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MARYLAND GENERAL ASSEMBLY
LEGISLATIVE POLICY COMMITTEE

December 15, 2009

9:00 a.m.

Joint Hearing Room, Legislative Services Building

Agenda

Part I: Maryland Program Evaluation Act (Sunset Process)

The "Sunset Process" is defined by the statute as "the process by which the Legislative Policy Committee determines whether a governmental activity shall undergo an evaluation". The fourth cycle began during the 2009 interim. During this time DLS conducted 17 preliminary evaluations. These evaluations have been consolidated into 16 preliminary evaluation reports. The Legislative Policy Committee will consider whether to waive or perform full evaluations of the following agencies:

- State Commission of Real Estate Appraisers and Home Inspectors
- State Collection Agency Licensing Board
- State Board of Pilots
- Office of the Commissioner of Financial Regulations
- State Board of Environmental Sanitarians
- State Board of Physical Therapy Examiners
- State Real Estate Commission
- State Board of Plumbing
- State Board of Examiners of Landscape Architects
- Maryland Home Improvement Commission
- State Board of Chiropractic and Massage Therapy Examiners
- State Board of Examiners and Optometry
- State Board of Examiners of Nursing Home Administrators
- State Board of Master Electricians
- State Board of Podiatric Medical Examiners
- State Board for Professional Land Surveyors

Part II: State Treasurer's Office - Report of the Treasurer

- A written report to the Legislative Policy Committee by the Honorable Nancy K. Kopp, State Treasurer, on operations in the State Treasurer's Office during the last six months of 2009.

Part III: Legislative Staff Agency Budget

Consideration of the fiscal year 2011 budget for the Department of Legislative Services.

Part IV: *Guidelines for Compensation and Expenses for Legislators, Maryland General Assembly, Effective January 1, 2010*

Non-substantive Changes relating to periodic changes to mileage, meals, and lodging reimbursements.

Part I
Maryland Program Evaluation Act
(Sunset Process)

Department of Legislative Services
Annapolis, Maryland

December 2009

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Summary of Sunset Review in 2009

- The 2009 interim marked the second year of the fourth “cycle” of sunset review under the Maryland Program Evaluation Act.
- 17 agencies underwent preliminary evaluation, 9 of which were scheduled for preliminary review in 2010, but for which DLS accelerated the review process to more evenly distribute the number of evaluations conducted over the next few interims.
- DLS findings and recommendations for LPC’s consideration are consolidated into 16 preliminary evaluation reports (see summary chart on next page).
 - 7 agencies (two of which were combined for the preliminary evaluation) are recommended for full evaluation in 2010;
 - 1 agency (the State Board of Environmental Sanitarians) is recommended for full evaluation in 2011;
 - 8 agencies are recommended for a waiver from further evaluation at this time.
 - Recommendations for 10-year extensions and follow-up reports are made for 4 agencies, with 9-year or 11-year recommendations for 3 agencies (primarily those accelerated to the 2009 interim to align the review schedule).
 - A recommendation for a four-year delay is made for the State Board of Examiners of Nursing Home Administrators.
- DLS recommends that the State Board of Podiatric Medical Examiners complete a follow-up report to LPC, certain standing committees, and DLS by October 1, 2010, and that the decision to waive the board be delayed until receipt of this report.
- Four entities underwent full evaluation.
 - Evaluations were conducted for the State Board of Barbers and the State Board of Cosmetologists (combined), the State Board of Dental Examiners, and the State Board of Waterworks and Waste Systems Operators.
 - All three full evaluation reports recommend extending the termination dates of the boards by 10 years and requiring follow-up reports to the evaluation committees.
 - However, the 10-year extensions for the State Board of Barbers and the State Board of Cosmetologists are contingent on legislative enactment of certain recommendations; otherwise, the evaluation recommends five-year extensions, with both boards moving directly to full evaluations at the end of five years.

DLS Recommendations on Preliminary Evaluations

<u>Preliminary Evaluation of Agency</u>	DLS Recommendation	
	<u>Full Evaluation in 2010 Interim</u>	<u>Waive or Take Other Action</u>
Department of Health and Mental Hygiene – Boards		
State Board of Chiropractic and Massage Therapy Examiners		X ¹
State Board of Examiners of Nursing Home Administrators		X ²
State Board of Examiners in Optometry		X ¹
State Board of Physical Therapy Examiners		X ¹
State Board of Podiatric Medical Examiners		X ³
Department of Labor, Licensing, and Regulation – Boards and Commissions		
Banking Board	X ⁴	
State Collection Agency Licensing Board	X ⁴	
State Board of Master Electricians	X	
Office of the Commissioner of Financial Regulation	X ⁴	
Maryland Home Improvement Commission	X	
State Board for Professional Land Surveyors		X ¹
State Board of Examiners of Landscape Architects		X ¹
State Board of Pilots		X ¹
State Board of Plumbing		X ¹
State Commission of Real Estate Appraisers and Home Inspectors	X	
State Real Estate Commission	X	
Maryland Department of the Environment – Board		
State Board of Environmental Sanitarians	X ⁵	

¹ DLS recommends waiving these agencies, extending their termination dates by 9 to 11 years, and requiring follow-up reports and other actions as specified in the evaluations.

² DLS recommends waiving this board from full evaluation at this time, but extending the board's termination date by only four years and requiring a follow-up report by October 1, 2011.

³ DLS recommends requiring a follow-up report by October 1, 2010, and deferring the decision on whether to waive the board from full evaluation until submission of the required report.

⁴ Preliminary evaluations for the Banking Board and Office of the Commissioner of Financial Regulation were conducted together; DLS recommends that these two entities be combined with the State Collection Agency Licensing Board into a single, full evaluation.

⁵ DLS recommends that a full evaluation be conducted during the 2011 interim rather than the 2010 interim.

