

Preliminary Evaluation of the Division of Labor and Industry and Associated Boards and Councils

- Recommendations:**
- Full Evaluation of the Employment Standards and Classification Program within the Division**
 - Full Evaluation of the Advisory Council on Prevailing Wage Rates**
 - Defer Decision on Whether to Waive Board of Boiler Rules Until Submission of Required Report**
 - Waive from Full Evaluation Other Units/Programs and Advisory Boards**
 - Extend Termination Dates of Waived Boards and Councils to July 1, 2024**
 - Require Follow-up Reports on Certain Activities**

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the regulatory entities or activities subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 entities according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an entity from further (or full) evaluation. If further evaluation is waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The Division of Labor and Industry (DLI) and its associated advisory boards and councils last underwent a full evaluation in 2002. Based on findings and recommendations in that evaluation, Chapter 316 of 2003 extended the termination dates applicable to the division and its associated boards, councils, and programs to July 1, 2014. In addition, both the State Board of Stationary Engineers and the Elevator Safety Review Board, which each have overlapping responsibilities with some of DLI's units, are undergoing concurrent preliminary evaluations during the 2011 interim.

This preliminary evaluation encompasses all aspects of the division's work, including several entities that are separately subject to sunset evaluations but operate under the division's supervision. This report discusses and includes recommendations on each of the following entities (Those marked with an asterisk are separately authorized in statute to undergo an evaluation.):

- Division of Labor and Industry (general administration) (discussion begins on page 7);
- Apprenticeship and Training, including the Maryland Apprenticeship and Training Council (MATC)* (discussion begins on page 9);
- Employment Standards and Classification (discussion begins on page 17);
- Prevailing Wage Enforcement, including the Advisory Council on Prevailing Wage Rates* (discussion begins on page 30);
- Occupational Safety and Health Program, including the Maryland Occupational Safety and Health Advisory Board* (discussion begins on page 38);
- Safety Inspection, including the Amusement Ride Safety Advisory Board* (discussion begins on page 48); and
- Board of Boiler Rules* (discussion begins on page 60).

DLS staff conducted in-person and telephone interviews with the Commissioner of Labor and Industry, the deputy and assistant commissioners, chairpersons and other members of the boards and councils, program staff, and members of related professional associations throughout the process of conducting this preliminary evaluation. In addition, DLS staff reviewed the statutes and regulations pertaining to the various programs, boards, and councils; analyzed fiscal and program data; reviewed meeting minutes of the boards and councils; attended board and council meetings when possible; and observed various safety inspections.

DLI reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in DLI comments may not reflect the final version of the report.

The Division of Labor and Industry

Historical Structure

The General Assembly established the Bureau of Industrial Statistics and Information – the forerunner of today’s DLI – in 1884 in response to the increased demands of the labor force during the Industrial Revolution. The bureau’s primary function was to collect statistics and information on the needs and abuses that existed in the various industries of the State. In 1916, the State Board of Labor and Statistics replaced the bureau. The main tasks of the board’s three commissioners were to (1) collect statistics on labor, agriculture, mineral products, transportation, and commerce; (2) operate free employment agencies; (3) investigate causes of unemployment; and (4) appoint Boards of Arbitration, as well as a deputy to arbitrate and settle labor disputes.

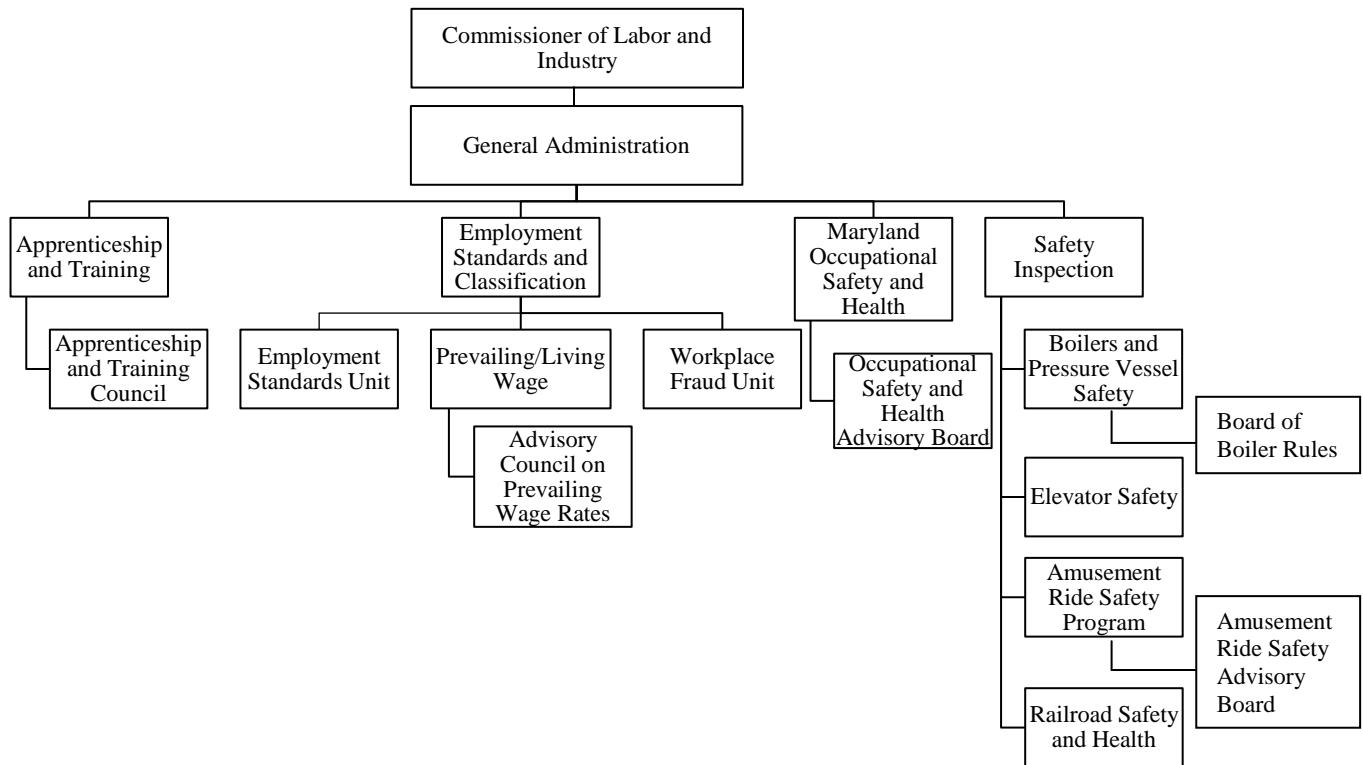
The duties of the three-person board were transferred to a single Commissioner of Labor and Statistics in 1922. In 1945, the administrative functions were transferred to the Department of Labor and Industry. Accordingly, the title of the agency’s administrator became the Commissioner of Labor and Industry. When the department was reorganized in 1970, Labor and Industry became a division within the Department of Licensing and Regulation, which is now the Department of Labor, Licensing, and Regulation (DLLR).

Current Organizational Structure

The division is charged with protecting and promoting the health, safety, and employment rights of Maryland residents. Among its responsibilities, the division administers State laws addressing employment issues such as wage payment; employment of minors; occupational safety and health; workplace fraud; labor contractors; and safety inspection of amusement rides, boilers and pressure vessels, elevators and escalators, and railroads.

The division consists of eight budgeted programs: (1) General Administration; (2) Apprenticeship and Training; (3) Employment Standards and Classification; (4) the Workplace Fraud Unit; (5) the Prevailing Wage and Living Wage Unit; (6) Maryland Occupational Safety and Health (MOSH); (7) Safety Inspection; and (8) Railroad Safety and Health. **Exhibit 1** depicts the organizational structure of the division and its programs as well as associated advisory boards and councils. The division’s budgeted programs as well as the Board of Boiler Rules are described briefly in **Exhibit 2**, and the remainder of this report is organized around these programs. Some of the budgeted programs are actually subunits of other programs.

Exhibit 1
Budgeted Programs and Advisory Boards and Councils of the
Division of Labor and Industry



Source: Department of Labor, Licensing, and Regulation

Exhibit 2
Programs within the Division of Labor and Industry

- General Administration:** Major activities include program planning, development, implementation, evaluation, and design; adoption of regulations for the division's programs; planning and management of the division's financial resources; and management of the issuance of work permits for minors throughout the State.
- Apprenticeship and Training:** Promotes industry sponsorship of occupational training for the skilled trades and crafts and registers, certifies, and monitors skilled, craft, trade, and technical apprenticeship programs statewide.
- Employment Standards and Classification:** Assists Maryland workers in resolving wage disputes and collecting wages owed to employees. The program also serves as a clearinghouse on many issues concerning employment in the State.
- Workplace Fraud:** Investigates cases of employee misclassification in the landscaping and construction industries in the State and levies fines against habitual offenders.
- Prevailing/Living Wage:** Determines and enforces wage rates and fringe benefits for workers employed on State-funded public works contracts through jurisdictional surveys, review of payroll records, and monitoring of work sites.
- Maryland Occupational Safety and Health:** Administers the State's occupational safety and health laws – equivalent to the federal Occupational Safety and Health Act.
- Safety Inspection:** Regulates the inspection of amusement rides and attractions, elevators, escalators, dumbwaiters, moving walks, wheelchair lifts, and boilers and pressure vessels.
- Railroad Safety and Health:** Monitors the safety practices of railroad companies in the State by inspecting railroad tracks and equipment, and reviewing operating practices. Supplements the national inspection program established under the Federal Railroad Administration.
- Board of Boiler Rules:** Formulates definitions, rules, and regulations for the safe construction, use, installation, maintenance, repair, and inspection of boilers and pressure vessels for sale or use in Maryland.

Source: Department of Labor, Licensing, and Regulation

Division Expenditures Increased between Fiscal 2007 and 2011

From fiscal 2007 to 2009, the division's budget grew steadily, primarily due to increased personnel costs and federal or special funding for certain programs, particularly the MOSH program. The division's budget decreased minimally in fiscal 2010 due to cost containment measures associated with the State's weakened fiscal condition. Roughly half of the division's budget is dedicated to MOSH, which is funded almost equally with federal and special funds. Likewise, with a staff of nearly 100, over half of the division's staff work for MOSH.

Exhibit 3 displays the division's direct and indirect costs, and position totals, from fiscal 2007 through 2011. Indirect costs cover a portion of DLLR's centralized finance, personnel, and information technology offices. Although the division is able to calculate an amount of total indirect costs each year, the method by which these costs are assessed is unclear and the division was not able to show the breakdown of indirect costs assessed to each program within it. An indirect cost obligation is not determined for or charged to the general fund programs within the division; thus, the division's indirect costs likely result from the following programs: MOSH, Safety Inspection, and the Workplace Fraud Unit.

The amount of indirect costs charged to the division's programs is a percentage of the total direct costs. In order to determine these costs, DLLR uses an indirect cost rate issued annually by the federal government. The indirect cost rate varies somewhat each year; thus, although the total direct costs of the division increased between fiscal 2008 and 2009, the total indirect costs decreased as the federal indirect cost rate dropped from 16.34% in 2008 to 13.22% in 2009.

Exhibit 3 **Fiscal and Personnel History of the Division of Labor and Industry** **Fiscal 2007-2011**

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Direct Costs	\$13,273,296	\$13,840,432	\$15,275,958	\$15,031,292	\$16,840,227
General Fund Costs	1,009,423	1,331,092	1,430,134	1,475,588	1,450,693
Special Fund Costs	7,775,453	8,366,638	9,345,751	8,777,409	10,413,833
Federal Fund Costs	4,488,420	4,142,702	4,500,073	4,778,295	4,975,701
Indirect Costs	\$1,119,159	\$1,079,399	\$905,753	\$907,711	\$809,958
Total Costs	\$14,392,455	\$14,919,831	\$16,181,711	\$15,939,003	\$17,650,185
Regular Positions	178	188	192	199	196

Source: Department of Labor, Licensing, and Regulation

General Administration

The General Administration program – or “the Office of the Commissioner” – within DLI consists of the commissioner, deputy commissioner, and five support staff members. General Administration is responsible for program planning, development, implementation, evaluation, and design; adoption of regulations for division programs; planning and management of the division’s financial resources; and supervision of the issuance of work permits for minors.

Few Legislative Changes Have Affected General Administration Since 2002

Unlike several of the programs overseen by the division, General Administration has been impacted minimally by legislative action over the last 10 years. **Exhibit 4** summarizes the legislation since 2002 that affects the division’s activities as overseen by General Administration.

Exhibit 4 **Major Legislative Changes Since the 2002 Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2003	316	Extends the termination date applicable to various programs and boards housed within the Division of Labor and Industry to July 1, 2014.
2005	444*	Mandates appropriations totaling at least \$700,000 annually for the Employment Standards and Prevailing/Living Wage units, beginning in fiscal 2007; of this amount \$315,000 must be allocated for the Employment Standards Unit and \$385,000 must be allocated for the Prevailing Wage Unit.

*The Budget Reconciliation and Financing Act

Source: Laws of Maryland

General Administration Budget Increased Significantly between 2007 and 2011

As shown in **Exhibit 5**, the General Administration budget grew from \$490,019 in fiscal 2007 to \$909,147 in fiscal 2011. Division staff advises that the increase is due to significant growth in personnel costs associated with new positions and salary adjustments.

Exhibit 5
Fiscal History of the General Administration Program
Fiscal 2007-2011

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
General Fund Costs	\$6,750	\$49,000	\$64,235	78,885	77,980
Special Fund Costs	318,834	386,815	468,956	506,570	550,078
Federal Fund Costs	164,435	187,518	219,029	265,565	281,089
Total Costs	\$490,019	\$623,333	\$752,220	\$851,020	\$909,147

Source: Department of Labor, Licensing, and Regulation

As the exhibit shows, the General Administration program is funded primarily with federal and special funds. The amount of special and federal fund income is related to the indirect cost assessment on certain programs within the division. However, the division was not able to provide a specific breakdown of the amount each program was assessed in indirect costs. Moreover, it is unknown what percentage of indirect costs is dedicated to the General Administration program – for general division costs – and what percentage is intended to pay for departmental services administered by the Office of the Secretary.

Recommendations

The General Administration program is fulfilling its statutory obligations by overseeing the programmatic operations of the division. Moreover, the program's experienced and dedicated staff ensures that division programs perform consistently and competently. **Therefore, DLS recommends that LPC waive the program from further evaluation. As the program is subject to termination only as a component of DLI, it will be reauthorized when legislation is enacted to extend the termination date for DLI following the full evaluation of the Employment Standards and Classification Program recommended later in this report.**

Nevertheless, several issues merit further consideration by DLLR. **Therefore, DLS recommends that DLLR submit a follow-up report to DLS by October 1, 2012, providing an update and further explanation on the assessment of indirect costs on the division's programs, including (1) how much each program has been assessed annually in indirect costs between fiscal 2007 and 2012; (2) the methodology used by the division to determine each program's indirect cost allocation; and (3) how departmental and division indirect costs are determined and allocated.**

Apprenticeship and Training

Apprenticeship is a voluntary, industry-sponsored system that prepares individuals for occupations typically requiring high-level skills and related technical knowledge. Apprenticeships are sponsored by employers, employer associations, and jointly by management and labor groups. An apprentice receives supervised, structured on-the-job training under the direction of a skilled journeyperson and related technical instruction in a specific occupation. Apprenticeships are designed to meet the workforce needs of the program sponsor. Many industry sponsors use apprenticeship as a method to train employees in the knowledge necessary to become a skilled worker. This also means the number of apprenticeships available is dependent on the current training needs of the industry.

Apprenticeships are available to those ages 16 and older; however, an employer may set a higher entry age. By law, individuals must be 18 years old to apprentice in hazardous occupations. Apprenticeships last from three to six years, and they involve a minimum of 144 hours of classroom instruction per year and at least 2,000 hours per year of on-the-job training. There are over 230 registered skilled occupations that employ more than 8,000 Maryland apprentices. At the end of fiscal 2010, 82.3% of apprentices worked in construction trades, 15.9% worked in the service industry, and 1.8% worked in the manufacturing sector.

A national apprenticeship and training program was established in federal law in 1937 with passage of the Fitzgerald Act, also known as the Apprenticeship Act. The purpose of the Act was to promote national standards of apprenticeship and to safeguard the welfare of apprentice workers. The U.S. Department of Labor (DOL), through its Employment and Training Administration – Office of Apprenticeship, works with individual states to implement these apprenticeship standards and labor practices throughout the country. Maryland is 1 of 28 states that has chosen to operate its own apprenticeship programs.

In 1962, Maryland became a state apprenticeship council (SAC) state when the General Assembly passed its apprenticeship and training law, which created the 12-member MATC. Within the framework established in federal law, the State's apprenticeship and training law also established the guidelines, responsibilities, and obligations for training providers and created certain guarantees for workers who become apprenticed. MATC serves in a regulatory and advisory capacity by providing guidance and oversight to the Maryland Apprenticeship and Training Program (MATP), which is responsible for the daily oversight of State apprenticeship programs.

Federal Oversight

In 2008, DOL implemented regulations that require state officials to be held accountable for the oversight and management of the state's apprenticeship system for federal purposes. In addition to having a council, states must have an agency designated as a state apprenticeship agency (SAA). In Maryland, DLLR, through MATP, is the SAA. Under new DOL regulations, only SAAs, not SACs, may register apprenticeship programs. However, SACs are still required

for advisory and regulatory purposes. Additionally, the regulations call for SAAs to submit all proposed modifications in legislation, regulations, policies, or procedures to DOL's Office of Apprenticeship for approval. The change in federal regulation allows the Office of Apprenticeship to maintain conformity while giving each SAA the opportunity to reconcile differences without affecting the state's SAA designation. As part of the federal government's oversight of state apprenticeship programs, the Office of Apprenticeship examines the functionality of the SAA. Approximately every five years, the office examines the SAA's records, staffing levels, and overall ability to administer apprenticeship programs.

Maryland Apprenticeship and Training Council

MATC approves new apprenticeship programs and changes to current programs. The approval process involves assessing the appropriateness of an apprenticeship program in a proposed industry, the education that will be provided to the apprentice, the current staffing level of the entity proposing the program to determine whether adequate supervision can be provided, recruitment and retention efforts, and the overall operations of the entity. MATC also serves in an advisory role for legislation and regulations, recommending changes to update apprenticeship laws.

All 12 members of MATC are appointed by the Governor, with the advice and consent of the Senate, and the advice of the Secretary of Labor, Licensing, and Regulation. MATC meets six times a year on a bimonthly schedule. There are no vacancies on the council. The current MATC members are listed in **Appendix 2**. By statute, council membership must consist of:

- four members who represent employee organizations;
- one employee;
- five members who represent employers; and
- two members of the general public.

Statute also requires that council members and any consultants include African Americans, females, and individuals with disabilities.

Maryland Apprenticeship and Training Program

The Secretary of Labor, Licensing, and Regulation appoints the director of MATP. The director is charged with staffing the council and administering the program. Both sponsors and apprentices are required to register with MATC, therefore, bringing the sponsor and apprentice under the guidance and oversight of MATP and MATC. Registration also enables MATP to provide various services to the sponsor and apprentices that are designed to ensure compliance with federal and State standards for apprentice training, including equal opportunity and nondiscriminatory practices.

The director, with the assistance of MATP staff – a program manager, an apprenticeship and training representative (ATR), and two contractual employees – has the responsibility for day-to-day operations, which include registering and certifying program sponsors, monitoring, issuance of apprentice completion certificates, maintaining a statewide database, staffing the six MATC meetings, and marketing and promoting the apprenticeship system. MATP staff covers the entire State and provides services to potential and existing program sponsors and apprentices. Such services include:

- analyzing training needs and developing apprenticeship standards;
- locating or developing related technical instruction curricula;
- constructing on-the-job training schedules consistent with industry standards;
- assisting in developing recruitment procedures;
- conducting program evaluations and quality assessment reviews;
- registering and cancelling apprentice agreements and issuing completion certificates; and
- representing sponsors on all matters presented to MATC.

