

ISSUE PAPERS 2020 LEGISLATIVE SESSION



DEPARTMENT OF LEGISLATIVE SERVICES 2019

Issue Papers

2020 Legislative Session

**Presentation to the
Maryland General Assembly**

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

December 2019

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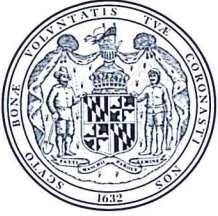
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

December 2019

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, 2019.

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.

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

Sincerely,


Victoria L. Gruber
Executive Director


Ryan Bishop
Director

VLG:RB/mrm

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Operating Budget

Economic and Revenue Outlook

Overall employment growth in Maryland has slowed in recent years from 1.5% in calendar 2015 to just 0.9% in calendar 2018. Economic growth in calendar 2019 is similar to the pace seen in calendar 2018. General fund revenues exceeded expectations in fiscal 2019 by \$217 million, and the estimate for fiscal 2020 was revised up by \$130 million.

Economic Outlook

In July 2019, the current U.S. economic expansion became the longest in post-World War II history, exceeding the 120 months of the 1990s expansion. Most economists expect the U.S. economy to continue to expand, but growth has slowed as fiscal stimulus in 2018 from both a federal budget deal and the federal Tax Cuts and Jobs Act of 2017 (TCJA) fades. U.S. inflation-adjusted gross domestic product was up 2.9% in 2018 but is expected to grow 2.3% in 2019 and 1.8% in 2020. U.S. employment grew 1.7% in 2018 and is up 1.6% through the first 9 months of 2019 but is projected to slow to about 0.9% growth in 2020. Total personal income grew 5.6% in 2018 (up from 4.7% in 2017), and wage income was up 5.0%. Nationally, total personal income in 2019 was up 4.8% through August with wage income increasing 5.2%. In 2020, growth is expected to slow to 4.2% for total personal income and 4.7% for wage income.

Throughout the economic expansion, 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 2018. Since 2010, U.S. employment growth has averaged 1.7% per year but only 1.1% per year in Maryland. Through the first nine months of 2019, employment in Maryland grew just 0.6% compared to 1.6% nationally. But alternate measures of the labor market suggest the monthly employment data is likely understating growth in Maryland. In the first quarter of 2019, data from the Quarterly Census of Employment and Wages shows job growth in Maryland at 1.0% and 1.5% nationally.

Wage growth in Maryland has also underperformed relative to the U.S. economy. In 2018, Maryland wage and salary income grew 3.7% compared to 5.0% nationally. In the first half of 2019, wages in Maryland were up 3.7% versus 5.2% for the United States as a whole.

In September 2019, the Board of Revenue Estimates (BRE) issued a revised economic forecast for Maryland, its first since March (see **Exhibit 1**). BRE revised the economic outlook largely consistent with recent performance. Employment growth for 2019 was unchanged, but wage growth decreased from 4.0% to 3.2%. This reduced the expected average wage growth in 2019 from 3.2% to 2.4%. 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 15.4% in 2018, and is projected to exceed 20.0% in 2029.

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

| <u>Calendar Year</u> | <u>Employment</u> | | <u>Wage and Salary Income</u> | |
|----------------------|-------------------|------------------|-------------------------------|------------------|
| | <u>Mar. 2019</u> | <u>Sep. 2019</u> | <u>Mar. 2019</u> | <u>Sep. 2019</u> |
| 2016 | 1.2% | 1.2% | 2.9% | 3.0% |
| 2017 | 1.1% | 1.1% | 3.5% | 3.6% |
| 2018 | 0.8% | 0.9% | 3.7% | 3.7% |
| 2019 Est. | 0.8% | 0.8% | 4.0% | 3.2% |
| 2020 Est. | 0.6% | 0.6% | 3.9% | 3.3% |
| 2021 Est. | 0.4% | 0.5% | 3.3% | 3.3% |
| 2022 Est. | 0.5% | 0.5% | 3.5% | 3.4% |

Note: The figure for 2018 wage growth under the Mar. 2019 column is an estimate. Wage growth for 2016-2018 under the Sep. 2019 column reflects data from the U.S. Bureau of Economic Analysis released September 24, 2019.

Source: Board of Revenue Estimates

Revenue Outlook

Fiscal 2019 general fund revenues exceeded the estimate by \$217 million, or 1.2%. General fund revenues totaled \$18.2 billion in fiscal 2019, an increase of 4.8% over fiscal 2018.

The overattainment was mostly due to the personal income tax and the corporate income tax, both of which were impacted by the TCJA that took effect beginning in tax year 2018. Personal income tax payments with returns were above estimate, while refunds were below. Among its many provisions, the TCJA increased the number of taxpayers taking the standard deduction rather than itemizing, a change that was also reflected on the Maryland return. According to data from the Comptroller's Office, the share of Maryland returns that itemized deductions fell to 25% in tax year 2018, down from 48% in prior years. This shift would generally increase Maryland tax liability and, therefore, resulted in a significant increase in payments with returns and a drop in refunds. For both individual and corporate filers, the TCJA also provided an incentive to shift income from tax year 2017 to tax year 2018 to take advantage of the lower federal taxes. This income shifting likely contributed to the overattainment in fiscal 2019.

Other components of the personal income tax underperformed in fiscal 2019. Income tax withholding, which accounts for 75% of gross receipts, was below the estimate and grew 3.2% over fiscal 2018. The sales tax was below the fiscal 2019 estimate by \$51 million and grew 3.6%

over fiscal 2018. Growth was just 1.9% after excluding additional revenue from new out-of-state retailers resulting from the U.S. Supreme Court decision allowing states to require those sellers to collect and remit the sales tax (*South Dakota vs. Wayfair*). Sales tax revenue growth was particularly weak in the first months of calendar 2019. The federal government shutdown in January combined with lower income tax refunds may have depressed consumer spending in this period.

Fiscal 2020 general fund revenue collections through September 2019 increased 10.0% from the prior year while ongoing revenues increased 9.4%. Personal income tax revenues grew 11.4% in the first quarter of fiscal 2020 driven primarily by quarterly estimated payments and final payments with returns. General fund sales tax collections grew 4.9%, but after adjusting for new remote sellers, growth was just 2.5%. Revenues from the estate and inheritance taxes increased \$45.6 million (145.6%) due to high payments this year and large refunds in fiscal 2019.

In September 2019, BRE increased its estimate for fiscal 2020 general fund revenues by \$129.9 million, or 0.7% (see **Exhibit 2**). The personal income tax estimate was revised up by \$169.5 million (1.6%), reflecting an upward revision for nonwithholding payments and downward revision to refunds. General fund corporate income tax revenues were revised up \$29.6 million, considerably less than the overattainment in fiscal 2019, reflecting the assumption that much of fiscal 2019 was related to income shifting and, therefore, would not carry forward. Other revenue sources were largely revised consistent with the performance in fiscal 2019, with the exception of the lottery. BRE assumed unusually large prize payouts in fiscal 2019 would not continue, boosting general fund revenues in fiscal 2020.

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

| | Fiscal 2020 | | | | Fiscal 2021 | |
|----------------------|---------------------------------------|---------------------------------------|------------------------|--|---------------------------------------|--|
| | BRE <u>Mar. 2019</u> | BRE <u>Sep. 2019</u> | <u>\$ Diff.</u> | % Change <u>2020/2019</u> | BRE <u>Sep. 2019</u> | % Change <u>2021/2020</u> |
| Personal Income Tax | \$10,377 | \$10,547 | \$170 | 2.7% | \$10,882 | 3.2% |
| Sales and Use Tax | 5,026 | 4,956 | -70 | 3.0% | 5,050 | 1.9% |
| Corporate Income Tax | 962 | 993 | 30 | -4.0% | 1,094 | 10.2% |
| Lottery | 545 | 567 | 23 | 2.7% | 579 | 2.1% |
| Other | 1,655 | 1,633 | -22 | 6.8% | 1,453 | -11.0% |
| Total | \$18,566 | \$18,695 | \$130 | 2.7% | \$19,058 | 1.9% |

BRE: Board of Revenue Estimates

Source: Board of Revenue Estimates

Operating Budget

Budget Outlook

The short-term general fund outlook has improved since the 2019 legislative session, but the long-term structural deficit remains. The improved outlook reflects better than expected revenue attainment in fiscal 2019, upward revisions to the revenue estimates for fiscal 2020 and 2021, and the Administration's decision not to release \$238 million of general fund spending reserved for legislative priorities. The fiscal 2020 end-of-year fund balance is now anticipated to be \$503 million. In fiscal 2021, ongoing spending exceeds ongoing revenues by \$441 million. This structural deficit is expected to increase to \$1.2 billion in fiscal 2025.

Background

Fiscal 2019 closed with a general fund balance of \$974.2 million. General fund revenues totaled \$18.2 billion, which is a 4.8% increase over fiscal 2018. **Exhibit 1** illustrates the changes by revenue component compared to the revised estimate from March 2019 adjusted for action at the 2019 session. Personal income taxes were higher than estimated by \$207.7 million, which was primarily due to federal tax changes and overattainment in capital gains. The corporate income tax also increased by about 7.8% above the estimate, resulting in an additional \$75.1 million in general fund revenues, which is likely reflective of corporations shifting sizeable amounts of income into tax year 2018 to account for the federal tax changes. These increases were offset by a \$51.0 million decrease in sales and use tax collections and a \$23.0 million decrease in all other revenue collections. Weak sales tax revenue growth attributable to demographic trends and consumers' shift away from tangible goods to more services and digital goods was somewhat offset by new revenue from remote sellers but ultimately resulted in a net decline in total collections.

Exhibit 1
Fiscal 2019 General Fund Revenue Performance
(\$ in Millions)

| | <u>Fiscal 2019 Estimated</u> | <u>Fiscal 2019 Actual</u> | <u>Change</u> |
|----------------------------------|------------------------------|---------------------------|----------------|
| Personal Income Tax | \$10,064.6 | \$10,272.4 | \$207.7 |
| Sales and Use Tax | 4,863.1 | 4,812.1 | -51.0 |
| Corporate Income Tax | 958.0 | 1,033.1 | 75.1 |
| State Lottery | 544.5 | 552.4 | 7.9 |
| Other | 1,752.2 | 1,729.0 | -23.1 |
| Subtotal Ongoing Revenues | \$18,182.4 | \$18,399.0 | \$216.6 |
| Excellence in Education Fund | -\$200.0 | -\$200.0 | \$0.0 |
| Total Revenues | \$17,982.4 | \$18,199.0 | \$216.6 |

Source: Department of Legislative Services

Fiscal 2020 Activity

Exhibit 2 shows that fiscal 2020 is projected to end with a significantly higher than anticipated general fund balance of \$503.0 million. This is approximately \$407.5 million above what was expected when the budget was enacted at the 2019 session. The turnaround is attributable to adjustments on both the revenue and spending sides of the equation. In addition to the previously mentioned overperformance of fiscal 2019 revenues at closeout, the Board of Revenue Estimates revised fiscal 2020 revenue collections upward in September 2019, adding nearly \$130 million to the total general fund revenue estimate for the current fiscal year.

State agencies reverted \$79 million of unspent funds at the close of fiscal 2019, which is \$44 million more than assumed in the budget. The largest reversions came from the Maryland Department of Health (\$19 million) and the Maryland State Department of Education (\$15 million). In addition, the Administration has opted to not release approximately \$238.0 million in general fund appropriations restricted in the fiscal 2020 budget. Of that amount, \$90 million will stay in the Rainy Day Fund, and the remaining \$148 million will either revert or be transferred to the General Fund. While the Governor's decision to withhold the funds does contribute to a higher total fund balance, the operational impact is to reduce fiscal 2020 funding available for a variety of initiatives identified as legislative priorities, including \$127 million less for school construction, \$25 million less for housing projects, and \$44 million less for open space and parks activities.

Exhibit 2
Evolution of the Fiscal 2020 General Fund Balance
(\$ in Millions)

| | Fiscal 2020 |
|--|--------------------|
| Estimated Closing Balance (July 2019) | \$95.5 |
| Revenue and Transfers | |
| Fiscal 2019 Closeout | \$212.0 |
| September 2019 BRE Revenue Revision | 129.9 |
| Net Change in Transfers from the Rainy Day Fund and Budgeted Tax Credits | -1.8 |
| Spending | |
| Fiscal 2019 Closeout Reversions | \$44.0 |
| Fiscal 2020 Restricted Funds Not Released by the Administration | 148.0 |
| DLS Estimated Fiscal 2020 Deficiencies | -124.5 |
| Revised Closing Balance (November 2019) | \$503.0 |

BRE: Board of Revenue Estimates

DLS: Department of Legislative Services

Source: Department of Legislative Services

Fiscal 2021 to 2025 Forecast

Exhibit 3 provides the Department of Legislative Services' (DLS) general fund forecast through fiscal 2025, which shows a projected cash surplus of \$503 million in fiscal 2020 declining to a \$1.5 billion cash shortfall by fiscal 2025. This is due to the disparity between ongoing revenue growth of 3.1% per year compared with spending commitments that grow by 4.0% annually on average. Relative to the forecast prepared following the 2019 session, the fiscal outlook has significantly improved. In July 2019, DLS estimated a fiscal 2021 cash shortfall of \$893 million. However, because of the previously discussed additional revenue for fiscal 2020 and 2021 coupled with more favorable spending trends for Medicaid, education aid, and bond premiums, DLS now projects a much smaller spending deficit of \$247 million. Despite these improvements, the structural deficit between ongoing general fund revenues and spending is still forecasted to exceed \$1.2 billion by fiscal 2024.

What is not reflected in the budget outlook presented in Exhibit 3 is any potential fiscal impact resulting from implementing recommendations from the Commission on Innovation and Excellence in Education (Kirwan Commission) that exceed the revenue sources identified in the Blueprint for Maryland's Future enacted at the 2019 session. It is anticipated that the Kirwan Commission's final recommendations, if ultimately passed by the General Assembly, will have a sizeable impact on ongoing spending over the next decade. Both the short- and long-term fiscal

outlook for the State would benefit from actions to better align existing revenues and spending in order to accommodate any additional out-year increases.

Exhibit 3
General Fund Forecast
Fiscal 2020-2025
(\$ in Millions)

| | Work. App. 2020 | Baseline 2021 | Estimate 2022 | Estimate 2023 | Estimate 2024 | Estimate 2025 | Average Annual Change 2021-2025 |
|-----------------------------------|--------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--|
| Revenues | | | | | | | |
| Opening Fund Balance | \$974 | \$503 | \$0 | \$0 | \$0 | \$0 | |
| Transfers | 158 | 353 | 43 | 42 | 41 | 44 | |
| Subtotal One-time Revenue | \$1,132 | \$856 | \$43 | \$42 | \$41 | \$44 | |
| Ongoing Revenues | \$18,731 | \$19,086 | \$19,680 | \$20,207 | \$20,885 | \$21,559 | 3.1% |
| Total Revenues and Fund | \$19,863 | \$19,942 | \$19,723 | \$20,249 | \$20,926 | \$21,603 | 2.0% |
| Spending | | | | | | | |
| Ongoing Spending | \$18,641 | \$19,527 | \$20,574 | \$21,377 | \$22,086 | \$22,805 | 4.0% |
| PAYGO Capital/Other | \$165 | \$71 | \$41 | \$26 | \$24 | \$24 | |
| One-time Reductions | 0 | 0 | 0 | 0 | 0 | 0 | |
| Appropriation to Reserve | 555 | 591 | 282 | 269 | 269 | 269 | |
| Subtotal One-time Spending | \$720 | \$662 | \$323 | \$295 | \$293 | \$293 | |
| Total Spending | \$19,360 | \$20,188 | \$20,896 | \$21,672 | \$22,379 | \$23,098 | 3.4% |
| Ending Balance | \$503 | -\$247 | -\$1,173 | -\$1,423 | -\$1,453 | -\$1,495 | |
| Rainy Day Fund Balance | \$1,183 | \$1,143 | \$1,174 | \$1,214 | \$1,257 | \$1,299 | |
| Balance over 5% of GF | 0 | 190 | 195 | 201 | 209 | 216 | |
| As % of GF Revenues | 6.3% | 6.0% | 6.0% | 6.0% | 6.0% | 6.0% | |
| Structural Balance | \$91 | -\$441 | -\$894 | -\$1,170 | -\$1,201 | -\$1,246 | |

GF: General Fund
PAYGO: pay-as-you-go

Source: Department of Legislative Services

Operating Budget

Transportation Trust Fund Overview

The Transportation Trust Fund closed fiscal 2019 with a \$319 million fund balance, which is \$169 million more than projected. 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 2020 to 2025 forecast period. This will reduce the six-year capital program by \$590 million.

Fiscal 2019 Closeout

The Transportation Trust Fund (TTF) ended fiscal 2019 with a fund balance of \$319 million, an amount \$169 million higher than the \$150 million projected ending balance. Revenues exceeded projections by \$91 million, while expenditures were \$78 million lower than projected.

Nonbond-related revenues exceeded projections by a net \$77 million, with corporate income tax attainment accounting for \$14 million of the additional revenues. Motor fuel tax revenue and titling tax revenue exceeded estimates by \$12 million and \$13 million, respectively. Revenues from bond sales and premiums were \$14 million higher than projected.

On the expenditure side of the equation, increased operating spending of \$36 million was more than offset by decreased capital spending of \$113 million relative to estimates.

Fiscal 2020 to 2025 Transportation Trust Fund Forecast

Exhibit 1 shows the fiscal 2020 to 2025 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 a net \$82 million lower and operating budget spending that is \$403 million higher. The lower revenue and higher spending assumptions require a reduction in bond issuances in fiscal 2021 through 2025 totaling \$208 million in order to maintain minimum debt service coverage ratios. Based on DLS estimates, the six-year capital program would be \$590 million less than projected in the MDOT forecast, not including mandated capital grants to local governments.

Exhibit 1
Transportation Trust Fund Forecast
Fiscal 2020-2025
(\$ in Millions)

| | <u>2020</u> | <u>2021</u> | <u>2022</u> | <u>2023</u> | <u>2024</u> | <u>2025</u> | <u>Total 2020-2025</u> |
|---------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------------------|
| Opening Fund Balance | \$319 | \$150 | \$175 | \$175 | \$175 | \$175 | |
| Closing Fund Balance | \$150 | \$175 | \$175 | \$175 | \$175 | \$175 | |
| Net Revenues | | | | | | | |
| Taxes and Fees | \$2,953 | \$2,995 | \$3,069 | \$3,131 | \$3,195 | \$3,247 | \$18,590 |
| Operating and Miscellaneous | 650 | 680 | 696 | 723 | 697 | 704 | 4,150 |
| Subtotal | \$3,603 | \$3,675 | \$3,765 | \$3,854 | \$3,892 | \$3,951 | \$22,740 |
| Bond Proceeds/Premiums | \$555 | \$318 | \$252 | \$265 | \$378 | \$178 | \$1,947 |
| Fund Balance (Increase)/Use | 169 | -25 | 0 | 0 | 0 | 0 | 144 |
| Total Net Revenues | \$4,327 | \$3,967 | \$4,017 | \$4,120 | \$4,271 | \$4,129 | \$24,831 |
| Expenditures | | | | | | | |
| Debt Service | \$354 | \$412 | \$455 | \$494 | \$457 | \$469 | \$2,641 |
| Operating Budget | 2,251 | 2,310 | 2,389 | 2,590 | 2,710 | 2,795 | 15,044 |
| State Capital | 1,723 | 1,245 | 1,172 | 1,036 | 1,103 | 866 | 7,146 |
| Total Expenditures | \$4,327 | \$3,967 | \$4,017 | \$4,120 | \$4,271 | \$4,129 | \$24,831 |
| Debt | | | | | | | |
| Debt Outstanding | \$3,692 | \$3,755 | \$3,710 | \$3,638 | \$3,711 | \$3,571 | |
| Debt Coverage – Net Income | 2.6 | 2.7 | 2.7 | 2.7 | 2.6 | 2.5 | |
| Capital Summary | | | | | | | |
| State Capital (Excl. Local Aid) | \$1,465 | \$983 | \$906 | \$765 | \$830 | \$670 | \$5,618 |
| Mandated Local Aid Capital | | | | | | | |
| Grants | 258 | 262 | 267 | 271 | 274 | 197 | 1,528 |
| Other Funds (Nonbudgeted) | 241 | 302 | 188 | 217 | 114 | 101 | 1,163 |
| Net Federal Capital (Cash Flow) | 1,361 | 1,215 | 980 | 748 | 634 | 649 | 5,587 |
| Total Capital Expenditures | \$3,325 | \$2,762 | \$2,340 | \$2,001 | \$1,851 | \$1,616 | \$13,896 |
| Dedicated Purpose Account GF – | | | | | | | |
| WMATA Dedicated Grant | \$110 | \$167 | \$167 | \$167 | \$167 | \$167 | \$945 |
| GARVEE Debt Service | \$51 | \$0 | \$0 | \$0 | \$0 | \$0 | \$51 |

GF: general funds

GARVEE: Grant Anticipation Revenue Vehicle

WMATA: Washington Metropolitan Area Transit Authority

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

Source: Department of Legislative Services

Revenues

Over the six-year forecast, DLS estimates that tax and fee revenue, including revenue going to other State agencies to cover transportation-related activities, will total \$19.0 billion with an average annual growth rate of 1.9%. Motor fuel tax revenue, the largest TTF revenue source, is projected to grow at an average annual rate of 2.0%.

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 \$15.0 billion, and debt service expenditures are estimated to total just over \$2.6 billion. The DLS baseline budget estimate for MDOT operations in fiscal 2021 is \$160.5 million (7.5%) higher than the current year legislative appropriation. For fiscal 2022 to 2025, the DLS forecast inflates operating spending by 3.4% annually, which matches the five-year average annual increase for the period ending with fiscal 2019, the most recent year for which actual expenditures are available. Both the DLS and MDOT forecasts include \$119 million in fiscal 2023, \$154 million in fiscal 2024, and \$151 million in fiscal 2025 for availability payments to the Purple Line concessionaire.

Debt Financing

Debt issued by MDOT supports the capital program. Debt issuances are limited by a total debt outstanding cap of \$4.5 billion and two coverage tests that require the prior year's pledged taxes and net income to be at least two times greater than the maximum debt service for all bonds outstanding in the current fiscal year. MDOT has an administrative goal of maintaining a minimum 2.5 times pledged taxes and net income to maximum debt service ratio. The lower revenue attainment and higher operating spending, as discussed earlier, results in the need to reduce the amount of bonds issued in fiscal 2021 through 2025 by \$208 million (13%) compared to the MDOT forecast in order to maintain the 2.5 minimum net income debt service coverage ratio throughout the forecast period.

Capital Expenditures

DLS estimates that the total special and federal fund capital budget, excluding mandated local aid capital grants and general funds for the Washington Metropolitan Area Transit Authority dedicated grant, will total \$11.2 billion, which is \$590 million less than assumed in MDOT's forecast.

Local Transportation Aid

Local transportation aid in the form of mandated capital grants total \$1.5 billion over the six-year period. Chapters 330 and 331 of 2018 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 effect prior to enactment of this legislation.

Operating Budget

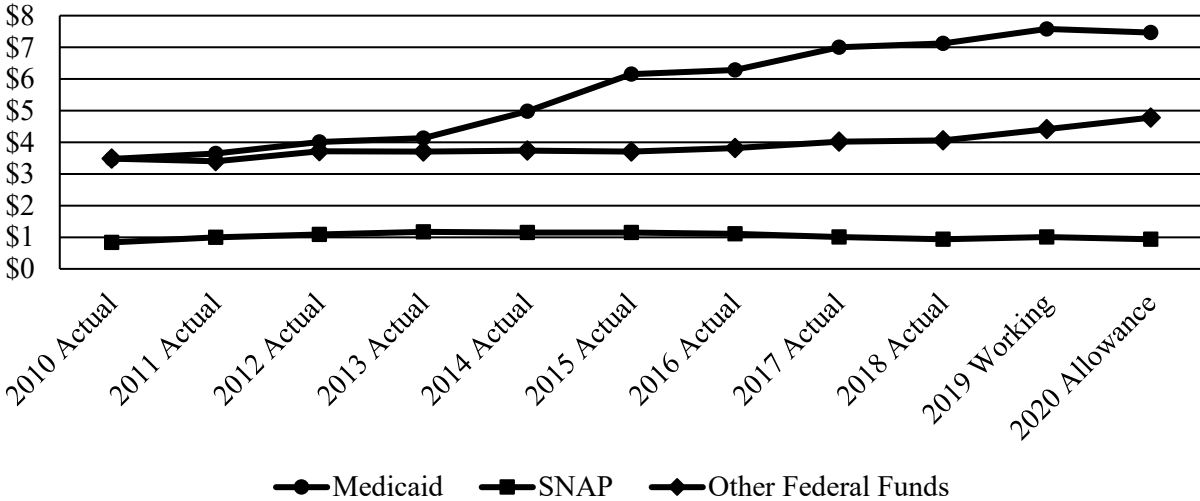
Federal Funds Outlook

In fiscal 2020, the State of Maryland anticipates receiving \$13.2 billion in federal funds. The federal fiscal 2020 budget is funded with a continuing resolution that expires on November 21, 2019.

Federal Funds to the State of Maryland

Federal funds to the State have grown 5.4% annually from fiscal 2010 to 2020; the fiscal 2020 federal fund allowance totals \$13.2 billion.¹ As shown in **Exhibit 1**, Medicaid accounts for \$7.5 billion in fiscal 2020, or 56.7% 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
(\$ in Billions)



SNAP: Supplemental Nutrition Assistance Program

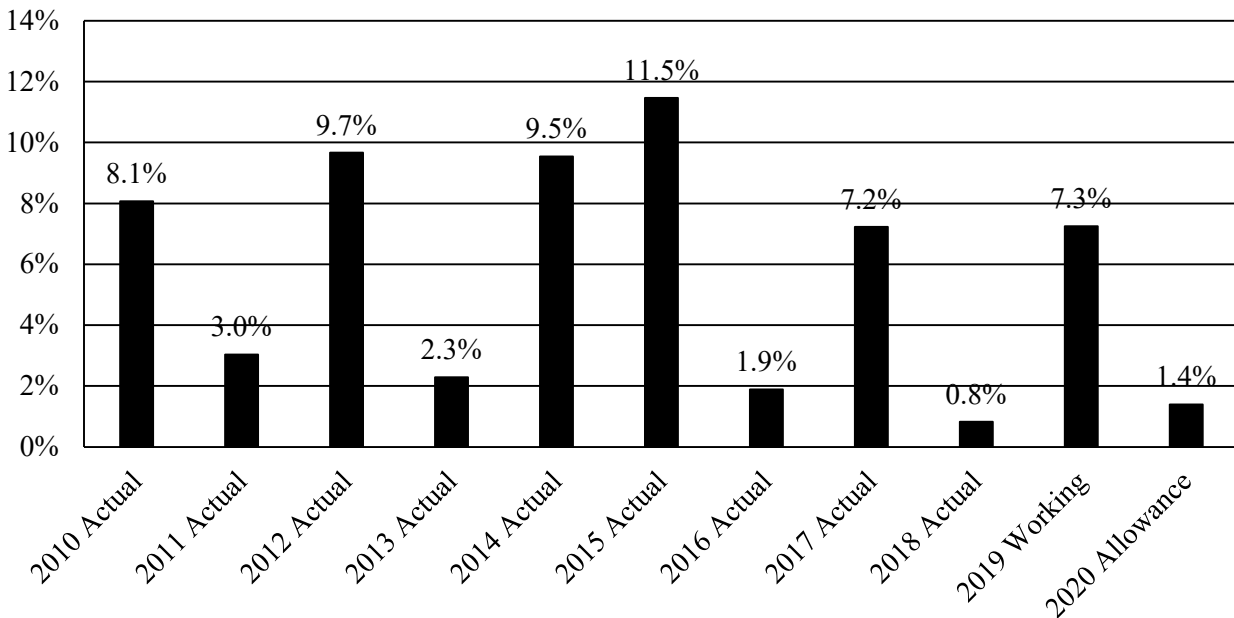
Source: Department of Budget and Management; Department of Legislative Services

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

Growth Rate of Federal Funds

Over the last 10 years, federal funds have grown at varying rates primarily due to changes in Medicaid enrollment and federal policy. 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 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. However, declines in enrollment led to a small decrease in federal Medicaid funding in the fiscal 2020 allowance.

Exhibit 2
Growth Rate of Federal Funds to the State of Maryland
Fiscal 2010-2020



Note: Excludes stimulus funding provided by the American Recovery and Reinvestment Act of 2009, which was provided from fiscal 2009 to 2017.

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

Fiscal 2020 Federal Fund Appropriation

The fiscal 2020 federal fund allowance totals \$13.2 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% of federal funding to the State.

Exhibit 3 Federal Funds in Fiscal 2020 Allowance (\$ in Millions)

| <u>Department/Service Area</u> | <u>Allowance</u> |
|---|-------------------|
| Judicial and Legal Review | \$4.7 |
| Executive and Administrative Control | 250.4 |
| Budgetary and Personnel Administration | 16.3 |
| General Services | 1.4 |
| Transportation | 1,318.2 |
| Natural Resources | 35.5 |
| Agriculture | 7.1 |
| Health | 7,954.0 |
| Human Services | 1,690.8 |
| Labor | 169.1 |
| Public Safety and Correctional Services | 30.5 |
| Public Education | 1,291.0 |
| Housing and Community Development | 297.5 |
| Commerce | 3.5 |
| Environment | 84.1 |
| Juvenile Services | 4.5 |
| State Police | 6.9 |
| Public Debt | 11.5 |
| Total Federal Funds | \$13,177.1 |

Note: Numbers may not sum due to rounding.

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

Federal Fiscal 2020 Budget Update

While none of the 12 annual appropriations bills for federal fiscal 2020 have passed the U.S. Congress, a continuing resolution (CR) ensures federal spending authorization through November 21, 2019, or until enactment of final appropriations. The CR did not include across-the-board spending cuts, unlike most CRs in recent years. It also extended several programs that were scheduled to expire at the end of fiscal 2019, including several health programs, the Temporary Assistance for Needy Families and related programs, and the National Flood Insurance Program. The U.S. Congress will need to either pass appropriations bills or another CR to ensure continued government operations.

Under caps set by the Budget Control Act of 2011, discretionary spending levels were set for an approximately 10% cut in fiscal 2020 due to sequestration. However, the U.S. Congress passed the Bipartisan Budget Act of 2019 in August. The legislation raised discretionary spending caps for federal fiscal 2020 and 2021 for both defense and nondefense spending and suspended the debt limit. The bill also required federal fiscal 2020 discretionary spending limits to be increased to account for 2020 census costs.

Capital Budget

Debt Affordability

The Capital Debt Affordability Committee recommended a general obligation bond debt limit totaling \$1.095 billion for fiscal 2021. 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 2025. The Treasurer's Office estimates that total tax-supported outstanding debt will be \$14.0 billion at the end of fiscal 2021, while debt service will be \$1.8 billion in fiscal 2021.

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 Maryland Stadium Authority (MSA) 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 7.8%. Debt outstanding to personal income peaks in fiscal 2020 at 3.5% and declines steadily throughout the period. This decline is, in part, attributable to State debt's short amortization period. The Constitution of Maryland limits State debt maturities to 15 years. Consequently, State debt is retired quickly.

Exhibit 1
Affordability Ratios
Fiscal 2020-2025

| <u>Year</u> | <u>Projected Debt Outstanding As a Percent of Personal Income</u> | <u>Projected Debt Service As a Percent of Revenues</u> |
|-------------|---|--|
| 2020 | 3.5% | 7.4% |
| 2021 | 3.5% | 7.5% |
| 2022 | 3.4% | 7.7% |
| 2023 | 3.2% | 7.8% |
| 2024 | 3.2% | 7.5% |
| 2025 | 3.0% | 7.5% |

Source: State Treasurer's Office, October 2019

State Debt

GO bonds finance the State's capital program, which supports local public school construction, higher education, State facilities, and other capital projects. CDAC recommended that fiscal 2021 GO bond authorizations be limited to \$1.095 billion. Total GO debt is projected to be \$9.7 billion at the end of fiscal 2021. The State Treasurer's Office (STO) projects that GO bond debt service payments will total \$1.3 billion in fiscal 2021.

Transportation bonds are limited obligation instruments, the proceeds of which fund highway and other transportation-related projects. Debt service on these bonds is funded from the Transportation Trust Fund, which is supported by motor vehicle fuel taxes, titling and registration fees, a portion of the corporate income tax, and other Maryland Department of Transportation (MDOT) revenues. State law limits consolidated transportation bonds outstanding to \$4.5 billion. CDAC projects that total outstanding transportation debt will reach \$3.8 billion in fiscal 2021. Transportation bond debt service is projected to be \$416 million in fiscal 2021.

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. GARVEE debt will mature in fiscal 2020, and the final fiscal year debt service is \$49 million. MDOT is not authorized 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. MDE estimates that \$210 million in bonds will be outstanding at the end of fiscal 2021. Debt service costs are projected to be \$32 million in fiscal 2021.

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. STO estimates that debt outstanding for leases is expected to be \$202 million at the end of fiscal 2021. Capital lease payments are estimated to be \$30 million in fiscal 2021.

The final category of State debt is MSA debt. Some MSA 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. MSA debt outstanding is expected to be \$87 million at the end of fiscal 2021. STO advises that debt service payments are projected to be \$16 million in fiscal 2021.

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 2021, CDAC recommends \$32 million for academic facilities on USM campuses. No issuances are anticipated for MSU, SMCM, or BCCC.

Capital Budget

Capital Funding Requests – Impact of Construction Inflation

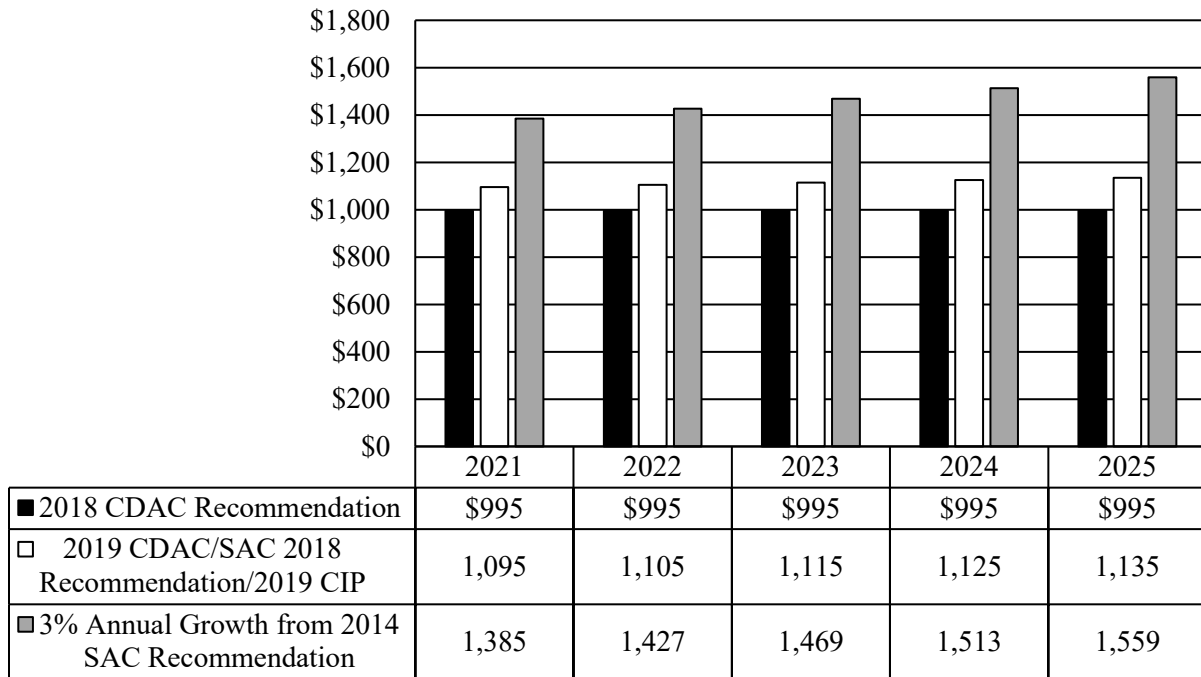
On October 17, 2019, the Capital Debt Affordability Committee (CDAC) recommended a \$1.095 billion limit on new general obligation (GO) bond authorizations for the 2020 session, which is the same amount recommended by the Spending Affordability Committee in its 2018 report and the same level planned in the Governor's 2019 *Capital Improvement Program* (CIP). CDAC's long-range plan recommends that GO debt authorizations increase 1% annually on a year-over-year basis. Construction inflation has grown at an average annual rate of 6.5% since January 2017. Continued construction inflation of this magnitude will necessitate restructuring the CIP or increasing GO authorizations above currently planned levels to maintain the purchasing power of the State's capital program.

Capital Debt Affordability Committee Recommendation

The Capital Debt Affordability Committee (CDAC) recommended a \$1.095 billion limit on new general obligation (GO) bond authorizations for the 2020 session. The committee's recommendation also includes a policy to increase authorizations by 1% annually on a year-over-year basis to account for the impact of construction inflation, which has increased dramatically over the past two years. The decision to include an annual inflationary increase is a departure from previous CDAC recommendations that held new GO bond authorizations at \$995 million annually in order to slow the growth of annual debt service costs.

Exhibit 1 shows the CDAC 2018 flat annual \$995 million authorization recommendation compared to its 2019 recommendation. The CDAC 2019 recommendation is the same recommendation made by the Spending Affordability Committee in its 2018 report and the same level of annual authorization included in the Governor's 2019 *Capital Improvement Program* (CIP) for the five-year planning period. Prior to the introduction of the 2019 CIP, the Governor's annual CIP programmed GO authorization levels at \$995 million annually consistent with prior CDAC recommendations. While the change in policy provides \$600 million more of authorizations over the next five years than would have been programmed had the flat annual \$995 million policy been maintained, it is quite a bit below the level of authorization that would have been available had CDAC's customary policy until 2014 of 3% annual increases been followed. This 3% rate of increase is affordable under current State revenue and debt service estimates resulting in the debt service to revenue ratio topping out at 7.8%. However, 3% annual increases would leave little room under the State's 8% limit in the event of an economic downturn and would require greater use of general funds to support debt service.

Exhibit 1
Effect of New Policy on General Obligation Bond Authorizations
Fiscal 2021-2025
(\$ in Millions)



CDAC: Capital Debt Affordability Committee

CIP: *Capital Improvement Program*

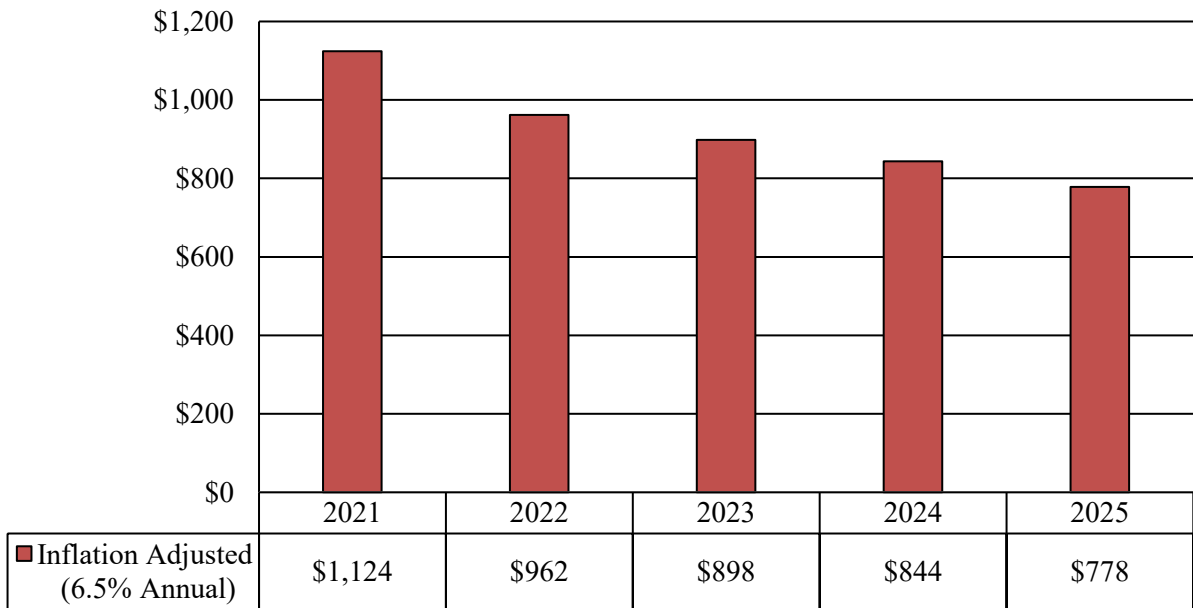
SAC: Spending Affordability Committee

Source: Capital Debt Affordability Committee Recommendation of GO Bond Authorizations

Year-over-year Construction Inflation on the Rise

A tightening of the labor market, a shortage of skilled labor, and a high level of construction activity in the region are contributing to a steady increase in construction inflation, as measured by the regional Engineering News Record regional building cost index. Since the beginning of calendar 2018, regional construction inflation has increased at an average annual rate of 6.5% and through the first nine months of calendar 2019 at a rate of 9.3%. **Exhibit 2** illustrates the impact that construction inflation, estimated at an average annual rate of 6.5%, would have on future authorization levels using the 2019 CDAC recommended levels currently programmed in the 2019 CIP.

Exhibit 2
Effect of Construction Inflation on General Obligation Bond Authorizations
Fiscal 2021-2025
(\$ in Millions)



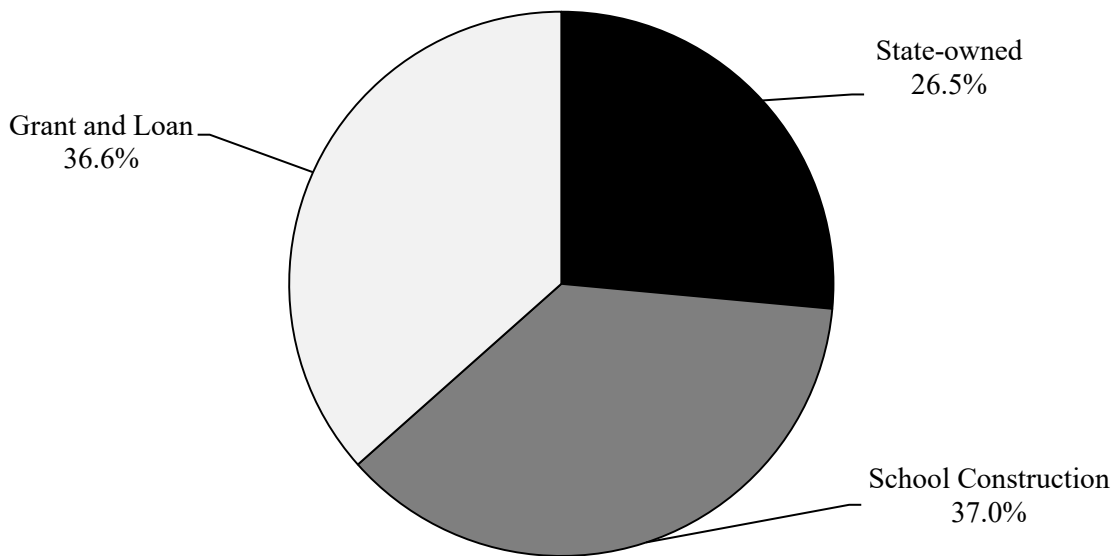
Source: Engineering News Record Building Cost Index

The rise in construction inflation is likely to result in an upward revision of the standard annual inflation factors used by the Department of Budget and Management (DBM) in estimating out-year project costs on State projects. For instance, the annual escalation rate used by DBM for calendar 2018 and 2019 was 4%, which is well below actual rates. Preliminary discussions with DBM indicate that the rate for calendar 2019 could be increased to as much as 9% to more accurately reflect current market conditions – a change that would result in higher programmed costs for projects currently in the CIP. Since the CIP already fully programs the use of GO bonds at the level of authorization proposed by the legislature, inflationary pressures will necessitate some restructuring of the CIP or an increase in GO bond authorizations above planned levels. Early estimates indicate that a 9% escalation rate for the calendar 2019 rate could add as much as \$30 million in project costs for State-owned projects for each year of the CIP. Should current market conditions persist beyond calendar 2019, or should a decision be made to apply a higher escalation rate for estimating purposes beyond calendar 2019, the fiscal impact could be much higher on an annual basis.