DLS Recommendations on Evaluation Committees

<u>Agencies to Undergo Full Evaluation in 2010 Interim</u>	<u>Senate Committee</u>	<u>House Committee</u>
Banking Board ¹	FIN	ECM
State Collection Agency Licensing Board ¹	FIN	ECM
State Board of Master Electricians	EHEA	ECM
Office of the Commissioner of Financial Regulation ¹	FIN	ECM
Maryland Home Improvement Commission	EHEA	ECM
State Commission of Real Estate Appraisers and Home Inspectors	FIN	ECM
State Real Estate Commission	EHEA	ECM
 <u>Agency to Undergo Full Evaluation in 2011 Interim</u>		
State Board of Environmental Sanitarians	EHEA	ENV

¹ Preliminary evaluations for the Banking Board and the Office of the Commissioner of Financial Regulation were conducted together; DLS recommends that these two entities be combined with the State Collection Agency Licensing Board into a single, full evaluation.

ECM = House Committee on Economic Matters

EHE = Senate Education, Health, and Environmental Affairs Committee

ENV = House Committee on Environmental Matters

FIN = Senate Finance Committee

HGO = House Committee on Health and Government Operations

Source: Department of Legislative Services

Preliminary Evaluation of the State Commission of Real Estate Appraisers and Home Inspectors

Recommendation: Full Evaluation

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Commission of Real Estate Appraisers and Home Inspectors was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this commission – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. The State Commission of Real Estate Appraisers and Home Inspectors last underwent a full evaluation in 2001. At the time of the evaluation, the commission’s authority recently had been expanded to include licensing of home inspectors, though the commission had not yet implemented the home inspector licensing program. In its evaluation report, DLS recommended, among other things, that the commission take certain measures to address delays in the real estate appraiser complaint resolution process and that the General Assembly alter certain appraiser licensing fees. Following the evaluation, the General Assembly passed legislation that altered various appraiser licensing fees and extended the commission to July 1, 2013.

In conducting this evaluation, DLS staff reviewed commission meeting minutes, prior sunset evaluations, evaluation responses, and relevant State statutes and regulations; analyzed financial data and complaint records; interviewed commission members and staff; and attended a commission meeting and a meeting of the commission’s Appraiser Complaint Committee.

The commission reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix I**. Appropriate factual corrections and clarifications have been made throughout the document.

The Real Estate Appraisal Industry

Real estate appraisers provide estimates of the value of commercial and residential real property. Although real estate appraisal services are most often associated with mortgage lending, appraisal services are used for a variety of other purposes, including estate planning and property insurance.

The real estate appraisal industry underwent significant changes following the savings and loan crisis of the 1980s. After finding evidence of fraudulent appraisal practices throughout the industry, the U.S. Congress passed the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). Title XI of FIRREA created a framework for the establishment of national uniform standards for the licensing of appraisers and the performance of appraisal services. However, Title XI did not mandate a national appraiser licensing system. Rather, the Act authorized states to license appraisers, subject to federal oversight and consistent with certain minimum standards.

Under FIRREA, an individual must be a licensed or certified appraiser to perform an appraisal in connection with a federally related transaction valued in excess of the federal *de minimis* amount, which currently is \$250,000 for most transactions. Federally related transactions include transactions that involve federally insured financial institutions, the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Association (Freddie Mac), or a financing program with the U.S. Department of Housing and Urban Development (HUD) or Veterans Administration.

As of 2008, 29 states, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands require licensing or certification of all real estate appraisers, regardless of whether the appraisal is provided in connection with a federally related transaction. Thirteen states, including Maryland, require licensing or certification only in connection with federally related transactions that are valued in excess of the federal *de minimis* amount. The remaining eight states maintain a voluntary system of appraiser licensing and certification by which individuals may acquire a license or certificate in order to appraise property in connection with federally related transactions.

In many instances, lending institutions impose their own licensing requirements that are more stringent than state and federal law mandate. It is not unusual for a lender to require licensing or certification of appraisers that provide appraisal services in connection with a loan issued by the lender, regardless of whether the transaction is federally related.

Federal Oversight of State Appraiser Licensing and Regulation

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (Appraisal Subcommittee) is charged with monitoring state appraiser licensing units. The Appraisal Subcommittee is composed of representatives appointed by the heads of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office

of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and HUD. To ensure compliance with federal law, the Appraisal Subcommittee audits state appraiser licensing units every two years.

In addition to monitoring state appraiser licensing units, the Appraisal Subcommittee is charged with overseeing the entities that develop uniform appraisal standards and minimum appraiser qualification criteria. The Appraisal Standards Board (ASB) is responsible for developing and maintaining uniform appraisal standards, which are published as the Uniform Standards of Professional Appraisal Practice (USPAP). The Appraiser Qualifications Board (AQB) develops and maintains uniform appraiser qualification criteria. ASB and AQB are independent boards of the Appraisal Foundation, a private, not-for-profit corporation established by the appraisal profession.

Title XI of FIRREA requires that the Appraisal Subcommittee:

- monitor state licensing and certification of appraisers who perform appraisals in connection with federally related transactions;
- monitor state enforcement of appraisal standards for federally related transactions;
- maintain a national registry of state licensed and certified appraisers;
- monitor the Appraisal Foundation and its independent boards, which are responsible for establishing uniform appraiser qualification criteria and USPAP; and
- report annually to the U.S. Congress.

The Home Inspection Industry

Whereas an appraiser estimates the value of real property, a home inspector evaluates the physical condition of a residential structure and identifies those components and systems that may require repair or replacement. A typical home inspector's report, usually prepared in connection with the proposed sale of a property, covers the condition of a home's heating and air conditioning systems, plumbing and electrical systems, roof, walls, ceilings, floors, windows, doors, visible insulation, foundation, and structural components.

In 1991, Texas became the first state to require licensing of home inspectors. Today, at least 29 states, including Maryland, require licensing, certification, or registration of home inspectors. State licensing, certification, and registration laws vary among jurisdictions, but most require that a home inspector complete a minimum amount of education or training, pass an examination, and comply with certain standards of practice.

Licensure in Maryland

Real Estate Appraisers

Maryland issues four types of real estate appraiser licenses, which meets the requirements of FIRREA and also allows for the regulation of appraisers who do not work on federally qualified transactions. A **real estate appraiser trainee** license authorizes the license holder to provide appraisal services while training to become a licensed or certified appraiser. A real estate appraiser trainee must work under the supervision of a certified residential or certified general real estate appraiser.