MATC and MATP work cohesively to expand apprenticeship throughout Maryland and to ensure that both the apprentice and the employer sponsor are following all regulations and standards. MATP's primary focus is on assisting employer sponsors by providing services to ensure compliance and working to expand apprenticeships. MATC's primary focus is ensuring that adequate laws and regulations are in place to foster a positive apprenticeship environment for both the apprentice and employer sponsor, that apprenticeship programs are compliant with the laws and regulations, and that apprenticeships are expanding throughout the State.

Legislation Created a New Special Fund to Promote Apprenticeships

Since the last sunset review in 2002, there have been very few legislative changes affecting the State's apprenticeship programs. As shown in **Exhibit 6**, Chapter 687 of 2009 created the State Apprenticeship Training Fund and required contractors and subcontractors with contracts worth at least \$100,000 on eligible public works projects that are subject to the prevailing wage law to either participate in an apprenticeship training program, make payments to a registered apprenticeship program or to an organization that operates registered programs for the purpose of supporting the programs, or contribute to the fund.

The purpose of the fund is to promote pre-apprenticeship programs and other workforce development programs in the State's public secondary schools and community colleges and to cover the cost of implementing the bill's provisions. The programs should prepare students to enter apprenticeship training programs.

DLLR is responsible for enforcement and must adopt regulations that establish an auditing procedure for organizations that operate apprenticeship programs to ensure that funds received are used solely to improve and expand apprenticeship programs, and these organizations must certify to the Secretary that all funds received are used solely for those purposes.

To enforce the provisions of Chapter 687, DLLR will need to hire one full-time equivalent (FTE) financial compliance monitor and a half-time administrative specialist to monitor and enforce compliance by contractors on eligible public works projects. DLLR is in the process of finalizing the regulations for the fund, so no payments have been made into the fund as of the completion of this evaluation. The fund is expected to be fully implemented by January 2012.

Exhibit 6**Major Legislative Changes Since the 2002 Sunset Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2003	316	Extends the termination date of the Apprenticeship and Training Council to July 1, 2014.
2009	687	Creates the State Apprenticeship Training Fund and requires contractors and some subcontractors on eligible public works contracts subject to the prevailing wage law to participate in an apprenticeship training program, make payments to a registered apprenticeship program or to an organization that operates registered programs for the purpose of supporting the programs, or contribute to the fund.

Source: Laws of Maryland

MATP Staffing Levels Continue to Be a Challenge

As shown in **Exhibit 7**, funding has varied over the past five fiscal years, with approximately 75% of the program's budget going to salaries, wages, and benefits. MATP is funded entirely through an appropriation from the general fund. Despite overall budget increases for fiscal 2011 and 2012, the number of employees has decreased from five regular employees in 2008 to three regular employees and 1.5 contractual employees in 2011. MATP also is borrowing a staff member from elsewhere in DLI and is utilizing the services of a staff member whose salary is funded through the Workforce Investment Board. Funding for the director's position comes from the Secretary's budget and not from the MATP allocation. The amount budgeted for wages and benefits has also decreased as shown by Exhibit 6. Until June 2011, three positions in MATP were funded by a 2009 federal grant. When that grant ended, MATP lost those positions. MATP has been able to restore two positions and is working to restore the third. This decrease in staff, as highlighted in the exhibit, is hindering the effectiveness of MATP. Currently, only one person on MATP staff is responsible for performing the program compliance reviews that help ensure the safety and efficacy of the apprenticeship and training programs throughout the State.

Exhibit 7
Funding and Staffing for Apprenticeship and Training Program
Fiscal 2008-2012

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012*
Total Budget	\$357,830	\$363,737	\$304,003	\$470,251	\$459,207
Salaries, Wages, and Benefits	\$314,365	\$327,950	\$232,793	\$213,571	\$227,985
Regular Employees	5	5	3	3	2
Contractual Employees	0	0	0	1.5	1.5

*Working appropriation for fiscal 2012.

Source: Department of Legislative Services

Backlog Will Continue without Adequate Staffing

Both apprenticeship programs and apprentices are registered with the State, which allows monitoring of both the employers and the apprentices to ensure that each is adhering to the mutually agreed upon standards and regulations. Compliance reviews ensure apprentices are treated fairly, gaining the training to which they are entitled, and being compensated fairly on a progressive wage scale. In addition to protecting the apprentices, compliance reviews also help protect employers by preventing other employers from misusing apprentices to undercut their competition through depressed labor costs. Compliance reviews also verify that the apprentice is completing the required training and other requirements set by the employer.

Depending on the size of the program at issue, the review can be a lengthy process and involves reviewing the records required under the Code of Maryland Regulations Section 09.12.42.07. Sponsors must keep adequate records, which include:

- a summary of the qualifications of each applicant;
- the basis for evaluation and selection or rejection of each applicant;
- records pertaining to interviews of applicants;
- the original application for each applicant;
- information relative to the operation of the apprenticeship program, including, but not limited to:
 - job assignment,
 - promotion,
 - demotion,
 - layoff or termination,
 - rates of pay or other forms of compensation or conditions of work, and
 - hours including hours of work and hours of training provided; and
- records related to their commitment to equal opportunity in recruitment, selection, employment, and training of apprentices.

Programs are reviewed every three years if the program has fewer than five apprentices and every two years if there are five or more apprentices. For smaller programs, these reviews can take a day or two, but for larger programs, the reviews can take weeks. MATP has only one person performing all of the reviews for the entire State.

Thus, MATP has a backlog of program compliance reviews. As of June 2011, MATP had 68 reviews outstanding. While this number represents fewer outstanding reviews than the 82 overdue reviews in January, due to the lack of staffing, MATP will find it difficult to decrease the backlog from its current status. This backlog may negatively affect apprentices because it allows poorly performing programs to continue operating without the necessary oversight to ensure a safe and productive work environment for apprentices.

Staffing Levels Are Low Compared to Other States

Additionally, the staffing level for MATP is among the lowest in the country for apprenticeship programs. **Exhibit 8** shows the staffing levels for 18 of the 28 state-controlled apprentice programs. Maryland has the lowest staff-to-apprentice ratio with one staff member for every 1,620 apprentices. The average for the 18 states is 11 staff members and 8,055 apprentices, or one staffer for every 732 apprentices. To match the average ratio of these 18 states, Maryland would need 6 additional staff members.

Exhibit 8

Staffing Levels for Other State Apprenticeship and Training Programs

<u>State</u>	<u>Staff</u>	<u>Apprentices</u>	<u>Ratio of Staff-to-Apprentice</u>
Montana	6.0	1,100	1/183
Vermont	2.5	600	1/240
Oregon	19.0	5,000	1/263
Kansas	6.0	1,500	1/250
Delaware	3.0	850	1/283
Wisconsin	18.0	8,000	1/444
New Mexico	3.0	2,100	1/700
Washington	15.0	10,800	1/720
Kentucky	3.0	2,200	1/733
Ohio	20.0	15,000	1/750
California	65.0	55,000	1/846
Rhode Island	1.5	1,300	1/867
Massachusetts	6.0	5,250	1/875
Virginia	13.0	13,000	1/1,000
District of Columbia	5.0	5,000	1/1,000
Minnesota	6.5	6,700	1/1,031
Louisiana	3.0	3,500	1/1,167
Maryland	5.0	8,100	1/1,620

Source: Department of Labor, Licensing, and Regulation

Program Activity Has Been Relatively Stable

Despite the loss of staff, MATP activity has remained fairly consistent. Program activity, as measured by the number of apprentices and participating employers, has remained relatively stable in recent years, as shown in **Exhibit 9**.

For fiscal 2011, the number of registered apprentices dropped to the lowest level in several years while the number of participating employers remained stable. However, the number of graduates increased by 28% over fiscal 2010. This represents the highest level of program completion in 20 years. This graduating class was also one of the most diverse classes. Of the 1,457 graduates, 447 were members of social or ethnic minority groups, which is 31% of the class and represents the highest percentage on record; and 65 were women, which is the second largest number of female graduates in 10 years.

Exhibit 9
Apprenticeship Program Status
Fiscal 2006-2011

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Registered Apprentices	8,669	9,398	9,661	9,487	9,209	8,065
Women	420	492	495	446	430	318
Minorities	3,381	3,698	3,786	3,623	3,474	2,951
Participating Employers	3,015	3,030	3,118	3,135	3,165	3,155
Apprentice Graduates	1,107	1,175	1,050	1,045	1,143	1,457
Women	44	75	27	34	27	65
Minorities	329	298	310	321	368	447

Source: Department of Labor, Licensing, and Regulation

To increase the level of participation in apprenticeships, MATP and MATC have launched the Apprenticeship Maryland initiative. Apprenticeship Maryland works collaboratively with partners in State government, private-sector organizations, the labor community, and higher education to (1) promote apprenticeship and training opportunities to jobseekers and employers; (2) identify avenues to expand opportunities to earn while learning; and (3) improve skills training. The program also wants to expand registered apprenticeships to nontraditional fields and identify strategies that allow apprenticeships to grow by working with partner organizations.

Decreased Ratio Requirements

The 2001 preliminary evaluation suggested that the council maintain its ratio requirement of journeypersons to apprentices at 3:1, instead of changing the ratio to 1:1; the issue was not discussed further in the subsequent 2002 full evaluation. The preliminary evaluation stated that lowering the ratio would have a detrimental effect on the apprenticeship program because projects would be more difficult to finish due to the presence of fewer experienced journeypersons. It also warned that projects might be more dangerous due to less supervision of apprentices. However, in 2006 the ratio was changed to one journeyperson for one apprentice. The aging workforce, and the overall decline in the skilled workforce, necessitated the change in ratio. The 1:1 ratio allows more people, in particular minorities and women, to enter into apprenticeships because it opens more slots for opportunities on eligible projects. Additionally, the 1:1 ratio is in line with neighboring states. Since the change in ratio, no safety issues have been reported.

Recommendations

MATC is fulfilling its statutory requirement. The council appears to be a well run and a professional entity. Nonetheless, MATP continues to struggle with staffing issues and a backlog of program compliance reviews. The backlog hinders the council from providing timely guidance and oversight to programs that may not be meeting standards.

The regulations governing the Apprenticeship and Training Fund are currently not in effect. The purpose of the fund is to expand apprenticeship and training efforts, which could expand apprenticeships in the State, thereby leading to a more skilled workforce. Until the regulations become effective, companies will not be paying into the fund and the fund will not be funding pre-apprenticeship programs.

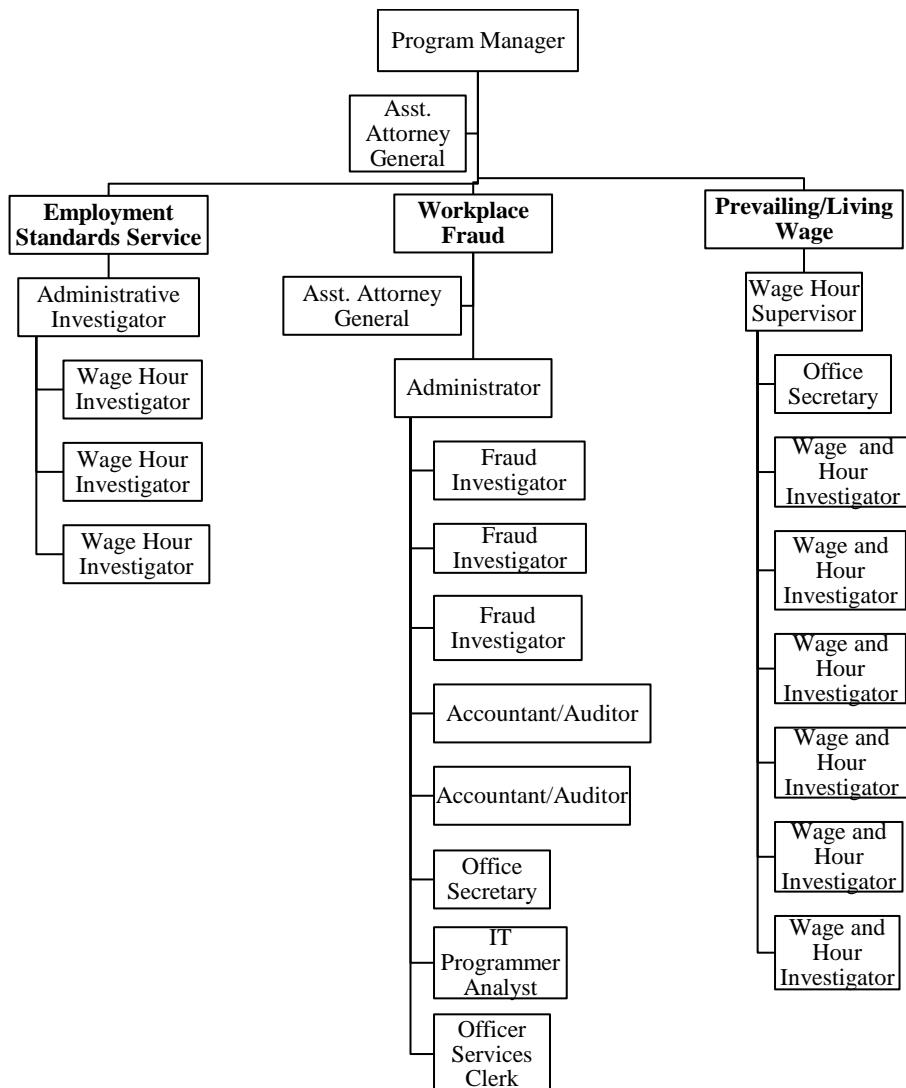
Therefore, DLS recommends that LPC waive both MATC and MATP from full evaluation and that the council's termination date be extended by 10 years to July 1, 2024. As the program is subject to termination only as a component of DLI, it will be reauthorized when legislation is enacted to extend the termination date for DLI following the full evaluation of the Employment Standards and Classification Program recommended later in this report. However, DLS also recommends that DLLR submit a follow-up report to DLS by October 1, 2012, which addresses:

- the status of the backlog of program compliance reviews and strategies for reducing the backlog; and
- the implementation, income stream, and expenditures of the State Apprenticeship Training Fund.

Employment Standards and Classification

The Employment Standards and Classification program comprises the Employment Standards Service Unit, the Workplace Fraud Unit, and the Prevailing and Living Wage Unit. The program's three units and associated program staff are managed and coordinated by a program manager. **Exhibit 10** displays the organizational structure of the program.

Exhibit 10
Organizational Structure of the
Employment Standards and Classification Program



Source: Department of Labor, Licensing, and Regulation

Employment Standards Service

The Employment Standards Service Unit was created in 1965 to enforce the State's Minimum Wage Law. The unit currently oversees or enforces various laws intended to protect employees and prospective employees in the State. **Exhibit 11** displays the laws enforced or overseen by the unit.

Exhibit 11 **Jurisdiction of the Employment Standards Service Unit**

Labor and Employment Article

Employment of Minors	Title 3, Subtitle 2
Equal Pay for Equal Work	Title 3, Subtitle 3
Wages and Hours	Title 3, Subtitle 4
Wage Payment and Collection	Title 3, Subtitle 5
Medical Questions	Title 3, § 3-701
Lie Detector Tests	Title 3, § 3-702
Healthy Retail Employees Act	Title 3, § 3-710
Job Applicant Fairness Act	Title 3, § 3-711
Farm Labor Contractors	Title 7

Business Regulation Article

Employment Agencies	Title 9
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Source: Laws of Maryland

History of Funding and Staffing Reductions Limit Scope of Enforcement

Due to the State's fiscal crisis in the early 1990s, the unit's funding was eliminated in fiscal 1991, which curtailed State-sponsored enforcement of the above-mentioned laws that were in existence at the time. The action eliminated 34 positions and reduced general fund expenditures by roughly \$500,000. Because many of these laws have federal counterparts, employees or former employees may pursue complaints against employers by appealing to federal regulators. The existence of the laws in State statute allows an employee to pursue a private right of legal action against an employer. In fiscal 1994, the unit's budget included funding for six positions to restore enforcement of the Wage Payment and Collection Law. Reducing the unit's staffing level from 34 employees to 6 employees significantly limited its enforcement ability; since 1994, the unit has not actively enforced several laws under its purview, including the State's wage and hour and child labor laws. In general, the division refers matters involving wage and hour or child labor complaints to DOL – its federal counterpart.

The unit's funding and staffing levels remained relatively constant for about 12 years after it was restored in 1994. The unit's funding was again eliminated for fiscal 2006. However, Chapter 444 of 2005 mandated an annual appropriation of at least \$315,000 for the unit

beginning in fiscal 2007. **Exhibit 12** displays the unit's fiscal history from fiscal 2007, when funding for the unit's activities was restored, through fiscal 2011. Although an annual appropriation of \$315,000 is required by Chapter 444, the unit's actual expenditures were below that level in fiscal 2007 and 2009; this is likely due to vacant positions within the unit during those years.

Exhibit 12
General Fund Expenditures by the Employment Standards Service Unit
Fiscal 2007-2011

<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
\$258,999	\$417,921	\$301,350	\$477,405	\$371,052

Source: Department of Labor, Licensing, and Regulation

All costs associated with the unit are derived from the State's general fund. The funding mandate provision included in Chapter 444 ensures a consistent minimum funding level for the unit. Although Chapter 444 ensures the continued existence of the unit, the current funding and staffing levels – four full-time investigators and no clerical or administrative support – limit the scope and effectiveness of the unit's enforcement abilities.

Staff Focuses on Enforcement of the Wage Payment and Collection Law

The Maryland Wage Payment and Collection Law, enacted in 1966, sets forth employer responsibilities related to wages and paydays. Specifically, the law requires employers to pay workers the wage promised; establish regular paydays; pay wages when due; pay employees in a specified manner; pay employees at least once every two weeks, with exceptions; furnish employees with a statement of gross earnings; advise employees of their rate of pay and designated payday; and pay employees all wages due on termination of employment. Unlike many laws under the jurisdiction of the Commissioner of Labor and Industry, a similar law does not exist at the federal level. Without the ability to rely on federal regulation, the unit has devoted its resources to enforcement of the Wage Payment and Collection Law.

Exhibit 13 displays the unit's wage payment and collection activity between calendar 2005 and 2010. Investigations are prompted by the receipt of a written complaint. Slightly fewer than half of the completed investigations conducted during these years resulted in the payment of additional wages to workers. Less than one-third of the wages collected did not require legal action, which indicates that the unit offers a valuable mediation service. The unit strives to resolve all complaints within 90 days. During fiscal 2011, investigators closed 55% of complaints received within 90 days. Many cases that exceeded the 90-day time period required action by the Office of the Attorney General (OAG). These cases tend to be more complex or contentious, or both, and require longer periods to resolve.

Exhibit 13
Wage Payment and Collection Activities
Calendar 2005-2010

	2005	2006	2007	2008	2009	2010
Claims Activities						
Claims Filed	374	452	1,341	1,630	1,545	1,383
Investigations Completed	353	238	1,276	1,392	1,430	1,780
Claims with Wages Paid to Employee	236	161	696	480	469	611
Collection Activities						
Wages Collected without Legal Action	\$129,127	\$147,478	\$539,822	\$630,518	\$314,310	\$717,384
Wages Collected by Legal Action	80,330	89,892	63,019	272,758	337,018	70,472
Total Wages Collected	\$209,457	\$237,370	\$602,841	\$903,276	\$651,328	\$787,856

Source: Department of Labor, Licensing, and Regulation

As noted earlier, funding for the unit was eliminated for fiscal 2006; thus, the unit was only active for six months of calendar 2005 and 2006. As a result, the total number of claims resolved and wages recovered were significantly lower in these years. The unit's workload was abnormally high following the fiscal 2006 shutdown because many claims that would have been filed in fiscal 2006 were withheld until the unit recommenced its work. Over the intervening years the unit has reduced this backlog of cases.