Exhibit 3 shows how the current CIP allocates planned levels of GO bond authorizations between State-owned projects and grant and loan programs, including the public school

construction program. As costs increase for State-owned projects above what is programmed, the amount of funds available to support grant and loan programs will likely decrease.

Exhibit 3
**General Obligation Bond Funding Shares for State-owned Projects,
Public School Construction, and Grant and Loan Programs**
Fiscal 2021-2024 Capital Improvement Program



Source: Department of Legislative Services

Revenues and Taxes

Casino Gaming Revenue

There are currently six casinos operating in Maryland. In fiscal 2019, State revenues from video lottery terminals (VLT) increased by 7.5%, while revenues from table games increased by only 0.5%. In Delaware, VLT and table game revenues both increased in fiscal 2019. In Pennsylvania and West Virginia, VLT revenues remained steady in fiscal 2019. Table game revenues grew by 1.1% in West Virginia and declined by 1.1% in Pennsylvania in fiscal 2019.

Video Lottery Terminals and Table Games in Maryland

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, 2019.

Exhibit 1 VLTs and Table Games in Operation by Facility

| <u>Facility</u> | <u>VLTs</u> | <u>Table Games</u> |
|-----------------|---------------|--------------------|
| Allegany | 665 | 18 |
| Anne Arundel | 3,697 | 193 |
| Baltimore City | 2,199 | 145 |
| Cecil | 822 | 21 |
| Prince George's | 3,139 | 204 |
| Worcester | 892 | 18 |
| Total | 11,414 | 599 |

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 2013 through 2021, 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 2013-2021 Est. (\$ in Millions)

| | <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> | <u>2017</u> | <u>2018</u> | <u>2019</u> | <u>Est. 2020</u> | <u>Est. 2021</u> |
|--|----------------|----------------|------------------|------------------|------------------|------------------|------------------|----------------------|----------------------|
| VLTs | | | | | | | | | |
| Allegany | \$2.8 | \$35.3 | \$38.0 | \$41.3 | \$45.1 | \$46.5 | \$48.9 | \$50.0 | \$50.7 |
| Anne Arundel | 431.1 | 419.0 | 391.8 | 408.8 | 371.9 | 369.5 | 411.8 | 429.0 | 435.4 |
| Baltimore City | | | 131.9 | 168.3 | 168.7 | 156.3 | 144.6 | 133.7 | 132.4 |
| Cecil | 76.0 | 72.1 | 66.1 | 65.7 | 63.1 | 64.9 | 65.2 | 64.5 | 64.5 |
| Prince George's | | | | | 177.5 | 345.3 | 384.8 | 401.6 | 409.7 |
| Worcester | 50.4 | 52.0 | 53.1 | 57.6 | 59.6 | 64.1 | 69.8 | 71.1 | 72.1 |
| Total VLTs | \$560.3 | \$578.4 | \$681.0 | \$741.7 | \$885.9 | \$1,046.7 | \$1,125.2 | \$1,149.9 | \$1,164.8 |
| Table Games | | | | | | | | | |
| Allegany | \$0.5 | \$5.9 | \$6.6 | \$6.6 | \$7.6 | \$7.6 | \$7.2 | \$7.5 | \$7.6 |
| Anne Arundel | 41.6 | 235.4 | 233.8 | 242.0 | 219.8 | 190.1 | 177.6 | 183.6 | 186.3 |
| Baltimore City | | | 104.1 | 142.1 | 135.3 | 110.8 | 105.6 | 98.4 | 97.4 |
| Cecil | 6.0 | 13.6 | 11.9 | 11.6 | 11.3 | 10.4 | 9.6 | 9.9 | 9.9 |
| Prince George's | | | | | 160.9 | 310.0 | 326.6 | 324.0 | 333.0 |
| Worcester | | | | | | 3.3 | 8.6 | 9.1 | 9.4 |
| Total Table Games | \$48.0 | \$254.9 | \$356.4 | \$402.3 | \$535.1 | \$632.3 | \$635.2 | \$632.5 | \$643.6 |
| Total VLT and Table Games | \$608.3 | \$833.3 | \$1,037.4 | \$1,144.0 | \$1,420.9 | \$1,679.0 | \$1,760.4 | \$1,782.4 | \$1,808.5 |

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 2013-2021 Est.
(\$ in Millions)

| | <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> | <u>2017</u> | <u>2018</u> | <u>2019</u> | <u>Est.</u> <u>2020</u> | <u>Est.</u> <u>2021</u> |
|----------------------------------|----------------|----------------|------------------|------------------|------------------|------------------|------------------|----------------------------|----------------------------|
| VLTs | | | | | | | | | |
| Education Trust Fund | \$274.7 | \$277.1 | \$316.1 | \$322.0 | \$361.7 | \$401.8 | \$447.4 | \$456.5 | \$445.3 |
| Lottery Operations | 11.2 | 11.6 | 11.9 | 7.8 | 9.3 | 10.5 | 11.2 | 11.5 | 11.6 |
| Purse Dedication Account | 39.1 | 38.9 | 46.0 | 50.1 | 54.6 | 61.2 | 65.9 | 67.2 | 68.1 |
| Racetrack Renewal Account | 10.8 | 9.5 | 7.1 | 7.0 | 8.4 | 10.0 | 10.8 | 11.0 | 11.1 |
| Local Impact Grants | 30.7 | 30.8 | 36.4 | 39.7 | 47.5 | 56.8 | 61.1 | 62.4 | 63.2 |
| Business Investment | 8.4 | 8.4 | 9.9 | 10.8 | 12.9 | 0.0 | 0.0 | 0.0 | 17.1 |
| General Fund | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 15.3 | 0.0 | 0.0 | 0.0 |
| Licensees | 185.4 | 202.1 | 253.6 | 304.3 | 391.3 | 491.0 | 528.8 | 541.2 | 548.3 |
| Total VLTs | \$560.3 | \$578.4 | \$681.0 | \$741.7 | \$885.9 | \$1,046.7 | \$1,125.2 | \$1,149.9 | \$1,164.8 |
| Table Games | | | | | | | | | |
| Education Trust Fund | \$9.6 | \$51.0 | \$71.3 | \$80.5 | \$89.5 | \$94.8 | \$95.3 | \$94.9 | \$96.5 |
| Local Impact Grants | | | | | 17.6 | 31.6 | 31.8 | 31.6 | 32.2 |
| Licensees | 38.4 | 203.9 | 285.1 | 321.8 | 428.1 | 505.8 | 508.2 | 506.0 | 514.9 |
| Total Table Games | \$48.0 | \$254.9 | \$356.4 | \$402.3 | \$535.1 | \$632.3 | \$635.2 | \$632.5 | \$643.6 |
| Total VLT and Table Games | \$608.3 | \$833.3 | \$1,037.4 | \$1,143.9 | \$1,420.9 | \$1,679.0 | \$1,760.4 | \$1,782.4 | \$1,808.5 |
| Education Trust Fund | \$284.3 | \$328.1 | \$387.4 | \$402.5 | \$451.2 | \$496.7 | \$542.7 | \$551.4 | \$541.9 |

VLT: video lottery terminal

Note: Figures may not sum due to rounding.

Source: Department of Legislative Services

Gaming in Surrounding States

Casinos in Delaware and West Virginia have faced increased competition with the expansion of gaming in Pennsylvania and Maryland in the past decade. 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 22% and 28%, respectively, while gaming revenues from the Hollywood Casino at Charles Town in West Virginia have decreased overall by 42%. Gaming revenues from Philadelphia casinos in fiscal 2019 were almost 5% higher than revenues in fiscal 2012.

Delaware's fiscal 2019 VLT revenues increased by 2.7% from the prior year, while table game revenues increased by 2.5% from the prior year. West Virginia's fiscal 2019 gaming revenues remained steady, only growing by 0.2% for VLT revenues and by 1.1% for table game revenues. Likewise, Pennsylvania's overall gaming revenues remained similar to the prior year, increasing by 0.7% for VLT revenues, but declining by 1.1% for table game revenues. Only one of the three Philadelphia area casinos experienced a decrease in gaming revenues in fiscal 2019. A new casino is expected to open in Philadelphia in December 2020.

Revenues and Taxes

Sports Betting

On May 14, 2018, the U.S. Supreme Court struck down the federal Professional Amateur Sports Protection Act, leaving states free to authorize single-game sports betting. Twelve states outside of Nevada now offer single-game sports betting. In the coming year, five states and the District of Columbia are expected to launch sports betting operations. Although sports betting is generally understood to be a low margin, high-volatility business, proponents in the gaming industry tout the ancillary benefits of retail sports books.

Legalized Sports Betting

The federal Professional Amateur Sports Protection Act of 1992 (PASPA) made betting on sports in most states illegal under federal law. New Jersey challenged the PASPA in the U.S. Supreme Court, arguing in *Murphy v. National Collegiate Athletic Association* that the federal ban violated the U.S. Constitution by commandeering the states into enforcing federal law. On May 14, 2018, the U.S. Supreme Court ruled in *Murphy* that the PASPA was unconstitutional, leaving states free to authorize sports betting.

Post-PASPA Sports Betting Operations

On June 5, 2018, less than one month after the PASPA was struck down by the U.S. Supreme Court, Delaware became the first state outside of Nevada to offer single-game sports betting. New Jersey launched single-game sports betting just nine days later. Since then, 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 12 of those states. **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 approximately \$394,600 a day, up from \$142,500 a day during the preseason. The total amount of bets placed in New Jersey jumped from \$293.6 million in August to \$445.6 million in September.

In the coming year, Illinois, Montana, New Hampshire, North Carolina, Tennessee, and the District of Columbia are expected to launch sports betting operations. Connecticut is positioned to move forward once lawmakers and regulators make necessary implementation decisions. Finally, Maine lawmakers passed a sports betting bill in the 2019 session, but Governor Janet T. Mills declined to sign it, thus delaying a decision on the bill until 2020. Under Maine rules, the Governor may veto the bill within three days of the beginning of the next legislative session; otherwise the bill will become law.

Exhibit 1
Post-PASPA Sports Betting States and Revenues

| <u>State</u> | <u>First Bet Placed</u> | <u>Tax Rate</u> | <u>Fees</u> | <u>Retail Sportsbooks Type / #</u> | <u>Mobile Betting</u> | <u>Sportsbook Data (Launch Date through September 2019)</u> |
|-----------------------|-------------------------|--|---|---|-----------------------|--|
| DE | 6/5/18 | 59.8% (includes a 9.8% share for race purses) | No separate sportsbook licensing fee required | Racetracks (3) | No | Handle – \$156,406,918 Revenue ¹ – \$16,685,421 State Share – \$8,342,724 |
| NJ | 6/14/18 | 8.5% onsite betting 13% online betting | \$100,000 application fee | Casinos and racetracks (12) | Yes | Handle – \$4,221,819,662 Revenue – \$284,789,051 State Share – \$33,442,939 |
| MI | 8/1/18 | 12% (includes a 4% local share) | Not specified | Landbased and riverboat casinos (23) | No | Handle – \$372,848,295 Revenue – \$40,068,693 State Share – \$4,808,243 |
| WV | 8/30/18 | 10% | \$100,000 application fee | Racetracks (4) and the private club at Greenbriar | Yes | Handle – \$188,387,886 Revenue – \$19,769,727 State Share – \$1,976,973 |
| NM² | 10/16/18 | Not specified | Not specified | Tribal casinos (2) | No | Not currently available |
| PA | 11/17/18 | 36% | \$10,000,000 application fee | Casinos and racetracks (11) | Yes | Handle – \$607,540,034 Revenue – \$46,127,248 State Share – 16,351,791 |
| RI | 11/26/18 | 51% | No separate sportsbook licensing fee required | Casinos (2) | Yes | Handle – \$168,165,611 Revenue – \$11,063,196 State Share – \$6,096,448 |
| AR | 7/1/19 | First \$150,000,000 at 13%, any additional revenues at 20% | Application fee not to exceed \$250,000 | Racetracks (2) and proposed casinos (2) | No | Not currently available |

| <u>State</u> | <u>First Bet Placed</u> | <u>Tax Rate</u> | <u>Fees</u> | <u>Retail Sportsbooks Type / #</u> | <u>Mobile Betting</u> | <u>Sportsbook Data (Launch Date through September 2019)</u> |
|--------------|-------------------------|-----------------|---|------------------------------------|-----------------------|--|
| NY | 7/6/19 | 10% | No separate sportsbook licensing fee required | Casinos (4) | No | Handle – Not currently available Revenue – \$3,080,275 State Share – \$308,028 |
| IA | 8/15/19 | 6.75% | \$45,000 application fee | Casinos and racetracks (13) | Yes | Handle – \$47,105,167 Revenue – \$7,118,035 State Share – \$480,467 |
| OR | 8/27/19 | Not available | Not specified | Tribal casinos ³ | Yes | Not currently available |
| IN | 9/1/19 | 9.5% | \$100,000 application fee | Casinos and racetracks (15) | Yes | Handle – \$35,215,416 Revenue – \$8,558,974 State Share – \$813,103 |

AR: Arkansas
DE: Delaware
IA: Iowa
IN: Indiana
MI: Michigan
NJ: New Jersey
NM: New Mexico

NY: New York
OR: Oregon
PA: Pennsylvania
PASPA: Professional Amateur Sports Protection Act
RI: Rhode Island
WV: West Virginia

¹ Vendor fees are subtracted from the handle before the distribution of the revenue.

² In New Mexico, two of that state's nine tribal casinos offer sports betting under the existing tribal gaming compact, although the activity remains unsanctioned under state law.

³ Currently, only 1 of Oregon's 10 tribal casinos offers sports betting.

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

Source: Department of Legislative Services

Sports Betting Legislation

In 2019, 17 states, including Maryland, considered sports betting legislation that ultimately failed to pass during their respective legislative sessions. Legislation is actively pending in Massachusetts, Michigan, and Ohio. As state lawmakers are debating the issue of sports betting in their respective states, U.S. Senate Minority Leader Charles E. Schumer has publicly pushed for a federal sports betting framework. Federal legislation was introduced in 2018 but has not been reintroduced under the current Congress.

Sports Betting Revenue Potential

Although sports betting is generally understood to be a low-margin, high-volatility business, proponents in the gaming industry tout the ancillary benefits of retail sportsbooks; specifically, bringing in younger, net new customers to a gaming facility with an aging customer base; increasing table games and slots revenue; and boosting onsite food, beverage, and hospitality business. Further, authorizing mobile sports betting could significantly increase revenues. Oxford Economics estimated that sports betting revenues would more than quadruple if sports betting became conveniently available online and at lottery retailer locations. Likewise, Global Advisors estimated that sports betting revenues could increase tenfold. New Jersey reported \$4.2 billion in total wagers since June 2018, 76% of which (\$3.2 billion) was generated from online and mobile betting. Without mobile betting, New Jersey's gaming revenues would have been reduced by \$26.9 million. In Pennsylvania, the handle for online and mobile betting, which launched in June 2019, averaged \$74.9 million per month between June and September. During that same four-month period, however, the monthly handle for retail sports betting averaged only \$27.4 million.

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 2019 session, but these bills failed to pass. If legislation is reintroduced and passed during the 2020 session, Maryland voters could consider the question in the 2020 general election. Otherwise, Maryland voters will not have the opportunity to consider the question of legalized sports betting until the 2022 general election.

Maryland Sports Betting Revenue Estimates

The Department of Legislative Services (DLS) noted during the 2019 session 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, DLS estimated that gross revenues after payouts to bettors could increase by \$35.6 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 \$7.1 million. DLS further estimated that gross revenues could increase up to \$71.1 million in fiscal 2020, totaling 4% of Maryland's gaming revenues if sports betting is authorized both online and at Maryland casinos and racetracks. Assuming a 20% tax rate, the State share of revenues would be \$14.2 million.

Revenues and Taxes

National Trends in Sales and Use Tax Collection

Sales and use tax revenue is an important source of revenue for state governments and is the second largest source of general fund revenues in Maryland. Due to several factors, the growth in sales and use tax revenue has not kept pace with the growth in personal income. States continue to take actions, including expanding the sales and use tax base, to prevent the erosion of this important revenue source. As a result of a recent U.S. Supreme Court decision, many states, including Maryland, have expanded their sales tax collection requirements to certain out-of-state sellers making Internet or mail order sales to in-state residents.

Background

Sales and use taxes have historically been an important source of revenues for state governments. Forty-five states and the District of Columbia impose a sales tax, and, according to the National Conference of State Legislatures (NCSL), sales taxes account for over 30% of total state tax collections. In Maryland, the sales and use tax is imposed on (1) the purchase of goods sold in Maryland; (2) the use, storage, or consumption in Maryland of tangible personal property purchased outside the State; and (3) certain services defined as taxable services under State law. Sales and use tax revenues are the State's second largest source of general fund revenues, with estimated fiscal 2020 revenues exceeding \$5.0 billion.

Over the past few decades, the growth in sales and use tax revenues has not kept pace with the growth in personal income, as the tax base has eroded due to several factors: (1) exemptions and sales tax holidays; (2) demographic changes, including the aging of the American population; (3) technology and advancements, such as the rise of the digital age; and (4) the shift of the American economy toward service industries. States have pursued several strategies to combat base erosion and maintain sales tax revenues.

Remote Sales Tax Collection

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 in *South Dakota v. Wayfair, Inc.* 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. According to NCSL, as of August 1, 2019, 37 states and the District of Columbia require remote sales tax collection. These jurisdictions will be joined by Arizona, Kansas, Oklahoma, Tennessee, and Texas by the end of 2019. Collection is not yet required by Florida, Louisiana, and Missouri. Although many jurisdictions establishing remote sales tax

collection requirements have modeled their thresholds on the South Dakota model, NCSL notes that some states have repealed minimum separate transaction amounts from their thresholds, utilizing only minimum monetary amounts to establish economic nexus. In addition, 36 states and the District of Columbia have implemented provisions requiring marketplace facilitators hosting third-party marketplace sellers to collect sales taxes on behalf of those sellers.

Effective October 1, 2018, regulations promulgated by the Comptroller established thresholds similar to those of South Dakota for the collection of sales tax by out-of-state vendors in Maryland. In addition, effective October 1, 2019, Chapter 728 of 2019 requires marketplace facilitators and marketplace sellers to collect and remit the State sales and use tax under specified circumstances. The Act also establishes tax collection and licensing requirements for marketplace facilitators and marketplace sellers.

Taxation of Digital Goods

The advent of the digital age has contributed to the erosion of the sales tax base as consumers have transitioned from purchasing tangible goods to digital goods, such as computer software, music, videos, and other electronic files. For example, rather than purchase a bound book that is subject to the sales tax, an individual may instead download a copy of the book, a transaction that traditionally would not be subject to tax. The disparate treatment of tangible and intangible versions of the same product have created inequities in sales tax codes.

Many states have taken action to address this issue. Data from Bloomberg BNA indicates that 30 states tax digital products in some form. In 28 states, digital goods and products are subject to sales and use taxes. In Hawaii, the income resulting from the sale of digital goods is subject to the state's general excise tax. In New Mexico, digital audio-visual works, digital audio works, and digital books are subject to a gross receipts tax when delivered to customers in the state. Effective August 1, 2016, Pennsylvania's 6% sales and use tax is imposed on digital products transferred electronically to a customer by download, streaming, or through other electronic means. This includes video, music, books, apps, games, and canned software. Beginning January 1, 2019, sales of digital goods are taxable in the District of Columbia.

A provision of House Bill 426 of 2019 would have imposed the Maryland sales and use tax on certain digital products and digital codes. Although actual revenue increases would depend on the amount and cost of digital products and codes that are purchased by Maryland consumers, based on experiences in other states, the Department of Legislative Services (DLS) estimated that revenues would increase by approximately \$38.1 million in fiscal 2020 and by \$51.3 million in fiscal 2024 under the bill's provisions.

Taxation of Services

A significant contributing factor cited for the erosion of the sales tax base is a shift in the national economy from the consumption of goods, the traditional base of the tax, to the consumption of services. The extent to which services are taxed varies across the nation. Hawaii, New Mexico, South Dakota, Washington, and West Virginia tax services broadly; in fact, Hawaii, New Mexico, South Dakota, and West Virginia subject all sales of goods and services to tax unless those goods or services are specifically exempt. Meanwhile, in other states, goods and services are not taxable unless specifically included in the tax base.

According to NCSL, states have faced several barriers to taxing services. These barriers include (1) administrative challenges in quantifying and tracking the value of services provided and determining where to source the sale of a service; (2) the difficulty in defining the new base (*i.e.*, developing clear definitions of services); (3) tax pyramiding, where the taxes on business-to-business sales are factored into the final sale price of a product; and (4) political hurdles. A number of states, including Louisiana, Massachusetts, Michigan, Nebraska, Pennsylvania, and Utah, have proposed significantly broadening their sales tax bases, including to professional services, but none have been successful. Meanwhile, Connecticut, the District of Columbia, Iowa, Kentucky, and North Carolina have taken incremental steps to broaden the application of their sales and use taxes to additional services.

In Maryland, the State sales and use tax has been imposed broadly on the sale or use of tangible personal property but only narrowly on a few specifically enumerated taxable services. The Maryland General Assembly last considered legislation expanding the sales and use tax base to services in 2012. House Bill 1051 of 2012 would have imposed the sales and use tax to approximately 30 additional types of services. DLS estimated that revenues could increase by over \$600 million under the bill's provisions.

State and Retiree Health Plan

Favorable trends in medical and prescription drug costs have helped reduce the pressure on employee contributions, 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 granted a temporary restraining order and preliminary injunction delaying the transition pending a decision on the case. Chapter 767 of 2019 was enacted to provide benefits to certain Medicare-eligible retirees with high out-of-pocket costs, with implementation delayed while the injunction is pending.

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. State employees may choose among three types of medical plans: a Preferred Provider Organization (PPO) that utilizes a national network and provides both in- and out-of-network benefits; an Exclusive Provider Organization (EPO) that also utilizes a national network and provides in-network benefits only; and an Integrated Health Model that utilizes a regional network.

EPO plans have the most members as of June 2019 with 64,418 members, or 51.7% 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.¹ This migration seems to have ended as the share of members electing EPOs has stabilized. EPO membership includes predominately active State employees (64% of membership), while PPO plan membership consists primarily of retirees (53% 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, who often have higher health care needs and appreciate the flexibility of PPO plans for out-of-network services.

¹ POS plans were discontinued in fiscal 2015 except for the State Law Enforcement Officer Labor Alliance members.

Large Fund Balance and Slow Prescription Drug Cost Growth

The State closed fiscal 2019 with a \$106.4 million surplus in the health insurance account, primarily due to starting the year with a significant fund balance as well as favorable trends in 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%. Fiscal 2019 growth returned to historic levels with growth of 4.4%. The onboarding of a new pharmacy benefits manager on January 1, 2018, has resulted in savings through reduced costs and enhanced rebates. In fiscal 2019, prescription drug costs (including rebate revenue) increased by 1.9%, which is lower than historic levels.

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

Chapter 397 of 2011 eliminated State prescription drug coverage for Medicare-eligible retirees beginning in fiscal 2020, 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 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 (Chapter 10 of 2018) to realign the transition of retirees to Medicare Part D to the new date, with the additional clarification of continuing 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 to delay the transition to Medicare Part D pending a decision on the lawsuit. During the 2019 session, Chapter 767 was passed to establish prescription drug out-of-pocket (OOP) reimbursement or catastrophic coverage programs for specified Medicare-eligible State retirees or dependents. Depending on certain eligibility requirements, the programs would cover OOP costs that exceed limits in the existing State plan, reimburse OOP costs after the participant enters catastrophic coverage under Medicare, or reimburse OOP costs for a life-sustaining drug covered under the State plan but not under the participant's Medicare prescription plan. However, Chapter 767 delays implementation of the three plans while the injunction is pending and requires that there be at least nine months before open enrollment before Chapter 767 is implemented. These provisions mean that the earliest Chapter 767 would be implemented would be January 1, 2021.

State Retirement and Pension System Investment Performance and Contribution Rates

The pension fund's fiscal 2019 return on investments was 6.46%, failing to exceed the assumed rate of return of 7.45%. The plan's funded status increased to 72.3%, compared to 71.6% at the end of fiscal 2018. State law requires that supplemental contributions of \$75 million continue until the system is 85% funded and includes a pension sweeper provision that will direct a portion of unspent State general fund balances to the system.

Fiscal 2019 Investment Performance

The State Retirement and Pension System's (SRPS) investment return for the fiscal year that ended on June 30, 2019, was 6.46%, failing to exceed the assumed rate of return of 7.45%. System assets grew to a market value of \$54.2 billion, as of June 30, 2019. Investment returns were below the assumed rate of investment return for the first time in three years, with returns exceeding the assumed rate of return in only two of the last five years. The system as a whole underperformed its policy benchmark by 0.63% (63 basis points). Total system return for fiscal 2015 through 2019 is 5.62%, which is 0.26% (26 basis points) above the plan return benchmark for that period. Total system return for the past 10 years is 8.61%, which is 0.57% (57 basis points) above its benchmark for that period.

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

From fiscal 2018 to 2019, SRPS's funded status (the ratio of projected actuarial assets to projected actuarial liabilities) improved from 71.6% at the end of fiscal 2018 to 72.3% at the end of fiscal 2019 (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. From fiscal 2018 to 2019, the total State unfunded liability increased marginally from \$19.038 billion to \$19.053 billion.

Fiscal 2021 Contribution Rates

Exhibit 1 shows that the employer contribution rate with reinvestment savings for the Teachers' Combined Systems (TCS) will decrease from 16.30% in fiscal 2020 to 15.65% in fiscal 2021, and the contribution rate for the Employees' Combined Systems (ECS) will increase

from 20.22% in fiscal 2020 to 21.36% in fiscal 2021. The aggregate contribution rate, including contributions for public safety employees and judges, decreases from 18.54% in fiscal 2020 to 18.46% in fiscal 2021. Based on projected payroll growth and other factors, the SRPS actuary estimates that total employer pension contributions will increase from \$1.991 billion in fiscal 2020 to \$2.038 billion in fiscal 2021. The fiscal 2021 contribution rates are the actuarially determined contribution rates and reflect the Board of Trustees' decision to lower the investment return assumption from 7.45% to 7.40% and incorporate the results of the system's 2014 through 2018 experience study. 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 2020 and 2021
(\$ in Millions)

| <u>Plan</u> | <u>2020</u> | | <u>2021</u> | |
|--------------------------|---------------|---------------------|---------------|---------------------|
| | <u>Rate</u> | <u>Contribution</u> | <u>Rate</u> | <u>Contribution</u> |
| Teachers' Combined | 16.30% | \$1,166.5 | 15.65% | \$1,154.1 |
| Employees' Combined | 20.22% | 670.2 | 21.36% | 722.7 |
| State Police | 80.58% | 84.7 | 79.03% | 88.6 |
| Judges | 44.44% | 22.1 | 40.27% | 20.6 |
| Law Enforcement Officers | 42.40% | 47.9 | 43.93% | 52.5 |
| Aggregate | 18.54% | \$1,991.3 | 18.46% | \$2,038.4 |

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., Preliminary Results of the June 30, 2019 Actuarial Valuation for Fiscal Year 2021

Employer contribution rates were subject to multiple influences this year, some exerting upward pressure and others downward pressure. Investment returns over the five-year smoothing period exert upward pressure on the fiscal 2021 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 million each

year until the system is 85% funded. Additionally, Chapter 557 of 2017 altered a sweeper provision that directs a portion of unspent general funds to the system as an additional supplemental payment in fiscal 2021 and subsequent years. This sweeper provision requires the Administration to include an additional \$25 million appropriation for State pension contributions in fiscal 2021.

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, the statute requires local school boards to pay the full normal cost for their employees in TRS/TPS. The normal cost rate for fiscal 2021 is 4.33%, and the system's actuary projects the local school board normal cost share for fiscal 2021 to be \$293.8 million. The system's actuary projects the total State contribution to TCS will be \$860.2 million, which consists of \$25.5 million of the normal cost,² \$783.9 million for unfunded liabilities, and \$50.8 million in supplemental contributions.

² 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 and operated by the State.

Education

State Education Aid

State aid for public schools is projected to total \$7.1 billion in fiscal 2021, representing an increase of \$105.0 million over fiscal 2020. Funding to support programs established or extended through The Blueprint for Maryland's Future (Chapter 771 of 2019) totals \$345 million in fiscal 2021.

State Public Schools Aid Projected to Increase by \$105 Million

Public schools are expected to receive an estimated \$7.1 billion in fiscal 2021, representing a \$105.0 million (1.5%) increase over the prior fiscal year. The increase is comprised of aid that flows directly to local school boards, which is projected to increase by \$137.3 million (2.2%), as partially offset by retirement aid, which is projected to decrease by \$32.3 million (4.2%). 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 funding designated to support The Blueprint for Maryland's Future.

Foundation and Many Other Direct Aid Programs Will Increase

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 2021, an increase of \$58.4 million (1.9%) over fiscal 2020, as shown in **Exhibit 1**. The increase is attributable to statewide enrollment growth of an estimated 0.7% and a 1.2% inflationary increase in the per pupil foundation amount, from \$7,244 to \$7,331. The 1.2% 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 Washington-Arlington-Alexandria, DC-VA-MD-WV (the Washington statistical area). State law requires the inflationary adjustment to be the lesser of CPI-U or the Implicit Price Deflator for State and Local Government up to 5.0%. Although projected enrollment grows statewide, it varies by local school system, from an increase of 1.7% to a decline of 0.7%. Actual enrollment and wealth figures will not be available until January 2020.

Other than the Foundation Program, the compensatory education and limited English proficiency formulas are projected to increase the most among the direct aid formula programs in fiscal 2021. 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.

Exhibit 1
Estimated State Aid for Education
Fiscal 2020 and 2021
(\$ in Millions)

| <u>Program</u> | <u>2020</u> | <u>2021</u> | <u>\$ Change</u> | <u>% Change</u> |
|------------------------------------|-------------------------|-------------------------|-------------------------|------------------------|
| Foundation Program | \$3,140.4 | \$3,198.8 | \$58.4 | 1.9% |
| Geographic Cost of Education Index | 145.5 | 148.2 | 2.7 | 1.9% |
| Net Taxable Income Grant | 65.3 | 58.8 | -6.5 | -9.9% |
| Declining Enrollment Grant | 18.9 | 10.1 | -8.8 | -46.3% |
| Foundation Special Grants | 11.9 | 0.0 | -11.9 | -100.0% |
| Kirwan Blueprint Funding | 251.6 | 335.1 | 83.5 | 33.2% |
| Compensatory Education Program | 1,330.4 | 1,349.8 | 19.3 | 1.5% |
| Special Education Formula | 303.0 | 308.1 | 5.1 | 1.7% |
| Nonpublic Special Education | 121.5 | 118.9 | -2.6 | -2.1% |
| Limited English Proficiency | 311.1 | 323.4 | 12.3 | 3.9% |
| Guaranteed Tax Base | 43.7 | 44.1 | 0.4 | 0.9% |
| Student Transportation | 303.1 | 308.1 | 5.1 | 1.7% |
| Head Start/Prekindergarten | 50.8 | 29.6 | -21.1 | -41.6% |
| Other Programs | 136.2 | 137.8 | 1.6 | 1.2% |
| <i>Direct Aid Subtotal</i> | <i>\$6,223.6</i> | <i>\$6,370.8</i> | <i>\$137.2</i> | <i>2.2%</i> |
| Teachers' Retirement | \$767.9 | \$735.6 | -\$32.3 | -4.2% |
| Grand Total | \$7,001.5 | \$7,106.4 | \$104.9 | 1.5% |

Kirwan: Commission on Innovation and Excellence in Education

Source: Department of Legislative Services

Also, a decrease of \$11.9 million is projected due to no funding being included in fiscal 2021 for a foundation special grant. This fiscal 2020 grant provided supplemental funding to some school systems to ensure that all received at least an increase of \$100,000 in direct State aid. A similar grant was provided in fiscal 2019. However, as this grant is not required by statute, it is not anticipated for the fiscal 2021 budget.

Funding for The Blueprint for Maryland's Future

Consistent with the 2019 interim recommendations of the Commission on Innovation and Excellence in Education, Chapter 771 of 2019, The Blueprint for Maryland's Future, established an array of programs and funding over the fiscal 2020 and 2021 period. Chapter 771 established (1) a Concentration of Poverty School Grant Program; (2) a Teacher Collaborative Grant Program; (3) a Teacher Salary Incentive Grant Program; and (4) a Transitional Supplemental Instruction for Struggling Learners Program. An additional \$65.5 million in both fiscal 2020 and 2021 is provided

for special education services with specified allocations to each local education agency. If any of this funding is not needed to fully implement individualized education programs and 504 plans for students with disabilities, each local board of education must use the remaining funding to implement other recommendations made in the commission's January 2019 interim report. In addition, Chapter 771 extended the declining enrollment grants to fiscal 2021, expanded and extended the supplemental prekindergarten grants under Chapter 6 of 2017 to fiscal 2021, and extended the free and reduced-priced meals student-count methodology for the compensatory aid program used to account for school and school system participation in the Community Eligibility Provision through fiscal 2025.

Chapter 771 enhanced State aid to local school systems by \$251.6 million in fiscal 2020 and \$345.3 million in fiscal 2021. Implementation of the commission's recommendations will also be supported in fiscal 2020 and 2021 by gaming revenues deposited in the Education Trust Fund, including the funds the Governor is required to earmark for supplemental funding for public education (\$125 million in fiscal 2020 and \$250 million in fiscal 2021); a portion of corporate filing fee revenue; general funds repurposed from the overfunded Teacher, Induction, Retention and Advancement Pilot Program; and funds available from The Blueprint for Maryland's Future Fund. Beginning in fiscal 2021, sales tax revenues from marketplace facilitators and out-of-state vendors that exceed \$100 million are dedicated to funding the commission's recommendations. If expended on education aid in fiscal 2021, these sales tax revenues would bring total spending on public education to \$7.2 billion.

State Retirement Costs Increase; Local Costs Virtually Flat

State retirement costs for public school teachers and other professional personnel will total an estimated \$735.6 million in fiscal 2020, representing a \$32.3 million (4.2%) decrease. This decrease is attributed to a decrease in the State contribution rate, which is only partially offset by modest salary base growth. In addition to the State's share of teacher pension costs, local governments will contribute approximately \$303.3 million in fiscal 2021 (nearly level with the fiscal 2020 local total) – \$287.4 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 \$15.9 million toward State Retirement Agency administrative costs. The normal cost for fiscal 2021 is 4.33% of salary base as compared to 4.38% in fiscal 2020; 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. However, as discussed below, under Chapter 6 of 2012 some county governments must increase per pupil funding. As of November 2019, the Maryland State Department of Education (MSDE) has certified that the school appropriations of 23 counties have met or exceeded the fiscal 2019 MOE requirement. In total, 18 counties exceeded MOE by 1.0% or more. According to MSDE, Baltimore City appealed MSDE's decision that Baltimore City was

noncompliant with its MOE requirement, but MSDE dismissed the appeal while noting the lack of a brief from Baltimore City in support of the appeal. Accordingly, the State Superintendent of Schools has requested the Comptroller to withhold \$2.1 million in income tax revenue (equivalent to the MOE shortfall) from Baltimore City. Baltimore City has requested reconsideration of its appeal, and as of publication of this report, the final resolution of its MOE compliance is not known.

Twelve jurisdictions that are below the statewide five-year moving average education effort level may be required to increase their MOE appropriations in fiscal 2021 as required by Chapter 6 of 2012. 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%. Preliminary estimates suggest that statewide per pupil local wealth will increase from fiscal 2020 to 2021. Actual wealth and enrollment figures pertaining to fiscal 2021 aid will be available in January 2019. In fiscal 2020, 12 jurisdictions were required to increase their appropriations, ranging from an increase of 0.7% to 2.5%.

Education

Commission on Innovation and Excellence in Education

The Commission on Innovation and Excellence in Education held its final meeting in November 2019, following more than three years of work to develop policy recommendations and funding formulas that are intended to transform Maryland's education system into a world-class system that truly prepares its students to be college and career ready. The commission's recommendations call for an investment of over \$4 billion (State and local funds) annually once full implementation is reached in 10 years with a phase-in schedule that incrementally increases the formulas.

Commission's Work Nears Completion

After more than three years of work, the Commission on Innovation and Excellence in Education held its final meeting on November 21, 2019, and will issue a final report in December 2019. The commission was established by Chapters 701 and 702 of 2016 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 formulas; (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. Former University System of Maryland Chancellor Dr. William "Brit" Kirwan was appointed by the Governor and Presiding Officers to serve as chair of the commission. The members of the commission include eight legislators; State and local superintendents; representatives of State and local boards of education, local governments, higher education institutions, and the business community; and numerous other stakeholders.

In January 2019, the commission released an interim report that included detailed recommendations in the five policy areas outlined in its December 2017 preliminary report:

- ***Policy Area 1 – Early Childhood Education:*** A significant expansion of voluntary, high-quality, full-day prekindergarten, which will be free for all low-income three- and four-year-olds and provided on a sliding scale for all other four-year-olds, as well as capacity building for child care providers and additional supports and services for young children and their families;
- ***Policy Area 2 – High-quality and Diverse Teachers and Leaders:*** Raising the standards and status of the teaching profession, including a performance-based career ladder and salaries comparable to other fields with similar education requirements as well as revamped

teacher preparation programs to provide the skills and knowledge teachers need to be successful with students' different learning abilities and styles;

- ***Policy Area 3 – College and Career Readiness:*** An internationally benchmarked curriculum that enables most students to achieve college and career readiness by the end of tenth grade and then pursue pathways that include early college, high-quality college preparatory programs, and/or rigorous career and technical education with an apprenticeship or other workplace experience leading to an industry-recognized credential;
- ***Policy Area 4 – More Resources for Students to be Successful:*** Extensive additional support for schools serving high concentrations of students living in poverty, including community schools and wraparound services, and increased support for students learning English and students with disabilities; and
- ***Policy Area 5 – Governance and Accountability:*** An independent accountability board with the authority to ensure that the commission's recommendations are successfully implemented and produce the desired results.

The interim report also included 10-year projections of the cost of the commission's proposals and a request for an additional year to develop proposed funding formulas to implement the policy recommendations. The commission projected that, when fully implemented in fiscal 2030, its recommendations would require an additional \$3.8 billion in education spending, including both State and local shares.

The Blueprint for Maryland's Future

In response to the commission's interim report, The Blueprint for Maryland's Future (Chapter 771 of 2019) established in statute the policy framework for a world-class education system in Maryland based on the commission's recommendations. The Blueprint legislation also provided to the commission the additional year that it requested to complete its work and a "down payment" on funding to begin implementing its recommendations, pending the development of new funding formulas.

The Blueprint legislation provided initial funding for fiscal 2020 and 2021 for some of the commission's top priorities and mandated in fiscal 2022 at least \$370 million, and up to \$500 million, for the new funding formulas to begin to be implemented. New State funding totals \$255.7 million in fiscal 2020 and \$355.6 million in fiscal 2021.

Funding Formula Workgroup

In June 2019, the Presiding Officers of the Senate and the House of Delegates appointed a workgroup consisting of several members of the commission and State and local officials with

experience in finance and education to review the State's education funding formulas and make recommendations to the full commission regarding (1) the distribution of funds between the State and local governments and by local education agency to implement the commission's policy recommendations and (2) specific funding formulas for ongoing costs within the commission's recommendations. The workgroup also made recommendations for a more even phase-in schedule over the 10-year implementation period. In response to language in The Blueprint legislation, the workgroup completed its work in October 2019, and the commission adopted the workgroup's recommendations nearly unchanged.

Specifically, the workgroup recommended per pupil funding formula amounts for the Foundation Program and the three targeted formulas (compensatory education, English Learners, and special education) as well as several new formulas including concentration of poverty. It also made recommendations related to enrollment counts, local wealth calculations, and numerous other factors related to the formulas. The workgroup's recommendations fully implement the commission's recommendations in 10 years, as envisioned by the commission in its interim report. However, the specific pacing of the workgroup's phase-in differs from what the commission envisioned, in part due to changes in assumptions about how quickly certain changes can be implemented (*e.g.*, the teacher career ladder) and the need for sufficient planning time so that the recommendations are implemented as intended with consideration for the fiscal impact on the State and local governments.

Under the workgroup's funding proposal, direct State aid for education in fiscal 2030, when the commission's recommendations are fully implemented, is projected to exceed the amount that would be allocated under current law by \$2.8 billion. During the phase-in period from fiscal 2022 through 2030, State aid grows at an annual rate of about 5.6%. This compares to significantly higher growth rates in the commission's interim report, especially in the first three years when costs increase by more than 50%.

The recommended schedule does not require any increase in local funding in fiscal 2021 from current projected levels. However, beginning in fiscal 2022, when the new funding formulas are proposed to take effect, local governments are expected to begin to contribute their share of those formulas. The State will pay the local share of the concentration of poverty grants for most school systems; only a small number of systems that benefit from the funding floor for State compensatory education funding will be responsible for paying the local share for the concentration of poverty funds. Under current law, local governments are only required to fund the local share of the Foundation Program. The workgroup recommended, and the commission adopted, a new requirement that the local governments fund the local share of all of the wealth-equalized formulas. However, the workgroup and the commission acknowledged that this new requirement will need to be phased in over time, particularly for less wealthy jurisdictions, and that other adjustments may be necessary during the legislative process.

Local jurisdictions will still be required to meet the per pupil Maintenance of Effort requirement under the proposal, but the so-called "escalator" provision that requires jurisdictions making below-average education effort to increase their maintenance of effort will be eliminated. The workgroup's recommendation estimates that the local share of education funding formulas

will increase by approximately \$1.2 billion over current projected local funding levels by fiscal 2030. Estimates of the phase-in of the State and local shares of the formulas by year and by jurisdiction are available on the commission's website. These estimates will be updated in January when the most recent enrollment and local wealth figures are available.

Education

School Construction

During the 2019 interim, several workgroups on school facilities met and finalized their recommendations. Additionally, the Interagency Commission on School Construction awarded grants to local education agencies from both the Healthy School Facility Fund and the School Safety Grant Program. Finally, ongoing progress was made toward the goal of renovating Baltimore City schools under the State, Baltimore City, and Baltimore City Public Schools partnership legislation enacted in 2013.

21st Century School Facilities Act Workgroups

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 during the 2018 legislative session. The Act made comprehensive changes to the public school construction funding and approval process, including making the process more independent and transparent. The Act also made a number of changes to the Interagency Commission on School Construction (IAC). The reconstituted IAC was appointed in 2018 and began implementing the Act.

The Act also created two workgroups to make further recommendations related to issues in public school construction that the commission could not resolve in the timeframe that it had to complete its work: the Workgroup on Educational Development Specifications (Ed Specs Workgroup) and the Workgroup on the Assessment and Funding of School Facilities (Assessment Workgroup). This section describes their work during the 2018 and 2019 interims.

Workgroup on Educational Development Specifications

The Ed Specs Workgroup was charged with, among other things, reviewing and making recommendations regarding (1) the square footage allocations used by IAC to determine funding levels for school construction projects and (2) the alignment between the State's school facility design standards and funding allocations. The Ed Specs Workgroup met several times in 2018 and 2019 and submitted a final report in July 2019.

The final report for the Ed Specs Workgroup recommended that IAC adopt new square footage allowances for school spaces that, in general, allow for slight increases in the square footage that is eligible for State funding. It also recommended that IAC clarify that design specifications for public schools are entirely at the discretion of local governments and that the State's design specifications serve as guidelines, not requirements. The report also recommended that IAC have sufficient flexibility to align gross area allowances with programmatic requirements

and to allow State participation in justifiable construction costs that exceed the standard cost per square foot. The Ed Specs Workgroup also made recommendations outside of its statutory charge, including recommendations related to requiring minimum allocations for building maintenance, the creation of incentives for local school systems to reduce the total cost of ownership for school facilities (which was referred to the Assessment Workgroup for its consideration), and promoting the use of shared space.

In May 2019, in anticipation of some of the Ed Specs Workgroup's recommendations, IAC voted to adopt the new square footage allowances recommended by the workgroup and to begin collecting information from local school systems on the total cost of ownership (TCO) when they submit new projects to IAC for review. The TCO information will be used only for planning purposes and will not be used in making any funding decisions at this time.