A **licensed real estate appraiser** may provide appraisal services in connection with a federally related transaction for (1) noncomplex one- to four-unit residential property if the value of the transaction is less than \$1,000,000; and (2) any type of property (residential or commercial) if the value of the transaction is less than \$250,000.

Unlike a licensed appraiser, a **certified residential real estate appraiser** is not limited by the complexity of the property or the value of the transaction when it comes to appraising residential property. A certified residential real estate appraiser may provide appraisal services for all types of residential property, without any limit as to the value of the transaction. A certified residential real estate appraiser, like a licensed appraiser, also may provide appraisal services for commercial property if the value of the transaction is less than \$250,000.

Finally, a **certified general real estate appraiser** may provide appraisal services for all types of residential and commercial property, regardless of the value of the transaction. For a summary of the education, training, and experience requirements for each type of appraiser license, see **Exhibit 1**.

As of June 1, 2009, there were 3,119 licensed or certified appraisers in Maryland and 1,201 appraiser trainees.

Exhibit 1
Appraiser License Scope and Qualifications in Maryland

	<u>Scope of License</u>	<u>Qualifications</u>
Licensed Real Estate Appraiser Trainee	May provide appraisal services while under the supervision of a certified residential real estate appraiser or a certified general real estate appraiser	75 tested hours of commission approved real estate appraisal courses, of which 15 hours are classroom instruction on USPAP
Licensed Real Estate Appraiser	May provide appraisal services in federally related transactions for (1) noncomplex one- to four-unit residential properties if the transaction is less than \$1,000,000; (2) complex one- to four-unit residential properties if the transaction is less than \$250,000; and (3) commercial properties if the transaction is less than \$250,000	(1) 150 hours of coursework approved by the commission; and (2) a minimum of 2,000 hours of appraisal work compiled over a period of at least 24 months
Certified Residential Real Estate Appraiser	May provide appraisal services in federally related transactions for (1) all one- to four-unit residential properties; and (2) commercial properties if the transaction is less than \$250,000	(1) 200 hours of coursework approved by the commission; (2) an associate's degree or higher or, in lieu of a degree, 21 semester credit hours in courses prescribed by the commission; and (3) a minimum of 2,500 hours of appraisal work compiled over a period of at least 24 months
Certified General Real Estate Appraiser	May provide appraisal services in federally related transactions for all types of residential and commercial properties	(1) 300 hours of coursework approved by the commission; (2) a bachelor's degree or higher or, in lieu of a degree, 30 semester credit hours in courses prescribed by the commission; and (3) a minimum of 3,000 hours of appraisal work compiled over a period of at least 30 months, of which at least 1,500 hours involves nonresidential property

Source: State Commission of Real Estate Appraisers and Home Inspectors; Code of Maryland Regulations

In addition to the four types of appraiser licenses, the commission issues temporary real estate appraiser permits to individuals licensed or certified in another state. A temporary permit allows an individual to provide real estate appraisal services in the State in connection with a particular appraisal assignment for a maximum term of six months. The fee for a temporary permit is \$75.

The commission is authorized to issue an appraiser license or certificate by reciprocity if the applicant is a licensed or certified real estate appraiser in a state that shares reciprocity with Maryland. Reciprocal licensing is permitted if the applicant provides adequate evidence that he or she otherwise meets Maryland's licensing or certification requirements, holds an active license or certificate in good standing in the other state, and became licensed or certified in the other state after meeting requirements that are substantially equivalent to Maryland's requirements. Reciprocal licensing is not available for appraiser trainees.

The commission most recently had reciprocal licensing agreements with nine states, including Delaware, Virginia, and West Virginia. However, due to variations among states in their implementation of the new federal education requirements for appraiser licensing and certification, as well as concerns about deficiencies in other states' licensing and certification practices, the commission suspended those agreements earlier this year.

Home Inspectors

Chapter 470 of 2001 required licensing of home inspectors in Maryland effective October 1, 2001. However, Chapter 226 of 2002 postponed the licensing requirement until July 1, 2003. Due largely to budgetary issues, the commission did not begin licensing home inspectors until fiscal 2007, when it first received an appropriation to fund the home inspector licensing program. As of June 1, 2009, there were 900 licensed home inspectors in Maryland.

An applicant for a home inspector's license must have a high school diploma; complete at least 72 hours of an on-site training course that, at a minimum, requires the completion of the National Home Inspector Examination or its equivalent; and maintain general liability insurance of at least \$150,000. The fee for an original home inspector license is \$400, plus an application fee of \$50. The license is valid for two years and may be renewed for an additional two-year term at a cost of \$400.

The commission is authorized to issue a home inspector license by reciprocity if the applicant is licensed in another state and either the applicant meets Maryland's current licensing requirements or, at the time of licensing in the other state, that state's licensing requirements were at least equivalent to the licensing requirements in Maryland. The commission has not entered into any reciprocal licensing agreements with home inspector licensing units in other states.

The State Commission of Real Estate Appraisers and Home Inspectors

The commission is within the Department of Labor, Licensing, and Regulation (DLR). The General Assembly established the commission, originally named the State Commission of Real Estate Appraisers, in 1990 to implement and administer a real estate appraiser licensing and certification program that complied with Title XI of FIRREA. As noted above, Chapter 470 of 2001 expanded the commission's authority to include the licensing and regulation of home inspectors.

In general, the commission:

- licenses and certifies real estate appraisers in accordance with standards developed under FIRREA;
- licenses home inspectors;
- enforces appraiser and home inspector standards of practice;
- processes and investigates complaints against licensees; and
- enforces disciplinary actions taken against licensees.

The commission comprises 15 members appointed by the Governor with the advice of the Secretary of Labor, Licensing, and Regulation and the advice and consent of the Senate. At least two members are certified general real estate appraisers; two are certified or licensed real estate appraisers; two represent financial institutions; four are licensed home inspectors; and five are consumer members. Members serve staggered three-year terms and may not serve more than two consecutive terms. At the end of a term, a member continues to serve until a successor is appointed and qualifies.

Five current members have exceeded the two-term limit. Of those five members, one represents financial institutions, two are consumer members, and two are licensed home inspectors. The licensed home inspector members serving beyond the two-term limit have served on the commission since 2001, when the General Assembly expanded the authority of the commission to include licensing and regulation of home inspectors. Although the commission did not implement the home inspector licensing program until 2007, the presence of home inspector members at commission meetings prior to 2007 was necessary to achieve a quorum.