Investigative Staff Handles Complaint Resolution and Routine Inquiries. As shown in Exhibit 13, the amount of wages collected by the unit resulting from violations of the Wage Payment and Collection Law fluctuate annually based on the number of resolved claims and the amount of wages included per claim. Often claims can be resolved through informal mediation with the involved parties. However, some claims must be settled through legal action. A high number of cases were resolved by legal action in 2008 and 2009. DLI advises that this occurred due to many claims being filed against several large employers; large employers are more likely than small businesses to utilize the legal system to adjudicate wage disputes with employees.

The unit currently consists of four full-time investigators, one of whom is the direct supervisor of the other three. The unit's day-to-day operations are overseen by the Employment Standards and Classification program manager.

The unit's four full-time investigators respond to written complaints from employees regarding unpaid wages. The Wage Payment and Collection Law does not authorize the

Commissioner of Labor and Industry to conduct unannounced on-site reviews of records. Thus, the unit does not send staff to businesses to determine the existence and extent of a violation. Instead, investigators place telephone calls and send letters requesting documentation from employers and, if necessary, from employees. Investigators attempt to inform employees and employers of the law's provisions and often can resolve disputes informally. The most common complaints include an employee not receiving a vacation reimbursement, last paycheck, or other issues related to the termination of employment. Most cases involve relatively small amounts of money and are resolved without legal action.

The investigative staff handled nearly 44,000 telephonic inquiries in fiscal 2011, which is an average of roughly 3,700 inquiries per month. These inquiries may pertain to an ongoing investigation or may be requests for information regarding State or federal employment laws. Common queries include "Does the law allow a person to work all day without a break?" and "Can an employer reduce my salary?" Thus, a primary function of the unit is to serve as a clearinghouse for information regarding labor and employment issues and workers' rights. The work time each investigator dedicates to pursuing the resolution of complaints is significantly limited by the lack of any administrative or clerical support staff within the unit. As a result, investigative staff performs many administrative duties such as answering phones, explaining the process of filing a complaint, and answering common inquiries regarding employment laws.

Limited Penalties Exist for Wage Payment Violations. The Wage Payment and Collection Law establishes that employers who violate the law are guilty of a misdemeanor and may be fined up to \$1,000. This is the only recourse available to the unit to penalize an employer who violates the law, as there are no administrative penalties in statute. The unit rarely, if ever, files criminal charges against an employer due to the cumbersome nature of the adjudication process. Also, the law offers the unit no feasible means to impose a penalty on employers who commit habitual or egregious violations. (Aggrieved employees may pursue a private right of action against an employer to receive treble damages, attorney's fees, and other costs.)

Chapter 151 of 2010 establishes an administrative procedure for resolving wage complaints involving \$3,000 or less whereby the Commissioner of Labor and Industry, or a designee, may issue a "wage order" requiring the employer to pay the claim if strong evidence exists indicating that an employer owes back wages to an employee. The wage order includes a requirement that the employer pay 5% annual interest calculated from the date when wages were to be paid. The division currently processes 10 to 15 wage orders per week and reports that in about 60% of the cases employers remit owed wages shortly after receiving the order. Early indications are that the procedure increases the efficiency of complaint resolution and results in faster recovery of owed wages. Nevertheless, the payment of owed wages is delayed by an average of six to eight weeks because the Comptroller's Office reviews the tax records of each employee who is owed wages to determine whether that person owes back taxes to the State; if the person has a tax obligation, the Comptroller may retain a portion of the wages.

Some Labor Laws, Including the Wage and Hour Law, Are Not Actively Enforced

The Maryland Wage and Hour Law, enacted in 1965, is the State complement to the federal Fair Labor Standards Act (FLSA) of 1938. State law sets minimum wage standards that provide a maintenance level consistent with the needs of the population. Under the Maryland Wage and Hour Law, employers are generally required to pay each employee at least \$7.25 per hour (the current federal minimum wage). Maryland has exemptions to its minimum wage law for various types of workers. The federal law contains similar exemptions.

Under the Wage and Hour Law, some workers are entitled to one and one-half times the usual hourly rate for all hours worked beyond 40 in a week. Similar to the federal law, State law includes exemptions for some employees, particularly in the retail and hospitality sector.

The Maryland Wage and Hour Law authorizes the Commissioner of Labor and Industry to investigate complaints about minimum wage payments and overtime compensation and to review wage records to enforce compliance with the law. Since the budget cuts of 1991, the division has not exercised this authority. Because the State and federal laws are similar, Maryland relies on the federal government to enforce the law by referring complainants to the Employment Standards Administration at DOL. The division does not track the number of referrals or complaint outcomes resulting from DOL investigations on behalf of Maryland workers.

Many New Laws Have Been Enacted. Since the full evaluation of DLI in 2002, 22 laws have been enacted in areas enforced or overseen by the unit. **Exhibit 14** displays the legislative changes affecting the unit since 2002. Most of these statutory changes are minor and do not significantly impact the workload of the unit. However, several new laws require the unit to implement new enforcement mechanisms and respond to additional complaints from employees.

Limited Staffing Hampers Enforcement of Recent Legislation. Chapters 612 and 613 of 2010 establish shift break requirements for employers who operate specified retail establishments. The law applies to retail businesses in the State that employ 50 or more retail employees during each work day for 20 or more weeks in the preceding or current year. The employees may be located in one location or in multiple franchised locations that operate under the same trade name. The law does not apply to wholesale establishments, restaurants, or to units of State, county, or municipal governments. In order to enforce the new law, DLI requires an additional investigator to investigate complaints, mediate disputes between employers and employees, and conduct employer outreach. Although Chapters 612 and 613 took effect March 1, 2011, DLI has not been authorized to hire the additional staff member. Thus, the unit's enforcement of these new statutory requirements is minimal or nonexistent.

Exhibit 14
Legislative Changes Since 2002

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2003	316	Extends the termination date applicable to various programs and boards housed within the Division of Labor and Industry to July 1, 2014. Corrects references to funding sources for several programs. Repeals the Commissioner of Labor and Industry's authority to regulate employment agencies. (Certain provisions regulating practices of employment agencies are maintained.)
2005	573	Authorizes employers to credit an employee's wages to a debit card or card account.
2006	2	Requires employers to pay the greater of the federal minimum wage or a wage that equals a rate of \$6.15 per hour to employees subject to federal or State minimum wage requirements. Alters the tip credit that employers can apply against the direct wages paid to employees classified as tipped employees.
	458	Prohibits an employer from printing an employee's Social Security number on the employee's paycheck, an attachment to a paycheck, direct deposit notice, or other similar document.
2008	114	Requires an employer to keep a record of the racial classification and gender of employees. Requires the Commissioner of Labor and Industry to study pay disparity issues and report findings to the General Assembly by October 1, 2013.
	434, 435	Authorize the Commissioner of Labor and Industry to initiate an investigation or investigate a complaint that an employment agency has failed to submit a penal bond and establishes civil penalties for noncompliance.
2009	188	Establishes, for the purpose of enforcement only, a presumption that work performed by an individual paid by an employer creates an employer-employee relationship, subject to specified exceptions. Prohibits construction companies and landscaping businesses from failing to properly classify an individual as an employee, and establishes investigation procedures and penalties for noncompliance.
2010	99, 100	Clarify that the definition of a wage, as it relates to the State's Wage Payment and Collection Law, includes overtime pay.
	151	Establishes an administrative procedure for resolving wage complaints involving \$3,000 or less whereby the Commissioner of Labor and Industry may issue an order requiring the employer to pay the claim.
	612, 613	Require employers that operate certain retail establishments to offer nonworking shift breaks to their employees. Apply to retail businesses in the State that employ 50 or more retail employees during each work day for 20 or more weeks in the preceding or current year; do not apply to wholesale establishments, restaurants, or units of State, county, or municipal governments.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2011	28, 29	Prohibit an employer from using an individual's credit report or credit history as a basis to deny employment to an applicant for hire, discharge an employee, or determine compensation or the terms of employment; establish certain exemptions whereby an employer may request and use the credit report or credit history of an applicant or employee when making employment decisions.
	118	Amends the Wage Payment and Collection Law by specifying that an agreement between an employer and an employee to work for a pay rate that is less than the wage required by law is void and therefore nonbinding.
	324	Authorizes a county or municipal corporation to pay the wages of an employee by direct deposit and allows a county or municipality, with some exceptions, to require an employee to receive wages in this manner as a condition of employment.
	494, 495	Specify that an employer may not take adverse action against an employee who files a complaint against the employer for a violation of the State's Wage and Hour Law.

Source: Laws of Maryland

Chapters 28 and 29 of 2011 took effect October 1, 2011, and prohibit an employer from using an individual's credit report or credit history as a basis to deny employment to an applicant for hire, discharge an employee, or determine compensation or the terms of employment. DLS estimated that enforcement of this legislation requires four and one-half additional staff members (two regular staff members and two and one-half contractual staff members) for implementation and enforcement. The division advises that, due to budgetary constraints, it does not expect to receive authorization to hire these staff members in advance of the Acts' effective date or any time in the foreseeable future.

Employment of Minors – Permit System Used to Monitor Compliance

Maryland's laws regarding employment of minors, originally enacted in 1886 and substantially amended in 1977, limit the types of occupations, the number of hours, and the periods of the day during which youths aged 14 through 17 may work. Statute also regulates the employment of children of all ages who work as models, performers, or entertainers. Statute allows minors to engage in safe occupations that might offer beneficial experiences while barring them from jobs that might negatively impact their education or their physical, mental, or moral welfare.

State law establishes a permit system to regulate the employment of minors. Employers may not hire a minor unless the individual has a valid work permit. To make the system accessible to young job seekers, the Commissioner of Labor and Industry has authorized officials at secondary schools and police departments in tourist areas, such as Ocean City, to issue work permits. The application process was recently modified and is now available online through the DLLR website. Children wishing to work as models, performers, and entertainers, however,

must seek their permits in-person so that the division can better monitor the employment activities of young children and teenagers in these types of businesses. The total number of work permits issued decreased significantly between calendar 2005 and 2010, from about 59,600 in 2005 to 39,900 in 2010. The decrease is most likely due to the recent economic downturn.

As with the Wage and Hour Law, in 1991 the unit eliminated active enforcement of the provisions related to employment of minors. It maintained the permit system, however, to enable employers and minors to comply with the laws. In addition, the federal child labor law requires that the permit system be administered by the states. Due to cost containment measures, the commissioner's office administers the permit system and handles complaints through correspondence with the employer. Through this process, the division informs the employer about an alleged violation and about the provisions of law. Serious complaints, or multiple complaints against one employer, are referred to the Employment Standards Administration of DOL for possible investigation under the federal child labor law. The federal government takes violations of child labor laws seriously, and when a violation is received by DOL, it becomes a priority for that particular regional office. In addition, federal penalties for violations of the child labor laws are more stringent than State penalties. According to division staff, such referrals are rare.

There Are Very Few Remaining Traditional Employment Agencies

As authorized by Title 9 of the Business Regulation Article, the Commissioner of Labor and Industry licenses and regulates employment agencies that charge fees to prospective employees. The employment agency industry has changed significantly since the General Assembly passed the Maryland Employment Agency Act of 1916. In the past, agencies, under a contractual arrangement with a job seeker, would identify vacant jobs and refer workers to interviews, typically for those seeking entry-level employment as bookkeepers, typists, or stenographers. In exchange for employment, the worker would pay a fee that often consisted of a portion of his or her wages. For example, the agency contract might require payment of 15% of earnings during the first year of employment.

Nearly all of these traditional types of employment agencies have disappeared. As of July 2011, 69 agencies were licensed by the division, nearly all of which are not traditional employment agencies. Over the last 10 to 15 years, job seekers have had less of a need to locate employment opportunities through fee-based services because the Internet offers a great deal of access to information about available jobs.

The division advises that most of the current licensees operate in the entertainment industry by serving as booking agents for bands, seeking theater performances for actors, and arranging contracts for models. These types of agencies represent a sizeable portion of those licensed under the Maryland Employment Agency Act.

Because of protections included in other laws, the Maryland Employment Agency Act does not apply to many businesses that are commonly thought of as employment agencies. For example, temporary employment agencies, such as Manpower, Inc. and Kelly Temporary

Services, do not need an employment agency license to operate in Maryland. Even though a temporary employment agency assigns clients to work at other businesses, the agency itself hires and pays wages to its clients. Because of this employer-employee relationship, the employee receives protection under State and federal labor laws. Executive search firms represent another type of employment agency excluded from licensure under the Maryland Employment Agency Act. In Maryland, these agencies enter into a contract only with the employer, not with the prospective employee, and may not charge advance fees to the job seeker. The prohibition against charging advance fees is an important protection provided by Maryland law. The provision has reportedly been successful in deterring the proliferation of executive search agencies that can charge fees to the unemployed with the promise of high-paying jobs.

Division Issues Few Farm Labor Contractor Licenses

Title 7 of the Labor and Employment Article, enacted in 1982, establishes a regulatory system designed to protect migrant farm workers. A farm labor contractor is an individual who, for money or other consideration, recruits, hires, employs, or transports migrant or seasonal agricultural workers, or offers housing to migrant agricultural workers. A farm labor contractor must obtain a license before performing any farm labor contracting activity in Maryland. Between calendar 2006 and 2010, the number of farm labor contractor licenses issued by the division decreased from nine to five. Due to resource constraints, the division cannot ensure that all contractors operate with a license, nor can it ensure that all licensees comply with the applicable laws. Under Title 7, the Commissioner of Labor and Industry has the authority to investigate, administer oaths, depose witnesses, and issue subpoenas to enforce the law. However, as with the Wage and Hour Law and provisions of law regarding employment of minors, staff refers complainants to DOL.

Mediation and Conciliation Operates on a Fee-for-service Basis

In 1969, the General Assembly created the State Mediation and Conciliation Service to serve as an independent, neutral third party in labor relations. The division has traditionally offered three types of labor relations services. The first type of service involves division staff helping to resolve election disputes between management and unions by serving as judges in collective bargaining elections. During elections, staff also monitors labor organizations competing to represent the same employees to ensure that the organizations do not violate laws or prescribed rules of conduct. The second type of service involves hearing disputes and rendering decisions in arbitration and unfair labor practices cases. The third service provided is mediation. As a neutral third party, division staff typically enters the negotiations when the parties cannot reach agreement on major issues.

Funding for the service was reduced significantly during the State budget shortfalls of the early 1990s. Although no funds are budgeted for this purpose, DLI continues to offer the service on a fee-for-service basis. Since various alternatives to State mediation exist – for example, federal mediation services and various private or nonprofit entities such as the American Arbitration Association – DLI receives few requests for State mediation services. Any costs associated with mediation services are borne by the Office of the Commissioner and are

reimbursed by the parties involved. In 2011, DLI conducted an election for teaching professionals in Howard County; DLI advises that it is unlikely to receive any other requests for mediation and conciliation services this year.

Workplace Fraud Unit: Enforcement Fully Underway in 2011

The Workplace Fraud Act of 2009 Necessitated Creation of an Additional Unit

As noted earlier, Chapter 188 of 2009 – “The Workplace Fraud Act” – establishes a rebuttable presumption that work performed by an individual paid by an employer creates an employer-employee relationship. The Act applies only to the construction and landscaping industries. Under the Act, an employer misclassifies an individual when an employer-employee relationship exists but the employer designates the individual as an independent contractor. Chapter 188 and subsequent regulations establish criteria for what constitutes an employer-employee relationship and when it is appropriate to classify an individual as an independent contractor.

When a company hires an employee, it is responsible for paying half of that employee’s Social Security and Medicare taxes, as well as premiums for workers’ compensation and unemployment insurance coverage. Employers also typically withhold federal, State, and local income taxes. An employee is responsible for half of his or her Social Security and Medicare taxes, as well as any State and federal income tax in excess of the amounts withheld by the employer. By contrast, an independent contractor pays all of his or her Social Security and Medicare taxes and has no income taxes withheld but is still responsible for paying them in full.

Individuals misclassified as independent contractors may not be subject to labor and wage protections, may not receive workers’ compensation or unemployment insurance benefits, and may not pay an appropriate level of taxes to the State or federal government. Moreover, companies that misclassify employees maintain a lower overhead and have a competitive advantage with respect to those that abide by the law in the treatment of their workers.

DLLR’s Division of Unemployment Insurance has conducted random and targeted audits of employers registered with the division to determine whether employees are correctly classified. Results of these audits indicate that the rate of misclassification may be as high as 20% to 25%.

Chapter 188 distinguishes between an employer who *improperly* misclassifies an employee and an employer who *knowingly* misclassifies an employee, and penalties are more severe for an employer who is guilty of knowingly misclassifying an employee. An employer found to have improperly misclassified an employee must, within 45 days, pay restitution to any employee not properly classified and come into compliance with all applicable labor laws. An employer is subject to a civil penalty of up to \$1,000 for each employee not in compliance, but the Commissioner of Labor and Industry cannot penalize employers who conform to applicable labor laws within 45 days.

For a knowing violation, an employer is subject to a civil penalty of up to \$5,000 per misclassified employee, regardless of whether the employer enters into compliance within 45 days. Penalties can be doubled for employers who have previously violated the Act's provisions. An employer who has been found to have knowingly misclassified employees on three or more occasions may be assessed an administrative penalty of up to \$20,000 for each misclassified employee.

Workplace Fraud Unit Very Active in First Year of Existence

The Workplace Fraud Unit began its operations in September 2010 but was not fully staffed until February 2011. As shown earlier in Exhibit 10, the unit has 10 full-time staff members, including an assistant Attorney General, 4 fraud investigators, and 2 auditors who are certified public accountants.

The unit began by reviewing prevailing wage records of State-funded construction projects to determine if contractors had properly classified employees. During fiscal 2011, the unit conducted 72 audits of *construction* firms that contracted with the State. The unit issued 9 citations based on these audits and levied \$15,200 in penalties. In *total*, the unit conducted 197 audits, issued 12 citations, and assessed \$33,200 in penalties in fiscal 2011; the unit undertook 623 inquiries into the activities of construction and landscaping companies and conducted 256 site visits. The unit also found 122 workers to be in violation and discovered \$2.5 million in unreported wages.

Certain Statutory Provisions Hinder Compliance

Based on early activity, division staff advises that certain provisions included in Chapter 188 may hinder employer compliance with the Act. For instance, the Act allows an employer to classify an individual as an independent contractor if the individual establishes himself or herself as a "business entity," even if the designation as an independent contractor would otherwise constitute workplace fraud. It is unclear whether the provision serves a viable purpose in some instances, but it may be a loophole that allows an employer to legally misclassify an individual. The Act also requires an employer to notify an independent contractor of the implications of such a classification. Additionally, the Act essentially does not punish first-time offenders, as long as they comply within 45 days, and it does not include a general penalty provision for violations of the Act that do not involve misclassification.

Special Funding Enables Adequate Staffing and Rigorous Enforcement

Although the unit is a subprogram of the generally funded Employment Standards and Classification program, the unit utilizes special funds to cover its expenditures. The special funds used to support these expenditures are derived from the State's Workers' Compensation Commission (WCC). The commission funds its adjudicatory operations by levying an assessment on workers' compensation insurers in the State. However, funds generated from the commission's assessment are also used to support various worker or public safety and health programs, such as the division's Safety Inspection, Railroad Safety, and MOSH programs; these programs are discussed in other sections of this report.

In fiscal 2011, the first year of activity, the unit's special fund expenditures were \$587,662. The unit's expenditures are expected to increase in future years due to annualization of staff salaries (most unit staff were not employed at the beginning of fiscal 2011). The unit does not issue licenses or collect special fund revenues. Penalty revenue associated with workplace fraud citations is deposited into the State's general fund.