Workgroup on the Assessment and Funding of School Facilities

The Assessment Workgroup's main charge under the 21st Century School Facilities Act was to review the results of the initial statewide school facility assessment required by the Act and to make recommendations related to (1) the prioritization of facility needs identified by the assessment and, (2) if appropriate, how the assessment results should be used in making funding decisions. The Act required the initial statewide facilities assessment to be completed by July 1, 2019. IAC issued a solicitation in November 2018 for the initial statewide school facility assessment; however, a bid protest delayed award of the contract and eventually required that IAC reissue the solicitation. As a result, there was no assessment for the Assessment Workgroup to review. Nevertheless, the Assessment Workgroup chose to continue to meet to make preliminary recommendations related to the initial statewide school facility assessment.

The Assessment Workgroup recommended that the results of the statewide school facility assessment should be used in some capacity related to State public school construction funding decisions. The workgroup agreed that the results of the assessment should be put into weights and categories and that two reports should be produced from the assessment – one with all schools in the State compared to all other schools in the State and one with all schools in a county compared to all other schools within the county. The workgroup also agreed that the results of the weighting should be used to create a pilot program to award funding. The workgroup recommended that both the funding prioritization pilot program and a potential capital maintenance incentive program should be determined based on the completion of the statewide school facilities assessment. The Assessment Workgroup also considered whether to provide funding incentives for local jurisdictions to reduce TCO of public school facilities. The workgroup further recommended the implementation of an incentive that would provide a 0.75% State share incentive for each 1% in reduction in estimated TCO.

Healthy School Facility Fund

Recently, many school systems have encountered facility issues with potential impacts on student health and, in some cases, resulting in temporary school closures. Chapter 561 of 2018 established the Healthy School Facility Fund within 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. Chapter 557 of 2019 modified the program to add lead in drinking water outlets in school buildings to the list of priority health issues eligible for grants under the program. 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.

In its October 2019 meeting, IAC gave final approval for projects totaling the full \$30 million allocation. Local education agencies requested funding for 93 projects, and IAC approved funding for 53 projects. Priority was given to projects to rectify facility deficiencies that resulted in, or have the potential to result in, school closures.

Maryland School Safety Grant Program

The 21st Century School Facilities Act required an annual \$10 million appropriation to fund school safety capital improvements through the Maryland School Safety Grant Program. The program provides grants to address the need for school security improvements, including to secure lockable classroom doors; areas of safe refuge in classrooms; surveillance and other security technology for school monitoring purposes; security communications; access control systems; and security vestibules. In fiscal 2019, \$20 million was authorized for the program (\$10 million more than mandated). IAC awarded the \$20 million in capital funding for public schools in two \$10 million installments. At its September 2018 meeting, IAC approved allocating \$5 million of the first installment based on enrollment and \$5 million based on school facility square footage.

At its March 2019 meeting, IAC approved release of applications and funding allocations for a second \$10 million of the \$20 million total fiscal 2019 authorization with an application period from April 1 to September 30, 2019. As of October 2019, 599 security project applications for the program were received, and 519 projects were approved with 80 projects under further review. An allocation of \$10 million for fiscal 2020 has not yet been distributed.

Baltimore City School Construction Revitalization

Chapter 647 of 2013 established a new partnership among the State, Baltimore City, and Baltimore City Public Schools (BCPS) to fund up to \$1.1 billion in public school facility improvements through revenue bonds to be issued by the Maryland Stadium Authority. 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 with BCPS and Baltimore City each contributing \$20 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. The schedule has taken longer than originally anticipated, but 10 of 11 Year 1 schools approved under the MOU have been completed, with the final Year 1 school slated to open in summer 2021. The first of 17 Year 2 schools was completed in September 2019, leaving a total of 17 remaining schools to be completed. Of those, 3 are slated to be completed and open to students in January 2020, 5 more are under construction, 6 are being designed, and 3 are undergoing feasibility studies. The program is currently anticipated to be completed by summer 2021, one year behind the original schedule.

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 2020 budget includes the required \$3 million increase. IAC also recommended 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.

Higher Education

Financial Aid Administration

The implementation of several new scholarship programs has taken more time than anticipated. The Maryland Higher Education Commission indicates that it generally takes 18 months to two years to establish new programs. The financial aid management system has also proven costlier than anticipated to update and modify. Discussions continue on modifications to the income verification processes for the Guaranteed Access grant.

Implementation of Scholarships in 2019

Implementation of several financial aid programs, including the Teaching Fellows of Maryland Scholarship and the Promise Scholarship, did not go as smoothly as anticipated in 2019. According to discussions with the Maryland Higher Education Commission (MHEC) staff, tight implementation timelines were a major contributing factor. To launch a new or significantly revised scholarship program, MHEC staff report that they need 18 months to two years. The process includes developing and receiving approval for regulations, revising and updating the Maryland College Aid Processing System (MDCAPS), and launching marketing initiatives.

Teaching Fellows of Maryland Scholarship Implementation

Chapters 542 and 543 of 2014 and Chapter 361 of 2018 renamed the defunct Maryland Teacher Scholarship to the Teaching Fellows for Maryland Scholarship and altered the eligibility criteria, service obligation requirements, and amount of the award. Recipients of the scholarship must pledge to teach at a public school in Maryland in which at least 50% of the students in the school are eligible for free or reduced-price meals. Recipients receiving a scholarship as an undergraduate or graduate student must teach one or two years, respectively, for each year that they receive an award. If a recipient does not fulfill the service requirement, then the scholarship is converted into a loan. However, MHEC must forgive a recipient for two years of an award if the recipient has taken the teacher certification exam in two consecutive years and failed to pass within the time period specified by MHEC.

While Chapters 542 and 543 indicated that the Governor include funds to award scholarships in the budget, a minimum funding level was not specified; therefore, the program was not funded. Chapter 361 mandated that the Governor provide \$2.0 million annually beginning in fiscal 2019 to fund the program. Funds for the scholarship were provided to MHEC in July 2018, less than a month before the start of the 2018-2019 academic year. Due to the insufficient time to develop and launch the scholarship program, the \$2 million was not awarded and reverted to the General Fund. In fiscal 2020, MHEC launched the scholarship program with applications due by October 3, 2019.

Community College Promise Scholarship Program Implementation

Promise Scholarship programs – programs designed to cover the full tuition and fees of a student at a community college – continue to be popular nationwide. According to the College Promise Campaign’s most recent annual report, there were over 200 local programs in 44 states and 23 statewide programs during the 2017-2018 academic year. Maryland joined these states with the passage of Chapter 554 of 2018, which established the Maryland Community College Promise Scholarship Program. In the current fiscal year, \$15.0 million is budgeted for the program.

The Maryland Community College Promise Scholarship Program is mostly a last dollar award whereby State funds are applied to eligible recipients after all nonloan aid has been applied. Awards may not 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 provided that the recipient continues to meet the designated income requirements, remains eligible for in-state tuition, applies annually, and continues to make satisfactory academic progress.

Chapter 752 of 2019 altered the program in a number of ways, including (1) requiring that, except under certain circumstances, a Promise Scholarship recipient must attend the community college in the county or region in which the student lives; (2) allowing Promise Scholarship recipients to participate in registered apprenticeships or courses leading to licensure or certification; (3) altering the grade point average (GPA) requirement from being an overall high school GPA to one collected at the end of the first semester of the senior year of high school; and (4) altering the time after which an award recipient had to commence employment to allow students to transfer to four-year institutions. Additionally, Chapter 464 of 2019 specified that if a local county offered a Promise Scholarship, an award from the statewide program must be applied before the local program.

Although the program has been widely discussed, enrollment in its first year has been low, with only about 900 awards being given as of October 2019. According to anecdotal information from MHEC and community college staff, the compressed implementation timeline and the service obligation requirements have deterred students from applying for the award.

Guaranteed Access Grant Verification

The Delegate Howard P. Rawlings Educational Excellence Awards (EEA) Program is the State’s largest scholarship program. In the fiscal 2020 State budget, \$86.4 million was allocated for the EEA Program. The EEA Program consists of two different types of awards: (1) Guaranteed Access (GA) grants that are awarded to the neediest students to ensure that 100% of educational costs are paid; and (2) Educational Assistance grants that are awarded to low- and moderate-income students to assist in paying educational costs.

Chapter 485 of 2019 authorized public institutions of higher education as well as private institutions that receive State funds under the Joseph A. Sellinger Program to verify the eligibility of applicants for the GA grant beginning July 1, 2020, instead of MHEC. The bill also directed the Financial Aid Advisory Council (FAAC) to study the institution-based verification process for the GA grant and make recommendations on the implementation of the verification process by December 31, 2019.

As of October, FAAC has not finalized its report and recommendations. However, discussions have made clear that some members prefer only to verify the income eligibility of students selected for certification by the U.S. Department of Education (approximately one-third of students are selected each year). Others believe that institutions should verify the income of all applicants as MHEC currently does.

Maryland College Aid Processing System Costs

MDCAPS is a comprehensive financial aid management system with secure portals for MHEC staff, scholarship applicants, school counselors, and legislators (for purposes of awarding legislative scholarships). The system is a custom built web-based system and is used to administer more than 25 State-funded financial aid programs that receive more than \$114 million in annual appropriations.

MDCAPS became fully operational for the fiscal 2012 award cycle. In June 2018, MHEC posted a solicitation for maintenance and enhancement support for the system. The proposal stated that the contract would be a fixed-price contract for normal operations and a time-and-materials contract for enhancements. According to the proposal, “the changes mandated by State law or State regulation shall be treated as enhancements.”

In September 2018, MHEC entered into a one-year contract with four one-year options with Interclype Incorporated at a fixed cost of approximately \$150,000 annually. In addition, enhancements for fiscal 2019 totaled over \$715,000, which was unusually high. The cost reflected several factors: (1) more than typical changes required by legislation passed during the 2018 session that created four new scholarships and modified five existing scholarships; (2) modifications required to import SAT scores due to College Board updates; (3) updates to the system’s outdated computer language; and (4) a lack of technical documentation provided by the system’s original contractor. The enhancements cost between \$27,800 and \$218,900 per scholarship created or changed. Any future enhancement costs will depend on the actual technical complexity of the changes.

Higher Education

Maryland's Historically Black Colleges and Universities Litigation Remains Unresolved

For the past 13 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 or resolution of the case.

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), is suing the State and the Maryland Higher Education Commission (MHEC), alleging violations of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. The lawsuit was initially filed in 2006 in Baltimore City but was moved a few weeks later to the U.S. District Court. After attempts at mediation failed and after a long process of discovery, a six-week bench trial ensued in January and February 2012 with closing oral arguments in October 2012.

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 to be in violation of Title VI of the Civil Rights Act of 1964. The coalition's lawsuit identified three alleged policies of the Maryland system of higher education, which the coalition argued were traceable to the prior *de jure* system: (1) limited institutional missions; (2) operational funding deficiencies; and (3) unnecessary program duplication. The District Court rejected the first two claims raised by the coalition but found that the State had failed to eliminate unnecessary program duplication for Maryland's HBCUs and concluded that this policy was traceable to the *de jure* segregation era.

Unnecessary Program Duplication

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 over the objections of Morgan State University 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 UB.

Funding of HBCUs

The District Court found that, under Maryland's current funding system, HBCUs are not underfunded by the State relative to traditionally white institutions (TWIs); rather, the court found that Maryland appropriated slightly more per full-time equivalent students at HBCUs than at TWIs. Further, the court determined that Maryland's HBCUs are funded at or above their peer-based funding targets.

In 2000, Maryland entered into a five-year partnership agreement with the Office for Civil Rights (OCR) to improve the educational opportunities at the State's four HBCUs. To achieve this end, the agreement specified \$59.9 million in State operating funding from fiscal 2001 through 2006, which included \$31.5 million in Access and Success funds; \$20.5 million for OCR enhancement funds; \$4.9 million in Private Donation Incentive Program funds; and \$3.0 million for development of a Master Plan and business incubator at Bowie State University, information technology and a revitalization study at Coppin State University, and an admissions and enrollment management consultant for each HBCU. In addition, \$510.7 million was provided for capital projects at HBCUs.

Although the partnership agreement expired in December 2005 (fiscal 2006), the State has continued to allocate funds to HBCUs for the operating of programs. Furthermore, the State has permanently incorporated into the HBCUs base budgets Access and Success (since fiscal 2007) and OCR enhancement funds (since fiscal 2019). In total, from fiscal 2007 through 2020, \$169.3 million additional operating funding has been provided, including \$84.0 million in Access and Success funds, \$84.0 million in OCR funding, and \$1.1 million in Private Donation Incentive Program funds. Additionally, from fiscal 2001 through 2020, \$870 million was allocated for capital projects at the State's four HBCUs.

Current Status of the Litigation

In February 2018, the Governor proposed a \$100 million settlement to be allocated over a 10-year period beginning in fiscal 2020 that would supplement State appropriations to Maryland HBCUs. The coalition rejected this proposal.

In September 2019, the attorneys representing the coalition submitted a letter to the President of the Senate and Speaker of the House proposing a settlement amount of \$577 million "spread over a reasonable time period." The coalition specified that the funds would be used to develop and launch new programs, hire faculty, and provide scholarships. The coalition's proposed

settlement amount was based the *Ayers* case, a 1975 class action lawsuit directed against the state of Mississippi and its university system for operating a dual system of universities that discriminated on the basis of race. In 2001, a settlement agreement was reached in which the state of Mississippi agreed to pay \$397.1 million to the state’s three HBCUs. The settlement amount included \$35 million in private endowment funds that HBCUs were intended to raise and \$2.25 million for attorney fees. However, it is unclear from the coalition’s letter exactly how the proposed \$577 million settlement amount was determined.

In September 2019, the Governor proposed a “final offer” to settle the coalition’s lawsuit for \$200 million allotted over a 10-year period starting in fiscal 2021. If the parties do not reach an agreement, the case will move back to the federal appeals court for further litigation.

Health and Health Insurance

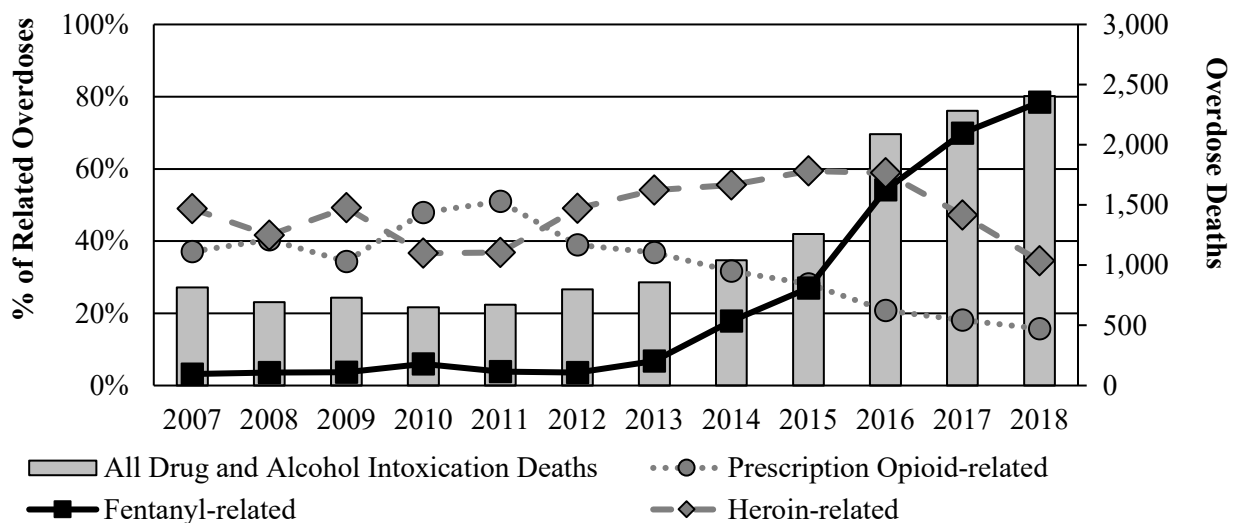
The Opioid Epidemic

In 2018, Maryland experienced the deadliest year on record for overdose deaths. Deaths associated with fentanyl continue to rise at an alarming rate, although deaths involving prescription opioids and heroin have decreased. The State has responded to the crisis through various initiatives aimed at prevention, treatment, and enforcement at the local and State level. Lawsuits filed against pharmaceutical manufacturers by the State and local jurisdictions have the potential to result in significant funding for opioid-related programs and services.

Opioid-related Overdose Deaths in Maryland

Maryland ranks among the top five states for the highest rates of opioid-related overdose deaths. In 2018, the State experienced the deadliest year on record for overdose deaths, due almost exclusively to the continued presence of fentanyl. **Exhibit 1** shows the total overdose deaths in the State since 2007 and the prevalence of prescription opioids, fentanyl, and heroin in contributing to overdose deaths.

Exhibit 1
Overdose Deaths and Substance Prevalence
Calendar 2007-2018

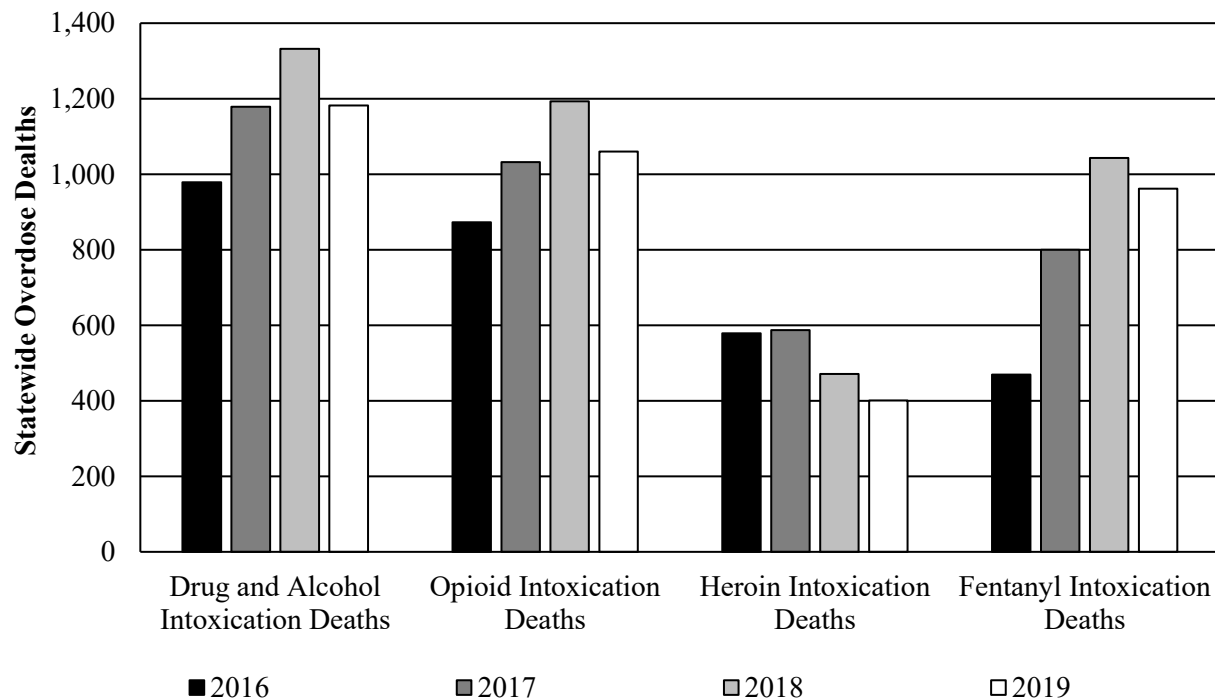


Source: Maryland Department of Health

Fentanyl, the deadliest of the three substances, tracks with an increase in overdose deaths overall, while overdoses involving heroin and prescription opioids have decreased.

Preliminary data for 2019 suggests that 2018 may have been the peak of the opioid epidemic. Data published by the Opioid Operation Command Center (OCCC) indicates that the total number of overdose deaths in Maryland for the first six months of 2019 was lower than the number of deaths at the same point in 2018. **Exhibit 2** shows the total overdose deaths, overdoses involving opioids, and deaths involving heroin and fentanyl for the first six months of the last four years.

Exhibit 2
Overdose Deaths, First 6 Months
Calendar 2016-2019



Source: Maryland Department of Health

Although the data for the first six months of 2019 shows a decrease in fentanyl-related overdose deaths relative to 2018, fentanyl-related deaths are still well above 2017 levels. It is also important to note that the overdose deaths for heroin and fentanyl are not mutually exclusive, as law enforcement often finds fentanyl mixed into the heroin supply. Research conducted by the Department of Legislative Services analyzing the same data sets used to create Exhibit 2 found that nearly 30% of all overdose deaths in the State in 2018 involved both heroin and fentanyl.

Maryland’s Actions to Address the Opioid Crisis

Executive Branch Response

Governor Lawrence J. Hogan, Jr.’s Administration has continued efforts to respond to the opioid epidemic through OCCC. OCCC announced awards of nearly \$10 million in grants for fiscal 2020 to assist in combating the opioid crisis, \$4 million of which will be divided among opioid intervention teams (OIT) in each of Maryland’s local jurisdictions. 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 remaining \$5.6 million will be awarded through a competitive grant process with \$2.7 million going toward treatment and recovery efforts, \$2 million going toward prevention and education efforts, and the remaining \$900,000 going toward enforcement and public safety efforts.

Legislative Response

During the 2019 session, the General Assembly passed legislation to further expand efforts to combat the opioid crisis. Chapter 532 of 2019 established programs for opioid use disorder screening, evaluation, and treatment (specifically medication-assisted treatment) in local correctional facilities and in the Baltimore Pretrial Complex. The programs established in local jails must conduct a screening of the mental health and substance use status of each inmate as well as offer at least one formulation of each U.S. Food and Drug Administration-approved full opioid agonist, partial opioid agonist, and long-acting opioid antagonist used for the treatment of opioid use disorders. Phase-in of the programs begins January 1, 2020.

Chapter 537 of 2019 established the Opioid Restitution Fund, a special fund that will retain any revenues received by the State relating to specified opioid judgments or settlements. The fund may be used only for specified opioid-related programs and services. The Act also established reporting requirements on the use of the fund.

Legal Actions Related to the Opioid Crisis

Nationwide, lawsuits have been filed against pharmaceutical manufacturers, pharmacies, and individual providers for fueling the opioid crisis, either for aggressively marketing opioids and downplaying the known addictive qualities of the drugs, or for failing to detect and report suspicious orders. In December 2017, the U.S. Judicial Panel on Multidistrict Litigation ordered the consolidation of the nearly 200 pending opioid-related cases into multidistrict litigation in the U.S. District Court for the Northern District of Ohio. Over 2,500 jurisdictions are part of the multidistrict litigation, including 32 Maryland jurisdictions (16 counties and 16 cities). In September 2019, Purdue Pharma, one of the original defendants named in the lawsuit, filed for bankruptcy. As part of their bankruptcy filings, Purdue Pharma has proposed a settlement worth \$3 billion plus future revenues from OxyContin sales. Attorney General Brian E. Frosh issued a statement rejecting Purdue Pharma’s proposed settlement. In May 2019, the Attorney General filed charges against Purdue Pharma, the Sackler family (owners of Purdue Pharma),

Rhodes Pharmaceuticals (an entity with ties to Purdue Pharma and the Sackler family), and related entities. The State's charges allege that Purdue Pharma and the Sackler family conducted an orchestrated marketing scheme designed to mislead Maryland healthcare providers, patients, insurers, officials, and others about the benefits of opioids while downplaying their risks. Any payments made to the State as a result of opioid litigation will be placed in the Opioid Restitution Fund.

Funding to Address the Opioid Crisis

The fiscal 2020 budget has nearly \$710 million targeted toward addressing the opioid crisis in Maryland. Nearly \$700 million of this funding is budgeted in the Maryland Department of Health (MDH), the overwhelming majority of which is for substance use disorder treatment in the Medicaid program (\$622.5 million). Also included in MDH's budget for fiscal 2020 is the second and final year of \$33 million in federal funds for the State Opioid Response Grant. The budget also contains \$3 million for the Behavioral Health Crisis Response Grant Program as mandated by the General Assembly, which will increase to \$4 million in fiscal 2021. Additional fiscal 2020 funding includes \$3 million in Department of Public Safety and Correctional Services support for medication-assisted treatment in State correctional facilities and \$725,000 between the Governor's Office of Crime Control and Prevention and the Department of State Police for various enforcement and treatment efforts.

Health and Health Insurance

Medical Cannabis Issues

The Natalie M. LaPrade Maryland Medical Cannabis Commission oversees licensing, registration, inspection, and testing related to the State's medical cannabis program, which serves approximately 85,000 certified patients. Since the initial announcement of grower and processor licenses in 2016, which caused controversy due to the absence of minority-owned growers, the General Assembly has enacted measures aimed at increasing diversity and minority participation in the medical cannabis industry. Additionally, legislation passed during the 2019 session introduced new rules related to advertising, license ownership and transfer, the use of medical cannabis for research, and the sale of edible cannabis products.

Natalie M. LaPrade Maryland Medical Cannabis Commission

The Natalie M. LaPrade Maryland 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 2016, the commission announced the award of 15 grower, 15 processor, and 102 dispensary Stage One license preapprovals. Following the award announcements, significant controversy arose surrounding two main issues: the commission's 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. Consequently, 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 were adopted; (3) raising the statutory cap on grower licenses from 15 to 22; and (4) establishing a new license cap of 28 for processors.

The disparity study conducted in accordance with Chapter 598 concluded that the State has a compelling interest in implementing remedial measures to facilitate participation in the medical cannabis industry by minorities and women. Based on these findings, the commission adopted emergency regulations in November 2018 altering the application review process for medical cannabis grower, processor, and dispensary licenses to incorporate remedial measures to assist

minorities and women in the medical cannabis industry. The regulations also altered the weighted criteria used to rank license applicants to include certain race-neutral and race-conscious provisions intended to address the needs of women and minority applicants. The new criteria account for 15% of the total points on the license application.

In 2019, the commission took additional steps to promote diversity and minority participation in the medical cannabis industry in accordance with Chapter 598, including:

- awarding \$225,000 in grant funding (five grant awards of \$45,000 each) to educational and business development organizations to provide free training to small, minority, and women business owners and entrepreneurs on how to participate and become licensees in the medical cannabis industry;
- co-hosting free workshops throughout the State with the Legislative Black Caucus of Maryland to educate small, minority, and women business owners and entrepreneurs on the medical cannabis industry in Maryland and to discuss the new medical cannabis grower and processor license applications; and
- accepting public comments and questions on the new grower and processor applications and posting the questions with responses on the commission website.

Following the conclusion of the commission's training and outreach efforts, the application period for the new grower and processor licenses was opened from March 25, 2019, until May 24, 2019. However, due to issues with the third-party-hosted online submission portal, the application period was reopened for two additional weeks in June 2019. All applicants were required to resubmit their application materials during this two-week period. The commission received a total of 213 applications. Of these, 202 were properly redacted as required for blind review and referred for evaluation in collaboration with Morgan State University (MSU). Over a six-week period, MSU evaluated, scored, and ranked each of the grower and processor applications. On August 31, 2019, MSU submitted a comprehensive evaluation report, including the evaluation scorecard, score, and ranking of each application, which was then combined with the portion of the application evaluation completed by the commission. The commission members, after review of the materials, voted to approve the rankings as submitted by MSU. Approval of the rankings did not award a Stage One preapproval to any applicant but rather enabled the commission to begin investigating the highest ranking applicants to verify the information and materials as submitted.

The commission was scheduled to announce the final preapprovals for the new grower and processor licenses on September 26, 2019. However, the announcement was delayed because (1) the Legislative Black Caucus of Maryland sent an official request to the commission asking for a delay in the award of any Stage One preapprovals until the commission completed the verification process for all applicants; and (2) a temporary restraining order was issued by a judge delaying the issuance of any Stage One preapprovals until October 7, 2019, pursuant to litigation brought against the commission by a potential applicant.

After numerous media reports raised concerns about the application review process, the commission announced plans to engage an independent firm to complete an investigation into the accuracy of material aspects of the highest ranking applications and the impartiality of the application process. The commission expects the investigations to be completed by the end of 2019.

Status of Medical Cannabis Implementation in Maryland

Medical cannabis became available for sale in the State in December 2017. As of July 2019, the commission had issued 16 final and 2 preapproved grower licenses, 18 final processor licenses, and 85 final and 17 preapproved dispensary licenses. Additionally, the commission had registered four independent laboratories and approved one-year provisional registrations for three independent testing laboratories. The commission maintains a list of licensees on its website: <https://mmcc.maryland.gov/Pages/industry.aspx>. As of September 26, 2019, the commission reported that there were approximately 85,000 certified patients, over 7,250 registered caregivers, and over 1,500 certifying providers. Further, the commission reported in August 2019 that there were a total of \$48.98 million in retail sales at medical cannabis dispensaries in the State during the first quarter of 2019.

Recent Statutory and Regulatory Changes

In December 2018, the commission proposed regulations requiring certified patients to obtain and maintain a valid identification card in order to more accurately implement statutory requirements. Previously, a patient could, but was not required to, pay a \$50 fee to purchase an identification card at the time of registration with the commission. The regulations make purchase of the card mandatory for all new patients registering on or after January 1, 2019. Beginning on April 1, 2019, all patients must present a valid identification card when purchasing cannabis from a licensed dispensary.

Chapter 456 of 2019, an emergency bill, made a number of changes to the State's medical cannabis program including (1) authorizing specified entities to register with the commission to purchase medical cannabis for research purposes; (2) requiring the commission to allow licensed medical cannabis dispensaries and processors to sell edible cannabis products; (3) increasing the length of time that a medical cannabis license holder must be actively engaged in the industry before selling or transferring ownership of the license; (4) expanding legal protections for individuals participating in the State's medical cannabis program; and (5) restricting medical cannabis advertising. Additionally, Chapter 501 of 2019, authorized a person to own or control up to four dispensaries. Chapter 501 also clarified the existing rule that a person may own or control only one licensed grower and codified that a person may own or control only one licensed processor.

In accordance with Chapter 456, the commission developed draft regulations to allow for the manufacture and sale of edible cannabis products. The commission hosted two stakeholder workshops to review the proposals, posted a revised draft on its website, and accepted public

comment on the draft in advance of an open meeting of the commission's policy committee. As required by statute, the terms for all commission members ended on September 30, 2019. Once replacement commission members are appointed, the commission will schedule a policy committee and a full commission meeting to review and vote on the proposed regulations.

Health and Health Insurance

Cannabidiol

The Agriculture Improvement Act of 2018 removed hemp from the federal Controlled Substances Act, resulting in the legalization of cannabidiol (CBD) products derived from hemp. The Act, along with the expansion of medical cannabis programs and legal marijuana at the state level, has increased the availability of products containing CBD for consumers seeking various health benefits. In Maryland, the Natalie M. LaPrade Maryland Medical Cannabis Commission has provided guidance to dispensaries that offer CBD products that are not regulated by the commission, and the State has expanded on a pilot program for the commercial production of hemp.

Cannabidiol

Cannabidiol (CBD) is one of the naturally occurring cannabinoids found in cannabis plants (*Cannabis sativa L.*). Although CBD is a component of cannabis plants, it does not cause the “high” associated with smoking or ingesting marijuana. CBD can be derived from both cannabis plants and hemp. Under federal law, whether a plant is considered hemp or a cannabis plant depends on the amount of delta-9 tetrahydrocannabinol (THC), which is the compound in cannabis plants that produces the “high” associated with cannabis use. Recently, there has been a proliferation of CBD products sold to address a wide variety of health issues, ranging from anxiety and insomnia to chronic pain. The increased availability of CBD products is likely attributable to recent changes to federal law and to the expansion of medical cannabis programs and the legalization of marijuana at the state level.

Federal Regulatory Action Related to CBD and Industrial Hemp

Hemp can be used in the production of a variety of consumer goods, including paper products, textiles, nutritional supplements and medicines, construction, and livestock feed. The distinction between a hemp plant and a cannabis plant is important because the federal Agriculture Improvement Act of 2018 (2018 Farm Bill) alters certain federal authority relating to the production and marketing of hemp and removes hemp from the federal Controlled Substances Act. Under the 2018 Farm Bill, cannabis plants and derivatives that contain no more than 0.3% THC on a dry weight basis are no longer controlled substances under federal law. The 2018 Farm Bill directed the U.S. Department of Agriculture (USDA) to develop a program to review and approve plans submitted by each state, territory, and Indian tribal agency outlining their production of hemp for commercial uses.

The 2018 Farm Bill explicitly preserved the U.S. Food and Drug Administration’s (FDA) authority to regulate products containing cannabis or cannabis-derived compounds under the

federal Food, Drug, and Cosmetics Act and the Public Health Service Act. According to FDA, the agency has not approved a marketing application for cannabis for the treatment of any disease or condition. However, in 2018, FDA approved Epidiolex, a drug containing a purified form of CBD, for the treatment of seizures associated with lennox-gastaut syndrome or dravet syndrome in patients two years of age and older. There are no other FDA-approved drug products that contain CBD, and the agency has issued numerous warning letters to firms that are marketing CBD products to treat diseases or for other therapeutic uses.

Maryland Regulatory Action Related to CBD and Industrial Hemp

Maryland Medical Cannabis Commission

Medical cannabis has been available to qualifying patients in Maryland since 2017. The Natalie M. LaPrade Maryland Medical Cannabis Commission is responsible for implementation of the State's medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of independent testing laboratories. There is a framework to certify health care providers, qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law. Qualifying patients have access to CBD products at licensed dispensaries, and there are strict labeling and testing requirements to allow qualifying patients and caregivers to distinguish the percentage of CBD or THC contained in medical cannabis products. All CBD products sold through the State's medical cannabis program must be derived from cannabis plants grown and processed by growers and processors licensed by the commission.

The commission issued a July 2019 bulletin to provide dispensaries with guidance on the sale of CBD products that are not regulated by the commission. The commission advised that it does not intend to take disciplinary action against a licensee offering unregulated CBD products for sale in the waiting area of the public zone of a dispensary, on the condition that a licensee ensure that each unregulated CBD product is conspicuously labeled to inform the purchaser that the product is not regulated by the commission, and that the product has not been subject to testing by any Maryland-registered independent testing laboratory. Since the 2018 Farm Bill removed only industrial hemp from the list of Schedule I substances, CBD derived from a source other than a hemp plant remains a Schedule I substance under the federal Controlled Substances Act. The bulletin also provided that licensees are individually responsible for ensuring the legality of any unregulated products they intend to offer for sale.

Maryland Hemp Farming Program

Chapters 475 and 476 of 2018 established an Industrial Hemp Pilot Program administered by the Maryland Department of Agriculture (MDA). Chapter 228 of 2019 expanded upon the pilot program and established a regulatory framework for the commercial production of hemp in the State in conjunction with the federal changes from the 2018 Farm Bill. According to MDA, the department is working on draft regulations to implement Chapter 228. MDA anticipates that USDA guidance on state hemp farming plans will be available by the end of November 2019. MDA advises that there are 65 farms in the State that are producing hemp under the pilot program. The Department of Legislative Services does not have information on whether there are CBD products available from Maryland-grown hemp plants.

Health and Health Insurance

Status of Health Care Reform and Maryland's Insurance Market

As of September 30, 2019, more than 312,000 individuals were enrolled in the Medicaid expansion, and 133,000 were insured through Maryland's health benefit exchange. The State Reinsurance Program, which began in calendar 2019, has reduced individual market premiums for the second year; however, premium rates remain high (particularly for individuals ineligible for federal subsidies), and deductibles and out-of-pocket expenses continue to rise.

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 has declined from 11.3% in 2010 to 6.0% in 2018. The largest gains in coverage have occurred through the expansion of Medicaid with 312,137 individuals enrolled under the expansion as of September 30, 2019.

More than 133,000 individuals were enrolled in a qualified health plan through the Maryland Health Benefit Exchange (MHBE) as of September 30, 2019. 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. The vast majority of MHBE enrollees (85%) 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 2019, the estimated value of APTC statewide is \$676 million.

Actions to Stabilize the Individual Market: State Reinsurance Program

In response to significant challenges in the individual market, Maryland enacted emergency legislation in 2018 and 2019. 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 (federal funding that would have been provided to Maryland residents in the form of APTC in the absence of the program). In August 2018, the federal government approved the waiver, which is valid through 2023. The program, which began January 1, 2019, provides reimbursement to carriers in the individual market that incur certain total annual claims costs on a per individual basis. Carriers are reimbursed for 80% of claims between \$20,000 and \$250,000. Payments to carriers will be made after the plan year ends, and all costs have been recorded and reconciled.

The reinsurance program is funded by a combination of assessment revenues and federal pass-through funds. Revenues come from 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 ACA for calendar 2019 but was temporarily suspended for that year by action at the federal level. Chapters 597 and 598 of 2019 extended the assessment through 2023 to provide additional funding for the program; however, for calendar 2020 through 2023, the assessment will be 1.0%.

When the reinsurance program was established, MHBE estimated that total funding would be \$1.1 billion for calendar 2019 through 2021, including \$365 million in State funds from the one-time assessment and \$730 million in federal pass-through funds. MHBE advises that program costs are now estimated to be less than anticipated. For calendar 2019, estimated costs of \$462 million have been revised to \$370 million, though final costs will not be determined until all 2019 claims are accrued. For calendar 2020, estimated costs of \$459 million are now anticipated to be \$400 million. These revised estimates suggest that funding will last longer than initially anticipated or may be available to fund other activities to further stabilize the individual market.

Individual Market Rates and Cost Sharing

For calendar 2019, individual market premium rates approved by the Maryland Insurance Administration (MIA), reflecting the anticipated impact of the reinsurance program, declined by an overall 13.2%. For calendar 2020, approved rates fell an additional 10.3%. Although premiums have decreased for the second year in a row, they remain high, and deductibles and out-of-pocket (OOP) expenses continue to increase. In calendar 2020, deductibles will range from \$4,000 to \$7,900 for bronze plans, \$2,250 to \$6,000 for silver plans (the most commonly purchased plan), and \$0 to \$1,750 for gold plans. Affordability is particularly an issue for individuals who do not receive an APTC. To address these issues, MIA conducted a report on health insurance cost-sharing trends and MHBE established a workgroup to study affordability of health care in Maryland.

The 2019 *Joint Chairmen's Report* requested that MIA produce an informational report on trends in health insurance. MIA found that the average actuarial value of plans in the individual and small group markets increased between 2016 and 2018, meaning plans were covering a higher percentage of total average costs for covered benefits. The average medical deductible increased steadily between 2016 and 2018, to \$4,168. The average drug deductible has gradually declined since 2016 to \$2,113 in 2018. The average OOP maximum increased through 2018 to \$6,938, approaching the maximum allowable for OOP expenses under federal regulations.

MHBE established an affordability workgroup to develop recommendations to reduce OOP costs and maximize affordability for both subsidized (those receiving APTC) and unsubsidized consumers. The workgroup found that the reinsurance program has helped to stabilize the individual market and provide insurance to individuals with chronic illnesses that would not otherwise be able to obtain insurance. Furthermore, the workgroup found that young adults between the ages of 19 and 34 represent the largest group of the remaining uninsured in Maryland. The workgroup recommended continuing the reinsurance program and considering a young adult subsidy, which may require Maryland to apply for another 1332 waiver. Additionally, MHBE has required carriers to offer value plans in the individual exchange for calendar 2020.

Value plans will cap deductibles at \$2,500 for silver plans and \$1,000 for gold plans and are designed to give consumers greater access to primary care, mental health care, and generic drugs before their deductibles apply.

Actions to Facilitate Enrollment

Chapters 423 and 424 of 2019 established the Maryland Easy Enrollment Health Insurance Program to facilitate health insurance enrollment for uninsured Marylanders. The program allows an uninsured individual to elect on their State income tax return to authorize the Comptroller to share information with MHBE in order to determine the individual's eligibility for insurance affordability programs. MHBE will assist in enrolling uninsured individuals in Medicaid or subsidized or unsubsidized health insurance. The program is anticipated to begin with the filing of tax year 2019 State income tax returns in early 2020.

Legal Challenges Regarding the Affordable Care Act

In *Texas v. United States*, 20 states filed suit in the U.S. District Court, Northern District of Texas arguing that the ACA, as amended by the Tax Cuts and Jobs Act of 2017 (which eliminated the tax penalty of the individual mandate), is no longer constitutional because it is not supported by a tax penalty. In December 2018, Judge Reed O'Connor ruled in favor of the plaintiffs, concluding that since Congress has eliminated the penalty for not complying with the individual mandate, the mandate is no longer permissible under Congress's taxing power and is thus unconstitutional. The judge found the individual mandate to be "essential" to and inseparable from the ACA and thus declared the entire law to be invalid. The defendants appealed the case to the Fifth Circuit Court of Appeals. The Fifth Circuit heard oral arguments in July 2019, and a decision is expected by the end of the year. The President Donald J. Trump Administration announced in October 2019 that, if the circuit court upholds the ruling, the Administration plans to ask the court to put the ruling on hold as it does not have a viable plan to replace the ACA. Regardless of outcome, the case is expected to be appealed to the Supreme Court.

According to a March 2019 Urban Institute report, should the ACA be invalidated, the number of uninsured nationally would increase by 65%, Medicaid enrollment would fall by 15.4 million through elimination of the Medicaid expansion, and the number of individuals with private nongroup insurance would decline by 35%. Those retaining private nongroup coverage would likely have policies that cover fewer benefits and require more OOP spending. 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.

Health and Health Insurance

Addressing Youth Vaping

Following continued increases in the incidence of youth vaping (electronic cigarette or e-cigarette use) in 2018 and the emergence of severe lung disease associated with e-cigarette usage, states are seeking additional policy options to reduce youth vaping, including bans on the sale of flavored e-cigarette products and taxation of e-cigarettes like traditional cigarettes.

Use of E-cigarettes among Youth Continues to Rise Significantly

According to the National Youth Tobacco Survey, in 2018, 1 in 5 high school students (20.8%) and 1 in 20 middle school students (4.9%) reported using electronic cigarettes (e-cigarettes) at least once in the previous 30 days, an increase of 78% and 48% since 2017, respectively. Among high school students currently using e-cigarettes, use of flavored e-cigarettes increased by 11.3% from 2017 to 2018. The 2019 Monitoring the Future Survey also found significant increases in youth vaping, noting that vaping among grade 8, 10, and 12 more than doubled from 2017 to 2019. According to the U.S. Food and Drug Administration, increased youth vaping is likely attributable to the popularity of USB-flash-drive-like e-cigarettes that have a high nicotine content, appealing flavors, and the ability to be easily concealed and used discreetly.

Severe Lung Disease Associated with E-cigarette Usage

Further fueling concerns over continued increases in youth vaping is the emergence of severe lung disease associated with e-cigarette usage. As of November 20, 2019, 2,290 cases of e-cigarette or vaping associated lung injury (EVALI) have been reported in 49 states (all but Alaska), the District of Columbia, and two U.S. territories. Forty-seven deaths have been confirmed in 25 states and the District of Columbia. In Maryland, 51 cases have been reported, but no deaths have occurred. The U.S. Centers for Disease Control and Prevention (CDC) is coordinating a multistate investigation. CDC has identified vitamin E acetate as a chemical of concern among people with EVALI; however, evidence is not yet sufficient to rule out other chemicals of concern. Vitamin E acetate is used as an additive, most notably as a thickening agent in vaping products containing tetrahydrocannabinol (a psychoactive component of the marijuana plant).

Policies to Reduce Use of E-cigarettes among Youth

In a 2016 report, the U.S. Surgeon General outlined actions to reduce e-cigarette use among youth, including preventing youth access to e-cigarettes and price and tax policies. In 2019, the American Academy of Pediatrics called for similar policies to combat the rise in youth vaping, including (1) bans on the sale of flavored e-cigarettes (including menthol), the sale of e-cigarettes to individuals younger than 21, Internet sales of e-cigarettes, and e-cigarette advertising accessible to youth; and (2) taxation of e-cigarettes at rates comparable to traditional cigarettes.

Bans on the Sale of E-cigarettes to Individuals Younger Than Age 21

To date, 16 states have banned the sale of e-cigarettes to individuals younger than age 21. Effective October 1, 2019, Maryland raised the minimum age to purchase all tobacco products (including e-cigarettes) from 18 to 21. Retailers are permitted to sell tobacco products to active duty military personnel age 18 or older with valid military identification.