A chairman and vice chairman are elected annually by the members. If the chairman is a real estate appraiser, the vice chairman must be a home inspector and vice versa. The Governor is authorized to remove a member for incompetence or misconduct.

The commission has four standing committees: the Real Estate Appraiser Education/Application Committee; the Real Estate Appraiser Complaint Committee; the Home Inspector Education/Application Committee; and the Home Inspector Complaint Committee. The education/application committees review and approve pre-license education courses and continuing education courses offered by various providers. The complaint committees review complaints and make recommendations to the commission regarding how to proceed with each complaint. Although State law requires that the commission meet at least once every calendar quarter, the commission and its standing committees generally meet every two months.

The day-to-day operations of the commission are carried out by one full-time administrator. State law provides for an executive director of the commission; however, that position was eliminated in October 2008, as a result of budget cuts. The executive director's responsibilities are now handled by the commission's administrator and DLLR's Assistant Commissioner of Home and Mechanical Services.

The commission also relies on volunteer expert appraisers to review appraisals in connection with appraiser complaints (see below). Currently, the commission relies almost exclusively on one individual to provide technical reviews of appraiser complaints. Investigative services are provided by an investigator assigned to DLLR's Division of Occupational and Professional Licensing. Legal services are provided by an Assistant Attorney General (AAG), who also provides legal services for other boards and commissions within DLLR. The AAG attends commission meetings, advises the commission on legal matters, and assists the commission in the preparation of proposed regulations and legislation. Additional AAGs assigned to DLLR present cases on behalf of the commission at formal hearings.

Commission Enforces Standards of Practice

Another core function of the commission is the regulation and enforcement of real estate appraisal and home inspection services. The commission may deny, revoke, or suspend a license or certificate; reprimand a license or certificate holder; and impose civil penalties for a violation of the Maryland Real Estate Appraisers and Home Inspectors Act.

Real estate appraiser complaints generally fall into one of two categories: valuation disputes and continuing education violations. Complaints involving valuation disputes are usually initiated by a homeowner or lender who disagrees with the appraiser's valuation of a specific property. Complaints of this nature often require that an expert appraiser conduct a technical review of the appraisal. Complaints relating to continuing education violations are initiated by the commission when a random audit reveals that an appraiser failed to complete mandatory continuing education. The commission randomly audits at least 10% of appraisers for continuing education compliance at the time of license renewal.

The commission regularly resolves continuing education complaints by entering into consent agreements with appraisers. The complaints are not complicated and usually are resolved within a few months. Valuation complaints, on the other hand, take significantly longer

to resolve. If the complaint is referred for a technical review, that process alone takes a minimum of six months to complete.

Home inspector complaints generally allege that the home inspector failed to disclose some defect with the home. With complaints of this nature, the issue is usually whether the home inspector violated the Minimum Standards of Practice.

Major Legislative and Regulatory Changes

Since DLS last conducted a sunset evaluation of the commission, the General Assembly passed legislation that altered real estate appraiser licensing and certification fees, altered the training requirement for home inspector license applicants, and increased the amount of general liability insurance a home inspector must carry. For a summary of significant State legislation, see Exhibit 2.

Exhibit 2

Major Legislative Changes Since the 2001 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	226	<p>Extends termination date of the commission by 10 years to July 1, 2013</p> <p>Alters the qualifications for real estate appraisers serving on the commission</p> <p>Exempts home inspectors from licensing until July 1, 2003</p> <p>Codifies the license application fee for real estate appraisers and appraiser trainees at \$75*</p> <p>Increases from \$75 to \$125 the license renewal fee for real estate appraisers</p> <p>Increases from \$100 to \$125 the certificate renewal fees for certified residential and general real estate appraisers*</p>
2007	649	Requires that an appraiser trainee be supervised by a certified residential or certified general real estate appraiser
2008	160	<p>Requires an applicant for a home inspector's license to complete at least 72 hours of on-site training and pass the National Home Inspector Examination or its equivalent</p> <p>Raises from \$50,000 to \$150,000 the level of general liability insurance that a licensed home inspector must maintain</p>

*License application fees and certificate renewal fees were previously set by regulation.

Source: Laws of Maryland

In addition to these legislative changes, the commission made significant regulatory changes. In order to comply with new minimum education requirements adopted by AQB, the commission increased the education requirements for individuals applying for an original real estate appraiser license or certificate. As of January 1, 2008, anyone applying for an original real estate appraiser license must complete at least 150 hours of classroom study, anyone applying for an original residential real estate appraiser certificate must complete at least 200 hours of classroom study, and anyone applying for an original general real estate appraiser certificate must complete at least 300 hours of classroom study. Before January 1, 2008, the required hours of classroom study were 90 hours for an appraiser license, 120 hours for a residential appraiser certificate, and 180 hours for a general appraiser certificate.

Additionally, as of January 1, 2008, an applicant for an original residential or general real estate appraiser certificate must hold a college degree or, in lieu of a degree, have completed certain college-level coursework. Previously, a college degree or college coursework were not required for appraiser certification.

Licensing Activity Spikes Briefly Due to New Standards

The real estate appraiser license and the general and residential real estate appraiser certificates are valid for three years and may be renewed for additional three-year terms at a cost of \$200. **Exhibit 3** summarizes the total number of licensees each year since fiscal 2005.

Exhibit 3
Number of License Holders, by Type of License
Fiscal 2005-2009*

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Real Estate Appraiser Licenses					
Real Estate Appraiser Trainee	1,989	2,385	2,334	1,929	1,201
Licensed Real Estate Appraiser	1,153	1,302	1,325	1,287	1,119
Certified Residential Real Estate Appraiser	800	856	951	1,241	1,221
Certified General Real Estate Appraiser	745	759	753	793	779
Home Inspector Licenses	-	-	99	631	900

*License count taken on or about June 1 of each year.

Note: The commission did not begin licensing home inspectors until fiscal 2007.

Source: State Commission of Real Estate Appraisers and Home Inspectors

Commission staff attributes the spike in the number of real estate appraiser trainees in fiscal 2006 and 2007 to the new licensing standards that went into effect on January 1, 2008.