Recommendations

There is a continued need for the existence of the Employment Standards and Classification program to enforce or oversee various statutory requirements and enforcement efforts. Specifically, there is a continued need in the State for the Employment Standards Service Unit to enforce the Wage Payment and Collection Law and oversee the Wage and Hour Law, statutes related to the employment of minors, and actions of employment agencies and farm labor contractors. Additionally, the Workplace Fraud Unit actively enforces the recently enacted Workplace Fraud Act of 2009 to ensure the provision of employee rights and benefits and increase the likelihood that employees and employers meet their tax obligations. **Nonetheless, given concerns about the ability of the units within the Employment Standards and Classification program to adequately enforce various statutes and fulfill their statutory obligations, DLS recommends a full evaluation of the Employment Standards and Classification program to address the following issues:**

- **Lack of Enforcement of Various Laws Under the Program's Purview:** Although State law authorizes or requires the Commissioner of Labor and Industry, or designee, to investigate potential violations of the Wage and Hour Law, child labor provisions, and other existing statutes, the division only actively conducts investigations of the State's Wage Payment and Collection Law. The full evaluation should examine (1) whether the lack of enforcement conforms with legislative intent; (2) the enforcement of wage and hour violations by DOL and whether enforcement by the State might be more effective; and (3) the extent to which recently enacted legislation is not being enforced by the division due to lack of additional staffing.
- **Staffing and Funding Shortages:** The Employment Standards Service Unit has no clerical or administrative support staff members. Moreover, the unit employs only four investigators to enforce the Wage Payment and Collection Law and respond to several thousand inquiries each year from the public regarding complaints or requests for information. Finally, in fiscal 2007 and 2009, the unit's expenditures were lower than \$315,000, the budgetary appropriation required in statute. The full evaluation should analyze the division's recent staffing trends in regards to (1) the experience of current investigative staff and recent or expected turnover; (2) whether any internal reorganization may be possible so that the unit may obtain much needed administrative support; and (3) why the unit's expenditures were below \$315,000 in fiscal 2007 and 2009.

- **Enforcement Mechanisms and Penalty Provisions:** The full evaluation should review the various statutes enforced or overseen by the Employment Standards Service Unit to analyze the effectiveness of existing penalty provisions. Further, the full evaluation should analyze whether or not additional enforcement mechanisms, such as administrative penalties or citation authority, would offer staff an effective but fair means of sanctioning serious violators and deterring future violations.
- **Effectiveness of Wage Orders in Wage Payment and Collection Cases:** The full evaluation should collect quantitative and qualitative information regarding whether wage orders have made the resolution of wage payment and collection cases more efficient.
- **Lack of Consistency Between FLSA and the State's Wage and Hour Law:** The full evaluation should review the interplay between federal and State wage and hour provisions to determine if employers may be subject to a confusing or conflicting set of requirements.
- **Effectiveness of Workplace Fraud Enforcement:** The Workplace Fraud Unit began its work midway through fiscal 2011 and uncovered numerous violations within the first few months of activity. The full evaluation should review the unit's fiscal 2012 performance data and analyze whether the unit is effectively (1) bringing employers into compliance with regards to employee classification; (2) identifying unreported wages and improving tax compliance; and (3) sharing information with pertinent State agencies.
- **Amendments to Workplace Fraud Statute:** Division staff advises that the lack of a general penalty provision in the Workplace Fraud Act inhibits the Workplace Fraud Unit's ability to enforce the statute. According to division staff, many employers are not notifying independent contractors of the implications of such a classification and the important distinction between being classified as an independent contractor and an employee. The full evaluation should determine whether or not a general penalty provision in the Workplace Fraud Act would encourage employer compliance. Further, the full evaluation should (1) analyze the practical effect of the provision allowing an employer to classify an individual as an independent contractor if the individual establishes himself or herself as a "business entity," even if the designation as an independent contractor would otherwise constitute workplace fraud; and (2) consider whether statute should be amended to allow the unit to penalize first-time offenders.

Prevailing Wage Enforcement

The Prevailing Wage Unit, established in 1969, is the administrative entity responsible for determining wage rates and fringe benefits prevailing in the locality (county) for construction workers employed on public works projects. The Prevailing Wage Unit also enforces the prevailing wage and living wage laws, each of which is discussed separately below. Although the unit is housed within DLI's Employment Standards and Classification program it is discussed separately in this evaluation due to its advisory council having a separate termination date.

Between fiscal 2005 and 2008, there were between 5 and 8 positions staffed in the unit; however, with the enactment of the living wage law in 2007, this number has been expanded to its current level of 11 positions beginning in fiscal 2009. The total budget of the Prevailing Wage Unit has likewise grown from \$354,339 in fiscal 2005 to \$796,892 in fiscal 2010 before dropping to \$699,285 in fiscal 2011. In fiscal 2011, costs of the unit were defrayed due to a sharing of resources with the Workplace Fraud Unit. Chapter 444 of 2005 (the Budget Reconciliation and Financing Act) requires the Governor to include an appropriation of at least \$385,000 for the unit in the budget submitted to the General Assembly.

Prevailing Wage Law Mirrors Federal Law

The Davis-Bacon Act, the federal prevailing wage enabling legislation, applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair, including painting, of public buildings or public works. The Act requires contractors and subcontractors to pay their laborers and mechanics, at minimum, the wage rates and benefits determined by the Secretary of Labor to be prevailing in the area for corresponding classes of laborers and mechanics employed on projects of a similar nature. The purposes of the Davis-Bacon Act include:

- stabilizing wages by preventing employers from paying less than what is commonly paid to workers in a region;
- preventing “unscrupulous” contractors from undermining local employment by “low bidding” on government contracts and/or importing workers at lower wages;
- ensuring that publicly financed construction projects can compete for the best qualified workers in an area; and
- promoting labor stability by providing a government-mandated baseline for wages.

State-level prevailing wage legislation is similar to federal legislation but differs in the way prevailing wages are calculated and by levels of coverage. Maryland is 1 of 31 states along with the District of Columbia that enforce prevailing wage laws.¹ Since the last sunset review in 2002, only one change has been made to the prevailing wage law, which is codified in §§ 17-201 through 17-226 of the State Finance and Procurement Article. Pursuant to Chapters 562 and 563 of 2010, if the Commissioner of Labor and Industry receives a complaint that an employee under a public works contract was paid less than the prevailing wage rate for that employee’s classification, then the commissioner must investigate the complaint and attempt to resolve the complaint informally within 90 days of its receipt.

¹Cato Journal, Vol. 30, No. 1 (Winter 2010).

Establishment of Prevailing Wages Relies on Survey

The Prevailing Wage Unit gathers current relevant wage data annually, which it uses to determine prevailing wages for each locality and job classification. Statistical information needed to issue wage determinations is obtained through surveys and from payrolls submitted by contractors. Field investigations are also used to obtain current information. Wage determinations are issued for each locality in the State (23 counties and Baltimore City) and remain in effect for one year from the date they become final. Three types of construction require wage determinations: (1) building and heavy construction; (2) highways; and (3) bridges.

In September of every year, an invitation is sent to various entities and individuals, including contractors, subcontractors, and unions, to participate in the prevailing wage annual survey. Everyone who was a participant in the prior year survey is sent an invitation. Further, every contractor that has submitted certified payroll records in the previous three years is sent an invitation to participate in the survey.² As of 2008, the prevailing wage survey is no longer staggered by county. All 23 counties and Baltimore City are now surveyed annually. In 2009, a database was created to electronically request and obtain prevailing wage determinations. In 2010, the database was updated to permit electronic submission of survey information from contractors. This process permits participants to include all projects including State, federal, and private contracts. Thus, the invitations request that the recipients submit electronic responses to the surveys; however, recipients may also complete the surveys in paper form and mail them to the Prevailing Wage Unit.

The development and implementation of the automated system has addressed significant problems with the surveys from previous years. First, before the implementation of the automated system, duplicate information was often used in the prevailing wage determinations. As an illustration, contractors could send in survey responses by mail and by fax, and both data sets would be entered. In another example, union organizations may send in survey responses that had already been submitted by contractors for the same projects. Establishment of the automated system has enabled the Prevailing Wage Unit to automatically identify duplicate information and discard it for purposes of determining the prevailing wage.

Second, the automated system has permitted the Prevailing Wage Unit to substantially reduce the amount of time and effort it takes to respond to challenges to the prevailing wage. If a contractor contested the prevailing wage in prior years, it would take weeks to prepare and relay the relevant data and resolve the dispute. Now, reports can be printed in minutes, and the system automatically redacts confidential information, permitting the Prevailing Wage Unit to share the relevant data with the individual/entity contesting the wage in very short order.

²Pursuant to regulation, certified payroll records are kept on file by the Prevailing Wage Unit for three years.

The Prevailing Wage Unit would like to improve the automated system. For example, it is necessary to archive information from prior years to eliminate any commingling of data. Also, presently there is no requirement that contractors use the automated system, and the Prevailing Wage Unit believes that adoption of a regulation requiring its use along with a penalty provision for failure to do so would increase its effectiveness.

Enforcing the Prevailing Wage Yields Recoveries and Liquidated Damages

The Prevailing Wage Unit enforces compliance with the prevailing wage by a combination of three methods: (1) responding to employee complaints; (2) conducting on-site inspections; and (3) reviewing certified payroll records submitted by contractors and subcontractors.

Employee Complaints: Division staff advises that employee complaints are infrequent. Currently, employee complaints are not tracked separately from the unit's investigations. Accordingly, there is no specific data on the number of complaints. However, each employee complaint has been investigated and followed through to resolution by investigators.

On-site Inspections: The Prevailing Wage Unit regularly conducts on-site inspections of public works projects subject to the prevailing wage. In fiscal 2011, 470 on-site investigations were conducted. The Prevailing Wage Unit has a standard set of procedures it follows when conducting an on-site inspection. The investigation includes observing work being performed and reviewing reports and records of the contractors and subcontractors. Further, employee interviews are considered essential to a complete investigation. During an on-site investigation, the investigator checks to see if the wage determination is properly posted, obtains a list of all subcontractors and the type of work being performed on the job site, observes the work being performed with particular attention paid to whether the workers are performing tasks within their classification, and examines the employer's payroll records for completeness and accuracy. After completing all aspects of the investigation, the investigator submits a written report with recommendations to the prevailing wage supervisor.

Review of Certified Payroll Records: Each contractor required to pay the prevailing wage rate must submit certified payroll records to the Commissioner of Labor and Industry within 14 days after the end of each payroll period. Failure to submit certified payroll records or late submission of certified payroll records subjects the contractor to applicable fines.

Submitted payroll statements are audited to determine whether employees were paid according to the determinations issued. In fiscal 2011, the Prevailing Wage Unit received 49,103 certified payroll records with a goal of auditing at least 50% of the submitted records. During fiscal 2010, the Prevailing Wage Unit received 42,066 certified payroll records representing 23,322 contractors. It performed 18,417 audits (44%, or slightly below the 50% target) and issued 252 determinations encompassing more than \$2.2 billion in State contracts. It recovered \$380,115 in unpaid wages for employees and collected \$202,339 in liquidated damages for violations.

The Advisory Council on Prevailing Wage Rates Largely Dormant

The six-member Advisory Council on Prevailing Wage Rates was established in 1969 and, pursuant to the Maryland Code, is supposed to advise and submit recommendations to the Commissioner of Labor and Industry on the commissioner's functions related to prevailing wage rate calculations. The current membership of the advisory council is shown in **Appendix 3**.

In 2001, DLS performed a preliminary sunset evaluation and indicated that the advisory council may not be necessary. The evaluation indicated that the advisory council had not met since 1997 at the time of the review and that its functions appeared disjointed from its purpose. DLS opined that the advisory council acted largely in a lobbying capacity and that its functions may be more appropriately handled by DLI, more specifically, the Prevailing Wage Unit. Accordingly, a full evaluation was conducted in 2002. The evaluation concluded:

Ten years ago, the last sunset evaluation of the council found that it met infrequently. The council has recently continued that pattern, with the last two meetings failing to generate the quorum necessary to approve meeting minutes from 1999.

Consequently, termination of the advisory council was recommended in 2002; however, this recommendation was not implemented. The advisory council has again continued its pattern of not meeting and not performing any discernible function. Only two meetings have been held in the past 10 years – both of them fairly recently. One meeting was held in May 2010, and this meeting had a quorum. The other meeting, held in May 2011, did not have a quorum. As a result, the minutes of the May 2010 meeting could not be approved. Nothing substantive was accomplished at either of these meetings. Presently, no meeting is scheduled to take place despite a statutory requirement that the council meet at least twice per year.

Living Wage First in the Nation for States

Chapter 284 of 2007 made Maryland the first state to require State service contractors to pay their employees a “living wage.” Two living wage rates are established statewide. Contracts in which at least 50% of the contract services will be work performed in Montgomery, Prince George’s, Howard, Baltimore, Anne Arundel counties or Baltimore City are defined as “Tier 1.” “Tier 2” applies to all other contracts. For fiscal 2008, the living wage was set at \$11.30 for Tier 1 work and at \$8.50 for all other areas of the State (Tier 2). The living wage rates are adjusted annually for inflation by DLLR under the authority of the Commissioner of Labor and Industry.

The commissioner approved inflation-based increases to both the Tier 1 and Tier 2 living wage rates for fiscal 2012. Effective September 27, 2011, the Tier 1 living wage is \$12.49, and the Tier 2 wage is \$9.39. Montgomery and Prince George’s counties and Baltimore City have local living wage ordinances that apply to their procurement of services.

State contractors or subcontractors with a State contract for services valued at \$100,000 or more must pay the living wage to employees who spend at least half their time during any work week working on the State contract. However, the living wage requirement does not apply to employees who are younger than age 18 or who work full time for less than 13 consecutive weeks for the duration of the contract. Employers who provide health insurance to workers may reduce wages by all or part of the hourly cost of the employers' share of the premium for each employee. The commissioner may allow an employer who contributes to its employees' tax-deferred retirement savings account to reduce the living wage rate by the hourly cost of the employer's contribution, up to 50 cents per hour.

State contractors are not required to pay a living wage if doing so would conflict with a federal requirement or if they are:

- providing emergency services to prevent or respond to an imminent threat to public health or safety;
- a public service company;
- a nonprofit organization;
- another State agency;
- a county government (including Baltimore City); or
- a firm with 10 or fewer employees that has a State contract valued at less than \$500,000.

The Commissioner of Labor and Industry is charged with adopting regulations, investigating wage complaints, issuing orders for hearings, issuing determinations, serving each interested party, and determining the amount of restitution for violations. Every three years, the commissioner must assess the appropriateness of the inflation measure used to recalculate the living wage. The commissioner must also assess whether Maryland counties are subject to the appropriate living wage rates when considering labor costs in their jurisdictions.

Living Wage Enforcement Less Rigorous than Prevailing Wage

The Prevailing Wage Unit is responsible for monitoring compliance with the living wage requirement for State service contracts. Since the inception of the living wage requirement, DLLR has examined 756 contracts, of which approximately 40% have been exempt under the law; on the basis of contract value, 74% of the total value of the contracts was exempt from the living wage law. After accounting for exemptions and terminated contracts, DLLR reports that 382 contracts with a total value of \$2.5 billion are under active review for compliance. Data on exemptions are not available dating to the program's inception, but for fiscal 2011, the nonprofit exemption was invoked the most frequently (39%), followed by employees not working for 13 consecutive weeks on a contract (18%).

When a State contract for services is signed, the Procurement Office within the Department of Budget and Management notifies the Prevailing Wage Unit. After receipt of this notice, the Prevailing Wage Unit issues an informational package to the contractor that the contractor must submit to the Prevailing Wage Unit. If the contractor is claiming an exemption to the living wage requirements, then this claim is submitted along with the informational package. This informational package includes:

- contractor and employee information forms;
- subcontractor and employee information forms;
- certification of posting the wage requirements; and
- a link to the regulations on the DLLR website.

If the informational package is not submitted by the contractor, the Prevailing Wage Unit notifies the Procurement Office of this failure. If the informational package is submitted, the Prevailing Wage Unit reviews the package for completeness and to determine if any exemptions claimed are warranted. If the Prevailing Wage Unit determines that the informational package is not complete or that the contractor does not qualify for any exemption claimed, a second letter is sent to the contractor and the contractor is required to resubmit.

Once the Prevailing Wage Unit either receives the informational package or issues its second letter determining that the contractor is obligated to abide by the living wage law, the contractor is at that time required to begin submission of certified payroll records to the Prevailing Wage Unit. There is no formal dispute mechanism for the contractor once the determination has been made that the contractor is obligated to comply with the living wage law.

The unit has assigned one wage and hour investigator to carry out its enforcement duties related to the living wage law. The Prevailing Wage Unit monitors compliance in two manners as discussed below.

Reactive – Employee Files a Complaint. If an employee contacts the Prevailing Wage Unit and indicates that the employee is being paid less than the living wage, the unit provides access to formal complaint forms. If the employee files a complaint, the Prevailing Wage Unit, within 30 days after a complaint is filed, conducts an investigation and makes a determination. The Prevailing Wage Unit notifies the contractor of the result of its investigation, and if a violation is determined, includes the amount of restitution and liquidated damages owed. The contractor is given an opportunity to either respond or issue a payment. If a violation is determined and the contractor fails to remedy the violation, the matter may be referred to OAG and notice is sent to the Procurement Office.

Although the living wage law took effect October 1, 2007, complaints were not received until March 2009. **Exhibit 15** documents complaints received from inception of the program through July 2011. More than one-half of the total complaint volume shown was received in the three-month period from May through July 2011.

Exhibit 15
Living Wage Complaint Volume and Outcomes

Year/Month Received	# of Complaints Received	Outcome				
		<u>Withdrawn</u>	<u>Closed</u>	<u>Exempt</u>	<u>Not a LW Contract</u>	<u>Pending*</u>
2009 – March	2	1			1	
2009 – November	1			1		
2010 – January	1				1	
2010 – April	3				2	1
2010 – August	1					1
2010 – September	1					1
2011 – May	2					2
2011 – June	9					9
2011 – July	1		1			
Total	21	1	1	1	4	14

*Pending includes cases pending investigation and action by the Office of the Attorney General.

Source: Department of Labor, Licensing, and Regulation

Proactive – Review of Certified Payroll Records. If review of the submitted certified payroll records of a contractor reveals a violation of the living wage, the Prevailing Wage Unit conducts an investigation and makes a determination. Once a determination is made, the Prevailing Wage Unit notifies the contractor of the result of its investigation and the contractor is given the opportunity to either respond or issue a payment. If a violation is determined and the contractor fails to remedy the violation, the matter may be referred to OAG and notice is sent to the Procurement Office.

In calendar 2010, the Prevailing Wage Unit received 142 new service contracts with a total value of \$508,549,444. The unit reviewed 203 service contracts and processed 607 payroll records. As of December 31, 2010, 636 service contracts were active, 51 service contracts were closed, and 90 were exempt. The unit interviewed 125 employees and recovered \$49,998 in restitution for 188 employees.³

Issues with Living Wage

The Prevailing Wage Unit has expended substantial time and energy developing a system to administer the recently enacted living wage law. It is developing an automated system for the submission of certified payroll records and would like to be able to issue fines or have a mechanism to ensure compliance with automated submissions. The living wage took effect in October 2007, and in 2008, the Prevailing Wage Unit was still implementing the system; accordingly, there were no compliance actions until 2009. Also, staffing was an issue in 2008 and continues to be a concern.

³The bulk of restitution came from a single contractor in April 2010.

Further, the Prevailing Wage Unit would like to enhance communication between the Department of Budget and Management's Procurement Office and the Prevailing Wage Unit. Currently, the Procurement Office sends initial service contracts and documents related to these projects; however, it does not notify the Prevailing Wage Unit if these contracts are extended or if/when the projects terminate. Finally, reviewing exemption claims has proven to be an administrative burden for the Prevailing Wage Unit.

Recommendations

The Prevailing Wage Unit is performing its duties and developing technology and procedures that should increase its efficiency. **Therefore, DLS recommends that LPC waive the unit from further evaluation. As the unit is subject to termination only as a component of DLI, it will be reauthorized when legislation is enacted to extend the termination date for DLI following the full evaluation of the Employment Standards and Classification Program recommended earlier in this report.**

However, the Prevailing Wage Unit should establish a distinct and separate recordkeeping system for employee complaints. Currently, employee complaints are grouped into overall investigations and not separately monitored. **Thus, DLLR should submit a report to DLS by October 1, 2012, providing information related to the tracking of employee complaints.**

DLLR should also submit a report to the Senate Finance Committee and the House Economic Matters Committee by October 1, 2013, that provides an update on the implementation and utilization of the automated system for enforcement of both the prevailing wage and living wage statutes. The report should specifically detail whether or not the implementation of the automated submission system has improved its ability to monitor compliance with the living wage.