Actions to Ban or Restrict E-cigarette Products

In response to the alarming health concerns related to e-cigarette use, several states have taken action through emergency regulations or rulemaking. On September 24, 2019, Massachusetts implemented a four-month ban on sales of *all* vaping products – an action that was upheld in federal court in early October 2019. Six states (Michigan, Montana, New York, Oregon, Rhode Island, and Washington) have banned the sale of flavored e-cigarettes. Michigan prohibited the sale or distribution of all flavored nicotine vapor products. Montana implemented an emergency 120-day ban on the sale of all flavored e-cigarette products. New York prohibited the possession, manufacturing, distribution, or sale of all vaping flavors other than tobacco and menthol. Rhode Island prohibited the manufacture or sale of flavored electronic nicotine-delivery systems. Oregon implemented a six-month ban on flavored vape and marijuana products. In response, e-cigarette and vaping businesses have filed lawsuits in several states. Recent court decisions in Michigan, New York, and Oregon have blocked or stayed bans in those states pending further judicial review.

In California, Governor Gavin C. Newsom ordered the state’s Department of Public Health to develop recommendations to reduce the availability of vaping devices to those younger than 21, including increased enforcement of illegal sales of e-liquid flavors to youth. In Utah, the Department of Health restricted the sale of flavored e-cigarette products to age-restricted retail tobacco specialty businesses.

Price and Tax Policies: Taxation of E-cigarettes

In Maryland, e-cigarettes and their components are subject to the State sales tax but are not subject to a statewide 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, equivalent to the State excise tax on tobacco and snuff products. To date, 19 other states and the District of

Columbia have enacted excise taxes on e-cigarettes. Taxation is typically imposed as either a percentage of wholesale value or per milliliter of vapor product. As shown in **Exhibit 1**, with the exception of Virginia, all of Maryland’s neighboring jurisdictions have imposed excise taxes on e-cigarettes. Nationally, excise taxes on e-cigarettes range from 12.5% to 96% of wholesale value and from \$0.05 to \$0.27 per milliliter of vapor product.

Exhibit 1
Excise Tax Rates on E-cigarettes
Enacted as of September 15, 2019

| <u>Jurisdiction</u> | <u>Excise Tax Rate</u> |
|-----------------------------|---|
| California | 59.27% of wholesale value |
| Connecticut | 50% of wholesale value |
| Delaware | \$0.05/milliliter of vapor product |
| District of Columbia | 96% of wholesale value |
| Illinois | 15% of wholesale value |
| Kansas | \$0.05/milliliter of vapor product |
| Louisiana | \$0.05/milliliter of vapor product |
| Maine ¹ | 43% of wholesale value |
| Minnesota | 95% of wholesale value |
| Montgomery County, Maryland | 30% of wholesale value |
| Nevada ² | 30% of wholesale value |
| New Jersey | \$0.10/milliliter for closed system products; 10% of retail value for open system products |
| New Mexico | 12.5% of wholesale value for open system products; \$0.50/cartridge for closed system products |
| New York ³ | 20% of retail value |
| North Carolina | \$0.05/milliliter of vapor product |
| Ohio | \$0.10/milliliter of vapor product |
| Pennsylvania | 40% of wholesale value |
| Vermont | 92% of wholesale value |
| Washington | \$0.27/milliliter of closed system products; \$0.09/milliliter of open system products |
| West Virginia | \$0.075/milliliter of vapor product |
| Wisconsin | \$0.05/milliliter of vapor product |

¹ Effective January 2, 2020.

² Effective January 1, 2020.

³ Effective December 1, 2019.

Source: Federation of Tax Administrators; Public Health Law Center; Department of Legislative Services

Health and Health Insurance

Maryland's Total Cost of Care Model

In January 2014, Maryland replaced its historic Medicare waiver that governed hospital rate-setting with the Maryland All-payer Model Contract. Building on those changes, effective January 1, 2019, the State entered 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 while containing costs.

Maryland's Total Cost of Care Model

In July 2018, Maryland and the federal Center for Medicare and Medicaid Innovation (CMMI) agreed to the terms of a new Total Cost of Care Model (TCOC). The model, effective January 1, 2019, builds on the State's prior All-payer Model Contract (APM) that was in effect calendar 2014 through 2018. TCOC is designed to (1) improve population health; (2) improve care outcomes for individuals; and (3) control growth in the total cost of care for Medicare beneficiaries. To accomplish these goals, the model is designed to move beyond hospitals to address Medicare patients' care in the community. TCOC will continue for 10 years provided that the State meets the requirements of the agreement.

Under TCOC, Maryland commits to reaching a compounded annual Medicare savings target of \$300 million through the end of calendar 2023 (program year 5) in Medicare Part A (*i.e.*, hospital services) and Part B (*i.e.*, doctor office visits, preventive services, and other nonhospital services). The compounded annual savings targets, as outlined by the model contract, are shown in **Exhibit 1**. Based on the current savings requirements of the base model, APM and TCOC are estimated to result in cumulative savings to Medicare of \$1.664 billion by the end of calendar 2023. Net TCOC savings are estimated to be \$1.065 billion. Prior to the end of calendar 2022 (program year 4), CMMI will assess the State's progress and determine if TCOC is on track to meet its savings goal. By the end of calendar 2023, CMMI and Maryland will establish the formula for the allowable Medicare cost growth rate for the remaining five years of TCOC.

Exhibit 1
Total Cost of Care Annual Medicare Savings Targets
 (\$ in Millions)

| <u>Year</u> | <u>Program Year</u> | <u>Compound Medicare TCOC Savings Targets</u> | <u>Estimated Cumulative Savings to Medicare from APM + TCOC</u> |
|-------------|---------------------|---|---|
| 2018 | | Initial savings under APM: | \$599 |
| 2019 | 1 | \$120 | 719 |
| 2020 | 2 | 156 | 875 |
| 2021 | 3 | 222 | 1,097 |
| 2022 | 4 | 267 | 1,364 |
| 2023 | 5 | 300 | 1,664 |

Estimated Net TCOC Savings: \$1,065

APM: All-payer Model

TCOC: Total Cost of Care Model

Note: Excludes savings from changing the hospital differential but includes savings from the Medicaid Deficit Assessment.

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

Medicare Performance Adjustments and Care Redesign Programs

In an effort to bring accountability for TCOC to hospitals, the Maryland Health Services Cost Review Commission (HSCRC) will use a Medicare Performance Adjustment (MPA), a scaled positive or negative adjustment to each hospital's Medicare payments relative to a per capita TCOC benchmark. For calendar 2018, the percentage of each hospital's Medicare revenue at risk under MPA was 0.5%. For calendar 2019, the revenue at risk is 1.0%. HSCRC will determine the share of revenue at risk for calendar 2020 and beyond. MPA adjustments are based on the all-cause readmissions rates and the hospital-acquired conditions quality programs.

In early recognition that payment and performance measures were not efficiently aligned across hospitals, physicians, and other health care providers, the State obtained a care redesign amendment for APM in September 2016. TCOC now includes two different care redesign programs. The Hospital Care Improvement Program (HCIP), implemented by hospitals and physicians with privileges to practice at hospitals, seeks to improve efficiency and quality of care by encouraging effective care transitions, encouraging effective management of inpatient resources, and decreasing potentially avoidable utilization. Currently, 40 hospitals participate in HCIP. The Episode Care Improvement Program (ECIP) allows a hospital to link payments across providers for certain items and services furnished during an episode of care in order to align incentives, improve care management, eliminate unnecessary care, and reduce post-discharge

emergency department visits and hospital readmissions. Currently, 16 hospitals participate in ECIP.

A third care redesign program, the Complex and Chronic Care Improvement Program (CCIP), aimed to strengthen primary care supports for complex and chronic patients, enhance care management, and facilitate overall practice transformation toward person-centered care. CCIP will end in December 2019 due to low participation and redundancy with the Maryland Primary Care Program (MDPCP).

Outcome and Population Measures

TCOC also includes a process to develop outcome-based credits aimed at improving general population health. Currently, the only outcome-based credit approved by CMMI is for programs that prevent and/or delay the onset of diabetes.

Maryland Primary Care Program

A key element of TCOC is MDPCP, a voluntary program open to all qualifying Maryland primary care providers that makes available funding and support for the delivery of advanced primary care in Maryland. MDPCP is intended to move Medicare fee-for-service (FFS) beneficiaries into advanced primary care and is an important part of meeting the commitments in TCOC by providing management of care and reducing unnecessary hospital and emergency department utilization.

Provider practices must be approved by CMMI for participation in MDPCP. Participating practices must undertake five functions to meet the standards for advanced primary care: (1) access to care and continuity; (2) care management; (3) comprehensiveness and coordination; (4) patient and caregiver experience; and (5) planned care for health outcomes. As of January 1, 2019, 380 practices were participating, representing all counties in Maryland. Providers are encouraged to enroll in MDPCP through prospective additional per beneficiary per month payments for Medicare FFS. These payments and a performance bonus are based on a provider's progress through MDPCP.

While MDPCP aligns primary care providers with the goal of TCOC, the payment incentives, although fully funded through Medicare, will also count toward Medicare FFS spending for TCOC, potentially creating a challenge for the State in meeting the annual savings targets for Medicare spending.

Health and Health Insurance

Medicaid Population and Expenditure Trends

Medicaid enrollment growth is generally flat and is estimated to increase by only 0.5% from fiscal 2020 to 2021. Anticipated deficiencies for fiscal 2020 are offset by the availability of unanticipated special funds. Fiscal 2021 general fund growth in the Medicaid budget is driven primarily by rate assumptions, a reduction in federal matching support for the federal Affordable Care Act expansion population and the Maryland Children's Health Program, and a decline in special fund availability.

Maryland's Medical Care Programs

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 federal fund participation rate in fiscal 2021 of 50.0% to 90.0% for Medicaid, depending on the eligibility category, and 67.9% for MCHP.

Anticipated Deficiencies in Fiscal 2019 and 2020

There is a projected general fund deficit of \$15.4 million for fiscal 2019 expenses carried forward into fiscal 2020. Just over half of this (\$8.4 million) is attributed to continued growth in behavioral health services. More significant deficiencies (\$57.7 million) are anticipated in fiscal 2020, which would have been much higher but for the availability of \$123.3 million in unanticipated special funds to support Medicaid. Of this amount, \$25.0 million is made available by Chapter 16 of 2019 (the Budget Reconciliation and Financing Act). The most significant increase in special funds is \$108.1 million derived from the Rate Stabilization Fund (RSF), which is supported through a premium tax on certain health care entities. In recent years, the Maryland Insurance Administration has misallocated revenue between the RSF and the General Fund. Apparent resolution of this misallocation in fiscal 2019 resulted in a far greater distribution to the RSF. As a result, Medicaid accrued \$40.9 million in RSF revenues in fiscal 2019 for use in fiscal 2020. Anticipated collections in fiscal 2020 are \$67.2 million above the fiscal 2020 estimate.

Key Drivers of Fiscal 2020 Expenditures

Maryland's Medical Care Programs are anticipated to incur higher than projected expenditures in fiscal 2020. The key drivers of these expenditures include additional spending on the parent/caretaker eligibility category, the impact of the calendar 2020 managed care organization (MCO) rate increase, and an unexpected increase in psychiatric rehabilitation program spending in the behavioral health budget.

Additional spending on the parent/caretaker eligibility category is attributable to markedly increased enrollment. In February 2019, a change was made to the Medicaid eligibility system to automatically grant Transitional Medicaid Assistance (TMA) coverage for certain low-income individuals who lose eligibility for various reasons, including an increase in earned income or hours of employment. Previously, TMA had to be requested. This change is estimated to increase average monthly enrollment to just over 233,000 compared to 205,000 assumed in the budget.

Increases to MCO rates are typically not included in the budget. MCO rates increase by 5.2% in calendar 2020. However, it should be noted that this increase includes 3.8% due to the cost of HIV/AIDS drugs being carved back into MCO capitation rates as opposed to being paid on a fee-for-service basis. The underlying MCO growth rate is a more modest 1.4%.

Fiscal 2021 Medicaid Budget Outlook

In fiscal 2021, expenditures are estimated at just over \$11.9 billion, a \$700.1 million (6.2%) increase over the fiscal 2020 legislative appropriation. However, as shown in **Exhibit 1**, after adjusting for deficiencies and special fund availability anticipated in fiscal 2020 noted above, fiscal 2021 baseline growth is \$308.4 million (2.7%), with general fund growth of \$255.1 million (7.2%). Baseline growth over the Department of Legislative Services estimate for fiscal 2020 will be the basis for this discussion.

Exhibit 1 Medical Care Programs Expenditures Fiscal 2019-2021 (\$ in Millions)

| Funds | 2019 Actual | 2020 Leg. Approp. | 2020 DLS Estimate | 2021 Baseline | 2020-2021 \$ Change | 2020-2021 % Change |
|--------------|------------------------|------------------------------|------------------------------|--------------------------|--------------------------------|-------------------------------|
| General | \$3,360.8 | \$3,505.4 | \$3,560.0 | \$3,815.1 | \$255.1 | 7.2% |
| Special | 956.9 | 873.9 | 995.7 | 943.5 | -52.1 | -5.2% |
| Federal | 6,634.8 | 6,834.0 | 7,049.3 | 7,154.7 | 105.4 | 1.5% |
| Total | \$10,952.5 | \$11,213.3 | \$11,605.0 | \$11,913.3 | \$308.4 | 2.7% |

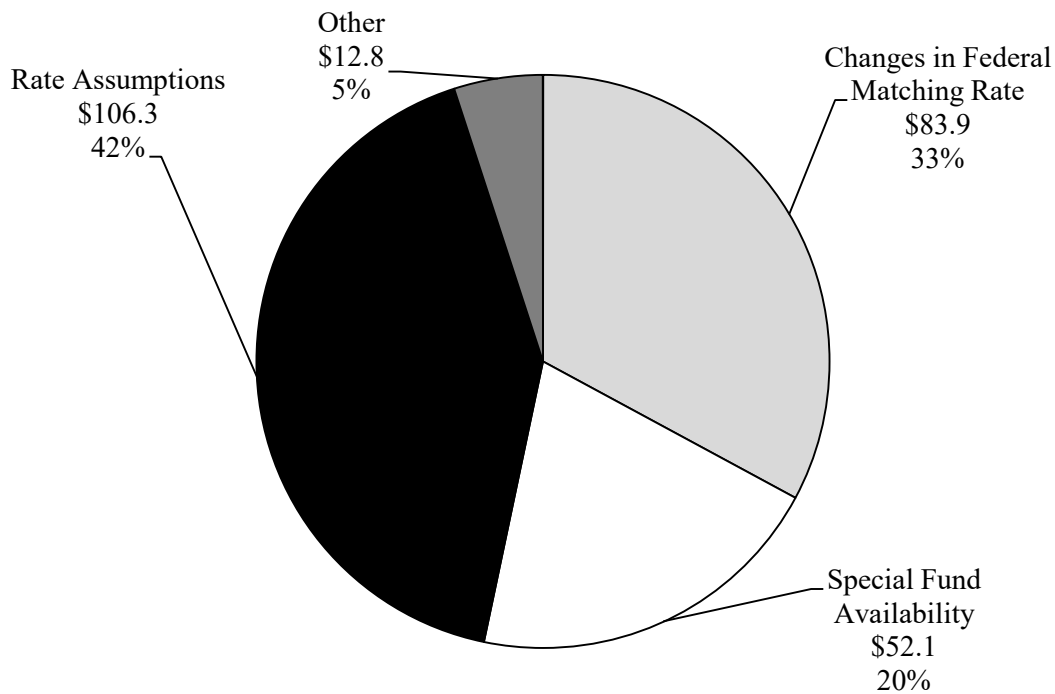
DLS: Department of Legislative Services

Note: The fiscal 2020 legislative appropriation does not reflect a planned general fund reduction of \$3.1 million based on the Governor's decision not to release certain withheld funds or special funds available through Chapter 16 of 2019 to backfill general fund reductions made during the 2019 legislative session. Data is for major provider payments only and includes Medicaid-funded behavioral health services.

Source: Department of Legislative Services

Major drivers of the 7.2% general fund growth from fiscal 2020 to 2021 are shown in **Exhibit 2**.

Exhibit 2
Medicaid – Why General Funds Grow
Fiscal 2020-2021
(\$ in Millions)



Source: Department of Legislative Services

As the exhibit shows:

- The baseline assumes rate increases of 4.0% for behavioral health services and other Medicaid providers mandated by Chapters 10 and 11 of 2019, 2.0% for regulated services, and the impact of the calendar 2019 MCO rate increase (5.2% overall or, as noted above, 1.4% when adjusted for the impact of including HIV/AIDS drugs in rates).
- The federal matching rate for the Affordable Care Act expansion population falls from 91.5% to 90.0% in fiscal 2021, necessitating an additional \$54.2 million in general funds. This is the last year of the phased-in reduction of the federal matching rate, which should remain at 90.0% moving forward. The federal matching rate for MCHP falls from 79.4% to 67.9% in fiscal 2021, requiring an additional \$29.7 million in general funds.

- Special fund availability declines, primarily as a result of the loss of the one-time surplus in RSF revenues and funds authorized in Chapter 16, plus a planned \$25.0 million drop in the Medicaid Deficit Assessment. These decreases are partially offset by increased Cigarette Restitution Fund revenues based on an anticipated settlement of arbitration concerning revenues from sales year 2004.
- Enrollment growth is expected to be only 1.9% in fiscal 2020 over 2019 (driven by the TMA change noted previously), slowing to 0.5% in fiscal 2021, with total enrollment of just over 1.4 million (see **Exhibit 3**).

Exhibit 3
Enrollment and Service Year Per Capita Expenditures
Fiscal 2019-2021

| | <u>2019</u> <u>Actual</u> | <u>2020</u> <u>DLS Estimate</u> | <u>2021</u> <u>Baseline</u> | <u>2020-2021 %</u> <u>Change</u> |
|-------------------------------|------------------------------|------------------------------------|--------------------------------|-------------------------------------|
| Enrollment by Category | | | | |
| Medicaid | 908,338 | 936,924 | 939,875 | 0.3% |
| MCHP | 154,321 | 146,605 | 145,139 | 1.0% |
| ACA Expansion | 309,238 | 314,207 | 319,234 | 1.6% |
| Total | 1,371,896 | 1,397,735 | 1,404,248 | 0.5% |
| Cost Per Enrollee | | | | |
| Medicaid | \$8,607 | \$8,621 | \$8,779 | 1.8% |
| MCHP | 2,183 | 2,201 | 2,236 | 1.6% |
| ACA Expansion | 8,794 | 8,960 | 9,193 | 2.6% |
| Total | \$7,926 | \$8,024 | \$8,197 | 2.2% |

ACA: Federal Patient Protection and Affordable Care Act

DLS: Department of Legislative Services

MCHP: Maryland Children's Health Program

Note: Expenditures by fiscal year are based on the cost of providing services during that fiscal year rather than the year that the bills were paid. Cost estimates are based on provider reimbursements and expenditures excluding administrative costs.

Source: Department of Legislative Services

Health and Health Insurance

Prescription Drug Affordability/Pharmaceutical Pricing

Significant increases in the cost of prescription drugs have prompted states to implement policies to reduce prescription drug prices. During the 2019 legislative session, the General Assembly established a Prescription Drug Affordability Board to identify high-cost prescription drug products and establish a cost review process. Federal initiatives have also been put forth in an effort to reduce drug prices and out-of-pocket costs.

Concerns Regarding the Pricing and Affordability of Prescription Drugs

In recent years, increases in the cost of prescription drugs have become controversial and have raised questions about how drug prices are set in the marketplace. Increased prices for popular diabetes drugs have received the most attention. Since 2009, prices for four of the leading insulin products sold in the United States have increased from less than \$100 per vial to over \$250 per vial. However, price increases have not been limited to one type of drug. According to Rx Savings Solutions, a consultant for health plans and employers, prices have increased for 3,400 drugs since January 1, 2019, compared to approximately 2,900 price increases in 2018. The cost increases have prompted action by the federal government, Maryland, and other states to implement policies to reduce prescription drug prices.

Legislative Action in Maryland

Price Gouging Prohibition

Maryland became one of the first states to take action to prevent increasing drug prices with the enactment of Chapter 818 of 2017, which prohibited manufacturers and wholesale distributors from engaging in “price gouging” in the sale of essential off-patent or generic drugs in the State. Opponents of the law filed a federal lawsuit, and the U.S. Court of Appeals for the Fourth Circuit found the legislation unconstitutional based on the vagueness of the definition of price gouging. In February 2019, the U.S. Supreme Court declined to review the decision.

Prescription Drug Affordability Board

In 2019, the General Assembly passed legislation (Chapter 692 of 2019) to establish a Prescription Drug Affordability Board to (1) identify high-cost prescription drug products and establish a cost review process and (2) determine if it is in the best interest of the State to establish a process for setting upper payment limits for prescription drug products. The board is made up of four members appointed by the Governor, the Attorney General, the President of the Senate, and

the Speaker of the House of Delegates, respectively, and a fifth member (the chair) appointed jointly by the President and Speaker. Except for the Governor's appointment, all appointments have been made. To fund the board, the General Assembly set aside \$750,000 in the fiscal 2020 budget and required the board to identify a future funding source. As of November 1, 2019, the Governor had not released the money earmarked to establish the board; while the Governor has indicated that his Administration is exploring funding options within the Maryland Department of Health, specifics have not been made public, and the board has been unable to start its work.

The board must collect and review publicly available information for each entity involved in setting prescription drug prices and enter into Memoranda of Understanding with other states to collect transparency data for prescription drug products. Based on the information and data, the board will adopt regulations to identify prescription drug products that are (1) brand name drugs or biologics that, as adjusted for inflation, have a specified launch wholesale acquisition cost (WAC) or a specified WAC increase over a specified period; (2) biosimilar drugs that have a specified launch WAC; (3) generic drugs that, as adjusted for inflation, have a specified WAC or a specified WAC increase over a specified period; and (4) other prescription drug products that may create affordability challenges. Further, the board is required to use the information and data to establish a cost review process and criteria for determining whether use of identified prescription drug products has led or will lead to affordability challenges for the State health care system or high out-of-pocket (OOP) costs for patients by considering multiple specified factors and alternate factors.

When determining whether it is in the State's best interest to set upper payment limits, Chapter 692 requires the board to study the entire pharmaceutical distribution and payment system in the State and policy options being used in other states and countries to lower the list price of pharmaceuticals. If the board finds that it is in the best interest of the State to set upper payment limits, the board must draft a plan for implementing the process that includes criteria for determining (1) if a drug has led or will lead to an affordability challenge in the State and (2) whether and how to set upper payment limits.

If a plan of action is drafted by July 1, 2021, the board must submit the plan to the Legislative Policy Committee (LPC) for approval. If LPC does not approve the plan, the board is required to submit the plan to the Governor and the Attorney General for approval. If it is not approved by either LPC or the Governor and the Attorney General, the board may not set upper payment limits. If the plan of action is approved by LPC or the Governor and the Attorney General, then the board may, beginning January 1, 2022, set upper payment limits in accordance with the approved plan of action.

Actions in Other States to Address Prescription Drug Costs

In 2019, 29 states enacted 46 pieces of legislation to curb the cost of prescription drugs, including authorizing cost review of prescription drugs, authorizing wholesale importation and volume purchasing, and addressing the impact of manufacturer's coupons on consumer costs.

Cost Review and Rate Setting

Similar to Maryland’s Prescription Drug Affordability Board, Maine established a board to assess prescription drug costs. Beginning in 2021, the board will determine annual spending targets for prescription drugs purchased by public payers based on a 10-year rolling average of the medical care services component of the Consumer Price Index adjusted for inflation and to achieve pharmacy savings. The board will have the authority to determine spending targets on specific drugs that may cause affordability challenges to enrollees in a public plan. Massachusetts also enacted rate-setting legislation by authorizing the Executive Office of Health and Human Services to directly negotiate supplemental rebate agreements with manufacturers for drugs covered by the state’s Medicaid program.

Importation

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 federal certification, Vermont was required to submit a certification request by July 2019. However, in 2019, Colorado, Florida, and Maine also enacted similar legislation, and the federal government expressed interest in facilitating the import of prescription drugs from Canada. In response to other states and federal interest, Vermont pushed its certification request to 2020 in order to confer with other states and the U.S. Department of Health and Human Services (HHS).

Volume Purchasing

Several states have expressed interest in cross-agency strategies to leverage their buying power to lower drug costs as a way to reduce spending. New Mexico established the Interagency Pharmaceuticals Purchasing Council to review cost containment strategies for the procurement of drugs and pharmacy benefits and study procurement strategies for use by all constituent agencies. Similarly, Delaware established the Interagency Pharmaceuticals Purchasing Study Group to review and make recommendations to leverage the bulk purchasing power of the state to negotiate lower pharmaceutical prices.

Manufacturer Coupons

Prescription drug manufacturers frequently provide coupons to patients to help reduce their OOP costs for pharmaceuticals. However, some insurers will not apply a manufacturer coupon to an enrollee’s deductible or OOP maximum, which negates the impact of the coupon. Arizona, Virginia, and West Virginia passed legislation to require insurers to count any payments made by another person on the enrollee’s behalf, such as manufacturer coupons as well as payments made by the enrollee, when calculating the enrollee’s overall contribution to any OOP cost-sharing requirement under the carrier’s health plan.

Federal Initiatives to Address Prescription Drugs Costs

Federal Regulatory Initiatives

In May 2018, the federal government released *American Patients First, The Trump Administration Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs*, which proposed addressing the high cost of prescription drugs through improved competition, better negotiation, incentives for lower list prices, and lowering OOP costs. The first actions taken by the federal government included (1) adopting a rule to require prescription drug manufacturers to post the WAC for drugs covered in Medicare or Medicaid in direct-to-consumer television advertisements and (2) submitting a revised 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.

To limit OOP costs in accordance with the *Blueprint*, the federal government adopted a final rule stating that “plans and issuers are permitted to exclude the value of drug manufacturers’ coupons for specific prescription brand drugs from counting toward the annual limitation on cost sharing when a medically appropriate generic equivalent is available.” Interpretation of the rule has caused confusion among stakeholders. In August 2019, HHS and the U.S. Department of the Treasury issued guidance concluding that the rule will be corrected and will not be enforced against insurers unless a state enacts similar legislation.

The Trump administration has also taken action to increase competition in the marketplace by (1) approving a record 1,171 generic drugs in fiscal 2019, up from 971 in 2018; (2) adopting the Biosimilars Action Plan to encourage the development of biosimilars; and (3) issuing a notice of proposed rulemaking that would allow various entities, including states, wholesalers, and pharmacists, to submit proposals to the U.S. Food and Drug Administration that outline how the entities would import certain drugs from Canada.

Federal Legislative Initiatives

The U.S. Congress is considering legislative action to address rising drug prices. In July 2019, the Senate Finance Committee passed the Prescription Drug Pricing Reduction Act of 2019, which would cap OOP costs, require manufacturers to pay a rebate to Medicare for the amount of Medicare Part B or D drugs that increase above the rate of inflation, lower federal reinsurance, increase insurers’ share of brand and generic drugs, and require manufacturers to pay a percentage for brand name drugs. In October 2019, House Speaker Nancy P. Pelosi introduced the Lower Costs Now Act of 2019, which, like the Prescription Drug Pricing Reduction Act, would establish an OOP cap and require manufacturers to pay a rebate. Unlike the Senate bill, Speaker Pelosi’s bill would also give Medicare the authority to negotiate drug prices and set upper price limits at 1.2 times the volume-weighted average of the price in certain other countries.

Health and Health Insurance

Federal Changes to the Title X Family Planning Program

A March 2019 federal rule substantially altered the Title X Family Planning Program. Several states won injunctions against the rule; however, these injunctions were lifted, and the rule took effect July 15, 2019. The General Assembly passed legislation in 2017 and 2019 requiring the Maryland Department of Health to provide general fund support for these services and prohibiting the State from accepting federal Title X funding under specified circumstances; therefore, family planning services continue in Maryland in fiscal 2020 but are funded with State general funds only.

Federal and State Title X Family Planning Programs

The Title X Family Planning Program is the only federal program dedicated to the provision of family planning and related preventive health services. Projects funded by Title X grants must offer a broad range of acceptable and effective contraceptive methods and related services on a voluntary and confidential basis. Title X services include patient education and counseling; cervical and breast cancer screening; sexually transmitted infection and human immunodeficiency virus prevention education, testing, and referral; and pregnancy diagnosis and counseling. Under federal law, Title X funds may not be used for abortion care.

Substantial Revisions to Title X

On March 4, 2019, the U.S. Department of Health and Human Services (HHS) published a final rule substantially altering the Title X program. The most significant provisions of the final rule:

- eliminate prior requirements that Title X sites offer a broad range of *medically approved* family planning methods and services;
- prohibit Title X grantees from referring patients for abortion services as a method of family planning;
- require that Title X funded activities have full physical and financial separation from abortion-related activities, which in effect blocks the availability of funding to providers that also offer abortion services;
- increase grant reporting and monitoring requirements; and
- define “family planning” and redefine “low-income” for purposes of program eligibility.

States and Provider Organizations File Suit

In response to the final rule, 23 states (including Maryland) as well as the District of Columbia and several provider organizations filed suit against HHS. Preliminary injunctions were initially issued in federal district courts in California, Maryland, Oregon, and Washington, preventing HHS from enforcing the final rule. Baltimore City also filed suit against HHS and was granted a preliminary injunction for the entire State. However, on July 11, 2019, the Ninth Circuit U.S. Court of Appeals lifted the preliminary injunctions, allowing HHS to begin enforcing the final rule in all states while the rule is litigated. HHS notified states that they must comply with the final rule, with the exception of the physical separation requirement, effective July 15, 2019. Effective March 4, 2020, all clinics receiving Title X grants must have full physical separation from abortion services.

Impact of the Final Rule and Maryland's Response

To date, 20% of Title X grantees nationwide have left the program, and more may leave in March 2020 when the physical separation requirement takes effect. At least eight states (including Maryland) have made state funding available to replace some or all of the federal funds.

The Maryland Department of Health (MDH) advises that the final rule triggers the conditions of Chapters 28 and 810 of 2017, which established a Family Planning Program in MDH to provide family planning services through providers that lost eligibility for Title X funding as a result of (1) the scope of services offered by the providers or (2) the scope of services for which the providers offer referrals. Program funding must be in addition to any funding applied by MDH before December 31, 2016, to the maintenance of effort requirement for federal funding under Title X. As of July 15, 2019, all providers formerly receiving Title X funds became ineligible for federal funding under the final rule because they provide counseling and referral for abortion. This requires MDH to provide general fund support under Chapters 28 and 810. MDH reports a general fund liability of \$3.2 million in fiscal 2020 to replace federal funds; however, the actual amount needed will depend on the results of pending litigation.

Chapters 733 and 734 of 2019 prohibit MDH from accepting any federal funding under Title X if the program (1) excludes family planning providers and (2) does not require such providers to provide a broad range of acceptable and effective *medically approved* family planning methods and services. As a result of the final rule taking effect, MDH notified HHS on September 3, 2019, that it was terminating its federal Title X funds and would not seek any reimbursement of expenditures after July 15, 2019. MDH advises that the only change to the Maryland program is that it is now funded solely with general funds.

Human Services

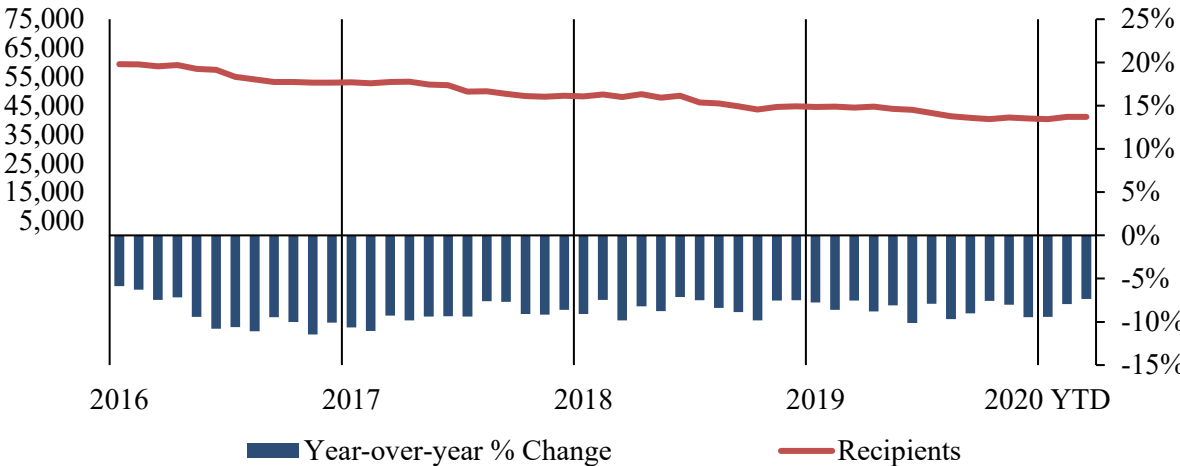
Public Assistance Caseload Trends

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. In fiscal 2019, a TCA shortfall of \$2.5 million is anticipated; however, there are sufficient federal funds to cover it. A shortfall of \$3.2 million is expected 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. The number of recipients has declined on a year-over-year basis in each month since calendar 2012. Beginning in calendar 2018, the monthly number of recipients has been below the pre-Great Recession low. As shown in **Exhibit 1**, the caseload declined to a low of 40,321 in July 2019. The average monthly caseload in fiscal 2019 (42,661) was the lowest in program history.

Exhibit 1
Temporary Cash Assistance Caseload
July 2015 to August 2019



YTD: year to date

Source: Department of Human Services; Department of Legislative Services

As shown in **Exhibit 2**, the Department of Legislative Services (DLS) projects the average monthly TCA caseload to continue to decline through fiscal 2021 but at a slower rate than has occurred since fiscal 2015. DLS also anticipates a higher average monthly grant than was assumed in the fiscal 2020 appropriation due in part to continued slow growth in federal Supplemental Nutrition Assistance Program (SNAP) benefits. The combination of TCA and SNAP benefits must equal 61% of the Maryland Minimum Living Level. Thus, lesser growth in SNAP benefits plus inflation has led to higher than expected increases in TCA benefits in recent years. As a result, DLS projects a shortfall of approximately \$2.5 million in the program. 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 2019-2021

| | 2019 <u>Actual</u> | 2020 <u>Approp.</u> | 2020 <u>Estimate</u> | 2021 <u>Estimate</u> | 2020-2021 <u>% Change</u> |
|--|-------------------------------------|--------------------------------------|---------------------------------------|---------------------------------------|--|
| Average Monthly Enrollment | 42,661 | 40,073 | 40,528 | 40,123 | -1.0% |
| Average Monthly Grant | \$213.69 | \$218.18 | \$220.95 | \$225.42 | 2.0% |
| Budgeted Funds (\$ in Millions) | | | | | |
| General Funds | \$4.1 | \$3.0 | \$3.0 | \$3.5 | 16.7% |
| Total Funds | \$109.4 | \$104.9 | \$107.5 | \$108.5 | 1.0% |
| Estimated Shortfall | | | -\$2.5 | | |

Note: Numbers may not sum due to rounding.

Source: Department of Human Services; Department of Legislative Services

Two changes related to TCA went into effect in July 2019. First, per Chapters 737 and 738 of 2017, the State began passing through \$100 for the first child or \$200 for two or more children of child support received on behalf of TCA customers per month. In August 2019, 6,458 TCA cases received pass-through child support funds. Through August 2019, \$589,799 has been distributed to families through the pass-through. This benefit reduces child support collections supporting the TCA program. In addition, the State began implementing a transitional benefit for individuals leaving TCA for employment or income over the limit. The State provides a benefit equivalent to the amount the individual received prior to exit for three months after exit. In August 2019, there were 841 recipients. A total of \$291,238 was paid through this benefit, funded through TANF, in the first two months of fiscal 2020.

Food Supplement Program and Related Benefits

SNAP, known in Maryland as the Food Supplement Program (FSP), helps low-income households 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. The supplement ensures that the household receives a benefit of at least \$30 per month.

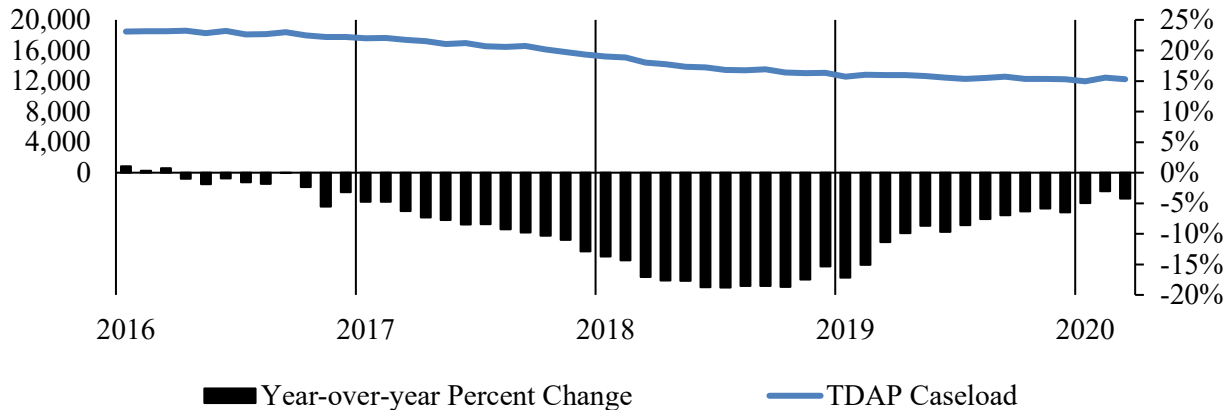
After peaking in October 2013 (800,022), the number of FSP recipients has generally declined. In July 2019, the number of recipients totaled 610,523. Despite the overall decline, the number of recipients of the State supplemental benefit has increased since October 2016 (the month that the program began). The average monthly number of cases in fiscal 2019, 22,433, was 15% higher than fiscal 2018. The budget assumed a caseload of 24,538 in fiscal 2020, below the year-to-date average in fiscal 2020 (24,761). Given the continued rapid increase in recipients, DLS projects a small shortfall in the program (\$0.2 million).

Chapters 635 and 636 of 2019 create a process for counties to apply to the Department of Human Services for matching funds to support a new supplement to FSP to provide additional benefits for children in the summer and winter break. The new benefit would provide an additional \$30 per month in summer months and \$10 in December for each child in an FSP household. However, the benefit will be available only in counties that apply to participate. The Acts mandate \$200,000 in funding for the program beginning in fiscal 2021.

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 or for individuals with a long-term disability while awaiting approval for federal disability benefits. Chapter 408 of 2018 mandated increases in the benefit level so that by fiscal 2027, the benefit will be equivalent to the maximum TCA benefit for a one-person household. Fiscal 2021 is the first year that the benefit is linked to the TCA benefit (74% of the one-person benefit level). TDAP enrollment has declined on a year-over-year basis since October 2015. However, as shown in **Exhibit 3**, the decline has slowed in recent months. DLS projects this decline to continue through fiscal 2021. As shown in **Exhibit 4**, DLS projects a shortfall of approximately \$3.2 million in TDAP due to a slower rate of caseload decline than was assumed in the fiscal 2020 budget.

Exhibit 3
Temporary Disability Assistance Program Caseload
July 2015 to August 2019



TDAP: Temporary Disability Assistance Program

Source: Department of Human Services; Department of Legislative Services

Exhibit 4
Temporary Disability Assistance Program Enrollment and Funding Trends
Fiscal 2019-2021

| | <u>2019 Actual</u> | <u>2020 Approp.</u> | <u>2020 Estimate</u> | <u>2021 Estimate</u> | <u>2020-2021 % Change</u> |
|-----------------------------------|------------------------|-------------------------|--------------------------|--------------------------|-------------------------------|
| Average Monthly Enrollment | 12,509 | 10,851 | 12,196 | 12,074 | -1.0% |
| Average Monthly Grant | \$193.16 | \$215.00 | \$213.00 | \$247.00 | 16.0% |
| Budgeted Funds in Millions | | | | | |
| General Funds | \$24.3 | \$23.7 | \$26.9 | \$31.1 | 15.6% |
| Total Funds | \$29.0 | \$28.0 | \$31.2 | \$35.8 | 14.7% |
| Estimated Shortfall | | | -\$3.2 | | |

Note: Numbers may not sum due to rounding.

Source: Department of Human Services; Department of Legislative Services

Human Services

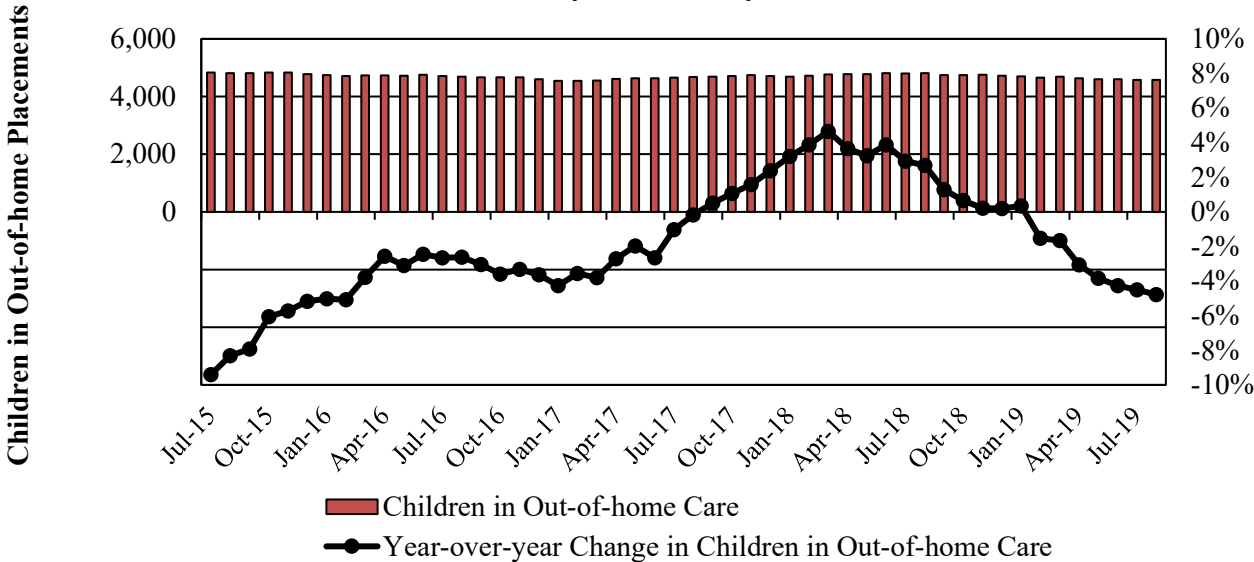
Child Welfare Caseload Trends

After increasing in calendar 2017 and 2018, out-of-home foster care placements have declined in calendar 2019. While the overall average foster care caseload continues to decline, institutional placements (the most expensive type of care) increased for the first time since fiscal 2008. Effective October 1, 2019, a number of federal rules regarding Title IV-E funding (the primary source of federal funds for foster care) changed due to federal legislation, but it is unclear how these changes will impact the State budget.

Out-of-home Placements Decline

After decreasing for several years, the number of out-of-home placements increased by 3.9% from January 2017 through December 2018. However, as shown in **Exhibit 1**, in calendar 2019, out-of-home placements began to decline again. Through August 2019, out-of-home placements had decreased by 2.9%. While not all placements included in this figure are paid for through the Department of Human Services Foster Care Maintenance Payments Program, it is generally reflective of the trends in regular foster care placements.