Beginning on that date, an applicant for an appraiser's license or certificate must complete additional hours of classroom study, and an applicant for an original appraiser's certificate also must hold a college degree or have completed certain college-level coursework. In anticipation of this change, an unusually large number of individuals obtained appraiser trainee licenses to be subject to the prior (less stringent) qualifications for an appraiser license or certificate. Since the effective date of the new licensing standards, the number of appraiser trainees has dropped sharply. Economic factors may also have contributed to the pattern.

The drop in the number of licensed appraisers from 1,325 in fiscal 2007 to 1,119 in fiscal 2009, as well as the increase in certified residential and general appraisers during that period, from 1,704 in fiscal 2007 to 2,000 in fiscal 2009, is partly due to the same dynamic. The requirement that applicants for an appraiser certificate hold a college degree or complete certain college level coursework encouraged some appraiser trainees and licensed appraisers to make the transition to residential or general certified appraiser before January 1, 2008. However, the primary forces behind this trend are the new appraiser certification requirements for Federal Housing Administration (FHA) and HUD loans. As of October 1, 2009, only certified appraisers may provide appraisal services in connection with FHA and HUD loans.

Real Estate Appraiser Complaint Volume Rising Sharply

While the number of home inspector complaints has remained low, the number of appraiser complaints spiked dramatically in 2009. The number of appraiser complaints filed through July 31, 2009, is equal to the number of appraiser complaints filed in all of calendar 2008. At this rate, the projected volume of appraiser complaints for calendar 2009 far exceeds the volume in prior years. **Exhibit 4** shows the commission's complaint volume by calendar year.

Commission staff attributes the increase in complaint volume to the recent downturn in the housing market, which has led to declining property values in many areas. According to commission staff, declining property values likely are fueling valuation disputes. Commission staff also notes that the complexities of appraising real estate in the current market have compelled the commission to refer an unusually high percentage of appraiser complaints for a technical review.

The commission administrator reviews each consumer complaint to determine whether the complaint falls within the commission's jurisdiction. If the commission has jurisdiction over a complaint, it is referred to the appropriate complaint committee: the Real Estate Appraiser Complaint Committee or the Home Inspector Complaint Committee. The complaint committee reviews the complaint for probable cause and makes a recommendation to the commission as to whether to proceed with or dismiss the complaint.

Exhibit 4
Complaint Activity by Year
Calendar 2005-2009

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009*</u>
Real Estate Appraisers					
Complaints Received	50	65	75	59	59
Closed as of July 31, 2009	49	60	65	45	10
Active as of July 31, 2009	1	5	10	14	49
Home Inspectors**					
Complaints Received	-	-	-	10	6
Closed as of July 31, 2009	-	-	-	10	6
Active as of July 31, 2009	-	-	-	0	0

*Received through July 31, 2009

**The commission did not process complaints relating to home inspections conducted prior to February 11, 2008, the effective date of COMAR 09.36.06 (Home Inspector Code of Ethics) and COMAR 09.36.07 (Minimum Standards of Practice).

Source: State Commission of Real Estate Appraisers and Home Inspectors

In the case of appraiser complaints, the Real Estate Appraiser Complaint Committee generally refers more complicated complaints to an expert appraiser for a technical review before making a recommendation to the full commission. The expert appraiser conducts an independent appraisal of the property and submits a report to the complaint committee. If a hearing is held on the complaint, the expert appraiser also serves as a witness during the hearing.

The commission, for the most part, relies on one part-time volunteer to perform technical reviews. Historically, when funding has been available, the commission has utilized the services of paid expert appraisers. However, funding for expert appraisers has been limited and sporadic, amounting to no more than approximately \$6,000 in any year. The commission has attempted to increase the number of available volunteer expert appraisers by establishing the Volunteer Expert Review Appraiser program, but the program proved ineffective in attracting competent appraisers. Because of the volume of appraiser complaints referred for a technical review and the commission's reliance on one part-time volunteer to perform the reviews, technical reviews usually take at least 6 to 12 months to complete.

If the commission chooses to proceed with the complaint, the complaint is scheduled for a hearing with the Office of Administrative Hearings (OAH) or the commission's Hearing Board. Most complaints, particularly those referred for a technical review, are heard by an administrative law judge (ALJ) with OAH. Because of the volume of complaints handled by OAH, it often takes four to six months before a hearing date is scheduled.

ALJs have 90 days from the date of a hearing to file their decisions and recommended orders with the commission. An ALJ's decision and recommended order are reviewed by the commission, which may affirm, modify, or reverse the order. The respondent may file an exception to the commission's proposed order, in which case a hearing is held before the commission's Hearing Board. Once the commission's order becomes final, the respondent may file an appeal in circuit court.

Complaint Volume for Home Inspectors Is Low

The volume of home inspector complaints has remained relatively low during the short period the commission has processed home inspector complaints. The commission did not process home inspector complaints concerning inspections conducted before February 11, 2008, because the commission had not yet adopted the Home Inspector Code of Ethics and Minimum Standards of Practice.

The commission has processed only 16 home inspector complaints, and all of those complaints were dismissed. However, commission members and staff expect the volume of home inspector complaints to increase in the coming years as the licensing program matures.

Commission Cited by Appraisal Subcommittee

Following its most recent audit of the commission, completed in August 2008, the Appraisal Subcommittee cited the commission for failing to comply with Title XI of FIRREA and the Appraisal Subcommittee's Policy Statement 10E with respect to the timely resolution of appraiser complaints. Policy Statement 10E provides that, absent special documented circumstances, "final administrative decisions ... should occur within one year of the complaint filing date." At the time of the audit, the commission had 53 outstanding appraiser complaints, 22 of which were more than one year old.

The timely resolution of appraiser complaints has been an ongoing issue for the commission, and it is a common problem among state appraiser regulatory units. Of the 190 appraiser complaints received from calendar 2005 through 2007, 52 complaints (27%) were not resolved within one year. As of July 31, 2009, 1 complaint from 2005, 5 complaints from 2006, 10 complaints from 2007, and 14 complaints from 2008 remained open. The high complaint volume, coupled with the high percentage of complaints referred for a technical review, likely will lead to greater delays in the processing of appraiser complaints. Of the 35 state units audited by the Appraisal Subcommittee in 2007, the subcommittee found that 18 failed to resolve complaints in a timely manner.