Finally, DLS found that the Advisory Council on Prevailing Wage Rates' pattern of not meeting regularly or at all has persisted for at least 20 years. **Thus, DLS recommends that the Advisory Council on Prevailing Wage Rates be further evaluated as part of the full evaluation to assess whether it should be repealed, as recommended in 2002, and whether its duties should be delegated to the Prevailing Wage Unit, which has been performing the functions for which the Advisory Council on Prevailing Wage Rates was created.**

Maryland Occupational Safety and Health

Federal Law Authorizes Creation of State Program

The Williams-Steiger Occupational Safety and Health Act (OSHA) of 1970 requires DOL to establish a program "to assure so far as possible every working man and woman in the nation with safe and healthful working conditions." The Act specifies that states may elect to

assume the responsibility for development and management of a state occupational safety and health program as long as the standards under the state program are “at least as effective as” OSHA standards. The federal OSHA program governs only private-sector employers, but states that choose to operate their own occupational safety and health programs for the private sector must also cover public-sector employers (OSHA oversees workplace safety efforts in federal government workplaces; the state plans must oversee the safety of state and local government workplaces).

In 1971, DLI was designated as the agency responsible for Maryland’s Occupational Safety and Health Plan. In 1973, the division assumed authority and enforcement responsibility, and in 1985, the Maryland program received final federal approval and full enforcement authority in all subject areas covered under the State plan. One-half of all states rely solely on the federal OSHA program. Puerto Rico, the U.S. Virgin Islands, and 25 states operate their own safety and health programs. Of the 25 state-run programs, Connecticut, Illinois, New Jersey, and New York operate only public-sector occupational safety and health programs. Private-sector employers in these four states are regulated by OSHA.

MOSH Approach Includes Enforcement, Consultation, Training and Education, and Research

Within the division, the authority for regulating occupational safety and health has been delegated to MOSH. MOSH consists of four subprograms: General Administration, Compliance and Enforcement, Consultation and Outreach, and Research and Statistics (MOSH’s organizational structure is included as **Appendix 4**). In addition, the Maryland Occupational Safety and Health Advisory Board reviews and recommends standards; its membership is shown in **Appendix 5**.

MOSH seeks to ensure workplace health and safety through a combination of enforcement, consultation, and educational programs; in addition, the program’s Research and Statistics unit collects, monitors, and analyzes data on fatal and nonfatal occupational injuries and illnesses in Maryland.

General Administration Handled by Assistant Commissioner

State law authorizes the Commissioner of Labor and Industry to delegate duties or functions related to MOSH to the Assistant Commissioner of Occupational Safety and Health. Thus, the Office of the Assistant Commissioner administers MOSH. The office is responsible for program planning and policymaking, program analysis and evaluation, and staffing and resource allocation. The office also ensures the appropriate implementation of new laws and monitors the development of new federal standards; the program remained current in its adoption of federal standards in 2010.

Compliance and Enforcement Unit Conducts Inspections

A primary component of MOSH is the Compliance and Enforcement Unit, which is the enforcement arm of MOSH. The Compliance and Enforcement Unit is responsible for ensuring that employers offer a safe and healthful workplace to employees as specified under the MOSH Act. Safety inspectors and industrial hygienists, or health inspectors, perform “scheduled” inspections to identify hazardous conditions and to secure their timely correction – these inspections are on the unit’s schedule but are unannounced on-site inspections. The Compliance and Enforcement Unit conducts safety and health inspections in the public and private sectors.

Enforcement is the largest unit within the agency and includes approximately 55 compliance officers located within three regions of the State. The unit focuses on high-hazard industries, such as the construction and manufacturing industries. In addition, the unit conducts investigations in response to fatalities, serious accidents, employee complaints, and professional referrals. These investigations are prioritized based on the seriousness of each situation to ensure a suitable and prompt response. As **Exhibit 16** shows, the number of inspections has been inconsistent in recent years. Significantly fewer inspections were conducted in fiscal 2006 and 2010 than in other years. This is due, in part, to other compliance investigations performed by MOSH in those years. For example, in fiscal 2006, MOSH responded to a higher number of accidents than in years where more scheduled inspections were performed. In fiscal 2011, a new assistant commissioner pressed the unit to achieve higher inspection rates after the unit posted relatively low performance numbers in fiscal 2010.

The Compliance and Enforcement Unit also offers employers an opportunity to voluntarily comply with MOSH laws and regulations through its Cooperative Compliance Partnership, Safety and Health Achievement Recognition Program or through its Voluntary Protection Program. An employer may receive an exemption from traditional compliance inspection by participating in one of these programs.

Exhibit 16
Inspection and Investigation Activity
Fiscal 2006-2011

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Investigations/Inspections	1,137	1,433	1,346	1,598	1,210	1,819
Violations	4,713	5,446	7,029	7,319	5,926	6,837
Accidents Investigated	150	139	135	121	93	55
Fatalities Investigated	35	32	22	27	18	21

Source: Department of Labor, Licensing, and Regulation

Penalties Apply Only to Private Sector. Private entities are subject to civil and criminal penalties for a violation of the provisions under MOSH. Generally, the civil penalty for a serious violation may not exceed \$7,000 for each violation and – if an employer does not correct the violation within the specified time period – \$7,000 for each day the violation continues. However, the penalty for a willful or repeated violation may be as much as \$70,000 for each violation but not less than \$5,000. If the willful violation resulted in an employee's death, criminal penalties may be assessed – the employer is subject to a fine of up to \$10,000 or imprisonment for up to six months or both. These penalties may be doubled for a second offense. MOSH may issue citations to public-sector employers who do not comply with worker safety provisions, but the agency may not issue fines for such violations.

MOSH Consultation Services Focuses on Small, High-hazard Employers

The MOSH Consultation Services Unit assists private- and public-sector employers, free of charge, to achieve voluntary compliance with MOSH standards to improve workplace safety and health. At the request of the employer, MOSH inspects a workplace for any safety or health hazards. The Consultation Services Unit is separate from the Compliance and Enforcement Unit. Thus, no citations or penalties are issued for any hazards identified in the workplace during a consultation inspection. However, employers are obligated to correct any serious hazards, within an agreed-upon timetable, identified during a consultation inspection.

In addition to on-site hazard surveys, the Consultation Services Unit assists employers through correspondence, telephone calls, meetings, safety and health program assessment and assistance, and limited formal or informal training on-site regarding conditions observed during a survey. The MOSH Consultation Services program helps to identify serious workplace hazards that might otherwise go undiscovered since the Compliance and Enforcement Unit of MOSH conducts random inspections. Consultation Services also helps to improve the relationship MOSH has with employers since it seeks to abate workplace hazards by working with employers rather than penalizing them.

Private-sector Consultation Program. Priority for private-sector consultations is given to small, high-hazard employers. An employer with fewer than 250 employees in the State and fewer than 500 employees nationwide is considered a small employer. An employer is obligated to correct all serious hazards within an agreed-upon timetable. Employers who fail to abate serious hazards risk enforcement action. In 2010, the private sector consultation program completed 210 on-site hazard surveys; 821 serious hazards and 727 other hazards were found.

Public-sector Consultation Program. The public-sector consultation program helps State and local agencies prevent worker injuries and illnesses by conducting site visits, at an agency's request, and following the same procedures as private-sector consultation. In 2010, MOSH completed 18 on-site public-sector hazard surveys; 99 serious hazards and 56 other hazards were found.

MOSH Training and Education Focuses on Public Outreach

The MOSH Training and Education Unit offers employers and employees information about MOSH safety and health requirements through free seminars, publications, and speakers. Free seminars are offered on new MOSH regulations and general topics of interest and are open to the public. Seminars are offered in Baltimore, the Washington metro area, on the Eastern Shore, and in Southern and Western Maryland. Seminar topics pertain to MOSH/OSHA standards and other subjects of general interest. A majority of MOSH's public training is designed for employers in industries known to have a high incidence of injuries, illnesses, and workplace fatalities, such as the construction business. Additionally, the unit developed a presentation geared specifically to students in career and technology education programs who will be entering high-hazard occupations. **Exhibit 17** displays the number of training classes offered and attendees between fiscal 2006 and 2011.

Exhibit 17
Number of Training Courses Offered; Participants
Fiscal 2006-2011

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Training Courses	179	201	84	95	96	105
Training Participants	5,787	5,492	2,101	2,556	2,222	2,267

Source: Department of Labor, Licensing, and Regulation

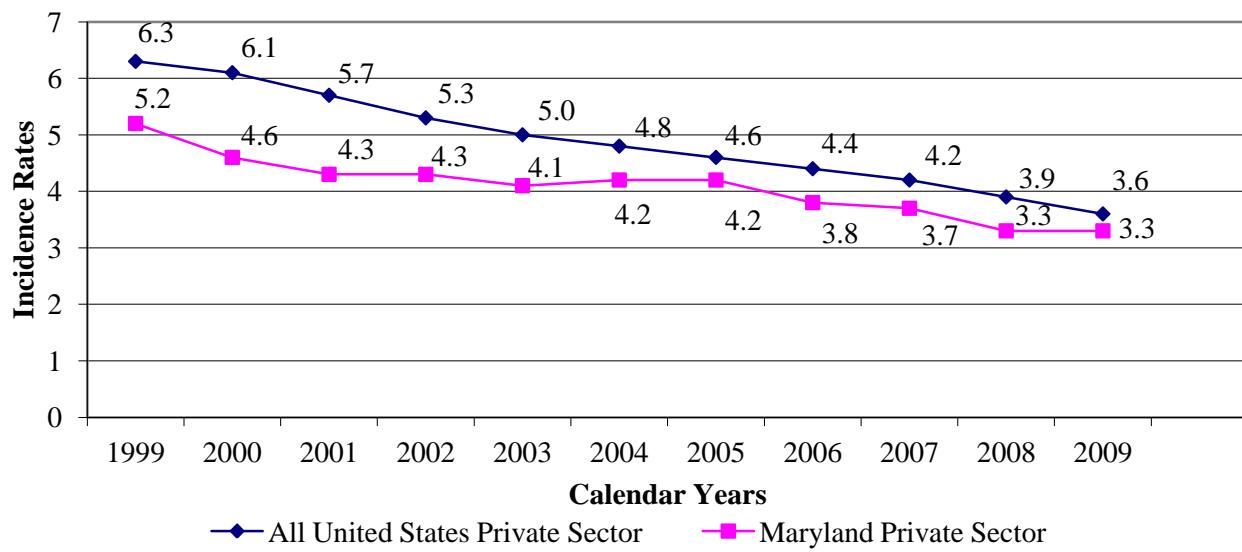
Research and Statistics Unit Monitors Worker Safety in Maryland

In cooperation with the U.S. Bureau of Labor Statistics, the MOSH Research and Statistics Unit conducts the Annual Survey of Occupational Injuries and Illnesses. This survey generates fatal and nonfatal occupational injury and illness statistical data. The data are used by the business community, government agencies, and private individuals. Each year approximately 4,700 Maryland business establishments – selected randomly – participate in the survey. The survey estimates the frequency and number (incidence rates) of nonfatal workplace injuries and illnesses. The injury and illness estimates are based upon logs kept by employers during the year. The survey offers insights into the demographics of the most seriously injured and ill workers (*e.g.*, occupation, gender, race, and length of service), along with the characteristics of their injuries and illnesses (*e.g.*, nature of injury or illness, part of body affected, event or exposure, and source.).

MOSH Outcomes: Rates Typically Lower in Maryland than National Average

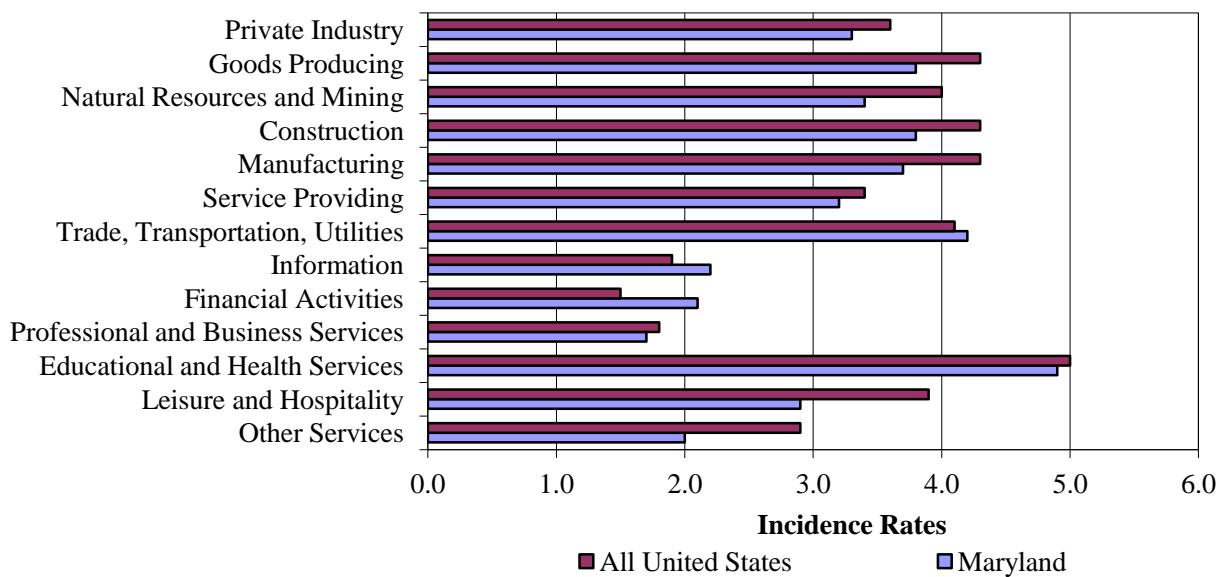
A total of 72,500 nonfatal work-related injuries and illnesses were reported by Maryland's private- and public-sector workplaces during 2009, which decreased by 2,500 compared with 2008. The number of injuries and illnesses in 2009 converts to a total recordable case (TRC) incidence rate of 3.3 injuries and illnesses per 100 equivalent full-time workers, which is lower than the 2009 national average. The number of injuries and illnesses reported in a given year can be influenced by changes in the State's economy, working conditions, work practices, worker experience and training, and the number of hours worked. **Exhibit 18** displays the State and national TRC rates per 100 full-time workers for all nonfatal workplace injuries and illnesses between 1999 and 2009. **Exhibit 19** displays the 2009 State and national TRC incidence rates per 100 workers for total nonfatal occupational injuries by major industry sector. Maryland compares favorably for most sectors; however, Maryland's rates are higher than the national rates for three sectors: trade, transportation, and utilities; information; and financial activities.

Exhibit 18
TRC Incidence Rates per 100 Full-time Workers
Calendar 1999-2009



Source: Department of Labor, Licensing, and Regulation in conjunction with the U.S. Bureau of Labor Statistics

Exhibit 19
TRC Incidence Rates per 100 Full-time Workers, by Sector
Calendar 2009



Source: Department of Labor, Licensing, and Regulation in conjunction with the U.S. Bureau of Labor Statistics

Maryland's rate of workplace-related fatalities is the region's second lowest and well below the national average. **Exhibit 20** displays the State's rate of workplace fatalities and those of five regional states, the District of Columbia, and the national average.

Exhibit 20
Rate of Fatalities per 100,000 Workers
Calendar 2009

Delaware	1.9
Maryland	2.5
New Jersey	2.6
Pennsylvania	3.1
Virginia	3.3
National Average	3.5
District of Columbia	4.0
West Virginia	5.7

Source: Department of Labor, Licensing, and Regulation in conjunction with the U.S. Bureau of Labor Statistics

Oversight of Public-sector Workplaces Is Limited

Public-sector employers may be cited by MOSH for safety and health violations, but public-sector employers are not subject to criminal or civil penalties. Therefore, MOSH has no substantive means to ensure that public-sector employers abate workplace hazards. The MOSH Task Force, which was appointed by the Governor in 1995, recommended “that there be sanctions in the public sector for violations of the MOSH law and regulations.” However, legislation was never introduced to give MOSH this authority.

There may be a reluctance to impose fines against public-sector employers since fines would be paid with public monies. There is also a cost associated with abating workplace hazards. The budget constraints faced by public agencies can make it difficult to abate workplace hazards in a timely manner. Funds used by public agencies to pay fines could be used to abate workplace hazards. Yet, if public agencies are not subject to fines, MOSH does not have any means of ensuring that public agencies are responsive to citations.

If a state chooses to operate its own occupational safety and health program, then, according to OSHA guidelines, it must include public-sector employers. However, public-sector occupational safety and health programs do not have to be operated identically to private-sector occupational safety and health programs. For instance, during compliance inspections for public-sector employers, MOSH cites agencies but does not fine them. By contrast, MOSH cannot warn private-sector employers of safety violations during a compliance inspection because it must cite and fine employers in order to maintain its eligibility for federal funding. While the illness and injury rates for State government agencies are slightly lower than the rates for the private sector in Maryland, the local government rates are significantly higher. This may be due to the nature of services provided by local government such as police and fire protection. However, it may also highlight that it is more difficult for MOSH to work with local government than with State agencies.

Advisory Board Fulfills Role in Recommending Standards

Chapter 44 of 1955 established the Occupational Safety Advisory Board, which was the forerunner to the Maryland Occupational Safety and Health Advisory Board. The board adopted its present name in 1968. The board formulates and proposes rules and regulations in an effort to prevent workplace accidents and occupational diseases.

A primary responsibility of the board is to ensure that MOSH standards remain consistent with federal standards established by OSHA. Since the sunset evaluation in 2002, MOSH has remained current in its adoption of federal standards. The board reviews federal standards and determines whether to adopt them without change or make them more stringent. The board also develops Maryland-specific standards. As evidenced by its recent work on crane safety and tree care and removal standards, the board appears to be fulfilling its role. Changes in workplace standards often require legislation, as shown in **Exhibit 21**.

Exhibit 21
Major Legislative Changes Since the 2002 Full Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2003	316	Extends the termination date applicable to various programs and boards housed within the Division of Labor and Industry to July 1, 2014. Conforms the Labor and Employment Article to Chapter 487 of 2002, which alters State funding of MOSH and other division programs from a general fund appropriation reimbursed by the Workers' Compensation Commission (WCC) to the general fund to a special fund appropriation directly from WCC.
2006	501, 502	Expand the locations in which individuals are prohibited from smoking and impose fines for smoking in nonsmoking areas. Establish such provisions in the Health-General Article of the State code and repeal the obsolete provisions included in the Labor and Employment Article.
2009	640	Specifies that a person may not operate a crane or authorize operation of a crane in the State for the purposes of construction or demolition work unless the operator holds a certificate of competence. The Commissioner of Labor and Industry must adopt regulations to implement, administer, and enforce the provisions of the Act.

Source: Laws of Maryland

The board generally meets when new federal OSHA regulations are issued and need to be reviewed. Thus, the board does not meet each month but typically meets five to seven times per year, depending on the volume of federal initiatives. Although the purpose of the board is to analyze proposed OSHA regulations and assist MOSH staff in implementing equivalent or more stringent regulations, the advisory board often acts in a proactive manner to adopt standards in advance of OSHA or other states. For example, State regulations regarding lead, workplace smoking, and blood-borne pathogens were adopted before similar OSHA standards were issued. The board is currently in the final phase of adopting tree care and removal regulations for the State following several workplace fatalities involving this industry in recent years. Similar federal regulations are being drafted, but board members advise that OSHA sometimes takes years to issue final orders that states must meet or exceed. By conferring with experienced MOSH staff and stakeholders – labor, industry, and other interested parties – the board recommends standards tailored to Maryland's workplaces and industries.