Exhibit 1
Out-of-home Placements
July 2015 to July 2019

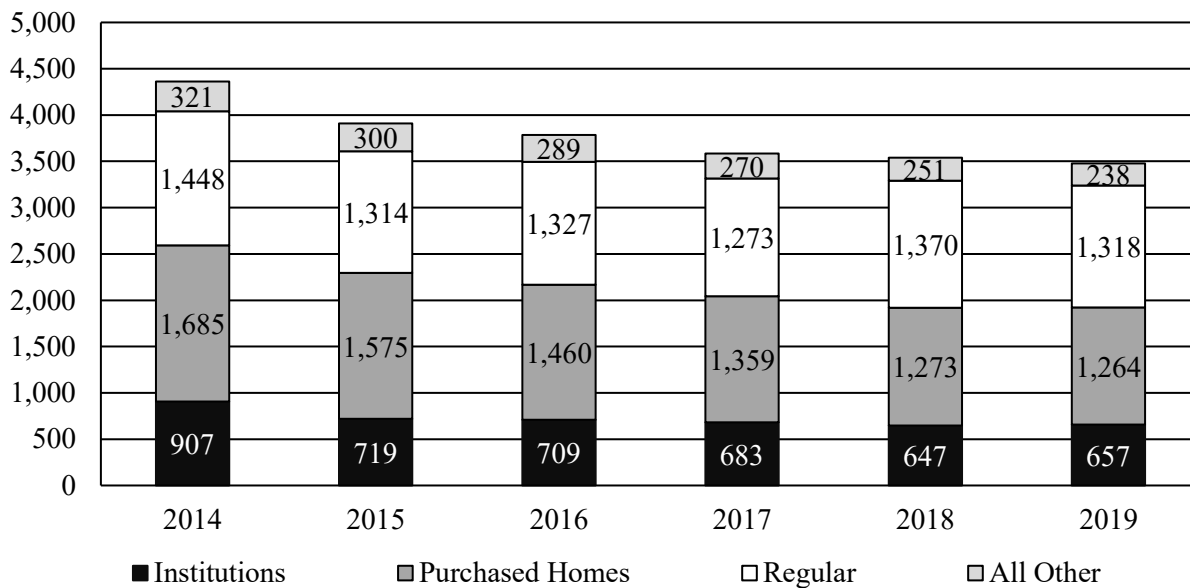


Source: Department of Human Services; Department of Legislative Services

Placement Type Variations and Increase in Institutional Placements

As shown in **Exhibit 2**, the overall average monthly caseload continues to decline. From fiscal 2014 through 2019, the average monthly caseload decreased by 20.0%. However, the declines have varied by placement type. In fiscal 2019, regular foster care placements decreased after an increase in fiscal 2018 but remained above fiscal 2017. The number of institutional foster care placements increased for the first time since fiscal 2008. While the increase was small (1.5%), this type of placement is considerably more expensive than regular foster care. It is also the third largest category of foster care placements. In addition, the decline in purchased home placements, which had exceeded 10.0% since fiscal 2010, slowed to less than 1.0%. This is the second largest category of placements and one of the higher cost placement types. The mix of placements plays an important role in the budget for foster care placements. The changes in fiscal 2019 resulted in an increase in spending of more than \$4.0 million compared to the prior year.

Exhibit 2
Foster Care Average Monthly Caseloads
Fiscal 2014-2019

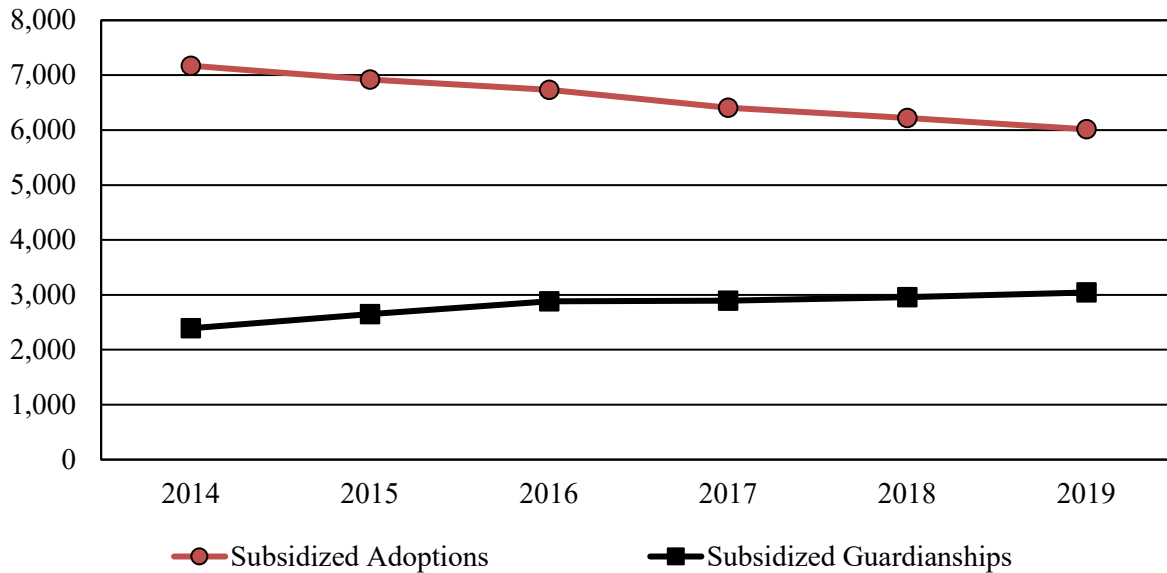


Note: Excludes certain types of placements that are paid for in other areas of the State budget, such as kinship placements or residential treatment centers.

Source: Department of Human Services; Department of Legislative Services

As shown in **Exhibit 3**, growth in subsidized guardianships slowed substantially in fiscal 2017. In the last two years, the growth rate stabilized at around 2%. Subsidized adoptions continue to decline annually.

Exhibit 3
Subsidized Adoptions/Guardianships Average Monthly Caseloads
Fiscal 2014-2019



Source: Department of Human Services; Department of Legislative Services

Federal Fund Changes

Effective October 1, 2019, a number of federal rules regarding Title IV-E funding (the primary source of federal funds for foster care) changed due to the Families First Prevention Services Act (FFPSA). Included among the changes is a limitation in the available Title IV-E reimbursement for residential child care institutions to two weeks, unless the program is a qualified residential treatment program (QRTP). FFPSA does not prevent youth from being placed in a program not meeting QRTP rules for longer than two weeks, but the placement would not be eligible for federal reimbursement. FFPSA contains a number of requirements for qualification as a QRTP, including having a trauma-informed treatment model and having registered or licensed nursing staff and other clinical staff who provide care onsite according to the treatment model and are available 24 hours per day, seven days per week. The reimbursement rules do not apply to certain types of programs (for example, programs for minor mothers or independent living programs). It is unclear how these changes will impact the State budget, but it bears monitoring given recent trends in institutional placements.

Human Services

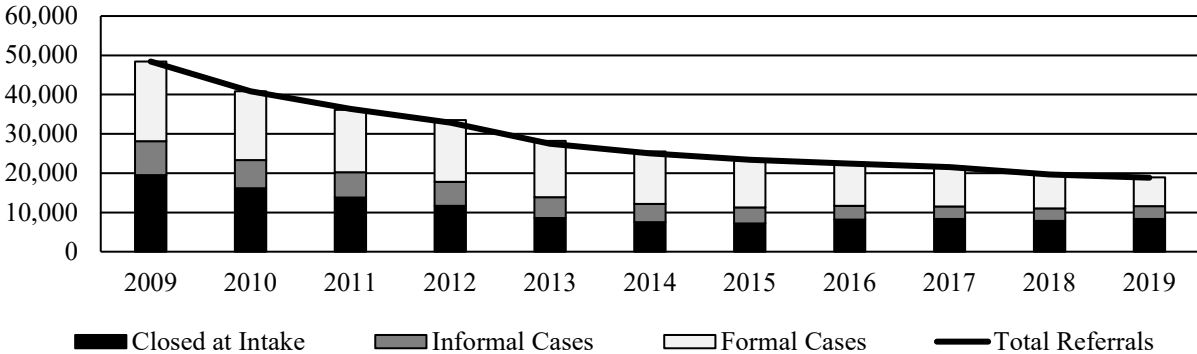
Department of Juvenile Services Caseload Trends

Although the number of juvenile complaints has declined in recent years, the detention population has begun to plateau. This is due to statutory changes requiring youth charged as adults to be housed in juvenile facilities pending trial and to the Department of Juvenile Services' efforts to return to Maryland's juvenile system youth committed to out-of-state placements. In addition, direct care staff separations are increasing, raising concern about the department's ability to adequately provide services to youth and maintain security within its facilities.

Continued Decline in Complaints

Exhibit 1 displays the total number of complaints received by the Department of Juvenile Services (DJS) over the past decade and complaint dispositions. The total number of complaints received has continued to decline to a low of 18,837 complaints in fiscal 2019. This is down 4% from fiscal 2018 and 61% from 48,422 complaints in fiscal 2009. As a result, the number of complaints closed at intake has become a larger percentage of all complaint decisions, rising from approximately 40% to 44% over the past decade. This is consistent with DJS' goal to "increase diversion efforts through partnerships with education, law enforcement, and community agencies to reduce involvement of youth" in the DJS system.

Exhibit 1
Total Complaints and Dispositions
Fiscal 2009-2019



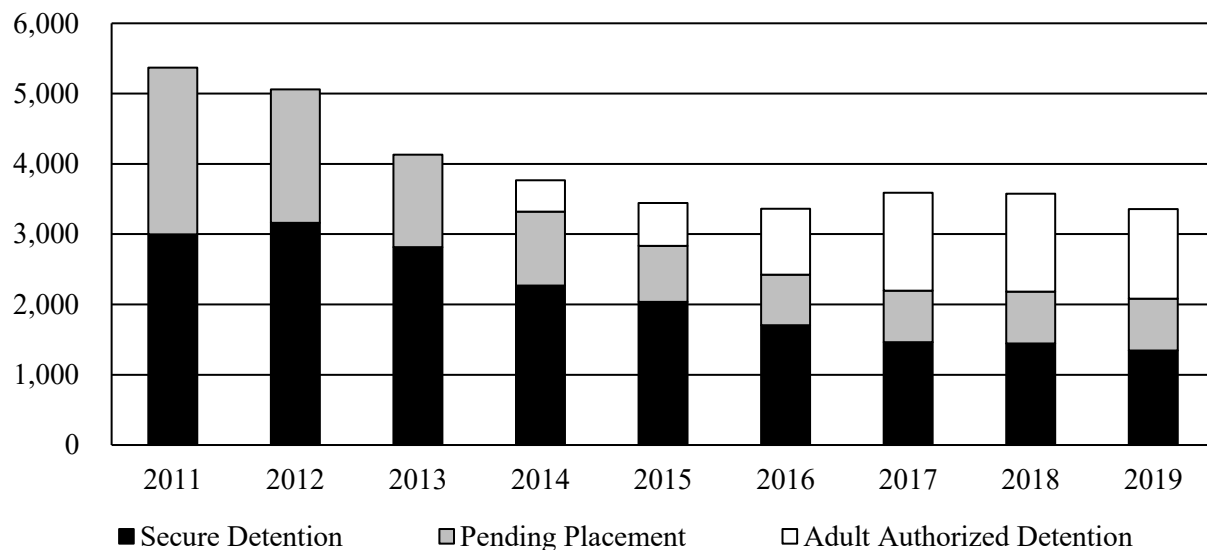
Note: Total complaints typically are 1% or 2% higher than the sum of those resolved at intake and the informal and formal caseload. The difference relates to jurisdictional issues or cases in which a decision was not recorded.

Source: Department of Juvenile Services

Stabilization of Detained Population

The detained average daily population (ADP) consists of three populations: (1) the secured detention population (*i.e.*, those awaiting juvenile court disposition); (2) the secured pending placement population (*i.e.*, those awaiting placement into a committed facility after juvenile court disposition); and (3) the adult court population (*i.e.*, those charged as adults pending a transfer determination to the juvenile court). While overall complaints have continued to decline, **Exhibit 2** shows that the total detained population has held steady in recent years. ADP fell from 447 youth in fiscal 2011 to a low of 280 youth in fiscal 2016. After a brief increase in the adult court population in fiscal 2016 and 2017, the total ADP has returned to 280 youth in fiscal 2019. Adult court population trends are discussed further in the following section.

Exhibit 2
Average Daily Detention Population
Fiscal 2011-2019



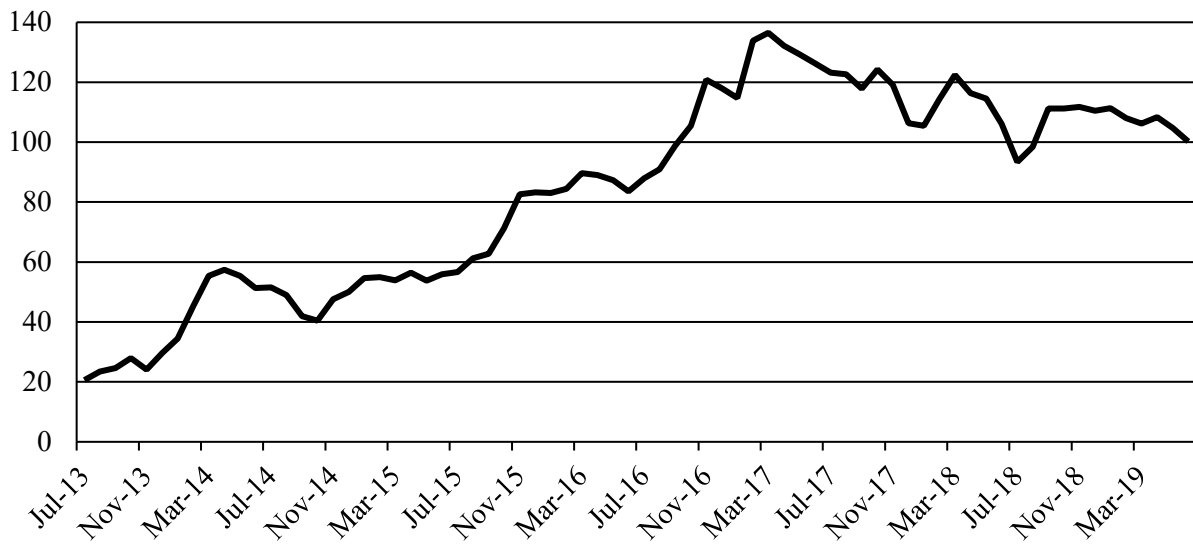
Source: Department of Juvenile Services

Growth in Adult Court Population

In fiscal 2014, DJS began to divert youth charged as adults from adult detention to juvenile detention, as per an agreement with Baltimore City. This agreement was codified and expanded statewide with the enactment of Chapter 69 of 2015, which requires a court to order a youth charged as an adult to be held in juvenile detention pending transfer if that youth is eligible to be transferred to the juvenile system. The adult court population detained at DJS facilities

subsequently grew 419% from 21 youth in July 2013 to 100 youth in June 2019, as shown in **Exhibit 3**.

Exhibit 3
Average Daily Adult Court Population
July 2013 to June 2019



Source: Department of Juvenile Services; Department of Legislative Services

This population tends to stay in DJS custody longer than those who move solely through the juvenile system. In fiscal 2019, the average length of stay (ALOS) for the juvenile predisposition population was 19.7 days while the ALOS for the adult court population was 108.4 days. Legal requirements guarantee predisposition youth in the juvenile court system an adjudication date within 30 days of their entry into DJS custody; no such requirement exists for youth charged as adults in the adult court system. Policies allowing adult court detention, combined with a substantially longer ALOS, have yielded a steadily growing average daily adult court population. This has in turn slowed the decline in the total detention population.

Decline in Committed Out-of-state Population

A major initiative of DJS has been to return youth committed to out-of-state placements to the Maryland juvenile system. **Exhibit 4** shows the monthly ADP of youth committed out-of-state between July 2013 and June 2019. The out-of-state ADP declined 62%, from 109 youth to 41 youth over this period. A notable exception to this trend occurred between March and December 2018, when ADP rose 63%.

Exhibit 4
Average Daily Out-of-state Population
July 2013 to June 2019



Source: Department of Juvenile Services; Department of Legislative Services

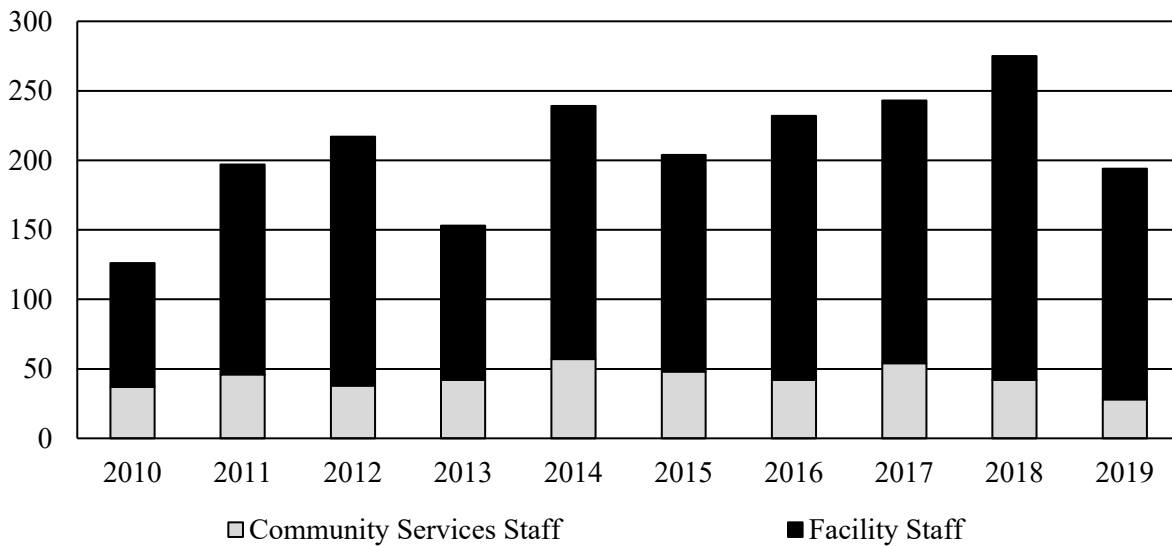
This sharp increase is associated with operational changes at two DJS facilities. The Savage Mountain Youth Center was temporarily closed for security improvements in September 2017. Due to this closure, 10 youth were moved out of state. As a result of a group disturbance at the Victor Cullen Center in April 2018 culminating in the hospitalization of several facility staff, DJS removed youth from the center and ceased to admit new youth until order could be restored. The

out-of-state ADP has since declined to 41 youth as of June 2019 as the Victor Cullen Center was reopened, and out-of-state youth were returned to the DJS system.

Rise in Direct Care Staff Separations

One area of concern is the department’s ability to maintain adequate staffing levels. **Exhibit 5** details the growth in direct care staff separations between fiscal 2010 and 2019. The number of direct care staff separations within DJS facilities nearly doubled, from 89 to 166 separations. Community services staff separations have remained relatively stable. As the total detention population begins to plateau, appropriate staffing levels must be available to provide youth with adequate services and facilities with adequate security.

Exhibit 5
Direct Care Staff Separations
Fiscal 2010-2019



Source: Department of Juvenile Services

Human Services

Poverty in Maryland

In 2018, Maryland’s overall rate of poverty continued to be below the national rate of poverty. In that year, Maryland had the sixth lowest rate of poverty and third lowest rate of child poverty in the nation. However, according to the Supplemental Poverty Measure, Maryland has a higher rate of poverty than the overall poverty rate. This measure accounts for variations in certain costs among areas.

Measuring Poverty

Poverty can be measured for statistical analysis or for determination of eligibility for certain public services. For each of these purposes, there are nuanced measures available to assist policymakers in understanding the scope of poverty in a jurisdiction.

Poverty Thresholds

The federal government adopted “poverty thresholds” as the official statistical definition of poverty in 1969. Poverty thresholds are issued by the U.S. Census Bureau and are primarily used for statistical analysis. Thresholds establish the annual expenditure amount below which a family is considered to be in poverty and are based on factors such as family size and the number of family members who are children. Thresholds are annually adjusted for inflation and do not vary geographically. Poverty status is determined by comparing poverty thresholds to a family’s income. Noncash benefits (*e.g.*, food stamps or housing subsidies) and capital gains are not included in the calculation of income. In determining poverty status, family income is usually aggregated.

Federal Poverty Guidelines

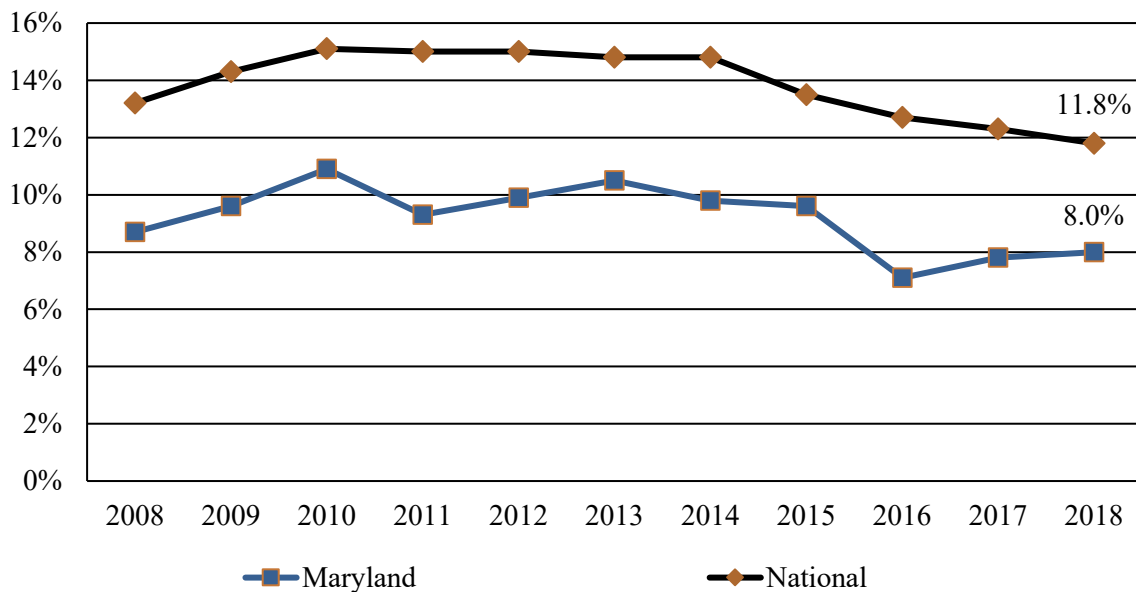
Federal poverty guidelines are derived from poverty thresholds and are used by the U.S. Department of Health and Human Services to determine eligibility for assistance or services under certain programs. Although poverty thresholds and guidelines are different, the actual amounts do not vary considerably. Like thresholds, guidelines are adjusted annually for inflation but have not changed significantly in recent years.

Maryland Poverty Rate

Maryland’s poverty rate has historically been lower than the national rate. As shown in **Exhibit 1**, the State’s poverty rate (8%) was 3.8 percentage points lower than the national rate

(11.8%) in 2018. In the same year, Maryland had the sixth lowest overall poverty rate and third lowest child poverty rate (9.5%).

Exhibit 1
Percent of Population in Poverty
Calendar 2008-2018



Source: U.S. Census Bureau

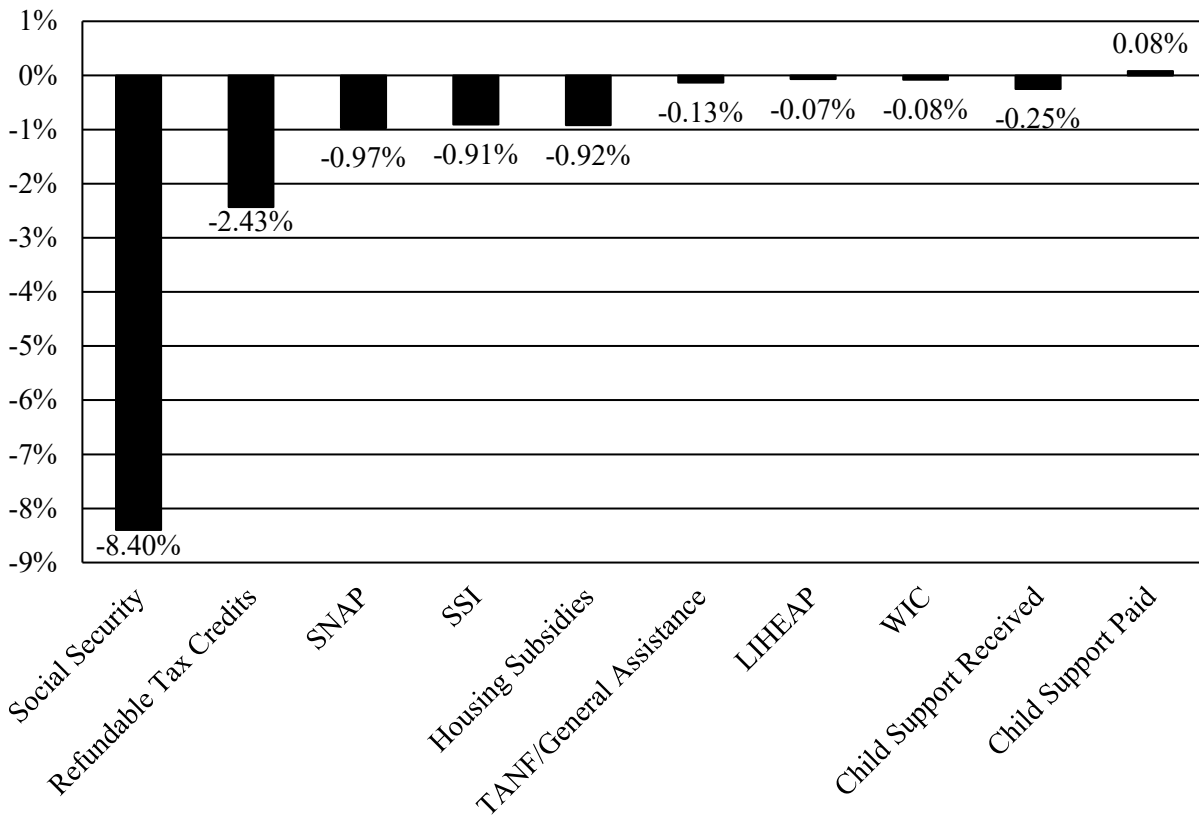
Despite performing relatively well on a national stage, these statistics reflect approximately 1 in 13 Marylanders living in poverty in 2018, including approximately 1 in 10 children. In 2017, according to the U.S. Census Bureau Small Area Income and Poverty Estimates Program, the highest concentrations of poverty in Maryland occurred in Allegany and Somerset counties and Baltimore City.

Supplemental Poverty Measure

To account for variations not captured by thresholds or guidelines (such as geographic location, work status, and medical care costs), a Supplemental Poverty Measure (SPM) is also produced by the U.S. Census Bureau annually. This measure includes the value of certain noncash benefits in the income calculation. Although SPM is not intended to be used for determining eligibility or distribution of funding, this measure can be used for research, discussion of economic need within populations, and isolation of the impacts of public assistance programs on poverty. As

shown in **Exhibit 2**, Social Security has the greatest impact on reducing rates of poverty (8.4 percentage points) as measured by SPM. According to the U.S. Census Bureau, using the most recent three-year average (2016 to 2018), Maryland, along with 19 other states, had an SPM poverty rate (12.4%) that exceeded the State’s official poverty rate (7.2%).

Exhibit 2
Change in the Supplemental Poverty Measure
Poverty Rate by Public Assistance Program or Expense
Calendar 2018



LIHEAP: Low Income Home Energy Assistance Program
 SNAP: Supplemental Nutrition Assistance Program
 SSI: Supplemental Security Income
 TANF: Temporary Assistance for Needy Families
 WIC: Women, Infants, and Children

Source: U.S. Census Bureau

Deep Poverty

Deep poverty is generally defined as having an income of less than 50% of the federal poverty level. Similar to the overall poverty rate, Maryland has a lower proportion of households in deep poverty (4.6% of population in 2017) than the nation (6.0% of population in 2017). However, Maryland's level of deep poverty has been decreasing at a slower rate than the national level. In addition, of the households in poverty, Maryland households were more likely to be in deep poverty than the national average for households in poverty. In Baltimore City and Somerset County, more than 10% of the population were in deep poverty in 2017.

Human Services

Potential Federal Changes to the Supplemental Nutrition Assistance Program

In 2019, the U.S. Department of Agriculture proposed several changes to rules related to eligibility and deductions from income for the Supplemental Nutrition Assistance Program. A broader change in policy has been adopted regarding the definition of a public charge, which may reduce applications or increase withdrawal from benefits; however, implementation of the rule is currently suspended due to ongoing litigation.

Eligibility Determination

Households without an individual who is elderly or disabled that apply for the Supplemental Nutrition Assistance Program (SNAP), known in Maryland as the Food Supplement Program (FSP), must meet a gross income test (130% of federal poverty guidelines (FPG)) and a net income test (100% FPG). Net income reflects countable income minus allowable deductions that include specified earned income, dependent care costs, medical expenses, and excess shelter costs. Net income is also part of the benefit calculation, as the benefit amount is the maximum allowable payment minus net income. These households must also meet an asset test (possess assets no greater than \$2,250). The asset limit is \$3,500 for households with an individual who is elderly or disabled. The FSP caseload has been declining since fiscal 2014. In fiscal 2019, the average monthly number of recipients was 627,299. In August 2019, there were 615,096 FSP recipients.

Broad-based Categorical Eligibility

Categorical eligibility allows an individual or household that is determined eligible for one benefit to be determined eligible for another benefit. Under SNAP, need-based cash assistance program benefits provided under the Temporary Assistance for Needy Families (TANF) block grant (known in Maryland as Temporary Cash Assistance) and Supplemental Security Income (SSI) allow recipients to qualify for SNAP through categorical eligibility. SNAP also allows for broad-based categorical eligibility under which states may convey eligibility for SNAP based on a noncash TANF (or TANF-related Maintenance of Effort) funded benefit. The noncash benefit may include a brochure or application funded with TANF. In general, the benefit must still have an eligibility limit of no greater than 200% FPG. Broad-based categorical eligibility can be used to increase the gross income limit for households receiving SNAP or increase or remove SNAP asset limits. For households receiving benefits under categorical eligibility or broad-based categorical eligibility, benefits must still be determined through the regular method (maximum allowable benefit minus net income). If the net income is too high, the household does not receive a benefit, except that all eligible households of one or two persons are eligible for the minimum monthly benefit (\$15).

According to the U.S. Department of Agriculture (USDA), as of October 2018, 40 states and Washington, DC; Guam; and the Virgin Islands had opted for broad-based categorical eligibility. Of the 43 jurisdictions with broad-based categorical eligibility, 37 have no asset test, and 33 have a gross income limit above 130% FPG. In Maryland, the broad-based categorical eligibility is conveyed with a referral to services on an application. Under this broad-based categorical eligibility, there is no asset limit, and the gross income limit is 200% FPG.

Proposed Federal Changes

In July 2019, USDA proposed a change to broad-based categorical eligibility. States would still be able to convey categorical eligibility using noncash TANF benefits; however, it would be limited. Under the proposed rule, TANF benefits used to convey categorical eligibility must be valued at a minimum of \$50 and be provided for at least six months. Eligible noncash TANF benefits would be limited to those that support work (*i.e.*, subsidized employment, child care, or other work supports).

Some households currently receiving benefits under broad-based categorical eligibility would continue to be eligible based on income and asset levels or receipt of qualifying benefits. The Department of Human Services (DHS) is unable to provide an estimate of the number of households that would potentially lose benefits as a result of this change because it does not currently collect asset information. Therefore, DHS cannot determine the number of households with assets exceeding SNAP limits. However, based on federal fiscal 2016 data, the Congressional Research Service (CRS) indicated that 5.7% of all SNAP households have an income over 130% FPG (4.2% of households without an elderly or disabled member and 7.7% of households with an elderly or disabled member). CRS estimated that, in federal fiscal 2016, 22,023 of SNAP households in Maryland without an elderly or disabled member had a gross income greater than 130% FPG (9.6% of these households). USDA estimated nationwide that 9% of households would lose eligibility for SNAP with higher shares among the elderly and households without children.

This change would also impact children receiving free and reduced-price lunches that are directly certified for that benefit as a result of the household's receipt of SNAP. Although USDA did not initially provide an estimate of the impact on this benefit, on October 15, 2019, it provided an estimate and reopened the comment period on the proposed rule for two weeks. USDA estimates that 982,000 children would no longer be directly certified for free school meals due to this change. However, an estimated 445,000 children would still be eligible for free lunch with an additional 497,000 children eligible for reduced-price meals instead of free meals. Approximately 40,000 children are expected to no longer be eligible for free or reduced-price meals.

Standard Utility Allowance

One of the available deductions to income under SNAP is the excess shelter deduction, which is for shelter expenses that exceed 50% of income (after other deductions). Utility costs are included in the shelter expense calculation. States are allowed to develop and use a standard utility allowance (SUA) in lieu of actual utility expenses for purposes of this deduction. The largest SUA is the heating and cooling SUA. USDA indicates that, in federal fiscal 2019, individual state SUAs ranged from \$278 to \$826.

In October 2019, USDA announced a proposed rule to alter allowable SUAs. Under the proposed rule, SUA would be set at the eightieth percentile of utility costs for low-income households in the state. USDA would calculate the base year SUA and update it annually using a three-year average of inflation for fuel and utilities. The proposed rule also eliminates state options to vary SUA by household size or geographic area. The proposed rule contains several other changes, such as capping certain other utility allowances at a certain percent of the state SUA. In addition, the proposed rule replaces the current telephone expense with a telecommunication standard that includes the cost of basic Internet service. It would not change the state options for mandating the use of SUAs or providing the option to use actual data.

USDA estimates that 29 states would see a net loss of SNAP benefits (totaling about \$1.54 billion annually) and 21 states and Washington, DC would see a net gain of SNAP benefits (\$0.54 billion). To calculate the impact, DHS used federal fiscal 2014 data. In that year, SUA in Maryland under the proposed rule was estimated at \$253 compared to \$388 under the current method. As a result of the expected lower SUA, DHS anticipates that SNAP benefits would decrease in Maryland if the proposed rule is finalized. The comment period for the proposed rule closed on November 4, 2019.

Public Charge

A broader change in policy has been adopted regarding the definition of a public charge. An individual who is deemed a public charge is inadmissible to the United States and ineligible to attain legal permanent status. Under prior rules, according to the U.S. Citizenship and Immigration Services (USCIS), a public charge is an individual who is likely to become primarily dependent on the government as demonstrated by receipt of public assistance for income maintenance or institutionalization for long-term care at government expense. Prior to the rule change, only cash assistance (SSI, cash assistance from TANF, or other state or local cash assistance) was considered public assistance for the purposes of the public charge policy. Under the rule change, other noncash TANF benefits, Medicaid, SNAP, and housing assistance will also be considered. In addition, the revised rule also changes the definition of public charge to require the individual to be more likely than not to receive one or more benefits for more than 12 months in a 36-month period. Public assistance receipt is only one factor in the public charge determination, and no single factor is expected to determine the outcome. Other factors to be considered will include age, income, educational attainment, employment, and health status.

In addition to the uncertainty surrounding how the various factors will be weighed, the potential impact is also unclear because the included public benefit programs generally have rules limiting receipt of benefits by immigrants. Nationally, lawsuits have been filed in multiple jurisdictions attempting to prevent the implementation and enforcement of the revised rule and alleging that the change will have a chilling effect on applications or result in a withdrawal from needed benefits by households that would not be impacted by the change. Federal judges in California, Illinois, Maryland, New York, and Washington have issued injunctions prohibiting USCIS from implementing and enforcing the rule pending a final resolution of the cases.

Transportation

Overview of Draft Consolidated *Transportation Program*

The Maryland Department of Transportation's draft 2020-2025 *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 2020-2025 CTP totals \$15.3 billion, a \$1.1 billion decrease from the 2019-2024 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. The CTP also includes mandated State aid to local governments. 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 2019-2024 CTP to the draft 2020-2025 CTP by fund source.

Exhibit 1 Comparison of Six-year Capital Spending by Fund Source Fiscal 2019-2025 (\$ in Millions)

| | <u>2019-2024 CTP</u> | <u>Draft 2020-2025 CTP</u> | <u>Change</u> | <u>% Change</u> |
|---------------------------------|----------------------|----------------------------|-------------------|-----------------|
| Special Funds | \$7,310.2 | \$6,203.1 | -\$1,107.1 | -15.1% |
| Federal Funds | 5,845.6 | 5,588.0 | -257.6 | -4.4% |
| Other Funds ¹ | 1,163.5 | 1,029.6 | -133.9 | -11.5% |
| General Funds | 793.0 | 945.0 | 152.0 | 19.2% |
| Subtotal – State Program | \$15,112.3 | \$13,765.7 | -\$1,346.6 | -8.9% |
| State Aid – Special Funds | 1,326.3 | 1,526.8 | 200.5 | 15.1% |
| Total | \$16,438.6 | \$15,292.5 | -\$1,146.1 | -7.0% |

CTP: *Consolidated Transportation Program*

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

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

Source: Maryland Department of Transportation 2019-2024 CTP, draft 2020-2025 CTP; Department of Legislative Services

Non-aid funding in the draft 2020-2025 CTP decreases by over \$1.3 billion from the 2019-2024 CTP (-8.9%). Special funds, the largest funding source for the CTP, decrease by over \$1.1 billion. Federal funds decline by 4.4%, and other funds that are nonbudgeted, decrease by 11.5%. General funds, included for the dedicated capital grant to WMATA, increase by \$152 million (19.2%). State aid to local governments, provided from special funds, increase by just over \$200 million (15.1%) in the draft CTP. Total State and local funding in the draft CTP decreases by over \$1.1 billion (-7.0%).

Exhibit 2 compares MDOT’s total capital spending in each plan by mode and for State aid to local governments. Programmed spending decreases for every mode except WMATA, which is supported by increased general funding in the draft. State aid to local governments increases by just over \$200 million reflecting the enhanced grant level mandated through fiscal 2024 by Chapters 330 and 331 of 2018. Nearly \$153 million of the decrease in funding for mass transit results from the expected fiscal 2023 completion of the Purple Line Light Rail project.

Exhibit 2
Comparison of Six-year Capital Spending by Mode
Fiscal 2019-2025
(\$ in Millions)

| | <u>2019-2024 CTP</u> | <u>Draft 2020-2025 CTP</u> | <u>Change</u> | <u>% Change</u> |
|--------------------|----------------------|----------------------------|-------------------|-----------------|
| Secretary’s Office | \$244.4 | \$147.4 | -\$97.0 | -39.7% |
| WMATA | 2,574.9 | 2,705.5 | 130.6 | 5.1% |
| State Highways | 7,352.2 | 6,591.2 | -761.0 | -10.4% |
| Port | 842.6 | 705.8 | -136.8 | -16.2% |
| Motor Vehicle | 143.4 | 143.3 | -0.1 | -0.1% |
| Mass Transit | 3,310.1 | 2,965.3 | -344.8 | -10.4% |
| Airport | 644.7 | 507.2 | -137.5 | -21.3% |
| Subtotal | \$15,112.2 | \$13,765.7 | -\$1,346.6 | -8.9% |
| State Aid | 1,326.3 | 1,526.8 | 200.5 | 15.1% |
| Total | \$16,438.6 | \$15,292.5 | -\$1,146.1 | -7.0% |

CTP: Consolidated Transportation Program

WMATA: Washington Metropolitan Area Transit Authority

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

Source: Maryland Department of Transportation 2019-2024 CTP, draft 2020-2025 CTP; Department of Legislative Services

Exhibit 3 compares MDOT’s six-year capital spending in each plan by category. On a percentage basis, the largest decrease in programmed spending is for the Development and Evaluation Program that decreases by nearly a third in the draft CTP. The largest dollar decrease occurs in planned spending for major projects.

Exhibit 3
Comparison of Six-year Capital Spending by Category
Fiscal 2019-2025
(\$ in Millions)

| | 2019-2024 | Draft 2020-2025 | | % |
|------------------------------------|-------------------|------------------------|----------------------|----------------------|
| | <u>CTP</u> | <u>CTP</u> | <u>Change</u> | <u>Change</u> |
| Major Projects | \$7,801.9 | \$7,039.8 | -\$762.1 | -9.8% |
| System Preservation/Minor Projects | 6,344.5 | 5,851.6 | -492.9 | -7.8% |
| Development and Evaluation Program | 324.5 | 223.2 | -101.3 | -31.2% |
| Local Transportation Aid | 1,326.3 | 1,526.8 | 200.5 | 15.1% |
| Other | 640.9 | 650.9 | 10.0 | 1.6% |
| Total | \$16,438.1 | \$15,292.3 | -\$1,145.8 | -7.0% |

CTP: *Consolidated Transportation Program*

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

Source: Maryland Department of Transportation 2019-2024 CTP, draft 2020-2025 CTP; Department of Legislative Services

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.

Chesapeake Bay Bridge Third Crossing

Background

Over the past 15 years, the Maryland Transportation Authority (MDTA) has conducted several studies on issues affecting the Chesapeake Bay Bridge, including transportation and safety needs, current and future maintenance requirements and costs, and traffic capacity and means to alleviate congestion. Most recently, MDTA initiated a formal process under the National Environmental Policy Act (NEPA) to consider options for the addition of a third Bay Bridge crossing.

Status

MDTA is conducting a \$5 million study, titled the Chesapeake Bay Crossing Study: Tier 1 NEPA (Bay Crossing Study), to identify a preferred corridor across the Chesapeake Bay. The Bay Crossing Study will evaluate multiple corridor alternatives based on specified criteria as well as environmental and financial considerations. In fall 2019, MDTA announced that it was moving forward with the analysis of four preliminary alternatives: Corridor 6 (MD 100 to US 301 between Pasadena, Rock Hall, and Centreville); Corridor 7/Existing Corridor (US 50/301 to US 50 between Crofton and Queenstown); Corridor 8 (US 50/301 between Crofton and Easton); and a no-build alternative. The Bay Crossing Study is scheduled to be completed in summer 2021. Contemporaneously, the budget committees have asked that MDTA provide a report on the feasibility of an MDTA-operated ferry service as an alternative to a third Bay Bridge crossing; that report is anticipated December 31, 2019.

Howard Street Tunnel Reconstruction

Background

The inability to run high-cube double-stack railroad traffic through the Howard Street Tunnel (HST) has been a long-standing issue for the Maryland Port Administration (MPA). Completed in 1895, the existing single-track freight tunnel, as well as several clearances along the

rail alignment, are approximately 18 inches too short to allow modern double-stack intermodal trains to travel to and from the Port of Baltimore. The Maryland Department of Transportation (MDOT) began working with CSX in 2015 to develop a cost-effective solution to modify HST to allow double stacking. In 2017, MPA sought federal grant funding to help finance the needed improvements. Soon after MPA applied for federal funding, however, CSX withdrew its support for the project, and MPA ultimately withdrew the federal grant application. Just over a year later, in December 2018, members of the Maryland congressional delegation announced that CSX had recommitted to the project.

Status

Of the estimated \$466 million required for the project, \$363 million has been committed: CSX and the State have tentatively committed \$91 million and \$147 million, respectively, and Maryland was awarded a federal grant of \$125 million for the project during federal fiscal 2019. CSX and the State are negotiating how to close the funding gap. Once construction begins, the parties estimate that the rehabilitation of HST and related clearances will take two and a half years to complete.

I-495 and I-270 P3 Managed Lanes

Background

In September 2017, the Governor announced the I-495 and I-270 Public-private Partnership (P3) Program. It 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 (I-495) and to I-270 from the Washington Beltway to Frederick. 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 one or more concessionaires chosen through a P3 procurement.

Status

MDOT is currently conducting the I-495 and I-270 Managed Lanes Study covering a portion of the project's alignment, which will result in the development of an Environmental Impact Statement (EIS) as part of the NEPA process. This study will develop alternatives to reduce traffic congestion while minimizing and mitigating environmental impacts of the project. Additional studies for the remainder of the project alignment will be required before construction on those segments can begin. Concurrent with development of 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. The Board of Public Works formally designated the program as a P3 project on June 5, 2019.

Loop and Hyperloop

Background

The Boring Company is proposing to construct parallel twin tunnels between Washington, DC and Baltimore City, largely under the Baltimore-Washington Parkway, in a project referred to as the DC-to-Baltimore Loop. As envisioned, the loop will be a high-speed underground transportation system that transports passengers in autonomous electric vehicles carrying between 8 and 16 riders and traveling at 125 to 150 miles per hour. Design objectives 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, which would draw a vacuum inside the tube to eliminate air friction and allow for greater speeds of over 600 miles per hour.

Status

MDOT, as the State agency sponsor for the project, has submitted an Environmental Assessment (EA) for review to the Federal Highway Administration and the Federal Rail Administration. The outcome of the EA review could be (1) a “Finding of No Significant Impact,” which would allow the project to proceed to construction once all applicable permits have been obtained or (2) a finding that environmental impacts are likely, which would require development of an EIS under the NEPA process. Copies of EA, as well as a draft Programmatic Agreement to satisfy requirements under the National Historic Preservation Act, are available at: <https://www.dcbaltimoreloop.com/>.