Title XI of FIRREA authorizes the Appraisal Subcommittee to decertify a state's appraiser licensing program if the program fails to meet federal standards. Decertification would put an end to virtually all mortgage lending in the state. Given the severity of this sanction, the Appraisal Subcommittee has never exercised this power.

Commission Is Self-supporting, but Future Stability Is Uncertain

Revenue collected by the commission is credited to the general fund. Sources of revenue include licensing fees, fines, and other fees charged for services provided. The commission relies on appropriations from the general fund to cover its operating expenses. Original, renewal, and reciprocal licensing fees for each of the licenses issued by the commission are shown in Exhibit 5.

Exhibit 5 Licensing Fees as of July 2009

	<u>Original</u>	<u>Renewal</u>	<u>Reciprocal</u>
Real Estate Appraisers (3-year License Term)			
Real Estate Appraiser Trainee	\$75	\$75	N/A
Licensed Real Estate Appraiser	150	200	\$150
Certified Residential Real Estate Appraiser	175	200	175
Certified General Real Estate Appraiser	175	200	175
Home Inspector (2-year License Term)	450	400	450

Note: The licensing fees for licensed real estate appraisers, certified residential real estate appraisers, and certified general real estate appraisers include a \$75 federal registry fee, which is maintained in a separate special fund and transmitted periodically to the federal Appraisal Subcommittee.

The original and reciprocal licensing fees for home inspectors include a \$50 application fee.

Source: State Commission of Real Estate Appraisers and Home Inspectors; Code of Maryland Regulations

Uneven Fees Create Concerns

Unlike appraiser licensing and certification fees, which are set by statute, the commission sets home inspector licensing fees, subject to a statutory maximum. The commission set home inspector licensing fees at the statutory maximum of \$400 based on the anticipated number of home inspector licensees and the expected costs of operating the program. According to the fiscal note accompanying Chapter 470 of 2001, DLLR estimated in 2001 that there were approximately 450 home inspectors in Maryland. As of June 1, 2009, there are 900 licensed home inspectors in the State, double DLLR's 2001 estimate.

At their current levels, home inspector licensing fees are significantly higher than appraiser licensing fees. The annualized renewal fee for a home inspector license is \$200 per year, whereas the annualized renewal fee for an appraiser license, residential appraiser certificate, and general appraiser certificate, excluding the \$75 federal registry fee, is just over \$41 per year. The difference in fees is due to the number of anticipated licensees in each program and the anticipated costs of operating the respective programs.

The significant difference in licensing fees, coupled with the current number of home inspector licensees, raises concerns about potential cross-subsidization of the commission’s licensing programs. Recent cost containment measures appear to have limited the potential for program cross-subsidization. Nonetheless, as discussed in greater detail below, there is the potential for future cross-subsidization, particularly if the cost of operating one of the programs is substantially less than the revenue generated by that program.

Revenues and Workload Both Expanding

As Exhibit 6 shows, with the exception of fiscal 2006, the commission’s revenues generally have covered its expenditures. However, cost containment measures have left the commission underfunded as its workload grows.

Exhibit 6
Fiscal History
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Revenues						
Appraiser Revenues	\$226,006	\$168,570	\$199,845	\$250,545	\$171,953	\$119,423
Home Inspector Revenues	-	-	-	67,950	234,725	170,525
Total Revenues	\$226,006	\$168,570	\$199,845	\$318,495	\$406,678	\$289,948
Expenditures						
Direct Expenditures	\$181,852	\$87,871	\$250,272	\$271,641	\$187,455	\$154,796
Direct Legal Expenditures	0	0	0	0	0	48,998
O&P Cost Allocation	32,333	27,455	22,337	31,724	50,780	27,692
DLLR Indirect Expenditures	0	11,696	46,528	18,284	27,738	20,561
Total Expenditures	\$214,185	\$127,022	\$319,137	\$321,649	\$265,973	\$252,047
Surplus/(Gap)	\$11,821	\$41,548	(\$119,292)	(\$3,154)	\$140,705	\$37,901

O&P: Occupational and Professional Licensing

Source: Department of Labor, Licensing, and Regulation; Maryland Governor’s Budget Books, Fiscal 2006-2010

From fiscal 2007 through 2009 the appraiser program generated approximately \$542,000 compared with approximately \$473,000 generated by the home inspector program. Thus, despite the higher fees for home inspectors, the programs generated comparable levels of revenue, with the appraiser program, on average, generating roughly \$23,000 more per year than the home inspector program. The fiscal 2006 funding gap is largely attributable to increased costs incurred that year in preparation for the 2007 implementation of the home inspector licensing program. The commission incurred start-up costs and added a contractual position to handle the increased workload. DLLR staff describes the decrease in expenditures from fiscal 2004 to 2005 as an

apparent aberration that was observed in several other boards but could not explain the specific cause of the decrease.

Over the fiscal 2007 to 2009 three-year cycle, the commission covered all of its expenses and generated a considerable surplus. During that period, the appraiser and home inspector programs generated a combined \$1,015,000 in revenue, of which approximately \$473,000 was generated by the new home inspector program. Commission expenditures, however, have not kept pace with revenue growth. Despite revenue growth of more than \$420,000 from the fiscal 2004 through 2006 cycle to the fiscal 2007 through 2009 cycle, commission expenditures increased by just under \$180,000. Growth in commission expenditures has been limited by various cost containment measures, including the elimination of the commission's executive director position and the elimination of the contractual position that was added to handle the increased workload created by the home inspector licensing program. From fiscal 2007 to 2009, commission expenditures decreased from \$321,000 to \$252,000.

At the same time, the commission's workload increased. The new home inspector licensing program has added to the commission's workload, as has the recent spike in appraiser complaints. Cost cutting measures have limited the commission to one staff person, though it appears that commission staff has been able to keep up with the day-to-day operations of the commission. However, commission staff anticipates an increase in home inspector complaints, which will create additional work for the commission. Moreover, the appraiser complaint process has been a consistent problem for the commission. The commission has been unable to meet federal complaint processing standards, and its continued reliance on an unpaid volunteer appraiser appears to be the primary cause of the delay. Commission staff raised concerns that appraiser complaint processing delays will increase due to the recent spike in appraiser complaints.