The board consists of 12 members, including the commissioner, who serves as an *ex officio* member. The 11 voting members, appointed by the Commissioner of Labor and Industry with the approval of the Secretary of Labor, Licensing, and Regulation, must represent various constituencies, including the public, as specified below:

- one represents agriculture, recommended by the Secretary of Agriculture;
- one represents businesses that the Public Service Commission regulates, recommended by the chairman of the commission;
- two represent health professions, recommended by the Secretary of Health and Mental Hygiene;
- two represent industry;
- two represent labor; and
- three represent the public.

The MOSH Act stipulates that members be chosen on the basis of competence and experience in the field of occupational safety and health. Members serve six-year terms, and a chairman is appointed by the commissioner from among the public members of the board. The board currently has one vacancy (a public member position).

Federal Cuts Jeopardize MOSH Funding

MOSH operations are financed with State special funds and federal funding from OSHA. Special funds are obtained through a reimbursement arrangement with WCC. Each year MOSH submits documentation of its expenditures to the commission; the commission recovers revenues sufficient to cover roughly 50% of MOSH costs (those not covered with federal funds) through its assessments on companies that provide workers' compensation insurance in the State. **Exhibit 22** shows MOSH's five-year funding history.

Exhibit 22 Fiscal History of MOSH Program Fiscal 2007-2011

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Special Funding	\$3,476,566	\$3,952,317	\$4,275,840	\$3,973,738	\$4,202,479
Federal Funding	4,323,985	3,955,184	4,281,044	4,486,114	4,694,612
Total	\$7,800,551	\$7,907,501	\$8,556,884	\$8,459,852	\$8,897,091

Source: Department of Labor, Licensing, and Regulation

MOSH occasionally receives significantly higher amounts of federal funding than special funds, as shown above in fiscal 2007, 2010, and 2011. DLI advises that this occurs because the MOSH program maintains additional program operations in the event that additional federal funds become available in a given year. Other states often are unable to use a portion of their federal money; when this occurs MOSH may apply for additional federal funding. Additionally, OSHA has offered MOSH additional funding in some years to collect occupational safety and health data for neighboring states, particularly West Virginia.

Cuts in federal funding for state occupational safety and health plans are expected in the coming years, due to efforts to reduce the federal budget deficit. The extent of such funding cuts is not yet known. However, MOSH staff advises that OSHA may face an overall 23% reduction in its budget. MOSH staff expects that the actual decrease in federal funding available to MOSH will not be that significant. Funding for all state occupational safety plans is included as one line item in OSHA's budget; the expected decrease to this portion of OSHA's budget is about 7%, likely beginning in fiscal 2013 or 2014.

If federal funding for MOSH decreases, the program must either make an equivalent reduction in its overall operations to maintain the roughly equal part special and federal funding arrangement or request additional funding from WCC through the budget process to make up the difference.

Recommendations

MOSH is fulfilling its statutory obligations. Moreover, MOSH performs a valuable service to the citizens of the State and functions at a high level. As a result, Maryland's rates of workplace injuries, illnesses, and fatalities are some of the lowest in the nation and well below the national average. **Therefore, DLS recommends that LPC waive the program from further evaluation and that the termination date of the Maryland Occupational Safety and Health Advisory Board and applicable laws be extended by 10 years to July 1, 2024.** The MOSH program is subject to termination only as a component of DLI, so it will be reauthorized when legislation is enacted to extend the termination date for DLI following the full evaluation of the Employment Standards and Classification Program recommended earlier in this report.

After discussions with staff and board members, several issues merit further consideration by DLLR. **Therefore, DLS recommends that DLLR submit a follow-up report to DLS by October 1, 2012, providing an update on:**

- **the extent of MOSH oversight of public-sector workplaces in the State and an analysis of how additional safety regulation or MOSH enforcement mechanisms may improve the safety of public-sector workers, particularly public safety personnel; and**
- **any decreases in federal funding for MOSH activities and how any such funding cuts (1) affect MOSH's worker safety functions; and (2) increase MOSH's reliance on special funding from WCC.**

Safety Inspection Program

The Safety Inspection Program consists of four units: Elevator Safety Inspection, Amusement Ride Safety Inspection, Railroad Safety and Health Inspection, and Boiler and Pressure Vessel Safety Inspection. Through this program, DLLR works with owners, industry, management, and labor to ensure that elevators, escalators, dumbwaiters, moving walks,

amusement rides, railroads, boilers, and pressure vessels are constructed, installed, and operated in accordance with applicable State and federal laws and regulations, nationally recognized safety standards, and manufacturers' specifications. This oversight covers critical safety inspections of equipment which, if not installed, maintained, and operated correctly, can pose significant hazards to the public.

The Safety Inspection Program has a total of 63 positions, which include a safety program manager, 3 chief inspectors, and several supervising inspectors. Overall, the program has 49 inspector positions and 14 positions that provide administrative support to the four units. As of August 2011, one administrative position and seven inspector positions were vacant. While the units deal with distinct types of equipment, inspectors often provide assistance to other units. For example, amusement ride inspectors rely on several elevator inspectors every May and June to properly review the safety of attractions for which they have received training and have inspection experience. In turn, the Elevator Safety Inspection Unit relies on several amusement ride inspectors, especially during the October through January period, to address past-due units, issue elevator citations, and research unit ownership. As an illustration, in fiscal 2011, the equivalent of 50% of one elevator inspector's time was dedicated to amusement ride inspection and the equivalent of 20% of one amusement ride inspector's time was dedicated to elevator inspections.

Program Funding

As shown in **Exhibit 23**, the Safety Inspection Program's fiscal 2012 budget is more than \$5.0 million, or 30.4% of DLI's \$16.6 million fiscal 2012 budget. The program's budget, consisting entirely of special funds, does not reflect indirect costs incurred at the division and departmental levels of DLLR. The program's indirect costs include activities and services related to budget, personnel, the Commissioner of Labor and Industry, and the Office of the Secretary. While costs associated with railroad safety inspection are tracked independently, the budgets associated with amusement ride, elevator, and boiler and pressure vessel inspection are not tracked independently. Thus, information about the current or historical allocation of funds among all four safety inspection units is not available. Detailed budget information about each safety inspection unit could facilitate and inform program management decisions in the future.

Exhibit 23 Safety Inspection Program Budget Fiscal 2008-2012

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Amusement Rides/BPVs/Elevators	\$3,660,095	\$4,318,539	\$3,917,046	\$4,633,430	\$4,657,424
Railroads	367,411	282,416	225,074	440,384	391,809
Total	\$4,027,506	\$4,600,955	\$4,142,120	\$5,073,814	\$5,049,233

BPVs: boilers and pressure vessels

Sources: Department of Labor, Licensing, and Regulation; Fiscal Digest of the State of Maryland (Fiscal 2012)

The Safety Inspection Program is funded by two different special fund sources. First, through its assessments on companies that provide workers' compensation insurance, the Maryland WCC generates revenues sufficient to cover the costs of operating the amusement ride, boiler and pressure vessel, and elevator safety inspection units. By dedicating WCC funds to these purposes, it makes insured employers, who typically have boilers, pressure vessels, and elevators in their places of business, responsible for paying to protect their employees. The rationale for using WCC revenues for amusement ride inspection is less clear, as this program primarily seeks to protect patrons. Second, the Public Service Commission's Public Utility Regulation Fund, which receives revenue from assessments on railroad companies and other public service companies operating in the State, supports the direct operation of State railroad safety and health inspection efforts.

The Safety Inspection Program generates some fee and registration revenue, which is allocated to the general fund and the special Elevator Safety Review Board Fund. As discussed in the separate evaluation on the Elevator Safety Review Board, elevator inspection-related fee revenue has been generated and deposited into the Elevator Safety Review Board Fund for use by that board; however, due to coding errors, additional fee revenue from other sources has inadvertently been commingled with the dedicated revenue. These commingled revenues may have included State boiler and pressure vessel inspection fee revenue that is supposed to be allocated directly to the general fund. DLLR is correcting the coding problems, and excess revenue not needed for Elevator Safety Review Board operations reverts to the general fund anyway. In total, these inspection fees generated approximately \$150,000 in fiscal 2011. Thus, revenue generated by the elevator and boiler and pressure vessel safety inspection programs is substantially less than the costs associated with operating the inspection programs.

Major Legislative Changes Affecting the Program Since the 2002 Sunset Review

Over the past decade, major legislative changes that affected the Safety Inspection Program sought to reduce inspection backlogs and further protect public safety. As shown in **Exhibit 24**, these changes included authorizing third-party inspectors to perform specified inspections of elevators and boiler and pressure vessels and adjusting inflatable amusement attraction inspection requirements.

To help address persistent inspection backlogs in the elevator and boiler and pressure vessel programs, recent legislative changes shifted more responsibility for conducting safety inspections to qualified third-party inspectors. Chapter 145 of 2009 requires elevators owned by the State or local governments to be certified either by the State or by their owners and all other elevator owners to hire qualified third-party elevator inspectors to conduct annual safety inspections. Chapter 387 of 2010 requires owners of uninsured boilers and pressure vessels to contract for required inspections with an authorized third-party inspector, the chief boiler inspector, or another State inspector. Chapter 387 also specifies the type of inspections reserved for the chief boiler inspector and deputy inspectors and establishes qualifications for special

inspectors, among other changes. As discussed below, this emphasis on third-party inspection appears to be effectuating significant reductions in the elevator and boiler and pressure vessel inspection backlogs.

Exhibit 24
Safety Inspection Program
Major Legislative Changes Since the 2002 Sunset Review

Year **Chapter** **Change**

Safety Inspection Program

2003	316	Extends the termination date of the Safety Inspection Program and other boards and programs in the Division of Labor and Industry from July 1, 2004, to July 1, 2014.
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Elevators

2003	254	Creates an elevator renovator contractor and mechanic licensure category for applicants who work only on the interior, nonstructural surface of an elevator.
2007	408	Authorizes third-party qualified elevator inspectors to perform periodic annual no-load test inspections, subject to regulation by the Commissioner of Labor and Industry.
2008	484	Establishes an Elevator Safety Review Board Fund to retain revenues generated from licensing, third-party inspector registration, elevator inspections, and other fees for use by the Elevator Safety Review Board. However, revenues in excess of 10% of the board's costs revert to the general fund.
2009	145	Requires State inspectors to conduct certain elevator safety inspections and elevator owners to hire qualified third-party inspectors for annual safety inspections and establishes specific adjudication procedures and penalty provisions for violations of elevator safety standards.

Amusement Rides

2009	21	Exempts inflatable amusement attractions from mandatory inspection before operating at a new location and instead subjects them to annual inspection.
2011	99	Alters the State Amusement Ride Safety Advisory Board's membership to include a representative of amusement ride rental operators and requires the board's composition to reflect the racial and gender composition of the State.

Railroads

2003	203	Requires railroad safety and health inspections to be funded with revenue from either the Public Utility Regulation Fund or assessments of each railroad company operating in the State.
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Boilers and Pressure Vessels

2004	351	Authorizes the Commissioner of Labor and Industry to set inspection intervals for specified boilers and pressure vessels through regulation instead of statute.
2008	497	Authorizes the commissioner to use special inspectors employed by an authorized inspection agency (AIA) to make certificate inspections under a contract with DLLR, an insurer, or an owner of a boiler or pressure vessel.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2010	387	Requires owners of uninsured boilers and pressure vessels to contract for required inspections with either an authorized third-party special inspector, the chief boiler inspector, or another State inspector; specifies the types of inspections reserved for the State's chief boiler inspector and deputy inspectors; establishes qualifications for special inspectors; and adjusts State inspection fees.
2011	608	Reestablishes insurance requirements that AIAs must satisfy prior to conducting inspections.

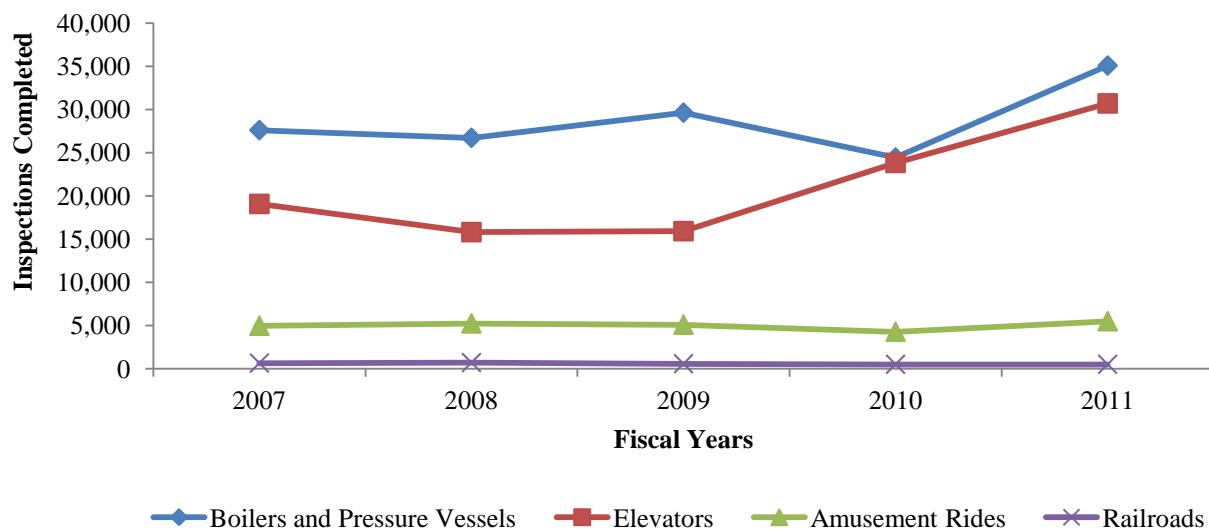
Source: Laws of Maryland

Safety Inspections Increase and Inspection Backlogs Decrease

Exhibit 25 illustrates that the total number of safety inspections conducted has increased 37% over the past five years, from 52,236 in fiscal 2007 to 71,720 in fiscal 2011. At the same time, the workload for State inspectors has actually decreased, primarily due to implementation of third-party elevator inspection. Between fiscal 2009 and 2011, the number of elevator inspections conducted by all parties increased by 14,785, or 93%, due in large part to requiring the use of third-party inspectors for some inspections. Furthermore, between fiscal 2009 and 2011 the number of boiler and pressure vessel inspections conducted increased by 5,450, or 18%, due in part to improved communication with AIAs and increased enforcement efforts.

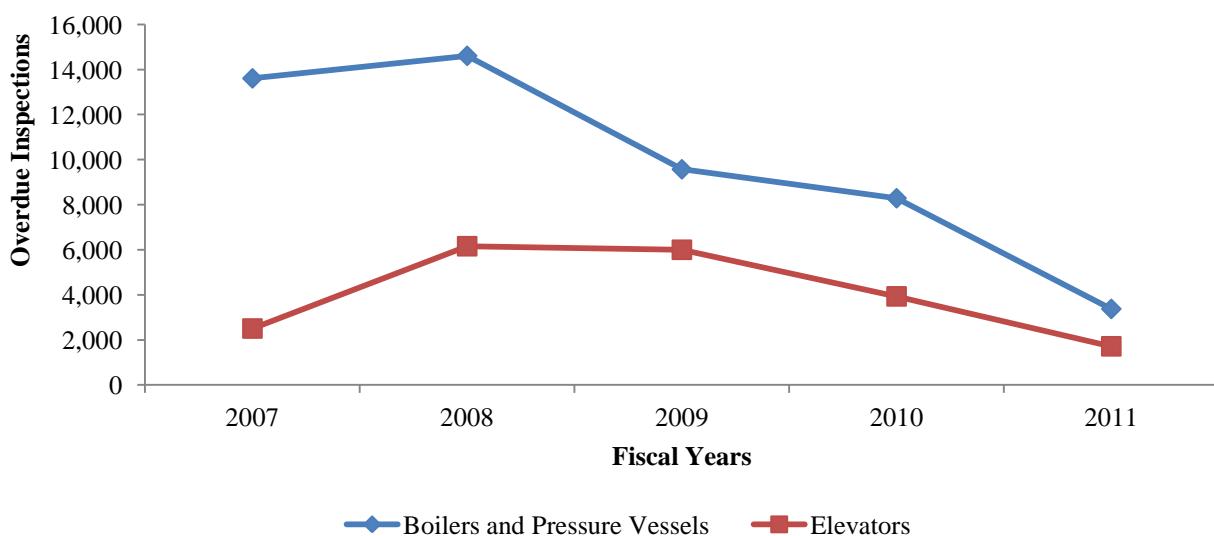
There is a longstanding history of inspection backlogs in the elevator and boiler and pressure vessel programs. In fact, a March 2009 Office of Legislative Audits audit of DLI notes that this condition has been reported in each of the division's audits since 1977. However, as illustrated in **Exhibit 26**, the programs' persistent inspection backlogs are subsiding. Between fiscal 2009 and 2011, the number of overdue elevator inspections decreased from 6,000 to 1,715, a 71% reduction. The number of overdue boiler and pressure vessel inspections decreased 65% between fiscal 2009 and 2011, from 9,570 in fiscal 2009 to 3,375 in fiscal 2011. While a greater reliance on third-party inspectors played an important role, DLLR also attributes these reductions to focusing resources on overdue inspections and issuing citations to large insurers for late inspections. DLLR also advises that several recent briefings it held with industry representatives to review applicable laws and regulations and to clarify responsibilities may have contributed to reductions in the inspection backlogs. There are no reported amusement ride or railroad safety and health inspection backlogs.

Exhibit 25
Safety Inspection Program Workload: Inspections Completed
Fiscal 2007-2011



Source: Department of Labor, Licensing, and Regulation

Exhibit 26
Safety Inspection Program: Inspection Backlogs
Fiscal 2007-2011



Source: Department of Labor, Licensing, and Regulation

Elevator Safety Inspection

The Commissioner of Labor and Industry is responsible for ensuring annual inspections are performed on each elevator, escalator, moving walkway, and dumbwaiter operating in publicly owned buildings, and safety inspections are performed by authorized third-party inspectors on all privately owned elevator units. Unless otherwise specified by statute (*e.g.*, an elevator in a private residence), an elevator may not operate in a building, structure, or place of employment in the State unless it has been certified by the commissioner or a political subdivision within the State. The Elevator Safety Inspection Unit has been charged with carrying out these inspection functions.

One chief inspector oversees DLLR's elevator safety inspection efforts and manages three supervisors, who in turn manage five to eight inspectors and/or administrative positions. All State and private elevator inspectors must meet qualifications and requirements established by the commissioner and are certified by an organization accredited by the American Society of Mechanical Engineers in accordance with the American National Standard/American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks. Inspectors must submit a copy of their current qualified elevator inspection certificate to the commissioner as part of an annual registration process. While several elevator inspector positions are vacant, DLLR advises that it has become less difficult to hire and retain inspectors over the past year. DLLR attributes this change to diminished competitive pressure from the private sector and reclassification of safety inspector positions to a higher salary level in fiscal 2010.

The Elevator Safety Inspection Program ensures the safety of approximately 22,800 elevators and related units. State inspectors conduct final inspections of all new or altered elevators, investigations of accidents and complaints, follow-up inspections to confirm corrective actions, comprehensive five-year inspections, and third-party inspector monitoring inspections. State elevator inspections are free under most circumstances. However, fees are assessed by State inspectors if an inspection of a new, modified, or altered unit indicates areas of noncompliance with safety regulations or if an elevator scheduled for a follow-up inspection has not been corrected as specified on an inspection checklist. State inspection fees may not exceed \$250 for a half day or \$500 for a full day. Private elevator owners must hire authorized third-party inspectors to conduct annual safety inspections to ensure compliance with State requirements.

Over the past year, inspectors issued significantly more elevator citations than in the past. The number of elevator citations issued increased from 315 in fiscal 2010 to 1,309 in fiscal 2011. DLLR advises that a majority of the citations resulted in the resolution of issues or clarification of administrative issues. Currently, elevator inspectors are traveling to the site of long overdue units to assess their condition. To some extent, DLLR is finding that overdue units are no longer active, were located in buildings that were razed, or have incorrect owner mailing addresses. It is expected that the number of citations issued will decrease in the future as the number of overdue units declines.