Maglev

Background

The Northeast Maglev, LLC (TNEM) is proposing to build and operate a superconducting magnetic levitation (Maglev) system between Baltimore City and Washington, DC. This line would have an intermediate stop at Baltimore-Washington Thurgood Marshall International Airport. In 2015, MDOT, as the State agency sponsor for the project, secured a \$27.8 million grant from the U.S. Department of Transportation to conduct planning activities for the MAGLEV project. TNEM is providing the required 20% match toward the federal grant.

Status

An environmental review under NEPA is currently underway. Two alignments in the Baltimore-Washington Parkway corridor have been identified. The Draft EIS is expected to be released in fall 2019 for public comment. The final EIS and federal Record of Decision are currently projected for fall 2020.

Purple Line Light Rail

Background

The Purple Line light rail project is a 16.2-mile light rail line that will extend from Bethesda in Montgomery County to New Carrollton in Prince George's County, with a total of 21 stations. 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 the Maryland Area Regional Commuter, Amtrak, and regional and local bus services. Project information can be found at: <https://www.purplelinemd.com/en/>.

Status

Construction of the Purple Line is approximately 22% complete. However, the project has experienced a delay of approximately one year. As a result, the plan is to open the Purple Line in two phases, with Phase I (New Carrollton to the College Park Metro Station) opening for service in December 2022 and Phase 2 (College Park Metro Station to Bethesda) opening in 2023.

Business Regulation

Renewable Energy

Recent increases in the Renewable Energy Portfolio Standard have heightened interest in the energy sources that qualify as renewable or clean. The expansion of solar photovoltaic systems in the State has raised questions on how siting solar generating stations should relate to other land use issues. Offshore wind facilities are expected to begin operating within the next three years.

Renewable Energy Portfolio Standard

Maryland's Renewable Energy Portfolio Standard (RPS) was enacted in 2004 to facilitate a gradual transition to renewable sources of energy. Electric companies (utilities) and other electricity suppliers must submit renewable energy credits equal to a percentage specified in statute each year or else pay an Alternative Compliance Payment (ACP) equivalent to their shortfall.

Chapter 757 of 2019 increased RPS from 25% by 2020 to 50% by 2030. Effective October 1, 2019, the Act reestablished the expired Tier 2 of RPS as an additional requirement to include electricity from large hydroelectric sources for two years (2019 and 2020). New offshore wind capacity is required beginning with at least 400 megawatts in 2026, increasing to at least a cumulative 800 megawatts in 2028 and to at least a cumulative 1,200 megawatts in 2030. The carve-out for solar increases from 1.95% to 5.5% in 2019 with further annual increases until the solar carve-out reaches 14.5% in 2028. To control ratepayer impacts, Chapter 757 reduces Tier 1 ACPs beginning in 2019; by 2029, solar and nonsolar Tier 1 ACPs reach parity. ACP revenue remains dedicated to supporting new renewable energy sources in the State, but under the Act, those new renewable energy sources also must be owned by or must directly benefit low-income residents.

By January 1, 2020, the Power Plant Research Program (PPRP) within the Department of Natural Resources must conduct a study and report on nuclear energy and its role as a renewable or clean energy resource. Chapter 757 also modifies an existing study being conducted by PPRP, due December 1, 2019, to include additional topics and requires PPRP to conduct a supplemental study on a 100% RPS goal due by January 1, 2024.

The Governor has also announced his intention to introduce legislation to achieve 100% clean electricity by 2040, under a Clean and Renewable Energy Standard (CARES) that would recognize zero- and low-carbon sources, including nuclear energy, support hydropower, promote carbon capture and storage technologies, and enhance the role of combined heat and power. Any increase will likely increase the overall compliance costs of the RPS.

Other stakeholders and legislators have also expressed interest in altering certain aspects of RPS, including the treatment of waste-to-energy and black liquor (currently designated as Tier 1 resources), as well as the treatment of hydropower.

Solar

As the number of solar photovoltaic (PV) systems in the State has grown over the years, so too has the potential for conflict over the appropriate use of the State's finite amount of land. The General Assembly has considered several proposals pertaining to the siting of solar PV systems; however, legislative consensus on the various issues has not been reached. In its June 2019 letter to the Legislative Policy Committee, the House Environment and Transportation Committee expressed its intent to study siting and land use policies surrounding solar development during the 2019 interim.

In July 2019, the Court of Appeals held in *Board of County Commissioners of Washington County, Maryland v. Perennial Solar, LLC* that State law preempts local zoning authority with respect to solar energy generating systems that require a certificate of public convenience and necessity issued by the Public Service Commission (PSC). The case arose from a controversy over a zoning decision pertaining to the siting and construction of a solar facility in rural Washington County.

In August 2019, the Governor issued an executive order establishing the Task Force on Renewable Energy Development and Siting. The task force is charged with studying and developing recommendations for, among other things (1) advancing the siting of clean and renewable energy projects in commercial, developed, industrial, and public settings; (2) reducing the impact of clean and renewable energy development on specified agriculturally and ecologically significant areas; and (3) recognizing and respecting local government authority and private property rights. The task force must submit an interim report, with preliminary recommendations for legislation, to the Governor by December 1, 2019; a final report is due August 14, 2020.

Wind

Chapter 3 of 2013 created a "carve-out" for energy derived from offshore wind in the State's RPS. The amount is set by PSC each year based on the projected annual creation of offshore wind renewable energy credits (OREC) by qualified offshore wind projects, which must apply for and receive PSC approval, and may not exceed 2.5% of total retail sales. In May 2017, PSC awarded ORECs to two projects to be built off the coast of Maryland. Combined, the two projects will total 368 megawatts in capacity. Each company was awarded ORECs for 20 years, beginning in 2021 for U.S. Wind, Inc. and 2023 for Skipjack Offshore Energy, LLC. U.S. Wind's project is expected to be operational in early 2021, and Skipjack anticipates being in operation near the end of 2022.

Business Regulation

Public Service Commission Initiatives

The Public Service Commission (PSC) has actively investigated and implemented initiatives related to energy policy. In response to legislation and its own initiatives, PSC has adopted a modernized rate setting mechanism for electric and gas distribution using multi-year rate plans. Under the umbrella of grid modernization proceedings, PSC has explored and undertaken a number of proposals on energy issues such as rate design, energy storage, and electric vehicles.

Overview

Beyond its active caseload, the Public Service Commission (PSC) has undertaken several initiatives involving public policies that either PSC, the General Assembly, or both entities have wanted to explore. The most significant initiatives stem from two active public conferences: PSC's rate modernization proceeding, Public Conference 51 (PC 51); and PSC's grid modernization proceeding, Public Conference 44 (PC 44).

Rate Modernization (PC 51)

Utility rate regulation is one of the most litigated, lobbied, and arcane topics of State law and policy. Each year, the General Assembly, PSC, and the State court system – with the active intervention of a wide array of interested stakeholders – collectively grapple with various aspects of how utilities should provide and recover the costs of utility service to Maryland customers, or “ratepayers.” Distributed utility services have traditionally been regulated through a “cost of service regulation” model. Gas and electric distribution services remain under that model, while telephone companies have been legislatively authorized to use an alternative form of regulation since 1995.

In the 2019 session, the General Assembly considered, but did not pass, Senate Bill 572 and House Bill 653, which had the potential to prompt significant changes in Maryland's approach to ratemaking for gas and electric utilities. The bills would have required PSC to give heightened consideration to various types of alternative ratemaking. As introduced, the bills defined “alternative rate plan” to be a plan to establish new base rates for an electric company or a gas company that would include the use of (1) a fully forecasted test year; (2) multi-year rates; (3) formula rates; (4) rate designs that reflect fixed and variable costs; (5) other rate plans; or (6) a combination of rate plans that met the requirements of the bills. The bills also would have allowed utilities to include performance standards along with their alternative rate plans, which would provide incentives for favorable utility performance in reliability or customer satisfaction.

Although the Senate did not pass the bill, the House passed an amended version limiting the forms of alternative ratemaking to fully forecasted test years and formula rates, along with other changes.

On the regulatory front, in recent years and in response to various requests for alternative ratemaking approaches, PSC has alluded in various rate case opinions to the need for a more holistic review of alternative rate plans before authorizing a more significant departure in rate setting practices. On February 14, 2019, shortly after Senate Bill 572 and House Bill 653 were introduced, PSC launched Public Conference 51 (PC 51), a Technical Conference on Alternative Forms of Rate Regulation. As part of that conference, PSC received 38 sets of written comments and held two days of hearings.

Subsequently, on August 9, 2019, based on the record in PC 51, PSC issued Order No. 89226, establishing Case No. 9618, to facilitate the implementation of Multi-Year Rate Plans (MRP). In its order, PSC endorsed the use of a historical test year to develop any MRPs,¹ which would be able to last up to three years, as well as the incorporation of performance-based goals to provide incentives for optimal utility performance and public policy outcomes. Utilities would also retain the right to file traditional rate cases. PSC found that MRPs could limit the frequency of rate cases and provide customers with greater certainty about changes in rates as well as reduce the administrative burden for regulators as compared to other alternative rate plans. PSC further found that MRPs would reduce delays in cost recovery and allow utilities to operate their businesses in a more predictable regulatory environment as well as provide more transparency and insight into utility planning processes.

To implement MRPs, PSC directed its Public Utility Law Division to convene a working group to propose details by December 1, 2019, on which PSC is expected to rule by January 30, 2020, and after which utilities may begin to file MRPs. PSC also directed the working group to explore how to incorporate performance-based measures into MRPs and to provide its recommendations to PSC by April 1, 2020.

Grid Modernization (PC 44)

In September 2016, PSC established PC 44 as an umbrella proceeding under which to explore “transforming Maryland’s electric distribution systems to ensure that electric service is customer-centered, affordable, reliable, and environmentally sustainable in Maryland.” PSC established several workgroups to study and develop ideas for cases and rulemaking in the areas of energy storage, interconnection standards, customer choice, electric vehicles, and rate design. As a result, among other work related to PC 44, PSC has ordered and continues to develop and implement an electric vehicle infrastructure program and time-of-use rates and has adopted or continued to develop regulations related to consumer choice and interconnection standards.

¹ It is worth noting that the historical test year will be used as a basis to develop forecasted test years for up to three years. MRPs by definition require forecasted revenue requirements and rates because PSC will set rates for a future period based on projected costs. The historic test year creates a baseline from which those projections can be made.

Additionally, based in significant part on the work of the energy storage workgroup, established under Chapter 427 of 2019 the General Assembly required PSC to implement a pilot energy storage program.

Business Regulation

Family and Medical Leave Insurance

A paid family and medical leave insurance program insures workers against wage loss when they take time off from work for eligible reasons by replacing a percentage of the qualifying workers' wages for a period of time. While only three states currently operate such programs, the concept has recently been gaining momentum, and valuable insight can be gained from examining other states' experiences with implementation.

Overview of Family and Medical Leave Insurance

A paid family and medical leave insurance program insures workers against wage loss when they take time off from work for eligible reasons by replacing a percentage of the qualifying workers' wages for a period of time. Similar to other forms of insurance, the benefits are funded through contributions – employee, employer, or both. Paid family and medical leave for an employee generally includes parental leave to care for and bond with a child after the birth or placement of the child, family leave to care for a family member with a serious health condition, and medical leave to attend to the employee's own serious health condition. This is distinct from both paid sick leave, which is generally for shorter term medical conditions, and from benefits available under the federal Family and Medical Leave Act, which authorizes longer term unpaid leave.

Proponents of paid family and medical leave insurance cite the benefits of paid family and medical leave, such as stronger labor force attachment for family caregivers, improved family health, and improved worker morale. Opponents are concerned about the costs of such programs and potential unintended consequences. Researchers have examined the business and health effects of providing paid family and medical leave insurance in states with existing programs, and the results have generally been positive. Employers surveyed generally report paid family and medical leave insurance having a minimal or positive impact on their businesses. Private insurance companies are also seeing a business opportunity by offering their own plans that could compete with a state program. Based on other state experiences, implementing a paid family and medical leave insurance program has significant costs, but there are also nonmonetary benefits of providing paid family and medical leave insurance.

Insurance Programs in Other States

Paid family and medical leave insurance has recently been gaining momentum among the states. Prior to 2016, three states (California, New Jersey, and Rhode Island) had paid family and medical leave insurance programs. These early adopters added their programs to existing temporary disability insurance programs. Since then, five more states (Connecticut,

Massachusetts, New York, Oregon, and Washington) and the District of Columbia have enacted programs; California and New Jersey also expanded their existing programs in 2019. Additionally, during the past several years, the U.S. Congress and many state legislatures, including the Maryland General Assembly, have considered legislation that would establish some sort of paid family and medical leave insurance program.

Only California, New Jersey, and Rhode Island currently operate paid family and medical leave insurance programs. Several states have enacted programs, but they are not yet fully implemented and paying benefits. The New York program began phased implementation in 2018 and plans to be fully implemented in January 2021. The District of Columbia and Washington have family and medical leave insurance laws that took effect in 2017 with benefit payments starting in 2020. Massachusetts' family leave program was enacted in June 2018 with benefit payments beginning in January 2021. Most recently, Connecticut and Oregon enacted family and medical leave insurance laws in 2019 with benefit payments beginning in January 2022 for Connecticut and in January 2023 for Oregon.

The District of Columbia's program is the only paid family and medical leave insurance program funded entirely by employer contributions; the other programs are funded by both employee and employer contributions or just employee contributions. Half of the states with paid family and medical leave insurance programs have set a wage ceiling on contributions that are the same as the wage ceiling on Social Security, which is currently \$132,900. The District of Columbia's program is the only program without a wage ceiling on contributions. Maximum weekly benefits paid to employees are subject to caps ranging from \$650 in New Jersey to \$1,252 in California.

Lessons from Other States

Valuable insight can be gained from examining other states' experiences with implementing paid family and medical leave insurance programs. Massachusetts delayed the start of employer and employee contribution by three months in order to provide the state and businesses with adequate time to prepare for the program's impact because of uncertainty and confusion surrounding the rollout of the program. The start-up costs of a paid family and medical leave insurance program can be a major hurdle to implementation. Most states addressed this issue by borrowing from the General Fund and repaying it once employer and/or employee contributions started. Ongoing expenses are typically paid by contributions.

The federal government provides funds to states to meet the necessary costs of administering their unemployment insurance (UI) programs, and most states with a paid family and medical leave insurance program are currently using UI's information technology (IT) infrastructure. However, some states, including Washington and Oregon, believe they are prohibited from using UI's IT infrastructure for a paid family and medical leave insurance program. Additional insight may be gained as more states start implementing their programs and the programs mature.

Baltimore City Crime Plan and Policing

The Baltimore Police Department (BPD) continues to implement reforms as a result of the consent decree between the city and the U.S. Department of Justice. Meanwhile, the Commission to Restore Trust in Policing, created during the 2018 legislative session, continues to review, investigate, and make recommendations relating to BPD. These efforts are occurring while violent crime in Baltimore City continues to surge, prompting calls from Governor Lawrence J. Hogan, Jr. for increased efforts to solve the problem.

Consent Decree

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). As a result of that investigation, DOJ determined that BPD had been engaging in a pattern of unconstitutional, excessively forceful, and discriminatory policing.

Subsequently, 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 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 federal statutes. BPD and DOJ entered into a consent decree to resolve litigation of the case, which the court approved on April 7, 2017. The court will retain jurisdiction over the case until it determines that full compliance with the consent decree has been achieved.

The consent decree's requirements focus on building community trust, creating a culture of community and problem-oriented policing, prohibiting unlawful stops and arrests, preventing discriminatory policing and excessive force, ensuring public and officer safety, enhancing officer accountability, and making needed technological upgrades. The consent decree also provides for the 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.

The monitoring team released its third semiannual report in July 2019. Based on its monitoring activities during the first half of 2019, the monitoring team stated that "BPD is still in the preliminary stages of reform, and its ability to achieve broad institutional reform remains

uncertain, but it has made reasonable progress on its threshold obligations” under the consent decree.

Gun Trace Task Force

The Gun Trace Task Force was created in 2007 as an elite unit within BPD intended to pursue violent criminals and persons who illegally possess and use firearms. 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 innocent citizens. 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 and investigate the operations of the Gun Trace Task Force and to make recommendations regarding reform of BPD. In 2018, the commission held three hearings during which several witnesses, including the Senate sponsor of the commission’s enabling legislation, representatives of the City of Baltimore, former police officials, and representatives of the Office of the Public Defender provided testimony. In addition, the commission obtained and reviewed numerous documents from Baltimore City and the U.S. District Court. In December, the commission submitted a preliminary report summarizing its activities to the Governor and the General Assembly.

In 2019, the commission held several hearings at which it received testimony from representatives of the Community Oversight Task Force, representatives of the Baltimore City State’s Attorney’s Office, an attorney in private practice with knowledge of the activities of the Gun Trace Task Force, the Commissioner of the Baltimore Police Department, and representatives of the Civilian Review Board. The commission also continued to obtain and review documents from the City of Baltimore and other sources and to interview factual witnesses.

Chapters 459 and 460 of 2019 extended the deadline for submission of the commission’s final report and recommendations to December 31, 2020.

Violent Crime Surge

Freddie Gray’s death in 2015 sparked civil unrest in Baltimore followed by a crime wave that has included an increase in the number of murders in the city. The city experienced a total of 344 homicides in 2015, a 63% increase over the 211 homicides recorded the previous year. In 2016, 2017, and 2018, there were 318, 343, and 309 homicides, respectively. Through October 5, 2019, 258 people have been killed in the city, and there have been 609 nonfatal

shootings. Based on current statistics, homicides in Baltimore City are again likely to exceed 300 in 2019.

BPD Crime Plan

In July 2019, Police Commissioner Michael Harrison released a five-year plan for reducing crime and overhauling BPD. The plan requires foot patrol officers to focus on “micro zones” where 33% of violent crimes have occurred over the past five years. The plan also requires police to respond to the “highest priority calls where life or property is in immediate danger” within 10 minutes or less. The plan says officers should, when not responding to calls, spend a third of their shifts talking with city residents and performing community engagement activities. The plan also includes implementing new technology; having detectives who investigate armed robberies, burglaries, and nonfatal shootings report to the district level; and strengthening relationships with federal, State, and local agencies. In addition, the plan calls for hiring more civilians to perform administrative tasks, which currently are handled by law enforcement officers.

Governor’s Initiatives

In September 2019, Governor Lawrence J. Hogan, Jr. announced that he had directed Attorney General Brian Frosh to independently investigate and prosecute additional violent crime cases in Baltimore City. The Governor also directed the Maryland State Police to increase the execution of high priority warrants for violent offenders. In a letter dated September 10, 2019, addressed to Mayor Bernard C. “Jack” Young and Police Commissioner Harrison, Governor Hogan pledged \$21 million in State funding for crime fighting efforts in Baltimore City, provided that the city comply with specified reporting requirements and performance measures. The Governor also endorsed the use of a controversial surveillance plane and stated that up to 10 Maryland State Police helicopters will patrol the air over Baltimore and share any information they detect about criminal activity with BPD.

Firearms

Increases in active shooter incidents and violent crimes have heightened interest in restrictions regarding access to firearms, particularly long guns and ammunition.

Background

Violence involving firearms has become an issue of major concern throughout the United States and in Maryland. Data from the Centers for Disease Control and Prevention show that between 1999 and 2014, the rate of death resulting from the use of a firearm varied between 10.1 and 10.7 deaths per 100,000. The rate increased to 11.3 deaths per 100,000 in 2015 and to 12.2 deaths per 100,000 in 2017. In Maryland, the rate of death resulting from the use of a firearm increased from 9.1 deaths per 100,000 in 2014 to 12.3 deaths per 100,000 in 2017. According to the Pew Research Center, in the United States in 2017, of the deaths involving the use of a firearm, approximately 37% were murders, while approximately 60% were suicides.

The increase in active shooter incidents in the United States has also resulted in increased scrutiny of the regulation of access to firearms. The Federal Bureau of Investigation (FBI) defines an active shooter incident as a situation in which one or more individuals actively engage in the killing or attempted killing of people in a populated area. According to the FBI, there have been 277 active shooter incidents since 2000 in the United States. The annual number of incidents has generally increased each year since 2000. In 2000, there was 1 active shooter incident in the United States, resulting in a total of 7 deaths. In 2018, there were 27 active shooter incidents across 16 states including Maryland. These incidents resulted in 213 casualties (excluding perpetrators), which included 85 deaths and 128 persons left wounded. Two active shooter incidents occurred in Maryland in 2018, which resulted in a total of 13 casualties (excluding perpetrators), including 8 deaths and 5 persons left wounded.

Maryland Firearms Law

Possession of Firearms and Ammunition

Both federal and State law govern the possession of handguns, rifles, and shotguns. In general, Title 5 of the Public Safety Article sets forth a number of prohibitions and requirements for a person to purchase, possess, or carry a handgun, or to possess a rifle or shotgun. Since 2013, with certain exceptions, a person is prohibited from transporting an assault weapon into the State. In addition, a person may not possess, sell, offer to sell, transfer, purchase, or receive an assault weapon. An assault weapon is defined as any firearm specifically listed in State law or a copy of

such a firearm. Further, in general, State law prohibits a person from possessing ammunition if the person is prohibited from possessing a handgun. State law does not require a license or impose a background check for the sale, transfer, or possession of ammunition.

Firearm Transfers

State and federal law also regulate the transfer of firearms. The requirements vary depending on both the type of firearm being transferred and the type of transfer occurring. In addition to the prohibitions and requirements regarding the purchase, possession, or carrying of handguns, State law prohibits a firearms dealer or other person from selling, renting, transferring, or loaning a handgun to a purchaser, lessee, transferee, or borrower who is prohibited from possessing a firearm, as specified in State law, or who the dealer or other person knows or has reasonable cause to believe (1) is visibly under the influence of alcohol; (2) is a participant in a straw purchase; (3) has not completed a required firearms safety training course; or (4) intends to use the handgun to commit a crime or cause harm to a person.

Under State law, before purchasing, renting, or receiving a handgun, a person must first obtain a Handgun Qualification License (HQL) and also submit a firearm application to the Department of State Police (DSP). This requirement applies to individuals acquiring a handgun whether through a firearms dealer, private sale, or gift.

The Secretary of State Police must submit a fingerprint-supported State and national criminal history records check for each applicant for an HQL. Generally, the Secretary must issue an HQL to a person who (1) is at least 21 years old; (2) is a State resident; (3) has completed a firearms safety training course; (4) is not prohibited by federal or State law from purchasing or possessing a handgun; and (5) pays the required fee. The term of the license is 10 years.

A firearm application is required for each handgun that a person purchases, rents, or receives. DSP is required to conduct an investigation of each applicant to verify the statements made by the applicant in the application and to determine whether the applicant is prohibited from possessing a handgun under State or federal law. DSP is required to determine whether to deny the application within 7 days after the executed application has been forwarded to DSP and notify the parties to the transfer of the decision. With certain exceptions, a person may not purchase more than one handgun in a 30-day period.

Federal law, not State law, generally governs the transfer of rifles and shotguns in Maryland. Under federal law, licensed firearms importers, manufacturers, and dealers must conduct a National Instant Criminal Background Check System (NICS) background check through the FBI prior to the transfer of any long gun to a nonlicensed individual. In general, however, any other Maryland resident may transfer a long gun to another Maryland resident as long as the transferor does not know or have reasonable cause to believe the recipient is prohibited from receiving or possessing firearms under federal law.

Under State law, a resident of Maryland who is eligible to purchase a rifle or shotgun under the laws of an adjacent state may purchase a rifle or shotgun from a federally licensed gun dealer

in the adjacent state. Likewise, a resident of an adjacent state who is eligible to purchase a rifle or shotgun under the laws of Maryland may purchase a rifle or shotgun from a federally licensed gun dealer in Maryland.

Required Mental Health Reporting

A court is required to promptly report identifying information to 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 Protective 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 filed by specified individuals.

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 of Firearms in Domestically Related Cases

Chapter 251 of 2018 requires a court to provide to 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 that the defendant 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

Staffing for the Department of Public Safety and Correctional Services continues to remain a significant concern, with nearly one-fifth of the department's correctional officer positions vacant. These staffing deficiencies have been somewhat mitigated by the continued decline in the State's offender population, as well as the closure or downsizing of select facilities; however, employee overtime continues to be excessively utilized.

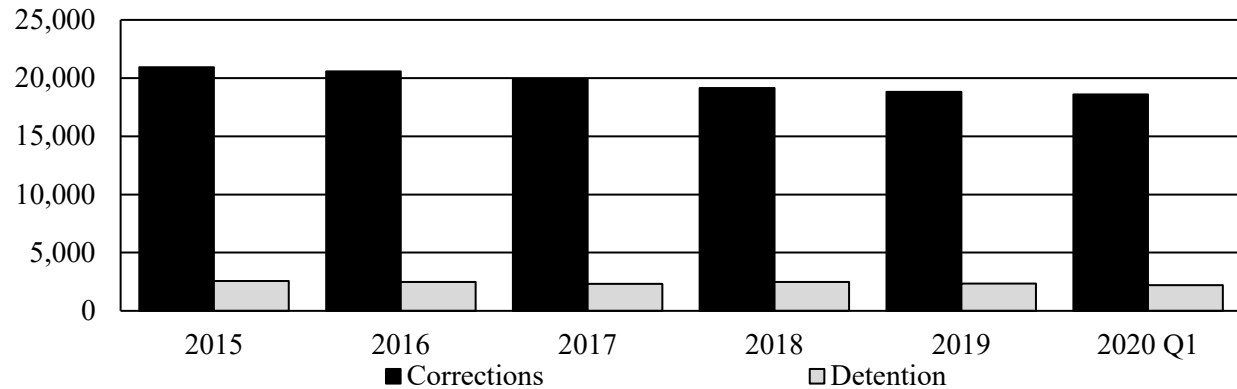
Background

The Department of Public Safety and Correctional Services (DPSCS) is responsible for operating 22 State correctional facilities and 4 detention facilities in Baltimore City, whose combined average daily population (ADP) is approximately 20,800. In addition, the Division of Parole and Probation (DPP) provides court-ordered supervision to offenders in the community. For fiscal 2020, DPSCS has a budget of nearly \$1.4 billion and approximately 10,150 employees, which accounts for 12.5% of the total State workforce and 6.4% of all general fund expenditures.

Population Trends

Overall, the number of offenders in DPSCS custody continues to decline. **Exhibit 1** shows ADP of sentenced and detained individuals in DPSCS custody since fiscal 2015. In the first quarter of fiscal 2020, an average of 18,608 offenders were incarcerated, while 2,204 were detained. This represents a 20% decrease in the total population since the peak ADP in fiscal 2011, with an average of 500 fewer offenders in State custody each year.

Exhibit 1
Average Daily Population in DPSCS Custody
Fiscal 2015-2020

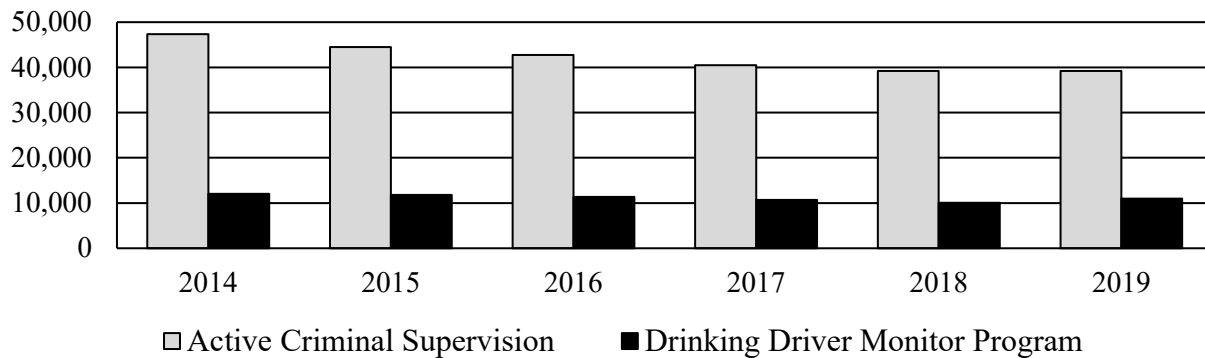


DPSCS: Department of Public Safety and Correctional Services

Source: Department of Public Safety and Correctional Services Annual ADP Reports

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). DPP supervised 39,191 active criminal cases and 11,005 active DDMP cases in fiscal 2019. Criminal cases have declined 17% since fiscal 2014 with minimal change between fiscal 2018 and 2019. DDMP cases have declined 9% since fiscal 2014, but increased 11% between fiscal 2018 and 2019. Overall, DPP has reduced active caseloads by an average of approximately 1,800 cases each year since fiscal 2014.

Exhibit 2
Community Supervision Cases Active during Fiscal Year
Fiscal 2014-2019



Source: Department of Public Safety and Correctional Services

Capital Plan and Facility Openings and Closures

DPSCS continues to consolidate facilities, staff, and resources as the number of offenders under custody declines. Since July 2014, the department has eliminated 2,580 beds for various legal, operational, and maintenance reasons, including:

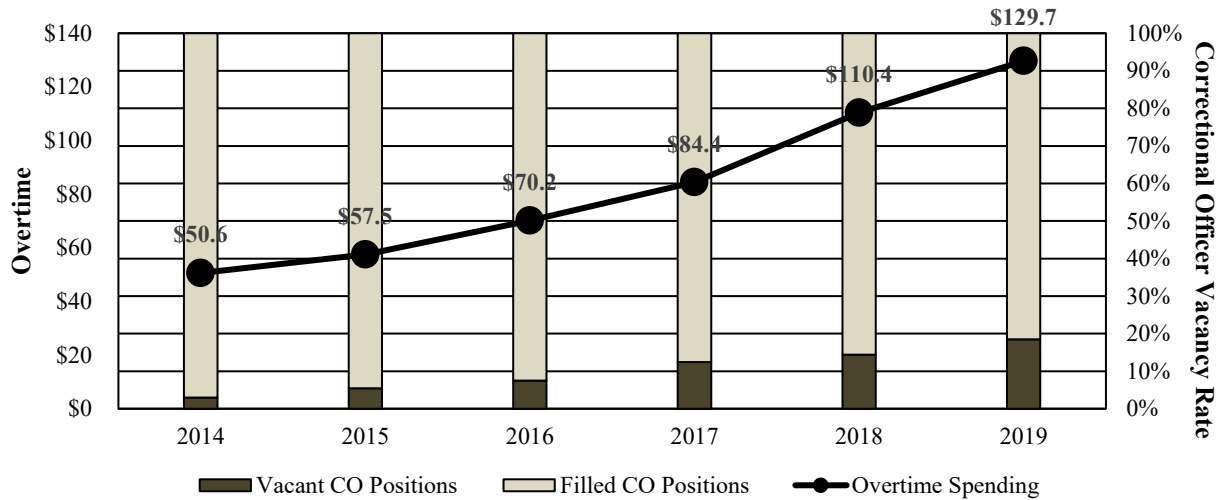
- Pursuant to the 2016 class-action *Duvall v. Hogan* settlement agreement, the Baltimore City Detention Center (BCDC) closure resulted in the shifting of 1,102 beds at the Metropolitan Transition Center and Jessup Correctional Institution from the incarcerated population to the pretrial detention population.
- The Poplar Hill Pre-Release Unit was closed, and the Maryland Correctional Institution – Hagerstown was downsized in fiscal 2017, removing 192 minimum-security beds and 952 medium-security beds, respectively.
- During fiscal 2019, Brockbridge Correctional Facility was downsized by 334 beds due to structural and plumbing issues; however, the facility maintains an ADP of 111.

The \$33 million demolition project of BCDC began in August 2019 and is expected to be complete in February 2021. While an independent monitor for the *Duvall* agreement has found DPSCS to be in compliance with provisions of the settlement regarding conditions of confinement, the agency remains out of compliance with medical and mental health provisions. The proposed plan to replace the existing facility with a Therapeutic Treatment Center would satisfy the outstanding provisions of the agreement, relocate Baltimore detainees back to a facility within the city, and allow DPSCS to better manage the high number of detainees with medical, mental health, and drug use disorders. The Governor’s fiscal 2020 *5-Year Capital Improvement Program* includes plans for DPSCS to receive \$17 million in fiscal 2021 to begin designing the treatment center.

Correctional Officer Recruitment and Retention

Since fiscal 2017, DPSCS has abolished, transferred, or reclassified 860 correctional officer (CO) positions. Despite fewer positions to fill, DPSCS continues to struggle with departmental vacancies. As of July 2019, nearly 20% of CO positions remain unfilled. **Exhibit 3** shows that high vacancies lead to an increasing reliance on overtime to accomplish essential operational tasks. Since fiscal 2014, each percentage point increase in the CO vacancy rate has increased overtime spending by about \$5 million. In fiscal 2019, overtime spending climbed to \$130 million, which is a 156% increase over 2014 spending.

**Exhibit 3
Correctional Officer Vacancy Rate and Overtime Spending
Fiscal 2014-2019
(\$ in Millions)**



CO: correctional officer

Source: Department of Public Safety and Correctional Services

To address these vacancies, the department continues to offer COs a \$2,000 hiring bonus and a \$3,000 retention bonus, as well as a \$500 referral bonus for existing employees who recommend a successful CO candidate. The fiscal 2020 budget also provides funding for CO salary enhancements, increasing CO salaries 4% beyond the additional compensation received by all State employees and eliminating the lowest two levels of the CO pay scale, which effectively increases the starting CO salary. In addition, DPSCS has begun single-day hiring events to shorten the application, interview, and testing processes with the goal of attracting more applicants. A report on DPSCS’s strategic plan to improve correctional officer hiring is expected in November 2019.

Sexting by Minors

Sexting, the electronic sharing of sexually explicit images and videos between mobile devices, poses a challenge to policymakers. Statutory language written before the conception of current technology can sweep sexting activity by minors into prohibitions against manufacturing and distributing child pornography and displaying obscene matter to a minor. A minor who is charged with such crimes can be spared severe penalties and a criminal record by the juvenile court. However, the Court of Appeals has called upon the General Assembly to consider passing legislation to specifically address the issue.

Sexting

Sexting is the sending of sexually explicit digital images or videos by mobile device. Sexting can be done at any age but is problematic when minors record sexually explicit images or videos of themselves and send those images or videos to other minors. Anyone receiving such images may share them with others without the knowledge of the creator. It is believed that sexting among minors is fairly common. In a meta-analysis published in *JAMA Pediatrics* (2018), the mean prevalence for sending and receiving sexts by youth were 14.8% and 27.4%, respectively, while the mean prevalence for forwarding a sext without consent and having a sext forwarded without consent were 12.0% and 8.4%, respectively.

In re: S.K.

In August 2019, the Maryland Court of Appeals upheld a juvenile court's ruling that a 16-year-old girl who texted a video of herself participating in a consensual sexual act with another person was delinquent under statutory prohibitions against distribution of child pornography and displaying an obscene item to a minor. The girl who was the subject of the case, S.K., had sent to two of her friends a one-minute video of herself performing a sexual act. Later, there was a disagreement among the friends, and the video was distributed to other students at the high school as well as the school resource officer. After notification, the State's Attorney for Charles County filed a juvenile petition alleging criminal charges against S.K. under §11-207 (a) (2) and (a)(4) and §11-203(b)(1)(ii) of the Criminal Law Article. The juvenile court ultimately found S.K. involved as to two of the three charges and imposed supervised probation subject to several terms and conditions, including approximately three weeks of electronic monitoring. S.K. subsequently fulfilled her probation requirements, and the case has been ordered closed and sealed.

Distribution of Child Pornography

Section 11-207 of the Criminal Law Article prohibits the manufacturing and distribution of child pornography. Section 11-207(a)(2) prohibits a person from photographing or filming a minor “engaging in an obscene act . . . or sexual conduct.” Section 11-207(a)(4)(i) prohibits a person from knowingly distributing “any matter, visual representation, or performance . . . that depicts a minor engaged as a subject in . . . sexual conduct.” Violation of § 11-207 is a felony, punishable by up to 10 years in prison and/or a fine of up to \$25,000 for a first-time offender, and for each subsequent violation, imprisonment for up to 20 years and/or a fine of up to \$50,000. An adult convicted under § 11-207 must register as a sex offender; however, a minor found delinquent under § 11-207 is not subject to sex offender registration.

At the conclusion of the hearing in juvenile court, the charge for violation of § 11-207(a)(2) was dismissed because there was no evidence presented that S.K. had filmed the video. However, the Court of Appeals upheld the finding of delinquency under § 11-207(a)(4)(i), stating that based on § 11-207’s intent to eradicate all child pornography and its unambiguous language, S.K.’s conduct falls within the purview of the statute. The court stated that the General Assembly “has not updated the statute’s language since the advent of sexting and thus we may not read into the statute an exception for minors.” However, the court recognized that there may be compelling policy reasons for treating teenage sexting differently than child pornography. The court noted that legislation to specially address sexting by minors was unsuccessfully introduced in the 2019 legislative session, “but in light of these policy concerns, such legislation ought to be considered by the General Assembly in the future.”

Displaying an Obscene Item to a Minor

Section 11-203(b)(1) of the Criminal Law Article prohibits a person from willfully or knowingly displaying or exhibiting to a minor an item “(i) the cover or content of which is principally made up of an obscene description or depiction of illicit sex; or (ii) that consists of an obscene picture of a nude or partially nude figure.” A violator of § 11-203 is guilty of a misdemeanor and is subject, for a first violation, to imprisonment for up to one year and/or a fine of up to \$1,000. Each subsequent conviction subjects a violator to imprisonment for up to three years and/or a fine of up to \$5,000.

The court held that the video sent by S.K. to her minor friends was an “item” within the meaning of the statute, and that the video qualified as “obscene;” therefore, S.K.’s conduct violated § 11-203.

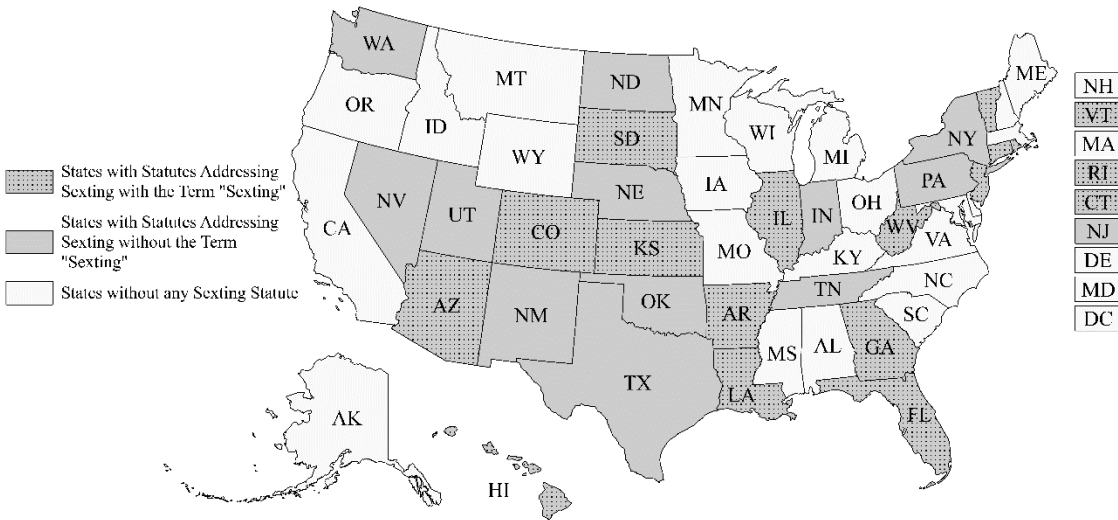
Maryland’s Juvenile Justice System

With certain exceptions, persons younger than the age of 18 who commit illegal acts are handled by the juvenile justice system. Unlike the adult criminal system, the juvenile system is designed to protect public safety while holding young offenders accountable for their actions without a determination of guilt or the imposition of fixed sentences.

Sexting Statutes of Other States

Exhibit 1 shows the approximately 25 states that have adopted legislation to address sexting acts. For the states that specifically address sexting acts between minors, the provisions include separate offenses applied to minors, affirmative defenses for minors, lower penalties if the minor is found delinquent, and alternative remedies including classes specifically addressing sexting and phone usage, community service, and counseling.

Exhibit 1
States with Sexting Statutes



Source: Cyberbullying Research Center; Department of Legislative Services

Legalization of Marijuana

The legalization of marijuana has been a major topic of discussion in state legislatures across the country, including Maryland. Recognizing that legalization of marijuana is a complex issue, the President of the Senate and the Speaker of the House of Delegates created the Marijuana Legalization Workgroup in February 2019. Legislation related to the workgroup's findings is likely to be introduced during the 2020 legislative session.

Marijuana Legalization in the United States

Marijuana remains a Schedule I substance under the federal Controlled Dangerous Substances Act. Nevertheless, legalization of the adult use of marijuana has gained momentum across the country. As of October 2019, 11 states (Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Washington, and Vermont) and the District of Columbia have legalized adult use of marijuana. Four of these states (California, Maine, Massachusetts, and Nevada) passed ballot initiatives to legalize adult use in the November 2016 election. In 2018, Vermont became the first state to legalize adult use of marijuana through the legislature (rather than through ballot initiative). In June 2019, Illinois became the eleventh and most recent state to legalize adult use of marijuana, also through its legislature. Although adult use of marijuana is not legal in Maryland, the State has legalized medical cannabis, decriminalized the possession of small amounts of marijuana, and authorized the expungement of convictions for possession of marijuana.

Marijuana Legalization Workgroup

Recognizing the momentum that marijuana policy has gained in the United States through the legalization of both medical cannabis and the adult use of marijuana, the President of the Senate and the Speaker of the House of Delegates created the Marijuana Legalization Workgroup in February 2019. Comprised of 18 members of the Senate of Maryland and the Maryland House of Delegates, the group was established to ensure that legislators understand the complexities of marijuana legalization and are prepared should the State move forward with legalizing marijuana. The workgroup was charged with focusing on several key areas including (1) the criminal justice impacts of legalizing marijuana for adult use; (2) appropriate tax and licensing structures; (3) regulatory models and best practices in other states; (4) the public health impacts of marijuana legalization; (5) challenges relating to federal tax and banking laws; and (6) ways in which the State can ensure and promote small, minority and women-owned business participation. The workgroup met on several occasions during the 2019 interim and examined the history of marijuana policy in the United States, the State's medical cannabis program, marijuana legalization in other states, and the benefits and challenges of legalizing marijuana. The workgroup

formed subworkgroups on minority participation, criminal justice, health, and licensing and taxation. A full workgroup report is expected prior to the 2020 session of the General Assembly.

Expungement

Maryland

In Maryland, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to six months and/or a \$1,000 fine. However, as of 2014, possession of less than 10 grams of marijuana is a civil offense punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. Since 2017, convictions for possession of marijuana are eligible for expungement. A petition based on a conviction of possession of marijuana may be filed by a defendant four years after the later of the conviction or satisfactory completion of the sentence, including probation.

Maryland's expungement process for removing an eligible criminal or civil offense or infraction record takes a minimum of 90 days. Court records are not automatically expunged in Maryland, even if the crime on which the conviction is based is no longer a crime. To begin the process of expungement, a petitioner must file a petition for expungement with the court and pay a \$30 filing fee, though fee waivers are available. If a State's Attorney or law enforcement agency objects, the court must hold a hearing on the petition. If the State's Attorney and law enforcement agencies do not object within 30 days of receiving a petition, the court must pass an order requiring the expungement of all police and court records concerning the charges. After the court orders are sent to each required agency, each agency has 60 days from receipt to comply with the order.

Other States

States that have legalized the adult use of marijuana vary in the treatment of the expungement of marijuana-related charges and convictions. Some states require a petition for expungement to be filed with the court to initiate the expungement process. Alternatively, other states require certain agencies to identify and automatically expunge eligible charges and convictions.