Potential Cross-subsidization of Programs

Although recent cost cutting within the commission has limited the possibility of program cross-subsidization, there is a risk that the home inspector program will subsidize the real estate appraiser program, particularly as State budget conditions improve and cost containment measures loosen. The commission consistently struggles to process appraiser complaints in a timely manner and was cited in 2008 for failing to meet federal complaint processing standards. The primary cause of the complaint processing delay is the backlog with the commission's expert appraiser. To address that backlog, the commission has attempted to pay for expert appraisal services; however, funding for that purpose, when available, has been limited. These persistent delays in the appraiser complaint process suggest that the appraiser program is in need of additional funding.

Given the apparent need for such funding, it is possible that the commission could meet that need by funding the appraiser program at levels that exceed appraiser revenues while funding the home inspector program at levels below home inspector revenues. The commission expects the volume of home inspector complaints to grow, which would increase the cost of operating that program and reduce or eliminate the potential for cross-subsidization.

Nonetheless, if home inspector complaints do not grow substantially, the board could use excess home inspector revenue to cross-subsidize the appraiser program.

Currently, there is no statutory mechanism that might prevent such cross-subsidization. Though the commission set home inspector licensing fees at a level that approximated the cost of operating the program, the commission is not obligated by statute to do so. At the same time, appraiser licensing fees are not within the commission's control, as those fees are set by statute.

Recommendation

Generally, the commission is a well-run and professional organization. Nonetheless, it continues to struggle to meet federal standards regarding the timely resolution of appraiser complaints. Due to an unusually high volume of appraiser complaints and the commission's reliance on one unpaid volunteer appraiser to perform technical reviews, delays in the appraiser complaint process may worsen. Persistent delays in the appraiser complaint process, as well as the recent spike in appraiser complaints, suggest the need for additional funding for expert appraisers.

Commission revenues increased considerably with the addition of the home inspector licensing program, yet commission expenditures have not kept pace with the growth in revenues. Although the commission's single staff person has been able to keep up with the day-to-day operations of the commission, the commission's workload is increasing. At the same time, cost containment measures have led to the elimination of the commission's executive director position and a contractual position.

The commission's cost containment measures have limited the possibility of program cross-subsidization, but there is a risk that the home inspector program could subsidize the appraiser program as cost containment measures are lifted. Given the apparent ongoing need for funding to pay for expert appraisers, the relatively low volume of home inspector complaints, and the absence of any statutory mechanism to prevent program cross-subsidization, the potential for cross-subsidization does exist.

The commission also recently suspended its reciprocal licensing agreements with other state appraiser licensing units. Although appraisers can obtain a temporary appraiser permit in Maryland and other states for specific appraisal assignments, the suspension of reciprocal licensing could have a significant effect on the region's appraisal industry.

Therefore, the Department of Legislative Services recommends that the State Commission of Real Estate Appraisers and Home Inspectors undergo a full evaluation to:

- **explore ways in which the commission might shorten its appraiser complaint resolution process;**

- assess the need for a fee increase for real estate appraisers to provide funding for expert appraiser services;
- examine the option of funding the commission through a special fund;
- explore the need to implement measures to prevent cross-subsidization between the appraiser and home inspector programs; and
- review the status of reciprocal licensing agreements with other states' appraiser and home inspector licensing units.

Appendix 1.
Written Comments of the State Commission of Real Estate
Appraisers and Home Inspectors

DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY BROWN, Lt. Governor
ALEXANDER M. SANCHEZ, Secretary

Occupational & Professional Licensing

DLLR Home Page • <http://www.dllr.state.md.us>
DLLR E-mail • pschott@dllr.state.md.us

November 30, 2009

Mr. Michael C. Rubenstein
Principal Policy Analyst
Department of Legislative Services
90 State Circle
Annapolis, MD 21401-1991

Dear Mr. Rubenstein:

On behalf of the Department of Labor, Licensing and Regulation and the Commission of Real Estate Appraisers and Home Inspectors ("Commission"), I wish to acknowledge receipt of your letter and the draft report of the Preliminary Evaluation of the State Commission of Real Estate Appraisers and Home Inspectors that was prepared by the Department of Legislative Services ("DLS").

The Commission reviewed the preliminary evaluation and found no factual errors in the report. The report indicates that the Commission is a well-run and professional organization, but recommends that the Commission undergo a full evaluation to explore ways to improve the Commission's program. The Commission accepts the recommendation and looks forward to working with the staff of the DLS in addressing the issues that were raised in the report.

Should you have any questions, feel free to call me at (410) 230-6165.

Sincerely,



Patricia Schott, Administrator
Maryland Commission of Real Estate Appraisers and
Home Inspectors

cc: Alexander M. Sanchez, Secretary
Stanley Botts, Commissioner, Occupational & Professional Licensing
Harry Loleas, Deputy Commissioner, Occupational & Professional Licensing
Steven McAdams, Chair, Commission of Real Estate Appraisers and Home Inspectors



Preliminary Evaluation of the State Collection Agency Licensing Board

Recommendation: Full Evaluation

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Collection Agency Licensing Board last underwent a preliminary evaluation as part of sunset review in 1999. The preliminary evaluation determined that, while the board operated efficiently and effectively, the authorizing statute required updating to reflect changes within the industry. As a result, DLS recommended that LPC waive the board from full evaluation, and that the board submit a follow-up report to LPC by October 1, 2000, detailing the board’s recommendations for revising its authorizing statute, the Maryland Collection Agency Licensing Act (MCALA). Chapter 79 of 2000 extended the board’s termination date to July 1, 2012, and the board submitted a follow-up report in September 2000 stating that it was not pursuing any revisions to its authorizing statute.

In conducting this preliminary evaluation, DLS staff interviewed board members, staff, and a licensee; reviewed pertinent State statutes and regulations; attended a board meeting; reviewed board meeting minutes; and visited the board’s office. In addition, DLS staff analyzed data relating to the board’s administration of licenses, complaints, and finances.