Elevator Safety Inspection Program Shifts to Monitoring Third-party Inspectors

Due to the shrinking inspection backlog and shift to private third-party inspections, DLLR has begun to dedicate more resources to quality control monitoring of authorized third-party elevator inspectors. In some instances, State inspectors have found that authorized third-party inspectors are not submitting elevator inspection reports to DLLR in a timely manner because they want to (1) provide owners with additional time to resolve issues and complete re-inspection of an elevator; or (2) receive payment from owners prior to submitting inspection reports to DLLR. Also, State inspectors have found that significant safety issues are being overlooked by some third-party inspectors. While it has not done so to date, DLLR intends to revoke inspection authority from third-party inspectors who consistently implement poor quality inspections.

Elevator Safety Inspection Program Coordination with the Elevator Safety Review Board

Elevator safety inspection efforts may be influenced in the future by the actions of the Elevator Safety Review Board, which recently received dedicated funding and is building its membership. The board is responsible for (1) licensing people who engage in the business of erecting, constructing, wiring, altering, replacing, maintaining, repairing, dismantling, or servicing elevators, dumbwaiters, escalators, and moving walks; and (2) regulating elevator mechanics and contractors. The board is funded with fee revenue generated from, among other things, licensing elevator mechanics and contractors and registering authorized third-party elevator inspectors. While only a few board meetings have been held to date, the board is expected to be more active in the future and establish policies and procedures that affect elevator safety inspection policies and procedures. As noted earlier, DLS has also completed a preliminary sunset evaluation of the Elevator Safety Review Board.

Amusement Ride Safety Inspection

The Amusement Ride Safety Inspection Program was created by the General Assembly in 1976. Its primary function is to ensure, to the extent possible, the safety of the public in the use of amusement rides and attractions erected permanently or temporarily at carnivals, fairs, and amusement parks throughout Maryland. The program's responsibilities include conducting inspections, investigating accidents and complaints, issuing citations, permitting variances, and imposing civil penalties. There are no fees associated with amusement ride inspections.

The Deputy Commissioner of Labor and Industry has administrative responsibility for enforcing the Amusement Ride Safety Act, while the administrator of the Safety Inspection Program oversees implementation of day-to-day operations. Currently, an acting supervisor oversees seven inspectors who conducted 5,478 inspections in fiscal 2011. State amusement ride inspectors must retain national certification through the National Association of Amusement Ride Safety Officials. Safety regulations associated with the maintenance and operation of amusement attractions are developed by the Amusement Ride Safety Advisory Board. The board meets several times a year and provides valuable assistance in updating safety standards to better protect the public.

An amusement ride or attraction may be operated in Maryland only if it has insurance and it has been registered, inspected, and issued a certificate of inspection by DLLR. As part of the certification process, the owner or lessee must provide a current certificate of insurance indicating liability coverage in the required amount. A certificate of inspection issued by DLLR for a ride or attraction in a permanent amusement park is valid for no more than one year from the date issued. Certificates for rides and attractions at traveling fairs and carnivals are valid for no more than 30 days.

Inflatable Attractions Proliferate

Inflatable amusement attractions (inflatables) are becoming increasingly popular and are a growing segment of the overall amusement inspection workload. Nearly 30% of the amusement inspections conducted in fiscal 2011 addressed inflatables, an increase from 22% in fiscal 2009. Since inflatables may be purchased and transported easily and inexpensively, they have become an attractive business opportunity.

Due to the growing number of inflatables and constant relocation of many of these units throughout the State, DLLR could not keep pace with the growing volume of required inspections. Therefore, Chapter 21 of 2009 required inspections of inflatables to be conducted annually instead of prior to operating at a new location. This shift in the inspection requirements effectively decreased DLLR's inflatable inspection workload. Annual inspections of inflatables are now often conducted during the winter months, when they are disassembled and in storage. While this approach permits close inspection of component parts, it does not allow inspection of installation and operation of inflatables. Thus, while Chapter 21 of 2009 effectively decreased the inspection workload, it led to fewer opportunities for inspectors to ensure correct installation and operation of inflatables.

Need for Education and Outreach on Inflatable Attractions

While interest in inflatables has increased in recent years, so has concern about the safety of these attractions. There have been numerous instances in other states of inflatables being blown by the wind and simply collapsing. Recently, in Oceanside, New York, three inflatable castles holding children were blown through the air, injuring 17 people. DLLR advises that many individuals and businesses, especially those based in neighboring states, may be operating inflatables in Maryland without the required certificate of inspection. The extent to which these businesses are ignoring State inspection requirements, or are just not aware of them, is not clear. However, this suggests there is a need for public education and outreach efforts that clarify State inspection requirements and encourage the use of only those inflatables with certificates of inspection.

To help ensure the safe operation of inflatables in Maryland, the Amusement Ride Safety Advisory Board recently developed draft regulations establishing safety standards for the installation, assembly, repair, maintenance, use, operation, disassembly, and inspection of inflatables operated in the State. While the regulations are consistent with existing safety standards for amusements rides, they provide more detailed requirements that reflect the unique

characteristics of inflatables. Among other things, the regulations require operators to provide DLLR with an itinerary of scheduled locations and events for each inflatable at least five business days in advance of anticipated operation. This requirement will allow DLLR to conduct unannounced monitoring inspections to ensure proper installation and operation. DLLR advises that the regulations will be finalized in fall 2011.

State Amusement Ride Safety Advisory Board

Chapter 844 of 1976 established the Amusement Safety Advisory Board, which was subsequently renamed the State Amusement Ride Safety Advisory Board. The board is responsible for advising and consulting with the Commissioner of Labor and Industry regarding amusement ride safety regulations and industry standards. The board holds hearings to receive public comment and information on which to base recommendations to the commissioner.

The board consists of nine members appointed by the Governor with the advice and consent of the Senate. One member must be a mechanical engineer, one must represent owners of carnivals, one must represent the State fair and county fairs, one must represent amusement ride rental operators, two must represent owners of amusement parks, and three must be consumers. In choosing the members of the board, the Governor must make every effort to ensure that each region of the State is represented. The race and gender of the board members must reflect the composition of the population of the State. A chairman is designated by the Governor from among the consumer members of the board, and members serve staggered, four-year terms. At the end of a term, a member continues to serve until a successor is appointed and qualifies. The current members of the board are listed in **Appendix 6**.

Railroad Safety and Health Inspection

The Railroad Safety and Health Inspection Program monitors the safety practices of each railroad in the State by conducting inspections of railroad track, operating practices, and motive power and equipment. Some of the heaviest traveled stretches of track in the country exist in Maryland. This program supplements the Federal Railroad Administration's (FRA) national inspection efforts, which involve annual inspections along heavily traveled track, by (1) conducting additional inspections along the most traveled railways; and (2) inspecting certain railroad operations that are not under federal jurisdiction, such as scenic and excursion tourist railroads. There are no fees associated with State railroad safety inspections. Currently, the program is operating with three deputy inspectors, one chief inspector, and one clerk; a signal inspector position is vacant. State railroad inspectors must be certified by FRA in one of the following disciplines: motive power and equipment, operating practices, signals and train controls, or track.

The frequency with which State railroad inspectors must inspect railroads is not specified in statute. Thus, the program has developed its own goals and inspection schedules, which are characterized by more frequent inspections in areas that serve more people and accommodate heavier volumes of traffic. The program inspects all tracks in the State and monitors federal inspections to avoid any overlap in the location and type of inspection conducted. Generally,

tourist attractions, such as the Baltimore & Ohio Railroad Museum and the Western Maryland Scenic Railroad, are inspected by State inspectors twice annually. While the law requires private industry to ensure the safety of privately owned tracks, State inspectors provide one courtesy inspection per year and follow-up inspections as needed. Railroad companies, such as Amtrak, CSX, and Norfolk Southern, must inspect their tracks once every seven days or, if they operate less frequently, prior to using the tracks.

State railroad inspectors find the highest rate of noncompliance during track inspections of rail lines with lower speed classifications and highly utilized motive power and equipment. Rather than issuing violations, the program typically encourages the party involved to take the necessary corrective action. DLLR advises that this method is more effective than imposing financial penalties, which could tie up limited inspection resources on contested hearings and violation report writing.

While there may be some overlap with federal efforts, the State Railroad Safety and Health Program requires minimal resources and provides a significant potential public safety benefit, making it an important effort to maintain. As mentioned previously, the cost of administering the program is borne by the railroad entities that ultimately benefit from public safety services.

Boiler and Pressure Vessel Safety Inspection

Boilers are used to generate power in a variety of large facilities, including churches, schools, offices, and apartment buildings. Maryland law defines a boiler as "... (1) a closed vessel in which water is heated, steam is generated, steam is superheated, or a combination of these functions is accomplished, under pressure or vacuum for use externally to the vessel by the direct application of heat from the combustion of fuels or from electricity or nuclear energy; or (2) a fired unit for heating or vaporizing liquids other than water if the unit is separate from a processing system and complete within itself." The statutory definition of a pressure vessel is "...a vessel in which the pressure is obtained from an external source; or by the application of heat from an indirect source or a direct source other than a boiler." Historically, improper operation, maintenance, and repair of boilers and pressure vessels has caused many serious injuries and property destruction.

Boilers and pressure vessels found in commercial establishments, office buildings, and apartments with six or more units are subject to an inspection either by the State or a special inspector. If a boiler or pressure vessel is insured by an insurer, a special inspector employed by an AIA and retained by the insurer conducts the inspection. If a boiler or pressure vessel is not insured, the owner must contract with an AIA or the State to make required inspections. In fiscal 2011, there were approximately 41,878 insured and 11,190 uninsured boilers and pressure vessels in Maryland. The units in most public buildings are insured. Boilers and pressure vessels must be inspected annually or biennially, depending on the type of equipment. While State inspectors do not charge fees for initial certificate inspections of units not previously inspected, a \$50 fee is charged for follow-up certificate inspections to determine compliance, and a \$250 to \$500 fee is charged for other types of inspections.

The Boiler and Pressure Vessel Safety Inspection Unit (BIU) is headed by the chief boiler inspector, who is appointed by the Commissioner of Labor and Industry with approval by the Secretary of Labor, Licensing, and Regulation. The chief oversees 11 inspector positions, 3 of which are currently vacant. All State and special inspectors must be accredited by, or meet qualifications of, the National Board of Boiler and Pressure Vessel Inspectors. The unit's primary responsibilities are to inspect uninsured boilers and pressure vessels, investigate accidents and complaints, and monitor the inspections of special inspectors. The chief also monitors the work of approximately 200 special inspectors and keeps the Board of Boiler Rules apprised of key information such as accidents, investigations, and inspection trends. The Board of Boiler Rules formulates rules and regulations for the safe construction, use, installation, maintenance, repair, and inspection of boilers and pressure vessels in Maryland.

Currently, DLLR is focusing its resources on completing initial inspections of all boiler and pressure vessels in the State. DLLR uses the Jurisdiction Online web-based software system to access and enter data on boiler and pressure vessel inspections, new units, and units that are out of service. This software, which is also used by the Elevator Safety Inspection Program, provides inspection data for each boiler and pressure vessel subject to inspection in the State. DLLR uses this information to send reports about overdue inspections to private insurers that help ensure consistency of information and encourage more timely inspections and better overall compliance. In the near future, DLLR intends to focus more on quality control monitoring of special inspectors and issuing citations as required, as it has done with the Elevator Safety Inspection Program.

Statutory Clarifications Would Benefit Safety Inspection Program

Several statutory provisions associated with the Safety Inspection Program's funding sources and name could benefit from clarification and updating. First, § 12-805(e) of the Public Safety Article states that "...the cost of administering Part II of this subtitle (elevator registration and inspection) is provided for under § 5-204 of the Labor and Employment Article." However, § 5-204 of the Labor and Employment Article simply authorizes the use of WCC funding for occupational safety and health-related programs and makes no reference to elevator inspection. Thus, there is a need to clarify the statutory authority to use WCC funding for administration of the Elevator Safety Inspection Program. Second, while operation of the Boiler and Pressure Vessel Safety Inspection Program is supported with special funds from WCC, there is no clear statutory authority to use these funds for the program. Historically, § 9-316 of the Labor and Employment Article has been interpreted to authorize funding for the administration and enforcement of the Boiler and Pressure Vessel Safety Act. However, this provision of law does not refer to boilers and pressure vessels nor does it provide general authority to use WCC special funds for this purpose. Finally, § 2-107(e) of the Labor and Employment Article lists the units within DLI and incorrectly refers to the "Safety Engineering and Education Service" instead of the Safety Inspection Program.

Recommendations

The Safety Inspection Program is fulfilling its statutory requirements to the best of its abilities. The program is administering critical safety efforts in a professional manner. It has implemented many significant statutory changes since the 2002 evaluation and is well positioned to address current issues and demands. **Consequently, DLS recommends that LPC waive the program from further evaluation. As the program is subject to termination only as a component of DLI, it will be reauthorized when legislation is enacted to extend the termination date for DLI following the full evaluation of the Employment Standards and Classification Program recommended earlier in this report. DLS also recommends that legislation be enacted to extend the termination date of the Amusement Ride Safety Advisory Board, which is subject to a separate termination provision, to July 1, 2024.**

After discussions with staff and board members, several issues merit further consideration by DLLR. **Therefore, DLS recommends that DLLR submit a follow-up report to DLS by October 1, 2012, providing an update on:**

- tracking the specific revenues and expenditures associated with each of the four safety inspection units;
- the process and outcomes of monitoring authorized third-party elevator inspectors and boiler and pressure vessel special inspectors;
- elevator and boiler and pressure vessel safety inspection workload and backlog trends;
- ongoing and planned efforts to ensure the safe operation of inflatable amusement attractions in the State, including public education and enforcement strategies; and
- clarifying the statutory authority to use WCC special funds for the elevator and boiler and pressure vessel safety inspection programs.

Board of Boiler Rules

Maryland's system of boiler regulation is split between two divisions of DLLR: (1) the Division of Occupational and Professional Licensing, which houses the State Board of Stationary Engineers; and (2) DLI, which houses BIU and the Board of Boiler Rules. The State Board of Stationary Engineers has regulatory jurisdiction over all of the State's stationary engineers, who operate and maintain steam and power generators, heating plants, boilers, pressure valves, and other systems. As discussed earlier, BIU oversees the inspection of boilers and pressure vessels and investigates any boiler and pressure vessel accidents. The Board of Boiler Rules recommends regulations for boilers and pressure vessels. In addition to this preliminary evaluation of the Board of Boiler Rules, both the State Board of Stationary Engineers and BIU are undergoing concurrent preliminary evaluation (the latter as part of the larger evaluation of DLI).

The Board of Boiler Rules last underwent an evaluation as part of a sunset review in 2001. The *Sunset Review: Evaluation of Boiler Safety in Maryland – Review of the Board of Boiler Rules and the Board of Examining Engineers* recommended that the board's termination date be extended to July 1, 2014, to coincide with the termination date for DLI. The evaluation also recommended that the board chairman be elected by the members of the board, that the board consider specific ways to improve the process for deciding variances, and that the board advise the Commissioner of Labor and Industry on establishing insurance coverage guidelines that clearly articulate liability for the board and BIU in boiler accidents and explosions. The adoption of Chapter 316 of 2002 extended the board's termination date to July 1, 2014, and required the chair of the board to be selected from among its members rather than appointed by the Governor.⁴

Establishment of the Board

The Board of Boiler Rules was established in 1920 under the Boiler and Pressure Safety Act. An advisory board located within DLI, the board's primary function is to formulate definitions, rules, and regulations for the safe construction, use, installation, maintenance, repair, and inspection of boilers and pressure vessels for sale or for use in Maryland. All board recommendations are subject to review and approval by the Commissioner of Labor and Industry and the Secretary of Labor, Licensing, and Regulation.

Statute requires that the State's safety standards reflect as nearly as possible the standards in the *American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code)* and the guidelines of the National Board of Boiler and Pressure Vessel Inspectors (National Board). The board ensures that the updates to the governing documents are adopted in Maryland.

Board Membership

The board is located within DLI. It consists of 10 members, including:

- a representative of owners and users of power boilers (not appointed);
- a representative of owners of agricultural, model, or historical steam engine equipment;
- a representative of owners and users of pressure vessels;
- a representative of manufacturers or assemblers of boilers or pressure vessels (not appointed);
- a representative of an insurer authorized to insure boilers or pressure vessels;
- a mechanical engineer on the faculty of a recognized engineering college in the State;
- a stationary engineer;
- a professional engineer with boiler or pressure vessel experience;

⁴In 2005, the General Assembly adopted Chapter 613 and replaced the Board of Examining Engineers, which had regulatory authority over stationary engineers only in Baltimore City, with the State Board of Stationary Engineers, a board with jurisdiction over stationary engineers throughout the State.

- a consumer member (not appointed); and
- an *ex officio* nonvoting member, the Commissioner of Labor and Industry.

The consumer member may not be subject to regulation by the board, may not be required to meet the qualifications for the professional members of the board, and may not have had within one year before appointment a financial interest in or have received compensation from a person regulated by the board. Members are appointed to four-year staggered terms. Members receive no salary but are reimbursed for travel expenses to and from the board's meetings.

As currently appointed, the board consists of seven members, with three vacancies (see **Appendix 7**). The current board members include a licensed professional engineer with boiler or pressure vessel experience, an owner/user of pressure vessels, an engineering faculty member from the University of Maryland, a boiler/pressure vessel insurer, a licensed stationary engineer, an owner/user of antique equipment, and the Commissioner of Labor and Industry. The consumer member and power boiler positions have been vacant since the beginning of 2011. The manufacturer/assembler of boilers or pressure vessels position has been vacant since August 2009.

The board typically convenes on an as-needed basis to decide variance requests, to review proposed changes in standards, and to address emergency situations. As a result, the board does not meet frequently; it met three times in 2009, once in 2010, and three times in 2011. The only statutory requirement for board meetings is that the board must meet at least twice a year with the State Board of Stationary Engineers, which it did in August 2011. However, this meeting was the first meeting between the two boards since the State Board of Stationary Engineers was established in 2005.

The board engages in no revenue-producing activities, and it incurs minimal expenses – the salaries and indirect costs allocated to it total about \$4,000 a year. These expenses are covered under the budget for BIU. The board is assigned legal services as needed and has one part-time administrative officer, who spends about 10% of her time with the board. Other officials within DLI also provide occasional assistance.

Statutory and Other Changes Affecting the Board Since the 2001 Evaluation

Several substantive statutory changes involving board operations have been adopted since the board was evaluated in 2001. In 2002, Chapter 316 required the chair of the board to be selected from among its members rather than appointed by the Governor. In 2008, Chapters 432/433 clarified that the provisions of the title governing stationary engineers and the regulations adopted under them do not supersede the authority of the Board of Boiler Rules to implement boiler and pressure vessel safety standards. Subsequently, Chapter 13 of 2010 altered the composition of the Board of Boiler Rules by replacing the existing representative of owners and users of heating boilers with a representative of owners of agricultural, model, or historical steam engine equipment.

Several other statutory changes have affected the regulation of boilers and pressure vessels in the State but have not directly impacted the board itself. As shown in **Exhibit 27**, the General Assembly has frequently bypassed the Board of Boiler Rules and altered the regulation of boilers and pressure vessels on its own authority. Exhibit 27 summarizes legislative changes affecting the regulation of boilers and pressure vessels since the 2001 evaluation of the Board of Boiler Rules.