Courts and Civil Proceedings

Erroneous Conviction Compensation

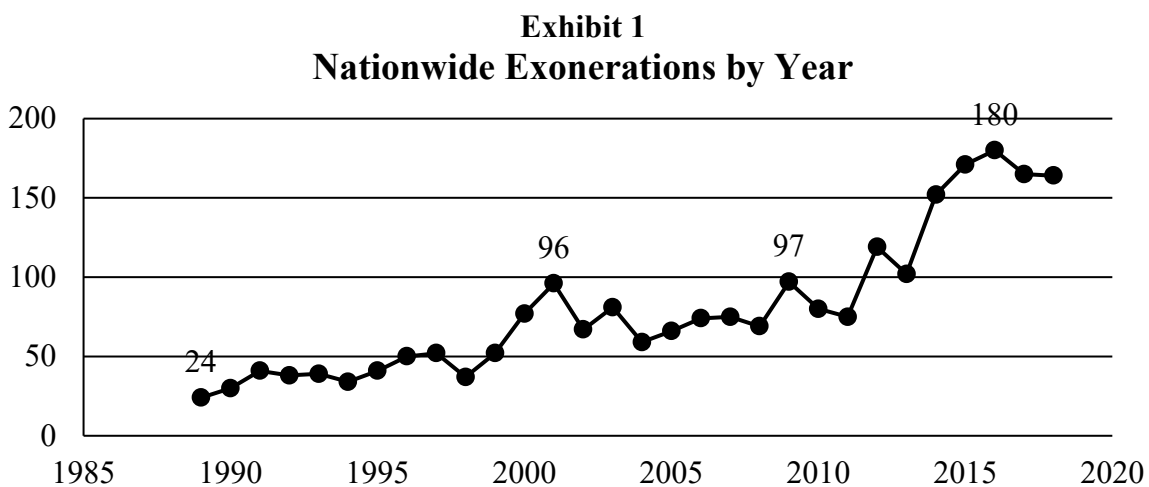
The use of forensic evidence and greater investigation of eyewitness identifications are among several factors that have caused an increase in the number of defendants exonerated for crimes that they did not commit. Recognition of the impact of unjust imprisonment on the lives of those who have been erroneously convicted has led to increased scrutiny of the processes employed by the State to compensate these individuals.

Background

According to the National Governors Association, during the last 30 years, the number of defendants exonerated as a result of erroneous convictions has increased. This has been due to more reporting, better data collection, greater investigation of eyewitness identifications, and the advent of DNA and other forensic testing. However, despite advances in forensics, 78% of these exonerations resulted from factors other than DNA evidence.

Exoneration Trends

Overall, total exonerations across the country continue to increase, the majority of which are for homicides, assaults, and other violent crimes. **Exhibit 1** shows the total number of exonerations per year since fiscal 1989. Including 96 exonerations to date in 2019, there are a total of 2,503 erroneously convicted defendants in the United States who have collectively served over 22,000 years of jail time – an average of nearly 11 years per exoneree.



Source: The National Registry of Exonerations, 2019

Data from the National Registry of Exonerations indicates that black defendants were more likely to be wrongfully convicted than white defendants, more likely to spend additional time in prison than white defendants for the same crimes, and 25% more likely than white defendants to be subject to police misconduct as a basis for exoneration. Additionally, since 1989, more than 1,800 defendants were found innocent in large-scale exonerations in which law enforcement officers framed innocent people for various drug crimes. The vast majority of the defendants in these cases were black.

Compensation

Approximately 30% to 40% of exonerees receive monetary compensation for the time that they spent in prison. A significant portion of exonerees either do not seek compensation or subsequently file unsuccessful lawsuits or claims for compensation. Generally, exonerees seek compensation either by filing a petition pursuant to a state law or by filing a lawsuit.

Compensation rates vary from state to state and at the federal level. In 2004, Congress passed the Justice for All Act, which provides up to a maximum of \$50,000 per year of incarceration for exonerees who were imprisoned in federal facilities. At the state level, compensation ranges from \$5,000 per year of incarceration in Wisconsin to \$80,000 per year of incarceration in Texas. Several states have limited the maximum amounts that may be awarded, including Florida (\$2,000,000), Maine (\$300,000), Massachusetts (\$500,000), North Carolina (\$750,000), Oklahoma (\$175,000), and Tennessee (\$1,000,000).

Maryland Actions to Address Erroneous Convictions

According to the National Registry of Exonerations, 31 men and 2 women have been exonerated for crimes in Maryland, representing a combined 446 years in prison. There is currently no law that requires the State to compensate those wrongfully convicted of a crime. However, State law authorizes the Board of Public Works (BPW) to grant compensation if (1) the individual has received a full pardon by the Governor or (2) the State's Attorney for the jurisdiction where the conviction occurred certifies that the individual's conviction was in error pursuant to a Writ of Actual Innocence. Since 1989, 3 exonerees have made claims to the State under the statute for \$1.4 million, \$900,000, and \$300,000, respectively.

Legislative Initiatives

In recent years, several legislative initiatives have been proposed, and some have been enacted, to improve compensation efforts for those erroneously convicted, including:

- ***Senate Bill 987 and House Bill 1225 of 2018:*** This legislation sought to require BPW to compensate those who were erroneously convicted, with rates at \$50,000 per year of incarceration, as well as assist exonerees with re-entry services including housing upon release, life skills and employment training, health insurance, and access to education. Neither of these bills passed.

- **Chapter 602 of 2018:** This law expands §§ 8-201 and 8-301 of the Criminal Procedure Article to authorize those convicted as a result of a guilty plea, an Alford plea, or a plea of *nolo contendere* to seek and obtain a Writ of Actual Innocence in addition to applying for post-conviction DNA testing. This legislation has expanded the number of defendants eligible to pursue release and compensation for an erroneous conviction.
- **Task Force to Study Erroneous Conviction and Imprisonment:** Chapters 799 and 800 of 2017 created the Task Force to Study Erroneous Conviction and Imprisonment. The task force was directed to (1) study the State’s process to redress erroneous convictions and provide compensation; (2) analyze the processes and standards in other states; and (3) make recommendations for new legislation and policies. Before concluding in September 2018, the task force made several recommendations including the following:
 - Passage of House Bill 1225 of 2018 with two changes: (1) to provide that a certificate of erroneous conviction may be acquired without petitioning for a Writ of Actual Innocence; and (2) to strike language requiring BPW to provide re-entry services to exonerees. The task force also declined to endorse a directive to BPW to manage compensation and recovery for erroneously convicted individuals.
 - That the Attorney General prepare a letter providing guidance and clarity regarding whether a State’s Attorney from a jurisdiction other than the one where the conviction was imposed is authorized to provide a certification of actual innocence to individuals erroneously convicted.
 - That BPW be directed to implement a process to receive erroneous conviction petitions and to respond to petitioners who seek compensation for an erroneous conviction.

Future Steps

On October 30, 2019, BPW approved a plan to pay approximately \$9.3 million to compensate five Maryland men who collectively served 120 years in prison and who were exonerated for crimes they did not commit. The payments were calculated based on a compensation rate of \$78,916 per year of confinement, which is a 5-year average of the median household income in Maryland.

BPW was required to submit a *Joint Chairmen’s Report* on erroneous convictions on October 1, 2019, but to date, the report has not yet been released. According to media reports, the Governor has announced that his office will work with the Office of Administrative Hearings to develop an interim process to determine compensation packages for future exonerees. The interim process would likely remain effective until legislation establishing standards for compensation for exonerees is enacted.

Courts and Civil Proceedings

Asbestos Cases

While a significant backlog of civil asbestos cases has developed in the Circuit Court for Baltimore City, plaintiffs' attorneys and defense counsel fundamentally disagree about the size, nature, and causes of the backlog. In recent years, the court has implemented new procedures to expeditiously address this backlog of cases. However, legislation backed by plaintiffs' attorneys was introduced during the 2019 session to significantly alter the way in which asbestos cases are handled.

Background

Committee narrative in the 2014 *Joint Chairmen's Report* directed the Judiciary to undertake a study of the asbestos docket in the Circuit Court for Baltimore City. In response, the circuit court conducted and submitted an assessment of its asbestos case inventory and proposed a plan to implement a new strategy to manage the docket.

At the time of the circuit court's report that was completed in 2015, plaintiffs' attorneys estimated that their collective case inventories included nearly 30,000 cases, with approximately 12,000 of these being delayed by what plaintiffs' attorneys allege was the court's failure to assign sufficient judicial resources to the docket. Defense counsel uniformly disputed the plaintiffs' assertions, arguing that the actual backlog of viable cases was much smaller and that the plaintiffs' attorneys were often responsible for the delay in bringing cases to trial. For its part, the circuit court stated that it could not definitively conclude how many cases were being delayed because the court lacked essential information about the individual cases on the docket.

To address these issues, the circuit court proposed adopting a new approach to managing the asbestos docket. The essential features of this approach include (1) the selection of cases for examination and scheduling; (2) enhanced information gathering for the cases selected to enable the court to identify cases that merit the investment of trial resources; (3) dismissal of cases lacking demonstrable viability; and (4) enhancement of alternative dispute resolution (ADR) requirements.

Pursuant to this approach, the circuit court held two groups of status conferences for randomly selected cases during fall 2017. The court commenced scheduling status conferences on a regular monthly basis in October 2018 following the resolution of technical and procedural issues and has steadily increased the number of status conferences scheduled each month.

At the status conferences, plaintiffs' counsel must provide certain information to the court, including (1) identification information for plaintiffs; (2) a statement of ongoing interest, certifying that counsel has spoken directly with the client and that the client intends to proceed with the case; (3) identification of each defendant; (4) all medical records relating to the plaintiff's claim; and (5) the plaintiff's work/exposure history.

If a plaintiff fails to submit this information within a specified time period, the defendant may file a motion to dismiss the case. Cases are scheduled for trial after a status conference or through trial slots made available to plaintiffs' attorneys.

2019 Legislation

Legislation supported by plaintiffs' attorneys to alter the process by which asbestos cases are handled was introduced during the 2019 legislative session. As passed by the Senate, Senate Bill 1049 would have established the Office of Asbestos Case Mediation and Resolution in the Executive Department, under a director appointed by the Governor with the advice and consent of the Senate. The bill would have required the director to perform specific case management functions and would have required the court to refer asbestos cases to the office for mediation.

Priority for mediation of an asbestos case would have been given to cases involving serious illness, including mesothelioma, lung cancer, and any other type of cancer. All parties referred to the office for mediation would have been required to participate in the mediation process, subject to a mesothelioma plaintiff's right to elect to forego mediation.

For those parties unable to reach an agreement through the mediation process, the director would have been required to notify the court of the conclusion of mediation, and the court would have been required to proceed with the asbestos case in accordance with specified procedures. The court would have been prohibited from proceeding with an asbestos case referred to the office for mediation before receiving notice of the election to forego mediation by a mesothelioma plaintiff or the conclusion of mediation.

In addition to plaintiffs' attorneys, the bill was supported by various groups associated with asbestos plaintiffs. Proponents of the bill testified that (1) the bill would result in the expeditious disposition of asbestos cases; (2) the court's status conference process is burdensome on plaintiffs and requires nothing from defendants; and (3) the court has not utilized ADR to dispose of asbestos cases.

The Judiciary, defense counsel, and insurers were among the stakeholders opposed to the bill. Opponents contended that (1) the court's existing status conference process is working and should be allowed to continue; (2) the status conference process is not burdensome on plaintiffs, since it only requires plaintiffs' counsel to provide basic case-related information; (3) forcing mediation prior to obtaining information about a plaintiff's case and without a firm trial date is futile, since a defendant will not settle a case without knowing the merits of the case and trial dates motivate parties to settle; and (4) there are multiple opportunities for ADR (provided free of charge by the court) built into the existing procedures.

The House of Delegates significantly amended the bill. As passed by the House, Senate Bill 1049 would have established the Joint Committee on Asbestos Litigation Oversight. Among other things, the committee would have been required to (1) make recommendations regarding increasing the use of mediation in asbestos cases; (2) examine and consider consolidating cases by

job site location or disease type; and (3) study the establishment of a separate asbestos court as used in other states.

Fiscal 2020 Budget and 2019 Joint Chairmen's Report

The fiscal 2020 budget includes \$500,000 in general funds for the Administrative Office of the Courts for compensation of recalled senior judges. These funds may be expended only to enhance the resources provided to reduce the backlog of asbestos-related cases in Baltimore City.

Committee narrative in the *2019 Joint Chairmen's Report* required the Judiciary to submit a report on the status of the asbestos docket and measures needed to address the volume of asbestos-related cases. The Judiciary submitted its report on October 15, 2019. Generally, the Judiciary's response states:

- ***Pending Asbestos Cases:*** There are 35,080 total open asbestos cases, representing filing years 1980 to 2019. Of these cases, 27,487 are open active asbestos cases and 7,593 are open inactive asbestos cases. The Special Pretrial Inactive Docket consists of cases dating from December 1992 filed by plaintiffs who allege exposure to asbestos but who are not currently impaired. No activity occurs in these cases until they are transferred to the active docket, either because the plaintiff has developed measurable indications of impairment or because the plaintiff died, regardless of the cause of death.
- ***Asbestos Case Dispositions:*** With respect to the disposition of asbestos cases, the Judiciary issued 5,005 dismissal orders in asbestos cases from fiscal 2016 until October 2019. The number of dismissal orders issued has increased substantially. In fiscal 2016, the court issued 10 dismissal orders; in fiscal 2019, the court issued 2,307 dismissal orders. In the first quarter of fiscal 2020, the court has issued 1,533 dismissal orders.
- ***Current Staffing and Resources:*** The Asbestos Unit currently has (1) three active judges assigned as full-time asbestos judges; (2) one senior judge who oversees the docket; (3) one full-time magistrate; and (4) additional administrative and clerical staff. According to the Judiciary, the three full-time asbestos judges hear other cases due to an insufficient number of asbestos trials. In addition to these individuals, other judges are assigned to perform responsibilities in asbestos cases as needed. The Administrative Judge oversees the unit's operations, conducts status conferences, and decides motions on an as-needed basis.
- ***Status Conference Results:*** From November 2017 through September 2019, 2,061 cases were set for conference. Of these cases, 1,033 (50.1%) were resolved prior to or at the status conference, 383 (18.6%) cases were extended/continued to resolve specified issues, and 645 (31.3%) were approved for trial.

- ***Trial Dates Scheduled:*** As previously mentioned, there are two ways in which an asbestos case can be scheduled – court approval for trial following a status conference (beginning in fiscal 2018) or the utilization of available trial slots by plaintiffs’ attorneys. From fiscal 2014 until October 2020, 1,595 trial dates have been set (1,184 through the trial slot process and 411 through the status conference process). However, based on recent data, the status conference process is becoming the prevalent method for scheduling trial dates. In fiscal 2019, 136 trial dates were set through status conferences and 104 trial dates were set through the trial slot process; during the first quarter of fiscal 2020, 234 trial dates were set pursuant to status conferences and 28 were set through the trial slot process.
- ***Availability of Judges:*** According to the Judiciary, following organization of the Asbestos Unit, no cases have been postponed due to the unavailability of judges. Furthermore, all cases set for trial have been resolved, with the exception of cases postponed at the request of counsel for reasons other than the availability of judges.
- ***Need for Additional Measures:*** The Judiciary has been scheduling 500 status conferences per month since July 2019. Increasing the rate at which status conferences are conducted would result in accelerated processing of the asbestos caseload. However, the Judiciary advises that it received feedback from plaintiffs’ attorneys indicating that the current rate at which the court is scheduling status conferences and setting cases for trial is the maximum capacity plaintiffs’ attorneys can absorb at this time. Therefore, the Judiciary does not believe that it can implement additional measures to address the asbestos docket without assurances from plaintiffs’ attorneys that they can handle an increased caseload.

The Judiciary stated that, given the steps that have been already taken, no additional statutory or regulatory changes are needed to improve management of the asbestos docket.

Environment and Natural Resources

The Status of Chesapeake Bay Restoration

Maryland's Phase III Watershed Implementation Plan details the State's strategy for meeting the requirements of the Chesapeake Bay Total Maximum Daily Load (TMDL), relying on accelerated nutrient and sediment pollution reductions from both the wastewater and agricultural sectors. Several factors may affect Maryland's ability to achieve and sustain the TMDL restoration goals by and beyond calendar 2025, including nutrient and sediment loads from the Conowingo Dam and the availability of federal funding for the Chesapeake Bay Program.

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. Measures to meet a pollution reduction of at least 60% were required to be in place by calendar 2017, and all reduction measures must be in place by calendar 2025.

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. Specifically, WIPs (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. WIPs must be submitted to EPA for review and evaluation. 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. In August 2019, each bay jurisdiction submitted a Phase III WIP to ensure that all measures to meet restoration goals are in place by calendar 2025. The Phase III WIPs are currently under review.

Achieving the Goal: Progress and What Lies Ahead

In its July 2018 midpoint assessment, EPA concluded that the bay jurisdictions exceeded the 60% goal for reducing phosphorus and sediment but did not achieve the goal for reducing nitrogen. In order to achieve the necessary nitrogen reductions by calendar 2025, the bay jurisdictions must reduce an additional 48.4 million pounds of nitrogen, which is more than twice the reductions achieved by the bay jurisdictions between calendar 2009 and 2017. Pennsylvania and Maryland are responsible for the majority of the remaining nitrogen reductions (70.6% and 17.4%, respectively). Pennsylvania is responsible for reducing an additional 34.1 million pounds of nitrogen, or 6.3 times its reductions between calendar 2009 and 2017, and Maryland is responsible for reducing an additional 8.4 million pounds of nitrogen, or 2.5 times its reductions between calendar 2009 and 2017.

Maryland's Phase III WIP anticipates that it will achieve (and possibly exceed) statewide nutrient and sediment pollution reduction goals by calendar 2025. Maryland's strategy focuses on accelerated pollution load reductions from both the wastewater and agricultural sectors to achieve a majority of the necessary reductions. Although the State anticipates meeting its 2025 pollution reduction goals, concerns have been raised regarding whether Maryland is fully on track to meet its restoration goals. Among those concerns are (1) whether Maryland's Phase III WIP includes sufficient detail regarding the actions that must be taken in order to achieve pollution reduction goals; (2) the feasibility of continued reliance on the wastewater sector to meet pollution reduction goals when other sectors fall short; and (3) whether adequate resources to implement necessary agricultural practices are available. In addition, Maryland's Phase III WIP acknowledges that pollution loading resulting from climate change, population growth, and the Conowingo Dam may impact the achievement and sustainability of restoration beyond calendar 2025.

Chesapeake Bay Program Funding

The Chesapeake Bay Program directs 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 2020 budget request called for reducing Chesapeake Bay Program funding 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 June 25, 2019, the House of Representatives passed an appropriations bill to increase funding for the Chesapeake Bay Program to \$85 million. Although this bill has not yet been voted on by the Senate, on September 24, 2019, the Senate Appropriations Committee approved \$76 million for the Chesapeake Bay Program. Meanwhile, on September 26, 2019, Congress passed the federal fiscal 2020 budget continuing resolution that, among other things, maintains funding for the program at the federal fiscal 2019 level (\$73 million) through November 21, 2019.

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 reduction 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.

While decisions are still being made about how to distribute nutrient and sediment loads from the Conowingo Dam among 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 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. On September 26, 2019, EPA announced awards totaling nearly \$600,000 to support third-party activities relating to Conowingo Dam WIP development and management, including development of the financial strategy. The draft Conowingo Dam WIP is expected to be completed by March 13, 2020; the final Conowingo Dam WIP is expected to be completed by June 19, 2020.

In addition, the Conowingo Dam is in the midst of relicensing by the Federal Energy Regulatory Commission (FERC). The license expired on September 1, 2014, and the Conowingo Dam 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). On April 27, 2018, MDE issued the water quality certification with special conditions requiring Exelon annually to reduce 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus. Exelon 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 pollutants that Exelon did not introduce into the Susquehanna River but that flow through the Conowingo Dam. Ultimately, on October 29, 2019, the State announced an agreement between MDE and Exelon that requires Exelon to invest more than \$200 million in environmental projects and operational enhancements to improve water quality, thus settling Exelon’s legal challenges to the water quality certification.

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 actual funding levels remain unknown. While Maryland’s Phase III WIP indicates that the State will meet its necessary nutrient and sediment pollution load

reductions by calendar 2025, the State still faces several challenges, including the availability of adequate resources to implement the WIP and the need to address pollution loads resulting from climate change, population growth, and the Conowingo Dam.

Environment and Natural Resources

Oyster Restoration

In summer 2019, the Department of Natural Resources (DNR) adopted a new fishery management plan for oysters. The plan describes the history and current status of the State's oyster fishery, and provides a broad framework for managing oyster harvesting, restoration, and aquaculture in the future. While DNR has begun implementing the plan, questions remain about how best to manage and restore the bay's oyster population, which continues to languish at about 1% of historic levels.

Recent Developments

2019 Oyster Management Plan

The 2019 Maryland Chesapeake Bay Oyster Management Plan (2019 OMP) replaces the State's previous oyster management plan adopted in 2004 and amended in 2010. It establishes objectives for the management of the State's oyster resource, general strategies for achieving those objectives, and specific actions for carrying out those strategies. New topics addressed by the 2019 OMP, which were not included in the State's previous oyster management plan, include:

- the results of the 2018 stock assessment and biological reference points developed in accordance with Chapter 703 of 2016;
- large-scale restoration in oyster sanctuaries; and
- the establishment of rotational harvest areas.

Additionally, the 2019 OMP contains updated approaches to (1) the adaptive management of the oyster fishery; (2) the impact of salinity on oyster reproduction and growth; (3) oyster cultivation substrate; (4) sanctuaries; (5) fishery management techniques; (6) aquaculture; (7) monitoring and enforcement; and (8) research needs.

Commercial Oyster Harvest Rules for the 2019-2020 Season

The concept of adaptive management is central to the 2019 OMP. Action 2.3.3 of the plan calls for the use of public notices "to modify oyster fishery parameters as an adaptive management measure." Accordingly, the Department of Natural Resources (DNR) released a public notice in September 2019 establishing commercial oyster harvest rules for the 2019-2020 season. The rules reduce bushel limits for all gear types and restrict commercial harvesting to four days a week. DNR has also temporarily closed areas north of the Chesapeake Bay Bridge to harvesting. DNR

expects the new rules to result in a 26% reduction in oyster harvests compared with the previous 2018-2019 season. **Exhibit 1** provides a comparison of the rules for the two seasons.

Exhibit 1
Comparison of Commercial Oyster Harvest Rules for the
2018-2019 and 2019-2020 Seasons

| <u>Gear Type</u> | <u>Rules for 2018-2019 Season</u> | <u>Rules for 2019-2020 Season</u> |
|---|--|--|
| Hand Tongs, Patent Tongs, and Diving | <ul style="list-style-type: none"> • Season: October 1, 2018 to March 31, 2019 • Days: Monday-Friday • Daily Bushel Limit: 15 bushels per license, not to exceed 30 bushels per boat | <ul style="list-style-type: none"> • Season: October 1, 2019 to March 31, 2020 • Days: Monday, Tuesday, Thursday, and Friday • Daily Bushel Limit: 12 bushels per license, not to exceed 24 bushels per boat |
| Power Dredging | <ul style="list-style-type: none"> • Season: November 1, 2018 to March 31, 2019 • Days: Monday-Friday • Daily Bushel Limit: 12 bushels per license, not to exceed 24 bushels per boat | <ul style="list-style-type: none"> • Season: November 1, 2019 to March 31, 2020 • Days: Monday, Tuesday, Thursday, and Friday • Daily Bushel Limit: 10 bushels per license, not to exceed 20 bushels per boat |
| Sail Dredging | <ul style="list-style-type: none"> • Season: November 1, 2018 to March 31, 2019 • Days: Monday-Friday • Daily Bushel Limit: 150 bushels per boat | <ul style="list-style-type: none"> • Season: November 1, 2019 to March 31, 2020 • Days: Monday, Tuesday, Thursday, and Friday • Daily Bushel Limit: 100 bushels per boat |

Source: Department of Legislative Services

DNR had initially proposed cutting 10 days from the beginning and end of the oyster season for each gear type, an initiative that was expected to reduce harvests by 30% compared with the previous season. However, DNR ultimately did not proceed with this proposal, due in large part to concerns from commercial watermen and seafood dealers who worried that a later start date would reduce profitable holiday sales.

Ongoing Issues

Addressing Shell Shortages

Oysters require a hard sediment-free surface, or substrate, on which to grow. On natural oyster bars, this substrate is typically shell, with generations of oysters growing on top of one another. Although stone and artificial substrates have been used successfully in restoration projects, oyster shell remains the most desirable substrate, both for the replenishment of commercially fished oyster bars and for the restoration of protected oyster bars within sanctuaries.

In Maryland's portion of the Chesapeake Bay, the loss of oyster shell from sedimentation and harvesting exceeds the natural replacement of shell through reproduction. Every year, DNR and the county oyster committees plant thousands of bushels of shell, some of it seeded with hatchery-grown oyster spat, to counteract this loss. Historically, DNR obtained shell from two primary sources – fresh shell was obtained from shucking houses, and dredged shell was obtained from old shell deposits buried in the bottom of the bay. However, both of these sources have become severely limited in recent years. Few shucking houses remain in Maryland, so DNR must purchase fresh shell at a high price from out-of-state vendors. Likewise, few deposits of buried shell remain in State waters, and DNR does not currently have the permits necessary to dredge those deposits.

Man-O-War Shoal

DNR has proposed to dredge buried oyster shell at Man-O-War shoal in the upper Chesapeake Bay. The U.S. Army Corps of Engineers approved a provisional permit for the project in May 2018, but the permit cannot be finalized until certain State certifications, which are contingent on approval of the project by the Board of Public Works, are made. The project is opposed by environmental groups and some commercial and recreational fishers, who fear that it will disrupt habitat for crabs and striped bass. Despite concerns over dredging, the Oyster Advisory Commission voted in August 2019 to request that DNR apply for permits to dredge for buried shell at several additional locations, including Shad Battery Shoal, Worton Point, and Plum Point.

Ending Overfishing

Chapter 703 of 2016 directed DNR, in consultation with the University of Maryland Center for Environmental Science, to conduct a formal assessment of the State's oyster stock. A report of this stock assessment was completed in December 2018. Among other things, the report concluded that overfishing had occurred during the immediately preceding 2017-2018 oyster harvest season in a majority of the areas surveyed. In other words, the level of harvesting exceeded sustainable levels throughout much of the bay.

DNR indicates that, through the use of the adaptive management techniques outlined in the 2019 OMP, it expects to end overfishing and achieve sustainable oyster harvest levels within 8 to 10 years. However, many environmental groups have advocated for a more aggressive

approach. Legislation passed by the General Assembly but subsequently vetoed by the Governor in 2019 (Senate Bill 830 and House Bill 720 of 2019) would have reestablished the Oyster Advisory Commission with new membership and would have required DNR to work with the new commission to develop consensus recommendations for enhancing and implementing the fishery management plan for oysters. The bills also would have required the State's oyster fishery management plan to (1) end the overfishing of oysters in all areas and regions of the Chesapeake Bay and its tributaries where overfishing has occurred; (2) achieve fishing mortality rates at target levels; (3) increase oyster abundance; (4) increase oyster habitat; and (5) facilitate the long-term sustainable harvest of oysters, including the public fishery.

Policy Implications

The General Assembly continues to review the 2019 OMP, as well as regulatory and policy changes made as part of the plan. Ongoing issues, including shell shortages and concerns regarding overfishing, may result in the introduction of legislation during the 2020 session.

Environment and Natural Resources

Rollbacks of Federal Environmental Regulations

The federal government is in various stages of rolling back numerous federal regulations. In particular, the rollback of key federal environmental regulations, including vehicle emissions standards, emissions standards for existing fossil-fueled power plants, water quality safeguards, and endangered species protections, may impact Maryland's air, water, and natural resources.

Background

In early 2017, the Donald J. Trump Administration issued several memorandums, executive orders, and guidance documents instructing the federal government to take a variety of actions impacting the federal regulatory process, including reviewing, rolling back, refraining from submitting, withdrawing, holding, or eliminating numerous regulations.

The *Memorandum for Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review*, published in January 2017, required federal department heads to (1) refrain from submitting new regulations until a department or agency head appointed or designated by President Trump reviewed and approved the regulation; (2) withdraw any submitted regulations so they could be reviewed by a department or agency head appointed or designated by the President; and (3) hold for 60 days any published regulations until further review by a department or agency head appointed or designated by the President.

Executive Order 13771, *Reducing Regulation and Controlling Regulatory Costs*, also published in January 2017, and a supporting guidance document published in April 2017, required the elimination of two regulations for every new regulation issued and required the total incremental cost of all new regulations to be no greater than zero.

Executive Order 13783, *Promoting Energy Independence and Economic Growth*, published in March 2017 (1) required the review of all existing regulations that potentially burden the development or use of domestically produced energy resources and the suspension, revision, or rescission of those regulations that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law; (2) specifically repealed a number of energy and climate-related regulations from the former administration; and (3) returned the basis for the social cost of carbon calculation to the guidance issued in 2003.

Federal Environmental Regulatory Rollbacks

Since the publication of the documents discussed above, there have been a number of federal environmental regulatory rollbacks that may impact Maryland. The rollbacks are in various stages of implementation, including some that have ultimately been reversed. **Exhibit 1** reflects federal environmental regulatory rollbacks identified as of September 12, 2019. The greatest number of rollbacks are in the category of air pollution and emissions and relate to both electricity-generating power plants and vehicles.

Exhibit 1 Federal Environmental Regulatory Rollbacks as of September 12, 2019

| <u>Category</u> | <u>Rollbacks Completed</u> | <u>Rollbacks In Process</u> | <u>Total</u> |
|-----------------------------|----------------------------|-----------------------------|--------------|
| Air Pollution and Emissions | 10 | 14 | 24 |
| Drilling and Extraction | 9 | 9 | 18 |
| Infrastructure and Planning | 12 | 1 | 13 |
| Animals | 9 | 1 | 10 |
| Toxic Substances and Safety | 4 | 1 | 5 |
| Water Pollution | 5 | 2 | 7 |
| Other | 4 | 4 | 8 |
| Total | 53 | 32 | 85 |

Source: Department of Legislative Services; *The New York Times*

State Attorneys General Challenges

Maryland State Attorney General Brian E. Frosh, along with a number of other State attorneys general, is currently challenging several of these environmental regulatory rollbacks.

Clean Cars

A coalition of 21 Attorneys General and four cities are challenging the withdrawal of the national Clean Car Standards, which establish standards for both Corporate Average Fuel Economy and greenhouse gas (GHG) emissions. In addition to freezing the standards at the 2020 level, the rollback also removes California's waiver to set emissions standards higher than the federal standards, which effectively removes Maryland's ability to use California's more stringent standards through the Maryland Clean Cars Act. A separate but related regulatory rollback would allow retrofitted "glider trucks" to be outfitted with higher polluting pre-2010 engines. Maryland and other states have already implemented the current more stringent standards

for these trucks, and a coalition of 13 attorneys general and two state environmental agencies are challenging this rollback.

Power Plants

A coalition of 22 states, the District of Columbia, and seven cities is challenging the rollback of the Clean Power Plan, which would be replaced with the new Affordable Clean Energy rule for GHG emissions from existing fossil-fueled power plants. The Affordable Clean Energy rule is projected to have significantly less impact on reducing GHG emissions than the Clean Power Plan. The rule also effectively prohibits the use of the Regional Greenhouse Gas Initiative cap-and-trade program (of which Maryland is a member) as a way to meet Clean Air Act requirements. In addition, while the Clean Power Plan would have allowed states to meet emissions goals by, among other things, switching from coal to natural gas or renewable energy, the Affordable Clean Energy rule focuses on reducing GHG emissions from individual power plants.

Water

A coalition of 11 attorneys general is challenging the suspension of the Clean Water Rule and the narrowing of the definition for “waters of the United States” to exclude small, seasonal, or rain-dependent streams, wetlands, and tributaries. According to Attorney General Frosh, narrowing the definition may increase flooding and pollution, damage hunting and fishing habitat, and foul drinking water supplies, including those that feed sources of drinking water for 117 million people.

Offshore Drilling

Several coalitions of attorneys general are challenging aspects of the federal government’s plan to allow for offshore drilling in the Atlantic Ocean from Delaware to Florida. The two current aspects of offshore drilling being challenged are (1) the authorization of harassment of marine mammals via seismic air gun surveys in the Atlantic Ocean, which could potentially harm endangered right whales among other species and (2) the reduction of safety standards for offshore oil and gas production, which could potentially endanger oil and gas industry workers and the Chesapeake and Atlantic Coastal Bays should a spill occur.

Endangered Species

A coalition of 17 states, the District of Columbia, and the City of New York is challenging three new rules that they claim undermine the key requirements and purpose of the Endangered Species Act. The coalition argues that the rules, finalized by the U.S. Fish and Wildlife Service and National Marine Fisheries Service, are unlawful as arbitrary and capricious under the Administrative Procedure Act, unauthorized under the Endangered Species Act, and unlawful under the National Environmental Policy Act. In Maryland, there are 13 animals and eight plants listed as endangered or threatened under the Endangered Species Act.

Maryland Department of the Environment Response to Rollbacks

The Maryland Department of the Environment (MDE) is taking a more limited look at the regulatory rollbacks noted above. MDE's primary concern appears to be the impact of federal rollbacks on the State's Greenhouse Gas Reduction Act (GGRA) of 2016 and the State's ability to achieve statutorily required GHG reduction goals. GGRA requires the State to adopt a plan by December 31, 2019, that achieves a 40% reduction in statewide GHG emissions from 2006 levels by 2030. MDE's draft plan, issued on October 15, 2019, reflects the concern that federal environmental regulatory rollbacks will affect Maryland's ability to achieve its GHG emission reduction goals. Despite these concerns, sensitivity analyses on emissions modeling of the impact of federal government programs and consumer behavior indicate that the draft plan achieves the 2030 goal. However, it is not clear whether the draft plan reflects the impact from the potential loss of California's car standards waiver and the effects of the Affordable Clean Energy plan.

Policy Implications

The federal government's recent actions on environmental regulations may have long-term policy implications for Maryland and the nation as a whole. In Maryland, among other things, the rollbacks may impact current planning and initiatives being implemented to mitigate the impacts of climate change and protect air quality, water quality, and endangered and threatened species.

State Government

Risk-limiting Audits

Risk-limiting audits are the method most recommended by experts for verifying that election outcomes are correct and are not corrupted by hacking of electronic voting machines. Risk-limiting audits gained prominence following the Russian government's attacks on state election systems during the 2016 election. Several jurisdictions have successfully implemented risk-limiting audits, but they have not yet been implemented in Maryland.

Introduction

Risk-limiting audits are the method most recommended by experts for verifying that election outcomes are correct and are not corrupted by hacking of electronic voting machines. Experts, including the National Academies of Sciences, Engineering, and Medicine, warn that electronic voting machines are vulnerable to hacking even if they are not connected to the Internet and election officials attempt to limit physical access to them. Malware can be introduced to a voting machine via software updates, removable media with ballot definition files, or direct physical access at any time when it is manufactured, stored in a warehouse, or taken to a polling place. Risk-limiting audits gained prominence following the Russian government's attacks on state election systems during the 2016 election. Several jurisdictions have successfully implemented risk-limiting audits, but they have not yet been implemented in Maryland.

What Is a Risk-limiting Audit?

A risk-limiting audit is a post-election audit procedure that has a high probability of requiring a full hand count of the paper ballots if a full hand count of the paper ballots would find different winners than were reported by the electronic tabulation. The "risk limit" is the maximum chance that, if the electronic tabulation is wrong, the audit would not correct it. The risk limit is typically set at 10% or less. Risk-limiting audits manually examine randomly chosen individual paper ballots or batches of paper ballots until there is sufficiently strong evidence that a full hand count would confirm the electronic tabulation or until there has been a full hand count.

Traditionally, most states have audited their election results by manually recounting a small predetermined percentage of ballots after each election. Risk-limiting audits differ from these traditional audits because the number of ballots to be manually audited is determined by the margin of victory in the contest being audited and the risk limit. Risk-limiting audits are considered more efficient and accurate than traditional audits because they require manually auditing the number of ballots that is needed to attain a high level of statistical confidence that the reported outcome is correct. In a race with a large margin, a small number of ballots will be audited. In a race with a

small margin, a larger number of ballots will be audited. A traditional fixed percentage audit may result in auditing more ballots than is needed to confirm the result in a race with a wide margin or too few ballots to confirm the result in a race with a close margin.

A risk-limiting audit also requires auditing more ballots if the initial sample of ballots audited does not provide sufficiently strong statistical evidence that the result is correct. The audit continues until there is enough evidence that the machine count is correct or until there has been a full hand count. Because a risk-limiting audit must be capable of correcting an inaccurate election result, it must be completed before the election results are certified.

Methods of Conducting a Risk-limiting Audit

There are several different methods that may be used to conduct a risk-limiting audit. Each method is equally valid, but certain methods may be used only with certain types of voting systems.

The most efficient method is known as a ballot-level comparison audit. This audit involves comparing randomly selected individual paper ballots with the electronic record of the votes on those ballots that is captured when the ballot is scanned by the voting machine. This type of audit involves auditing the least number of ballots compared to the other audit methods. However, due to limitations of the voting equipment currently on the market, this audit method cannot be implemented in states where ballots are counted in precinct polling places, such as Maryland. The ballot-level comparison method is currently only feasible in jurisdictions where ballots are scanned centrally at election offices, such as vote-by-mail states.

Another method is the ballot polling audit. This method involves manually tallying the votes on a statistically valid random sample of paper ballots and comparing the vote tally from the audited ballots to the tally produced by the voting system. If this comparison does not validate the reported outcome, more ballots are audited. The ballot polling method can be used with any voting system but is relatively inefficient, requiring more ballots to be audited.

The final method is the batch-level comparison audit. This method involves manually tallying the votes in randomly selected batches of ballots and comparing the vote tally for those batches to the tally for those ballots produced by the voting system. A batch may consist of any group of ballots for which the voting system is capable of producing a subtotal, such as a precinct. Batches do not have to include the same number of ballots. The batch-level comparison method can be used with a precinct count voting system but is relatively inefficient, requiring more ballots to be audited.

Risk-limiting Audits in Other States

States first began implementing risk-limiting audits in the past several years. Colorado and Rhode Island mandate a statewide risk-limiting audit after each election. Virginia requires local jurisdictions to perform a risk-limiting audit once every five years, but the audit does not have to be conducted before certification of the election results. California, Georgia, Indiana, Nevada, Michigan, and New Jersey are phasing in risk-limiting audits by conducting pilot programs. In Ohio, Washington, and Oregon, local jurisdictions are authorized to conduct a risk-limiting audit in lieu of a traditional post-election audit if they choose.

Potential Implementation of Risk-limiting Audits in Maryland

Maryland's current post-election audit procedure involves manually auditing a predetermined percentage of ballots after each general election and conducting an automated software audit of the electronic images of all ballots after each primary and general election. The manual audit examines 2% of precincts and 1% each of the early, absentee, and provisional vote. The manual audit must be completed within 120 days after the election. Because the manual audit takes place after certification of the election results, it cannot change the results even if the audit determines that the incorrect winner was certified. The automated software audit involves using independent software to retabulate the electronic images of each paper ballot that are captured by the voting machines when each ballot is scanned. The automated software audit is completed before certification, but it cannot be used to change the election results even if the audit determines that the incorrect winner was certified because the software is not a voting system that is certified to tabulate votes. Furthermore, experts, including the National Academies of Sciences, Engineering, and Medicine, strongly oppose the use of electronic ballot images for auditing. These experts say that the electronic images could be manipulated by hackers and are therefore not trustworthy evidence of voter intent.

Neither Maryland's current manual audit nor the automated audit are capable of correcting a wrong election outcome or ensuring that the correct winners are certified. Instead, these audits are used to gather information about the performance of the voting system and make improvements for future elections. Some adjustments to Maryland's election process may be necessary to implement risk-limiting audits. For example, the deadline for certification of the election results may have to be extended to allow election officials sufficient time to conduct the audit.

Local Government

State Aid to Local Governments

State aid to local governments is projected to total \$8.4 billion in fiscal 2021, representing a \$184.0 million, or 2.3%, increase over the prior year. Public schools will continue to receive the vast majority of State aid with State support totaling \$7.1 billion in fiscal 2021, including \$345.3 million targeted to the Commission on Innovation and Excellence in Education's Blueprint Funding Plan.

Projected Funding

Local governments are projected to receive \$8.4 billion in State aid in fiscal 2021, representing a \$184.0 million, or 2.3%, increase over the prior year. Public schools will receive the vast majority of the State funding, while counties and municipalities will receive 8.9% of the total funding. Public schools will receive \$7.1 billion in fiscal 2021, which is 85.1% of total State aid. Counties and municipalities will receive \$739.8 million in fiscal 2021 with \$267.9 million targeted to transportation initiatives and \$164.1 million targeted to public safety programs. Community colleges, libraries, and local health departments will receive \$508.6 million, which accounts for 6.1% of total State aid. **Exhibit 1** shows the change in State aid by governmental entity for fiscal 2021. **Exhibit 2** shows the change in State aid by major programs.

Exhibit 1
State Aid to Local Governments
Fiscal 2021
(\$ in Millions)

| | <u>2021</u> <u>State Aid Amount</u> | <u>Percent</u> <u>of Total</u> | <u>2021</u> <u>Aid Change</u> | <u>Percent</u> <u>Change</u> |
|--------------------------|--|-----------------------------------|----------------------------------|---------------------------------|
| Public Schools | \$7,106.4 | 85.1% | \$104.9 | 1.5% |
| Libraries | 84.6 | 1.0% | 0.7 | 0.8% |
| Community Colleges | 367.4 | 4.4% | 36.4 | 11.0% |
| Local Health Departments | 56.6 | 0.7% | 1.2 | 2.2% |
| Counties/Municipalities | 739.8 | 8.9% | 40.9 | 5.9% |
| Total | \$8,354.9 | 100.0% | \$184.0 | 2.3% |

Source: Department of Legislative Services

Exhibit 2
State Aid by Major Programs
Fiscal 2019-2021
State Funds
(\$ in Millions)

| | <u>2019</u> | <u>2020</u> | <u>2021</u> | <u>Difference</u> | <u>Percent Difference</u> |
|---|------------------|------------------|------------------|-------------------|---------------------------|
| Public Schools | | | | | |
| Foundation Program | \$3,056.2 | \$3,140.4 | \$3,198.8 | \$58.4 | 1.9% |
| Geographic Cost Index | 141.6 | 145.5 | 148.2 | 2.7 | 1.9% |
| Net Taxable Income Education Grant | 62.5 | 65.3 | 58.8 | -6.5 | -9.9% |
| Declining Enrollment Grant ¹ | 18.7 | 18.9 | 10.1 | -8.8 | -46.3% |
| Foundation – Special Grants | 13.0 | 11.9 | 0.0 | -11.9 | -100.0% |
| Kirwan Blueprint Funding ¹ | 0.0 | 251.6 | 335.1 | 83.5 | 33.2% |
| Compensatory Aid | 1,308.3 | 1,330.4 | 1,349.8 | 19.3 | 1.5% |
| Student Transportation | 282.6 | 303.0 | 308.1 | 5.1 | 1.7% |
| Special Education – Formula Aid | 290.8 | 303.3 | 308.1 | 4.9 | 1.6% |
| Special Education – Nonpublic | 123.5 | 121.5 | 118.9 | -2.6 | -2.1% |
| Limited English Proficiency Grants | 288.0 | 311.1 | 323.4 | 12.3 | 3.9% |
| Guaranteed Tax Base | 48.2 | 43.7 | 44.1 | 0.4 | 0.9% |
| Head Start/Prekindergarten | 29.5 | 50.8 | 29.6 | -21.1 | -41.6% |
| Other Education Programs | 138.8 | 136.2 | 137.8 | 1.6 | 1.2% |
| Subtotal Direct Aid | \$5,801.6 | \$6,233.6 | \$6,370.8 | \$137.2 | 2.2% |
| Retirement Payments | \$732.9 | \$767.9 | \$735.6 | -\$32.3 | -4.2% |
| Total Public School Aid | \$6,534.5 | \$7,001.5 | \$7,106.4 | \$104.9 | 1.5% |
| Libraries | | | | | |
| Library Aid Formula | \$41.9 | \$43.2 | \$44.1 | \$0.9 | 2.0% |
| State Library Network | 18.4 | 19.1 | 19.5 | 0.4 | 2.3% |
| Subtotal Direct Aid | \$60.3 | \$62.3 | \$63.6 | \$1.3 | 2.1% |
| Retirement Payments | \$20.6 | \$21.7 | \$21.0 | -\$0.7 | -3.1% |
| Total Library Aid | \$81.0 | \$84.0 | \$84.6 | \$0.7 | 0.8% |
| Community Colleges | | | | | |
| Community College Formula | \$240.4 | \$249.7 | \$285.8 | \$36.0 | 14.4% |
| Other Programs | 37.9 | 35.6 | 36.6 | 0.9 | 2.6% |
| Subtotal Direct Aid | \$278.3 | \$285.4 | \$322.3 | \$37.0 | 13.0% |
| Retirement Payments | \$44.1 | \$45.6 | \$45.1 | -\$0.6 | -1.3% |
| Total Community College Aid | \$322.4 | \$331.0 | \$367.4 | \$36.4 | 11.0% |
| Local Health Grants | | | | | |
| County/Municipal Aid | \$52.7 | \$55.4 | \$56.6 | \$1.2 | 2.2% |
| Transportation | \$242.1 | \$259.4 | \$267.9 | \$8.5 | 3.3% |
| Public Safety | 133.9 | 139.8 | 164.1 | 24.3 | 17.4% |
| Disparity Grant | 140.8 | 146.2 | 150.6 | 4.4 | 3.0% |
| Gaming Impact Grants | 92.9 | 93.7 | 95.4 | 1.7 | 1.8% |
| Retirement Supplemental Grant | 27.7 | 27.7 | 27.7 | 0.0 | 0.0% |
| Other Grants | 32.0 | 32.2 | 34.2 | 2.0 | 6.2% |
| Total County/Municipal Aid | \$669.4 | \$698.9 | \$739.8 | \$40.9 | 5.9% |
| Total State Aid | \$7,659.9 | \$8,170.8 | \$8,354.9 | \$184.0 | 2.3% |

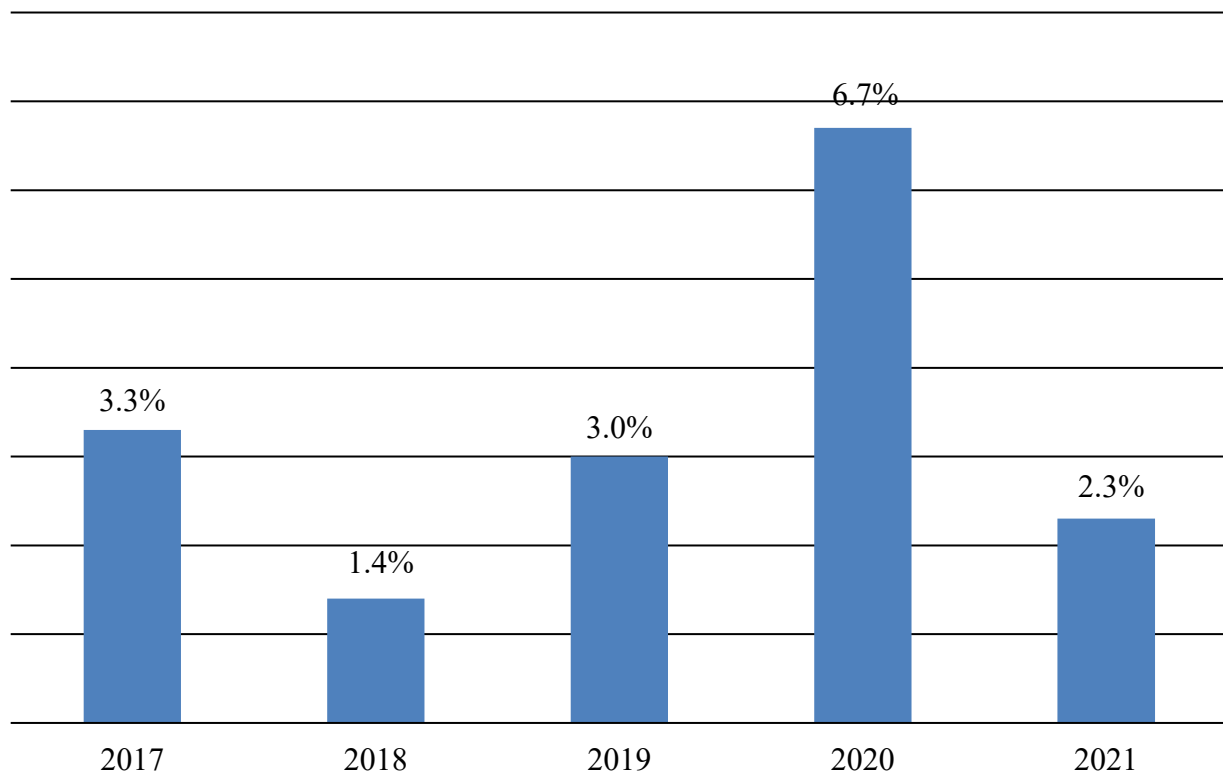
¹ The Commission on Innovation and Excellence in Education's Blueprint Funding Plan in fiscal 2021 includes \$10.1 million in declining enrollment grants.

Source: Department of Legislative Services

State Aid Funding Trend

The projected 2.3% growth in State aid in fiscal 2021 is relatively modest compared to prior years. Over the prior five fiscal years, the growth in State aid has ranged from 1.4% in fiscal 2018 to 6.7% in fiscal 2020 (**Exhibit 3**). The projected increase in State aid in fiscal 2021 is held down due to minimal inflationary adjustments in the per pupil foundation amounts used in education aid formulas. The per pupil foundation amount increases by 1.2% in fiscal 2021 compared to 2.5% in fiscal 2020. Education funding under the foundation program will increase by \$58.4 million, or 1.9%, while compensatory aid will increase by \$19.3 million, or 1.5%. In addition, teacher retirement payments are expected to decline by 4.2% in fiscal 2021, representing a \$32.3 million decrease in funding from the prior year.

Exhibit 3
Annual Change in State Aid to Local Governments
Fiscal 2017-2021

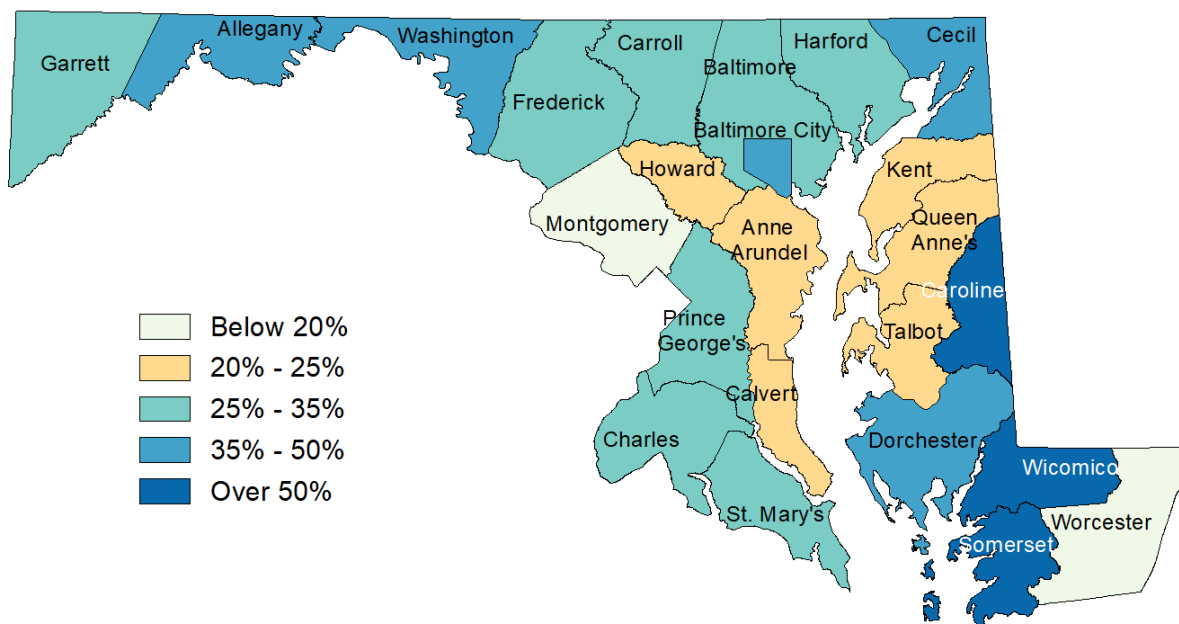


Source: Department of Legislative Services

Reliance on State Aid

State aid is one of the leading revenue sources for local governments, accounting for 27.1% of total revenues in fiscal 2018. The reliance on State aid depends on each jurisdiction's local wealth base that is comprised of property assessments and net taxable income. Since approximately 70% of State aid is distributed inversely to local wealth, jurisdictions with a relatively higher tax base on a per capita basis receive less State aid. Utilizing local wealth measures to distribute State aid attempts to offset the inequalities in the revenue capacity among local jurisdictions. For Maryland jurisdictions, the reliance on State aid ranges from 14.9% of total revenues in Worcester County to 54.9% in Somerset County (**Exhibit 4**).

Exhibit 4
Percent of Total County Revenues — State Grants
Fiscal 2018



Source: Department of Legislative Services

Local Government

Local Revenue Trends

Local taxes account for approximately 50% of county revenues and represent the primary local revenue source for most counties. Overall, county governments are projecting a modest increase in local tax revenues in fiscal 2020. This increase is influenced by two primary factors: continual growth in local income tax collections due to the strong State economy and steady growth in property tax collections.

Overview

The local fiscal outlook continues to improve for most county governments with general fund revenues increasing statewide by 3.9% in fiscal 2020 and local tax revenues increasing by 4.3% (**Exhibit 1**). This modest increase in local tax revenues is influenced by two primary factors: continual growth in local income tax collections due to an overall strong State economy and steady growth in property tax collections. However, several jurisdictions indicated that the fiscal 2020 budget cycle was the most difficult and challenging in recent years. For example, the annual increase in local tax revenues in fiscal 2020 is estimated at 1% or less in Allegany County and Baltimore City, with Garrett County anticipating a slight decrease in tax revenues between fiscal 2018 and 2020.

Exhibit 1 County Revenue Projections Annual Percent Change Fiscal 2018-2020

| | <u>2018-2019</u> | <u>2019-2020</u> | <u>Two-year Average</u> |
|-----------------------|------------------|------------------|-----------------------------|
| Property Taxes | 2.6% | 3.7% | 3.2% |
| Income Taxes | 4.2% | 5.9% | 5.1% |
| Recordation Taxes | 0.2% | 0.0% | 0.1% |
| Transfer Taxes | -3.5% | -1.0% | -2.2% |
| Hotel Rental Taxes | 2.5% | 1.9% | 2.2% |
| Admissions Taxes | 1.1% | 3.3% | 2.2% |
| Other Local Taxes | -0.2% | 6.2% | 3.0% |
| Total Local Taxes | 2.8% | 4.3% | 3.5% |
| General Fund Revenues | 3.1% | 3.9% | 3.5% |

Source: Department of Legislative Services

Local income taxes accounted for the largest percentage increase over the two-year period (fiscal 2018 to 2020) with revenue growth exceeding 5% statewide. Income taxes are projected to increase by 4.2% in fiscal 2019 and 5.9% in fiscal 2020. Property taxes are projected to increase by 3.2% over the two-year period with revenues increasing by 2.6% in fiscal 2019 and 3.7% in fiscal 2020. With property and income taxes accounting for approximately 90% of local tax revenues, the relatively strong increase in these two taxes indicates a positive fiscal outlook for most counties.

General Fund Revenues

General fund revenues for county governments are projected to total \$16.3 billion in fiscal 2020 (**Exhibit 2**). Revenue amounts range from \$42.4 million in Somerset County to over \$3.5 billion in Montgomery County. On a per capita basis, the amount ranges from \$1,280 in Allegany County to \$3,884 in Worcester County with the statewide average at \$2,707. General fund revenues (per capita) are the highest in Worcester, Howard, Calvert, and Montgomery counties and Baltimore City. The lowest per capita amounts are in Wicomico and Allegany counties.

General fund revenues for county governments continue to point upwards, increasing statewide by 3.9% in fiscal 2020 compared to a 3.1% growth rate in fiscal 2019. Over a two-year period, local general fund revenues are expected to increase, from \$15.3 billion in fiscal 2018 to \$16.3 billion in fiscal 2020. This represents a 3.5% average annual increase over the two-year period. Garrett County is the only jurisdiction that is anticipating a decrease in general fund revenues over the two-year period. In the other counties, the average annual increase ranges from 1.8% in Baltimore City to 11.6% in Somerset County. The large increase in Somerset County is due to federal and State grants and bond proceeds. Five counties are expecting average annual increases over 5%, while nine counties are expecting increases between 3% and 5%. Lower growth is projected in nine counties, where the average annual increase will be below 3%.

Local Tax Revenues

The projected growth in local tax revenues, which includes both general and special fund revenues, continues to improve with local revenues increasing by 2.8% in fiscal 2019 and 4.3% in fiscal 2020 (**Exhibit 3**). The average annual increase in local tax revenues over the two-year period is projected at 3.5%. In total, local governments are projected to collect \$16.3 billion in local tax revenues, which is a \$1.1 billion increase since fiscal 2018. Statewide, local tax revenues average \$2,696 per capita. The highest per capita amounts are in Calvert, Howard, Montgomery, and Worcester counties, where local tax revenues exceed \$3,000 per capita. The lowest per capita amounts are in Allegany, Caroline, Somerset, and Wicomico counties, where local tax revenues are below \$1,500 per capita.

Most jurisdictions are realizing average annual increases in local tax revenues of between 2% and 4%. Four counties (Anne Arundel, Baltimore, Calvert, and Caroline) are anticipating increases in excess of 4%, while Allegany County and Baltimore City are anticipating annual increases below 2%. Garrett County is the only jurisdiction anticipating a decrease in local tax revenues over the two-year period. This decrease is due to an anticipated decline in local income, recordation, and transfer taxes.

Property Taxes

As a result of the triennial assessment process and the homestead assessment caps, the property tax remains a relatively stable and predictable revenue source for county governments. Revenue collections are projected to total \$8.8 billion in fiscal 2020. This represents a \$536.5 million increase over a two-year period. For the most part, the increase in county property tax revenue is driven by the growth in the jurisdiction's property tax base. Based on projections by the State Department of Assessments and Taxation, the county assessable base will increase by 3.1% in fiscal 2020, a slight decrease from the 3.5% growth rate in fiscal 2018. In addition, several counties are experiencing growth rates of 1% or less, which have constrained revenue growth. Two of these jurisdictions increased the property tax rate in order to generate additional revenue.

The average annual increase in local property tax revenues over the prior two-year period ranges from 0.5% in Baltimore City to 6.8% in Talbot County. A majority of counties are experiencing annual growth rates of between 1.5% and 4.5%. However, six counties are experiencing annual increases of less than 1.5% a year, while five counties are experiencing growth rates above 5%.

Income Taxes

The local income tax is the third largest revenue source for county governments, accounting for 17.2% of total revenue in fiscal 2018. Maryland is one of just a few states that allow local governments to impose a local income tax. Local income tax revenues are projected to total \$5.8 billion in fiscal 2020, which represents a \$547.7 million increase over the two-year period. The average annual increase in local income tax revenues over the prior two-year period ranges from 1.4% in Talbot County to 9.1% in Worcester County. A majority of counties are experiencing annual growth rates of between 3.3% and 6.2%. However, two counties (Garrett and Somerset) are experiencing a decrease in local income tax revenues.

Exhibit 2
Total General Fund Revenues for Fiscal 2018-2020

| County | 2018 | 2019 | 2020 | 2018-2019 | | 2019-2020 | | Average Annual Difference |
|-----------------|-------------------------|-------------------------|-------------------------|----------------------|--------------|----------------------|--------------|---------------------------|
| | | | | \$ Difference | % Difference | \$ Difference | % Difference | |
| Allegany | \$87,542,655 | \$88,589,227 | \$90,842,753 | \$1,046,572 | 1.2% | \$2,253,526 | 2.5% | 1.9% |
| Anne Arundel | 1,445,672,076 | 1,477,030,700 | 1,565,661,700 | 31,358,624 | 2.2% | 88,631,000 | 6.0% | 4.1% |
| Baltimore City | 1,848,907,138 | 1,899,776,210 | 1,915,559,484 | 50,869,072 | 2.8% | 15,783,274 | 0.8% | 1.8% |
| Baltimore | 1,952,934,316 | 2,024,877,422 | 2,156,335,786 | 71,943,106 | 3.7% | 131,458,364 | 6.5% | 5.1% |
| Calvert | 280,465,070 | 296,298,998 | 311,630,741 | 15,833,928 | 5.6% | 15,331,743 | 5.2% | 5.4% |
| Caroline | 47,072,488 | 47,536,212 | 52,667,299 | 463,724 | 1.0% | 5,131,087 | 10.8% | 5.8% |
| Carroll | 379,533,902 | 387,595,180 | 398,893,953 | 8,061,278 | 2.1% | 11,298,773 | 2.9% | 2.5% |
| Cecil | 192,223,244 | 194,131,861 | 202,043,087 | 1,908,617 | 1.0% | 7,911,226 | 4.1% | 2.5% |
| Charles | 390,809,271 | 393,738,600 | 414,995,800 | 2,929,329 | 0.7% | 21,257,200 | 5.4% | 3.0% |
| Dorchester | 51,207,096 | 53,531,755 | 55,575,857 | 2,324,659 | 4.5% | 2,044,102 | 3.8% | 4.2% |
| Frederick | 575,477,435 | 579,367,288 | 611,983,668 | 3,889,853 | 0.7% | 32,616,380 | 5.6% | 3.1% |
| Garrett | 83,470,669 | 78,044,738 | 82,330,730 | -5,425,931 | -6.5% | 4,285,992 | 5.5% | -0.7% |
| Harford | 542,325,948 | 549,718,155 | 569,471,000 | 7,392,207 | 1.4% | 19,752,845 | 3.6% | 2.5% |
| Howard | 1,051,268,261 | 1,076,693,495 | 1,105,413,789 | 25,425,234 | 2.4% | 28,720,294 | 2.7% | 2.5% |
| Kent | 46,660,415 | 47,554,228 | 49,664,285 | 893,813 | 1.9% | 2,110,057 | 4.4% | 3.2% |
| Montgomery | 3,293,529,893 | 3,449,301,149 | 3,546,240,466 | 155,771,256 | 4.7% | 96,939,317 | 2.8% | 3.8% |
| Prince George's | 1,962,559,153 | 2,020,430,400 | 2,108,011,700 | 57,871,247 | 2.9% | 87,581,300 | 4.3% | 3.6% |
| Queen Anne's | 136,440,573 | 136,426,106 | 142,750,862 | -14,467 | 0.0% | 6,324,756 | 4.6% | 2.3% |
| St. Mary's | 221,765,796 | 230,155,443 | 253,113,474 | 8,389,647 | 3.8% | 22,958,031 | 10.0% | 6.8% |
| Somerset | 34,047,340 | 43,461,181 | 42,414,938 | 9,413,841 | 27.6% | -1,046,243 | -2.4% | 11.6% |
| Talbot | 83,804,839 | 86,979,370 | 87,664,740 | 3,174,531 | 3.8% | 685,370 | 0.8% | 2.3% |
| Washington | 222,045,205 | 229,639,310 | 233,782,190 | 7,594,105 | 3.4% | 4,142,880 | 1.8% | 2.6% |
| Wicomico | 136,281,000 | 151,061,227 | 148,541,880 | 14,780,227 | 10.8% | -2,519,347 | -1.7% | 4.4% |
| Worcester | 185,926,525 | 190,030,719 | 201,285,552 | 4,104,194 | 2.2% | 11,254,833 | 5.9% | 4.0% |
| Total | \$15,251,970,308 | \$15,731,968,974 | \$16,346,875,734 | \$479,998,666 | 3.1% | \$614,906,760 | 3.9% | 3.5% |

Source: Department of Legislative Services

Exhibit 3
Total Local Taxes for Fiscal 2018-2020

| County | | | | 2018-2019 | | 2019-2020 | | Average Annual Difference |
|-----------------|-------------------------|-------------------------|-------------------------|----------------------|--------------|----------------------|--------------|---------------------------|
| | 2018 | 2019 | 2020 | \$ Difference | % Difference | \$ Difference | % Difference | |
| Allegany | \$70,536,487 | \$72,294,856 | \$72,982,127 | \$1,758,369 | 2.5% | \$687,271 | 1.0% | 1.7% |
| Anne Arundel | 1,384,236,997 | 1,414,891,700 | 1,509,352,300 | 30,654,703 | 2.2% | 94,460,600 | 6.7% | 4.4% |
| Baltimore City | 1,491,612,940 | 1,502,087,000 | 1,512,084,625 | 10,474,060 | 0.7% | 9,997,625 | 0.7% | 0.7% |
| Baltimore | 1,776,927,486 | 1,850,802,330 | 1,976,481,138 | 73,874,844 | 4.2% | 125,678,808 | 6.8% | 5.5% |
| Calvert | 267,276,066 | 283,329,847 | 296,745,435 | 16,053,781 | 6.0% | 13,415,588 | 4.7% | 5.4% |
| Caroline | 41,738,889 | 42,401,271 | 45,238,484 | 662,382 | 1.6% | 2,837,213 | 6.7% | 4.1% |
| Carroll | 375,949,405 | 389,441,654 | 398,070,330 | 13,492,249 | 3.6% | 8,628,676 | 2.2% | 2.9% |
| Cecil | 183,936,617 | 186,402,790 | 192,954,282 | 2,466,173 | 1.3% | 6,551,492 | 3.5% | 2.4% |
| Charles | 383,601,873 | 387,405,800 | 404,139,800 | 3,803,927 | 1.0% | 16,734,000 | 4.3% | 2.6% |
| Dorchester | 45,741,440 | 46,431,723 | 48,151,082 | 690,283 | 1.5% | 1,719,359 | 3.7% | 2.6% |
| Frederick | 549,268,890 | 559,646,089 | 586,720,869 | 10,377,199 | 1.9% | 27,074,780 | 4.8% | 3.4% |
| Garrett | 72,568,391 | 68,543,263 | 72,164,925 | -4,025,128 | -5.5% | 3,621,662 | 5.3% | -0.3% |
| Harford | 562,795,979 | 570,469,727 | 589,085,500 | 7,673,748 | 1.4% | 18,615,773 | 3.3% | 2.3% |
| Howard | 1,191,727,912 | 1,215,435,237 | 1,282,348,656 | 23,707,325 | 2.0% | 66,913,419 | 5.5% | 3.7% |
| Kent | 44,854,533 | 45,683,568 | 47,363,926 | 829,035 | 1.8% | 1,680,358 | 3.7% | 2.8% |
| Montgomery | 3,742,332,244 | 3,880,523,992 | 4,043,172,996 | 138,191,748 | 3.7% | 162,649,004 | 4.2% | 3.9% |
| Prince George's | 2,086,698,669 | 2,160,178,400 | 2,236,130,200 | 73,479,731 | 3.5% | 75,951,800 | 3.5% | 3.5% |
| Queen Anne's | 128,065,945 | 128,992,892 | 134,522,105 | 926,947 | 0.7% | 5,529,213 | 4.3% | 2.5% |
| St. Mary's | 215,024,472 | 218,318,223 | 228,995,317 | 3,293,751 | 1.5% | 10,677,094 | 4.9% | 3.2% |
| Somerset | 23,896,688 | 23,663,134 | 25,584,723 | -233,554 | -1.0% | 1,921,589 | 8.1% | 3.5% |
| Talbot | 75,519,805 | 78,988,204 | 80,026,750 | 3,468,399 | 4.6% | 1,038,546 | 1.3% | 2.9% |
| Washington | 213,590,783 | 220,891,309 | 227,030,405 | 7,300,526 | 3.4% | 6,139,096 | 2.8% | 3.1% |
| Wicomico | 119,270,578 | 122,900,633 | 124,607,782 | 3,630,055 | 3.0% | 1,707,149 | 1.4% | 2.2% |
| Worcester | 167,988,938 | 170,793,966 | 179,860,835 | 2,805,028 | 1.7% | 9,066,869 | 5.3% | 3.5% |
| Total | \$15,215,162,027 | \$15,640,517,608 | \$16,313,814,592 | \$425,355,581 | 2.8% | \$673,296,984 | 4.3% | 3.5% |

Source: Department of Legislative Services

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Local Government

Local Government Tax Actions

Several county governments increased local tax rates in order to balance their budgets and enhance funding to public schools. Beginning in calendar 2020, 11 counties and Baltimore City will have a 3.2% local income tax rate, which is the maximum rate allowed by State law.

Local Government Tax Rates

Many local jurisdictions chose to increase local tax rates in fiscal 2020. As shown in **Exhibit 1**, seven counties changed their local property tax rates with five counties increasing their rates and two counties decreasing them. The rate increases in Anne Arundel and Talbot counties exceeded those counties’ charter limits. Seven counties increased their local income tax rates, with four counties increasing their rates to the maximum allowed by State law. Two counties increased their hotel rental tax rates. No county altered its recordation, transfer, or admissions and amusement tax rates. A comparison of local tax rates for fiscal 2019 and 2020 is provided in **Exhibit 2**.

Exhibit 1
Counties Changing Local Tax Rates
Fiscal 2018-2020

| | <u>Fiscal 2018</u> | | <u>Fiscal 2019</u> | | <u>Fiscal 2020</u> | |
|----------------------|--------------------|---|--------------------|---|--------------------|---|
| | ▲ | ▼ | ▲ | ▼ | ▲ | ▼ |
| Real Property | 2 | 6 | 2 | 5 | 5 | 2 |
| Local Income | 1 | 0 | 1 | 0 | 7 | 0 |
| Recordation | 0 | 0 | 0 | 0 | 0 | 0 |
| Transfer | 0 | 0 | 0 | 0 | 0 | 0 |
| Admissions/Amusement | 0 | 0 | 0 | 0 | 0 | 0 |
| Hotel Rental | 1 | 0 | 0 | 0 | 2 | 0 |

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

Source: 2019 Local Government Budget and Tax Rate Survey; Department of Legislative Services; Maryland Association of Counties

Exhibit 2
Local Tax Rates – Fiscal 2019 and 2020

| County | Real Property | | Local Income | | Recordation | | Transfer | | Admissions/Amusement | | Hotel Rental | |
|-----------------|---------------|---------|--------------|---------|-------------|--------|----------|-------|----------------------|-------|--------------|------|
| | 2019 | 2020 | CY 2019 | CY 2020 | 2019 | 2020 | 2019 | 2020 | 2019 | 2020 | 2019 | 2020 |
| Allegany | \$0.975 | \$0.975 | 3.05% | 3.05% | \$3.50 | \$3.50 | 0.5% | 0.5% | 7.5% | 7.5% | 8.0% | 8.0% |
| Anne Arundel | 0.902 | 0.935 | 2.50% | 2.81% | 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% | 3.20% | 2.50 | 2.50 | 1.5% | 1.5% | 10.0% | 10.0% | 8.0% | 9.5% |
| Calvert | 0.937 | 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 | 3.20% | 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 | 1.000 | 1.000 | 2.62% | 3.20% | 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 | 1.056 | 2.65% | 2.65% | 3.50 | 3.50 | 1.0% | 1.0% | 6.0% | 6.0% | 6.0% | 8.0% |
| 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 | 1.250 | 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% | 3.20% | 3.30 | 3.30 | 0.5% | 0.5% | 4.5% | 4.5% | 5.0% | 5.0% |
| Montgomery | 0.993 | 0.991 | 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% | 3.17% | 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 | 0.606 | 0.637 | 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% | 3.20% | 3.80 | 3.80 | 0.5% | 0.5% | 5.0% | 5.0% | 6.0% | 6.0% |
| Wicomico | 0.940 | 0.935 | 3.20% | 3.20% | 3.50 | 3.50 | 0.0% | 0.0% | 6.0% | 6.0% | 6.0% | 6.0% |
| Worcester | 0.835 | 0.845 | 1.75% | 2.25% | 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: 2019 Local Government Budget and Tax Rate Survey; Department of Legislative Services; Maryland Association of Counties

Property Tax

For fiscal 2020, five counties (Anne Arundel, Garrett, Howard, Talbot, and Worcester) increased their real property tax rates. Montgomery and Wicomico counties decreased their real property tax rates. Real property tax rates range from \$0.637 per \$100 of assessed value in Talbot County to \$2.248 in Baltimore City.

Local Income Tax

Seven counties (Anne Arundel, Baltimore, Dorchester, Kent, St. Mary's, Washington, and Worcester) increased their local income tax rates for calendar 2020. Baltimore, Dorchester, Kent, and Washington counties increased their rates to 3.2%, which is the maximum allowed by State law. Local income tax rates range from 2.25% in Worcester County to 3.2% in 12 jurisdictions.

Recordation Tax

No county altered its recordation tax rate for fiscal 2020. 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 2020. 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 2020. 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

Baltimore and Garrett counties increased their hotel rental tax rates for fiscal 2020. Hotel rental tax rates range from 4.0% in Talbot County to 9.5% in Baltimore City and Baltimore County.

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. In fiscal 2020, Anne Arundel County exceeded its charter limit for the first time, enacting a supplemental tax rate of \$0.034 for the county board of education. Talbot County also exceeded its charter limit again in fiscal 2020, enacting a \$0.023 supplemental tax rate for the board of education.

Local Government

Local Government Salary Actions

All county governments and boards of education provided salary enhancements to their employees in fiscal 2020, with 19 counties and 23 boards of education providing cost-of-living adjustments/general salary increases and 20 counties and 23 boards providing step/merit increases.

All 23 counties and Baltimore City are providing some type of salary enhancements in fiscal 2020, 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, 19 counties are providing their employees with a COLA or GSI in fiscal 2020, compared to 20 in fiscal 2019. Twenty counties are providing step or merit increases in fiscal 2020, compared to 17 in fiscal 2019. Similarly, all local boards of education are providing salary enhancements to their employees. Twenty-three boards of education are providing COLAs or GSIs for their employees in fiscal 2020, compared to 18 boards that did so in fiscal 2019. Additionally, 23 boards of education are providing step or merit increases in fiscal 2020 – the same number as in fiscal 2019. For comparison purposes, the State will award a 4.0% COLA to its employees in fiscal 2020, compared to a 2.5% COLA awarded in fiscal 2019. **Exhibit 1** compares local salary actions in fiscal 2019 and 2020, while **Exhibit 2** and **Exhibit 3** show specific local salary actions for fiscal 2020.

Exhibit 1 State and Local Government Salary Actions Fiscal 2019 and 2020

| <u>Salary Action</u> | County Government | | Public Schools | |
|----------------------|--------------------------|-------------|--|-------------|
| | <u>2019</u> | <u>2020</u> | <u>2019</u> | <u>2020</u> |
| COLA/GSI | 20 | 19 | 18 | 23 |
| Step/Merit Increases | 17 | 20 | 23 | 23 |
| | State Government | | CPI-Urban Consumers¹ | |
| | <u>2019</u> | <u>2020</u> | <u>2019</u> | <u>2020</u> |
| COLA Amount | 2.5% | 4.0% | 2.5% | 1.9% |
| Step/Merit Increases | No | No | | |

COLA: cost-of-living adjustment

CPI: Consumer Price Index

GSI: general salary increase

¹ CPI for 2019 and 2020 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 2020

| County | COLA/GSI | Step/Merit | Additional Comments |
|----------------|----------|------------|---|
| Allegany | 2.0% | No | |
| Anne Arundel | 2.0% | Yes | Firefighters, police sergeants/lieutenants, police management, and detention officers received no COLA. Instead, police sergeants/lieutenants and police management received 5% added to step, and detention officers received a scale adjustment of 6% in July 2019 and 1% in January 2020. All employees received a 3% merit or step increase except firefighters, who received a step increase ranging from 5% to 15% based on proficiency advancement depending on job class, and correctional program specialists, who received a merit increase of 3% of new scale effective in January 2020. Sheriffs and sheriff sergeants also received a retention bonus based on years of service. |
| Baltimore City | Varies | No | FOP Units I and II received a 3% COLA; Managerial and Professional Society of Baltimore received a 2.5% COLA; Baltimore City Fire Fighters IAFF Local 734 received a 2% COLA and Local 964 received no COLA; City Union of Baltimore Local 800 and all AFL-CIO units (including AFSCME) are still in negotiations. |
| Baltimore | 2.0% | Yes | COLA effective June 30, 2020. All employees received a step increase ranging from 3% to 5%. Some police officers and firefighters received stipends for special assignments or certifications (amounts vary). |
| Calvert | 2.05% | Yes | Sheriff's and correctional deputies received a 5% COLA. All employees received a 1 step merit increase. |
| Caroline | 3.0% | Yes | All employees except the Sheriff's office received either a 3% GSI or a flat \$2,000 GSI, whichever was greater. Sheriff's office employees received step increases of 1 step for 1-2 years of service, 2 steps for 3-9 years of service, 3 steps for 10-21 years of service, and 4 steps for 22+ years of service. |
| Carroll | 2.0% | Yes | County government and Circuit Court employees received a 2% COLA and a service or longevity increment of 1%. State's Attorney employees received a COLA ranging from 0% to 1.5% and an increment ranging from 0% to 3.5%. Sheriff's office employees received the following: 0% to 5.95% COLA and 1% to 4% increment for law enforcement; 0% to 6.5% COLA and 2.2% to 4% increment for detention center officers; and 2% to 9.8% COLA and 1.5% to 2% increment for civilian personnel. County government, Circuit Court, and State's Attorney employees will receive a one-time bonus in December 2019 (\$340,000 to be allocated among all eligible employees). |

| County | COLA/GSI | Step/Merit | Additional Comments |
|-----------------|----------|------------|--|
| Cecil | 1.0% | Yes | Police officers and firefighters received a 1.5% COLA; firefighters will receive another 1.5% effective January 1, 2020. All employees received a 2% step increase. |
| Charles | 1.0% | Yes | 1% COLA for all employees effective January 1, 2020, except police officers, who received a 5% COLA effective in July, and corrections officers, who received no COLA. All employees received a merit increase of 3% of the midpoint of the employee's pay grade except police officers, who received a step increase, and corrections officers, who received the 3% plus 0.5% multiplied by missed merits up to a maximum of 2.5%. |
| Dorchester | 0.0% | Yes | 2.5% step increase. |
| Frederick | 0.0% | Yes | Law enforcement and corrections employees received a 2% COLA; fire service employees received a 7.99% COLA effective October 26, 2019. County employees received a step increase of 3.5% of the midpoint of the employee's pay grade; law enforcement and corrections employees received a step increase of 4.5% of step 1; fire service employees did not receive a step increase. |
| Garrett | 2.0% | No | 2% COLA to all employees except Sheriff's Department, who received a 6% GSI, and AFSCME members (Roads Department laborers), who received longevity increases of \$0.50 for 0-14 years of service, \$0.75 for 15-19 years of service, and \$1.00 for 20+ years of service. |
| Harford | 0.0% | Yes | \$2,000 merit increase. |
| Howard | 2.0% | Yes | Average step increase of 3%. |
| Kent | 1.0% | Yes | Employees in grades 1 through 6 received a 3% merit increase; employees of the Sheriff's office, State's Attorney's office, and Circuit Court received a 2% merit increase. |
| Montgomery | 2.25% | Yes | County employees generally, MCGEO (represented general employees union), and Management Leadership Service will receive a 2.25% GSI on December 8, 2019; IAFF/Fire Management will receive a 2.4% GSI on November 11, 2019; FOP/Police Management received no GSI. Step increase of 3.5% for all employees except Management Leadership Service, who receive merit-based increases ranging from 0% to 6%. Varying longevity increases for county employees generally, and MCGEO. MCGEO and FOP employees at top of pay grade on July 1, 2019, received a \$1,000 lump sum bonus. |
| Prince George's | 1.5% | Yes | FOP 112 (deputy sheriffs) received a 1.25% COLA, and IAFF 1619 received a 2% COLA. All COLAs effective January 2020. All employees received a 3.5% merit increase except FOP 89, which received varying merit increases based on rank and years of service. |
| Queen Anne's | 1.0% | Yes | Merit increase ranging from 0% to 3%. |
| St. Mary's | 1.0% | Yes | All employees received a 1% COLA as well as a 3.71% scale adjustment except for sworn county employees, who received the COLA and a 1.5% adjustment, and corrections employees, who received the COLA and a 1.96% adjustment. There was also a \$500 stipend for top of pay grade. All employees received a 2.5% merit increase except sworn county employees and corrections employees, who received a merit increase ranging from 1.9% to 5.4%. |

| County | COLA/GSI | Step/Merit | Additional Comments |
|----------------------------|-----------|------------|---|
| Somerset | 0.0% | Yes | Full-time employees received a step increase of 2.5%; part-time employees received no step increase. |
| Talbot | 1.0% | Yes | Step increase ranging from 1% to 3%. |
| Washington | 0.0% | Yes | 2.5% step increase. |
| Wicomico | 2.0% | No | FOP received a GSI ranging from 1% to 5%. |
| Worcester | 2.0% | Yes | 2.5% step increase. Regular full-time employees with at least 20 years of service by December 1 are eligible for a longevity bonus. |
| Total Jurisdictions | | | |
| Granting Increases | 19 | 20 | |

AFL-CIO: American Federation of Labor and Congress of Industrial Organizations

AFSCME: American Federation of State, County and Municipal Employees

COLA: cost-of-living adjustment

FOP: Fraternal Order of Police

GSI: general salary increase

IAFF: International Association of Fire Fighters

MCGEO: Municipal and County Government Employees Organization

Source: Department of Legislative Services

Exhibit 3
Board of Education Salary Actions in Fiscal 2020

| School System | COLA/GSI | Step/Merit | Additional Comments |
|----------------|----------|------------|--|
| Allegany | 1.5% | Yes | Additional \$1,400 increase to all bargaining unit members for one year through Kirwan funds. Step increase for eligible employees. |
| Anne Arundel | 2.0% | Yes | 1 step increase for all eligible employees; 2 back steps for eligible employees for the 2008-09 and 2009-10 school years. Secretaries and assistants still in negotiations. |
| Baltimore City | 2.0% | Yes | PSRP are also eligible to receive a longevity stipend/bonus (15 years – 0.399% to 0.504%; 20 years – 0.798% to 1.006%; 25 years – 1.201% to 1.51%) depending on position. FOP received a 1% COLA and are eligible for a longevity stipend/bonus (10 years – 1%; 15 years – 2%; 20 years – 3%). Administrators, CUB, and Local 44 have not yet negotiated. Merit/step increases for teachers and administrators vary based on evaluations, professional development, and special projects. Merit/step increases for PSRP, FOP, CUB, and Local 44 vary based on evaluations. |
| Baltimore | 2.0% | Yes | COLAs for teachers and educational support professionals effective July 1, 2019. COLAs for administrators, AFSCME support personnel, and noncertificated administrative professionals effective June 30, 2020. Teachers received a step increase ranging from 0.78% to 3.5%; administrators and noncertificated administrative professionals received a step increase of 2%; educational support professionals received a step increase ranging from 3.85% to 5.1%; AFSCME support personnel received a step increase ranging from 2.61% to 5.05%. |
| Calvert | Varies | Yes | Teachers received an increase through Kirwan funds ranging from 2.5% to 4.5%. Administrators and support staff received a 1% COLA. Teachers and administrators received a 1 step increase with additional steps as outlined in their negotiated agreement; support staff received a 1 step increase. |
| Caroline | 4.0% | Yes | Teachers and administrators received a 4% COLA; support services received a 3.5% COLA. All employees received a 1 step increase. |
| Carroll | Varies | Yes | Teachers received a COLA of up to 5% and AFSCME members of up to 3.5% due to restructuring of pay scales; administrators and nonunion employees received a 3.5% COLA; food service employees received a 2% COLA. Teachers, AFSCME members, and food service employees received a 1 step increase. Support staff still in negotiations. |
| Cecil | Varies | Yes | Increases for teachers and administrators vary due to restructuring of pay scales; support services received a 1.02% COLA. Teachers and support services received a 1 step increase. |

| School System | COLA/GSI | Step/Merit | Additional Comments |
|-----------------|----------|------------|--|
| Charles | 2.62% | Yes | Teachers received a 2.62% COLA; support personnel received a 3% COLA; administrators received a GSI of at least \$1,000 due to restructuring of pay scales. Education Association of Charles County Unit I members (includes teachers) who were employed as of June 30, 2013, and are currently active receive a 1 step increase effective January 1, 2020. AFSCME members who were employed as of December 31, 2013, and were currently active received a 1 step increase effective July 1, 2019. |
| Dorchester | 4.57% | Yes | Administrators and noncertificated support staff received a 1% COLA. Teachers and noncertificated support staff received a 1 step increase; administrators receive a 1 step increase effective January 1, 2020. Adjustment of \$500 made to step 2 and \$600 to step 3 of teachers' pay scale; all employees in those steps received the increase. Administrators above top of scale received a \$750 bonus; noncertificated support staff above top of the scale received a \$500 bonus. |
| Frederick | 5.01% | Yes | Teachers received a 5.01% increase as the final phase of a new salary scale; administrators received a 1.75% COLA; support employees received a 2% COLA. Administrators received a 3.22% merit increase; support employees received a 2.98% merit increase. |
| Garrett | 3.0% | Yes | Teachers received a COLA of 3% on average. Administrators received a \$1,250 COLA; support personnel received a COLA of 5.75% on average; head custodians and cafeteria managers received a \$1,500 COLA. All employees received a 1% step increase. |
| Harford | 3.0% | Yes | HCEA (teachers, counselors, therapists) and APSASHC (certified administrators and supervisors) received a 3% COLA; HCESC (instructional support professionals), AFSCME (noninstructional support employees), and AHCATSP (noncertified supervisors) received a 2.5% COLA. All employees received a 1 step increase. |
| Howard | 0.0% | Yes | Nonunion administrative employees received a 1% COLA. All union bargaining units received a 1 step increase (salary scale adjustments provided an average increase of 4%). |
| Kent | 1.0% | Yes | All employees received a 1% COLA; teachers also received a \$315 GSI. Teachers and other employees (support staff) received a 1 step increase. Administrators received a 1 step increase in July and another 1 step increase in January 2020. |
| Montgomery | 1.0% | Yes | All employees received a 1% GSI and a 1 step increase. Teachers in steps 1 through 5 received an additional \$1,000 increase on the scale and steps above 5 received an additional \$500 increase on the scale; administrators received an additional \$948 increase on the scale; support professionals received an additional \$0.17 per hour increase on the scale. |
| Prince George's | 1.5% | Yes | Teachers and AFSCME received a 1.5% COLA; administrators received a 1% COLA; service employees union received a 2% COLA. Eligible employees who were continuously employed from June 30, 2009, to July 1, 2019, received a 1 step increase; those employees who were at the top of their step received a one-time 1% differential. Service employees union members received a one-time bonus of 1%. |

| School System | COLA/GSI | Step/Merit | Additional Comments |
|----------------------------|-----------|------------|---|
| Queen Anne’s | 2.25% | Yes | Administrator received a 1% COLA; support units received no COLA. All employees received a 1 step increase. |
| St. Mary’s | 2.0% | Yes | Teachers and support staff received a 2% COLA; administrators received a 1% COLA. All employees received a 1 step increase. |
| Somerset | 2.75% | Yes | Teachers received a 2.75% COLA; administrators and other employees received a 1.75% COLA. All employees received a 1 step increase. |
| Talbot | 2.3% | Yes | 1.75% step increase. |
| Washington | 3.86% | No | Teachers received a 3.86% COLA plus an additional 1.56% due to restructuring of steps; administrators received a 3% COLA; support staff received a 2.75% COLA. |
| Wicomico | 3.5% | Yes | Teachers received a 3.5% COLA; administrators received a 2% COLA; classified/support staff received a COLA ranging from 2% to 16.35% based on a salary study. All employees received a 1 step increase. |
| Worcester | 2.0% | Yes | 1 step increase. |
| Total Jurisdictions | | | |
| Granting Increases | 23 | 23 | |

AFSCME: American Federation of State, County, and Municipal Employees
AHCATSP: Association of Harford County Administrative, Technical and Supervisory Professionals
APSASHC: Association of Public School Administrators and Supervisors
COLA: cost-of-living adjustment
CUB: City Union of Baltimore
FOP: Fraternal Order of Police
GSI: general salary increase
HCEA: Harford County Education Association
HCEC: Harford County Educational Support Council
PSRP: Paraprofessionals and School Related Personnel

Source: Department of Legislative Services

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