Exhibit 27
Sunset Review of Boiler Safety in Maryland

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	316	Extends the termination date for the Board of Boiler Rules from July 1, 2003, to July 1, 2014. Requires the chair of the board to be selected from among its members rather than appointed by the Governor.
2003	316	Requires DLI to report to the General Assembly on the efforts of the Boiler and Pressure Vessel Inspection Unit to (1) coordinate with the insurance industry when developing inspection procedures for boilers and pressure vessels; and (2) reduce the inspection backlog of public buildings.
2004	351	Authorizes the Commissioner of Labor and Industry to set inspection intervals for low-pressure-steam or vapor-heating boilers, hot-water-heating boilers, hot-water-supply boilers, and pressure vessels through regulation instead of statute. Requires inspections to be conducted in accordance with the State Administrative Procedure Act and national standards. Exempts model steam boilers from annual inspections.
2008	432/433	Clarify that the provisions of the title governing stationary engineers and the regulations adopted under them do not supersede the authority of the Board of Boiler Rules to implement boiler and pressure vessel safety standards.
2008	461/462	Authorize inspection of an exhibition or antique boiler or pressure vessel by a private inspector certified by the American Society for Nondestructive Testing (ASNT) and commissioned by the National Board of Boiler and Pressure Vessel Inspectors.
2008	497	Authorizes the Commissioner of Labor and Industry to contract with an authorized inspection agency or an insurer to make certificate inspections of boilers and pressure vessels. Requires the commissioner to issue regulations that establish insurance requirements that must be satisfied by an authorized inspection agency.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2010	13	Alters the composition of the Board of Boiler Rules by replacing the existing representative of owners and users of heating boilers with a representative of owners of agricultural, model, or historical steam engine equipment.
2010	387	Boiler and Pressure Vessel Safety Act specifies that owners of uninsured boilers and pressure vessels must contract for required inspections with either an authorized third-party inspector, the chief boiler inspector, or another State inspector for regular safety inspections. Specifies the types of inspections reserved only for the State's chief boiler inspector and deputy inspectors, establishes qualifications for special inspectors, authorizes rather than requires the Board of Boiler Rules to give examinations to applicants for special inspector commissions, and adjusts the fee structure for State inspections to reflect these changes.
2011	608	Reestablishes insurance requirements inadvertently repealed by Chapter 387 of 2010. Requires the Commissioner of Labor and Industry to establish, by regulation, insurance requirements that authorized boiler and pressure vessel inspection agencies must satisfy before their employees are allowed to act as boiler and pressure vessel inspectors.

Source: Laws of Maryland

More Active Regulatory Review Is Necessary

The board's primary duty is to establish regulations for boiler and pressure vessel safety. As a result, the board has adopted an extensive regulatory program governing boiler and pressure vessels in Code of Maryland Regulations. The board has not, however, adopted or amended any regulations on a permanent basis since 2004.

Officials in BIU who support the Board of Boiler Rules acknowledge the need for a comprehensive update of the State's boiler and pressure regulations. The unit has intended to revise the regulations for several years and hopes to begin the revision process within the next calendar year, after DLI completes its revisions of other outdated regulations under its purview.

Improved Procedures for Issuing Variances

A new boiler or pressure vessel may not be installed and operated unless the item conforms to regulations governing the new construction or installation or the board issues a special installation and operating permit for the boiler or pressure vessel. The board may issue a permit if the boiler or pressure vessel is of special design or construction and is not inconsistent with the spirit and safety objectives of certain boiler and pressure vessel regulations.

A person who believes that a regulation is unreasonable or imposes an undue burden on an owner may request the Board of Boiler Rules to grant a variance from that regulation. The board considers variance requests for a number of reasons, including extensions of inspection cycles and boiler clearances.

The variance process begins when an owner or contractor contacts the board for a variance application. Once the application is submitted, the board administrator reviews the application for completeness and forwards a copy to the chief boiler inspector. The chief assigns to the case a deputy boiler inspector who conducts an inspection of the site and unit(s). Once the investigation is conducted and the chief reviews the findings, the chief presents the variance request and his recommendations to the Board of Boiler Rules at its next meeting.

Although the process for granting a variance was a concern of the 2001 sunset evaluation, the Commissioner of Labor and Industry disagreed with the changes suggested by DLS, and requested that the recommendation be withdrawn. Further efficiencies in the variance process have, however, been realized.

Until recently, the chief made his recommendations to the board and answered any questions the board presented regarding the variance application. That process has changed in that the applicant is now requested to attend the board meeting where the variance request will be addressed so that any questions board members may have can be asked directly of the applicant. In the past, the board would sometimes table a variance request until such time that the applicant could come before it to answer questions that the chief could not. This action would delay the variance process until the board held its next meeting. The new system has proven much more efficient.

Following a review of the information presented, coupled with the recommendations of the chief, the board renders its decision and the applicant is notified accordingly. The chief then makes the appropriate notation in his database, and the unit is monitored accordingly.

The frequency of variance requests fluctuates. Since 2007, individuals have applied for 11 variances. Out of those 11 requests, 7 variances went before the Board of Boiler Rules and all 7 variances were granted. Upon investigation, two of the requested variances were found not to be needed. The other two variance requests were withdrawn.

Recommendations

The Board of Boiler Rules and all associated regulations and provisions will terminate as of July 1, 2014, unless reauthorized. The board serves an important role in protecting the citizens of Maryland from unsafe boilers and pressure vessels.

As demonstrated above, while the board has improved its process for approving variances, the board could operate more efficiently. Although the board's membership is equipped with a significant amount of subject expertise, and the board has immediate access to staff support from BIU, the board has not updated its regulations in a permanent manner since

2004. Similarly, while the board's coordination with the State Board of Stationary Engineers needs improvement, the boards have made recent progress toward bolstering their coordination. Moreover, while the board continues to seek additional members, it has three vacancies and meets fairly infrequently.⁵

The Board of Boiler Rules is also in a unique position in that its division within DLLR houses the vast majority of staff expertise on the subject of boiler safety, but it has little regulatory power over the occupation that services boilers and pressure vessels: stationary engineers. Although the board is equipped with eager and active members, it is unclear whether the current regulatory structure, if fully embraced, allows it to carry out its mission most effectively.

In sum, although the Board of Boiler Rules possesses the ability to carry out its designated mission, there is merit in monitoring its continued efforts to improve and exploring the possibility of a more efficient method of facilitating boiler safety in the State. **Therefore, DLS recommends that the Board of Boiler Rules, in conjunction with the State Board of Stationary Engineers and DLLR, make full use of the existing statutory framework for regulation of boilers and pressure vessels by:**

- enhancing efforts to fill vacant seats on both boards;
- meeting regularly with a quorum necessary to conduct official business; and
- holding joint meetings between the two boards, including joint meetings to consider ways to boost board membership and improve the State's regulatory structure.

By October 1, 2012, the three entities should report to DLS on the following developments between the date of this report and the delivery of the required report to DLS:

- the frequency with which the State Board of Stationary Engineers and the Board of Boiler Rules have been able to meet independently with a quorum necessary to conduct official business;
- the frequency with which the two boards have met together to coordinate enforcement of boiler safety; and
- steps taken by the Board of Boiler Rules to update the State's boiler and pressure vessel safety regulations.

Given the information provided in the report, DLLR may wish to articulate a position on the effectiveness of maintaining the current system of having two boards regulate the boiler industry or whether the two boards should be consolidated.

⁵The State Board of Stationary Engineers also has two vacant seats and has frequent attendance problems. Both of the vacant stationary engineer seats also involve boiler expertise.

Based on this report, DLS will recommend to LPC in 2012 whether to waive the board from full evaluation and, if waived, recommend a new termination date for the board. If the report is not submitted, DLS will automatically conduct a full evaluation of the board during the 2013 interim. If a full evaluation is required, the evaluation should:

- **investigate the practicality of the current system of having two boards regulate the boiler industry: one to address occupational issues and one to address equipment problems;**
- **evaluate the board's efforts to improve its coordination with the State Board of Stationary Engineers; and**
- **evaluate the board's progress in more efficiently discharging its responsibility to recommend boiler and pressure vessel safety regulations.**

Summary of Recommendations

As noted at the beginning of this report, DLI encompasses several component programs, advisory councils, and regulatory boards. Many of these components are subject to termination under a single provision of the Maryland Program Evaluation Act that applies to DLI, but others are subject to separate statutory termination provisions that apply exclusively to them.

Of the programs that are subject to the DLI termination provision, only one, the Employment Standards and Classification Program, is recommended for a full evaluation to occur during the 2012 interim. The specific areas to be addressed in the full evaluation are described in the corresponding section of this report. DLS recommends that the remaining programs directly subject to the DLI termination provision be waived from further evaluation. These include:

- general administration;
- MATP;
- the Prevailing and Living Wage Unit;
- MOSH; and
- the Safety Inspection Program.

However, DLS recommends that each of these programs submit a follow-up report that updates DLS on specific aspects of their operations, which are listed in their respective sections of this report. These updates will be included in the full evaluation that DLS will conduct during the 2012 interim and will inform DLS's recommendations for reauthorization of DLI, including a determination of whether DLI or some of its component programs should be exempt from future termination while still subject to review under the Maryland Program Evaluation Act.

In the course of completing this preliminary evaluation, DLS encountered compelling reasons to exempt either all of DLI or, at a minimum, some of its programs from future termination. For instance, MOSH and the Safety Inspection programs both perform vital public safety functions, and the need for the services they provide shows no signs of diminishing. In the case of the Prevailing and Living Wage Unit and the Employment Standards Unit, the General Assembly has determined that the functions they perform are sufficiently important as to warrant a mandated minimum appropriation for those units. Federal support for apprenticeship and training programs is contingent on the work of MATP, which only enhances the rationale for exempting DLI from termination. Therefore, the full evaluation will explore whether DLI, or some of its programs, should be exempt from future termination but possibly still be subject to ongoing evaluation. DLS notes that some precedent does exist for such an arrangement: the Maryland Insurance Administration is subject to the evaluation requirements of the Maryland Program Evaluation Act but does not have a termination provision in its authorizing statute.

In addition, this preliminary evaluation examined several entities that, while subject to their own termination provisions, nevertheless fall under the purview of DLI. These include (1) MATC; (2) the Advisory Council on Prevailing Wage Rates; (3) the Maryland Occupational Safety and Health Advisory Board; (4) the Amusement Ride Safety Advisory Board; and (5) the Board of Boiler Rules. Three of these entities function primarily as advisory boards with little or no independent authority, but the other two (MATC and the Board of Boiler Rules) do have specific but limited regulatory functions.

Of these five entities, DLS recommends that three be reauthorized, and one (the Advisory Council on Prevailing Wage Rates) be further studied as part of the full evaluation due to prolonged inactivity; a DLS recommendation on the fifth (the Board of Boiler Rules) is deferred until the 2012 interim pending submission of a follow-up report by the board in conjunction with the State Board of Stationary Engineers. The purpose of the report is to provide an update on nascent efforts to enhance the board's role in the regulation of boilers and pressure vessels and to coordinate those efforts with the State Board of Stationary Engineers, as required by statute. However, the legislation to reauthorize the three waived advisory boards will be consolidated with the legislation emanating from the full evaluation in 2012.

Appendix 1. Written Comments of the Division of Labor and Industry

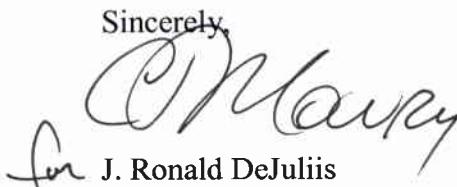
December 5, 2011

Mr. Michael Rubenstein
Department of Legislative Services
Office of Policy Analysis
Legislative Services Building
90 State Circle
Annapolis, MD 21401

Dear Mr. Rubenstein:

The Division of Labor and Industry has reviewed the exposure draft of the Department of Legislative Service's preliminary evaluation of the Division of Labor and Industry. The Division of Labor and Industry generally concurs with the findings and recommendations contained within the draft report. The Division will conduct a more detailed, factual review of the full evaluation planned for next year.

Sincerely,


for J. Ronald DeJuliis
Commissioner of Labor and Industry

cc: Jenny Baker, Assistant Attorney General

Appendix 2. Membership of the Maryland Apprenticeship and Training Council

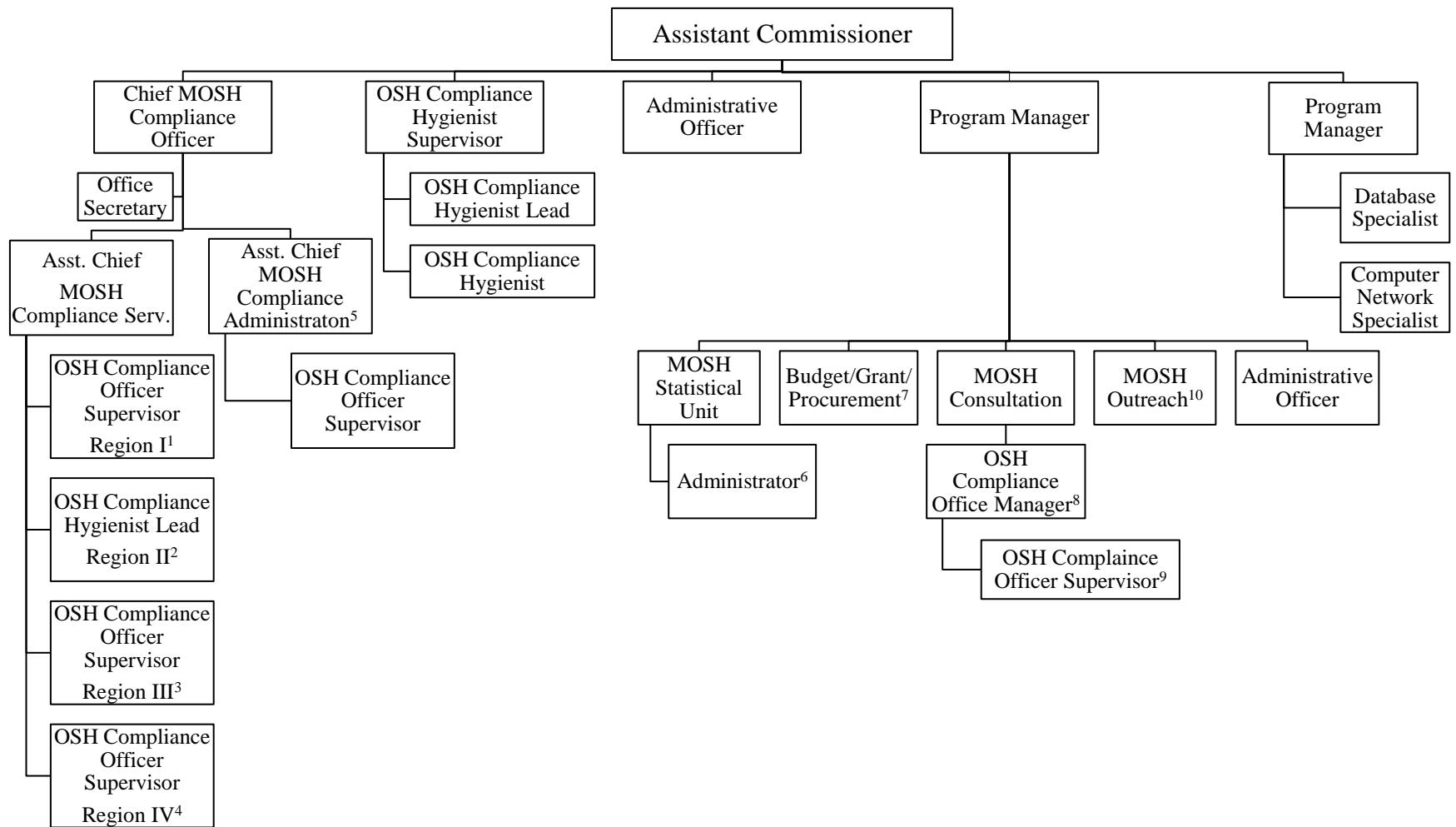
<u>Board Member</u>	<u>Representation</u>
Michelle L. Butt	Employer
Edwin Cluster	Employer
Larry R. Greenhill, Sr.	Employee
Christopher F. Kelly, Sr.	Employer
Robert H. Laudeman – <i>Ex Officio</i> Consultant to the Council	U.S. Department of Labor Representative
George Maloney	Employer
Michael J. McNelly	Employee
David W. Norfolk	Employee
Rosie L.D. Pointer	Employee
Grant Shmelzer	Employer
William C. Taylor, Chair	Public
James A. Williams, Sr.	Public
Robert F. Yeatman, Jr.	Employee

Appendix 3. Membership of the Advisory Council on Prevailing Wage Rates

<u>Council Member</u>	<u>Representation</u>
Maryann S. Cohea, Esquire	Public
Patricia Cook-Ferguson	Labor
James L. Correll, Chair	Labor
Kenneth M. Grunley	Management
Joseph M. Herbert	Management
Michael Claude A. McPherson	Public

Appendix 4.

Organizational Structure of the Maryland Occupational Safety and Health Program



Note: Additional positions in designated offices are listed below.

¹Office Secretary III
OSH Compliance Program
Specialist
OSH Compliance Officer Lead
(3 positions)
OSH Compliance Officer III
(2 positions)
OSH Compliance Officer II
(3 positions)
OSH Compliance Hygienist III
(2 positions)
OSH Compliance Officer I –
Trainee (2 positions)

²Office Secretary III
OSH Compliance Hygienist III
(5 positions)
OSH Compliance Hygienist I –
Trainee

³Office Secretary III
OSH Compliance Program
Specialist (2 positions)
OSH Compliance Officer Lead
(3 positions)
OSH Compliance Officer III
(8 positions)
OSH Compliance Officer II

⁴Office Secretary III
OSH Compliance Program
Specialist
OSH Compliance Officer Lead
OSH Compliance Officer III
OSH Compliance Officer I
Office Clerk Assistant (contractual)
OSH Compliance Officer I –
Trainee (4 positions)
OSH Compliance Hygienist Lead
OSH Compliance Hygienist III

⁵Office Secretary II (2 positions)
OSH Compliance Officer III
Office Secretary 1
Administrative Aide

⁶Administrative Specialist II
Administrative Specialist I
(3 positions)

⁷Administrative Officer II
Administrative Officer I

⁸Office Secretary III
Administrative Aide
⁹OSH Compliance Hygienist III
(2 positions)
OSH Compliance Hygienist I –
Trainee
OSH Compliance Officer Lead
OSH Compliance Officer III
(2 positions)
OSH Compliance Officer I –
Trainee

¹⁰OSH Compliance Program
Specialist
OSH Compliance Hygienist III
OSH Compliance Officer III
OSH Compliance Officer II
Administrative Aide
Administrative Specialist III
Office Secretary III
Office Clerk Assistant
(contractual)
Office Clerk Assistant
(contractual)

Appendix 5

Membership of the Maryland Occupational Safety and Health Advisory Board

<u>Board Member</u>	<u>Representation</u>
John C. Duley, Jr.	Industry
Linda L. Harding	Public
Dennis W. Howard	Agriculture
Robert M. Howarth	Labor
Emory E. Knowles	Industry
Michael W. Maxwell	Businesses Regulated by the Public Service Commission
Melissa A. McDiarmid, M.D.	Health
Clifford S. Mitchell, M.D.	Health
Jo-Ann M. Orlinsky, Chair	Public
Richard L. Ruehl	Labor
Vacant	Public

Appendix 6

Membership of the Amusement Ride Safety Advisory

<u>Board Member</u>	<u>Representation</u>
Nancy R. Brashear (Becky)	Fairs
John M. Chenoweth	Engineer
Curtis Collins, Sr.	Public
Glenn Fishack, Sr.	Public
Dawn O. Holland	Public
John Hunt, Chair	Public
Michael H. Jones	Park Owner
Ralph E. Shaw	Carnival Owner
Christopher M. Trimper	Park Owner

Appendix 7. Membership of the Board of Boiler Rules

<u>Board Member</u>	<u>Representation</u>
Leonard Billian	Industry – Experienced Licensed Professional Engineer
J. Ronald DeJuliis, <i>Ex Officio</i> Member	Commissioner of Labor and Industry
Carey M. Dove	Industry – Owner/User of Pressure Vessels
Ashwani K. Gupta, Chair	Industry – Mechanical Engineer Faculty
Eric Harvey	Industry – Owner/User of Antiques
Kevin J. Mulvey	Industry – Boiler/Pressure Vessel Insurer
Brian Wodka	Industry – Licensed Stationary Engineer
Vacant	Industry – Manufacturer/Assembler of Boilers
Vacant	Industry – Owner/User of Power Boilers
Vacant	Consumer