The State Collection Agency Licensing Board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix I**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

The Collection Agent Industry

State statute defines collection agencies as third parties that collect consumer debt or sell systems used to collect consumer debt. Most entities that collect their own debt are not considered collection agencies and, therefore, are not regulated by the board. The board does regulate debt purchasers that collect a consumer claim acquired when the claim is in default.

The federal Fair Debt Collection Practices Act, enforced by the Federal Trade Commission, prohibits debt collectors from using abusive, unfair, or deceptive practices to collect debt. The federal Act specifically prohibits debt collectors from:

- contacting third parties other than a debtor's attorney for any reason other than to locate the debtor. In contacting third parties, collection agents must state their name but may not reveal that they are calling about a debt or state the agency's name unless asked;
- contacting a debtor directly who is represented by an attorney unless the debtor gives the agent permission to contact the debtor directly. Collection agents may not call debtors before 8 a.m. or after 9 p.m., and may not contact them at work if the employer specifically prohibits collection calls;
- using threats or actual violence against a debtor or another person. Collection agents may not publish a debtor's name on a "blacklist" or other public posting;
- lying about the debt, their identity, the amount owed, or the consequences of not paying the debt. Collection agents may not send documents that resemble legal documents or offer incentives to disclose information; and
- engaging in unfair or shocking methods to collect debt, including adding interest or fees to the debt, threatening criminal prosecution, or threatening to seize property to which the agent has no right.

The federal Act also exempts specific federal benefits from garnishment, including Social Security and other federal retirement payments and student assistance.

The State Collection Agency Licensing Board

The State Collection Agency Licensing Board is located within the Department of Labor, Licensing, and Regulation's (DLLR) Office of the Commissioner of Financial Regulation. Board membership consists of the Commissioner of Financial Regulation, two collection agency industry representatives, and two consumer members. The commissioner chairs the board. The other four members are appointed by the Governor with the Senate's advice and consent for

four-year terms. The consumer members must be either board officers or members of a Maryland consumer group or an employee of one of Maryland’s legal consumer protection units. Consumer members cannot serve as board members if they are subject to board regulation. They also must not have financial interests with or be paid by someone regulated by the board.

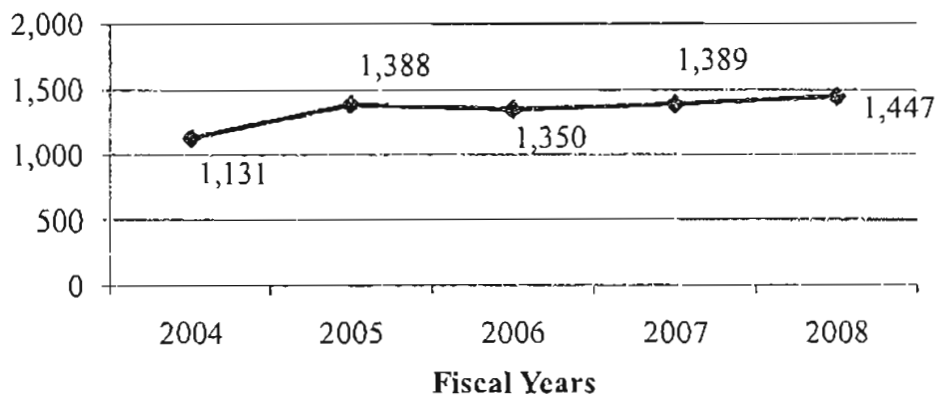
The board is served by two administrative officers from the Office of the Commissioner of Financial Regulation and by the office’s legal counsel. Additional support comes from the office’s executive, complaint, licensing, investigative, legal enforcement, and other support staff.

The board provides consumers with an alternative venue for consumers who otherwise would have to pay expensive attorney fees or file time-consuming claims with the Federal Trade Commission. As of July 27, 2009, there were 1,452 collection agency licensees, but only 1,018 collection agency firms operating in Maryland, not including all branch offices.

Number of Licensed Collection Agencies Has Grown

Exhibit 1 shows that the number of collection agencies has steadily increased. But while revenues from collection agencies have increased along with the size of the industry, the basic licensing fees charged by the industry have not. Applicants for a two-year collection agency license must submit an application, a \$400 nonrefundable application fee, and a \$5,000 surety bond. The surety bond is available to reimburse anyone who suffers damage from a collection agency. The board may renew the license for a two-year term if the collection agency is in good standing and submits a renewal application form, a \$400 renewal fee, and a bond or bond continuation certificate.

Exhibit 1
Growth in Collection Agency Licensees
Fiscal 2004-2008



Source: State Collection Agency Licensing Board

Despite Some Changes, Licensing Remains Similar

The board must process collection agency licenses within 60 days. The board currently processes licenses within 14 to 60 days. Although the board implemented an electronic licensing mechanism that was expected to significantly reduce processing time, the length of time necessary to process an initial application has remained the same. While e-licensing has streamlined the application and payment processes, staff must still collect all pertinent documents and review and decide on the merits of each applicant. Renewing licenses electronically is now easier, however, because most documentation is already on file.

Some collection agencies may remain unlicensed. Operating a collection agency without a license is a misdemeanor under State law, subject to a \$1,000 fine and imprisonment for up to six months. Even if an agency is licensed, the board may reprimand a collection agency, or suspend or revoke its license, if the agency or any owner, director, officer, member, partner or agent of the collection agency commits certain acts. These include making a material misstatement in an application for a license; being convicted under U.S. or State law of a felony, or a misdemeanor directly related to engaging in the collection agency business; committing fraud or engaging in illegal or dishonest activity in connection with the collection of a consumer claim; knowingly or negligently violating the Maryland Consumer Debt Collection Act; and failing to comply with a lawful order the board passes under the Maryland Collection Agency Licensing Act. The board may also impose a fine of up to \$500 for violating a board order. The board may deny an application if an applicant fails to meet licensure requirements, or if the applicant has committed any act that would be a ground for reprimand, suspension, or revocation of a license.

If the board denies a license application, or takes action against a licensee, the licensee or license applicant is entitled to a hearing and a judicial appeal.

Statutory and Other Changes Affecting the Board Since 1999 Sunset Review

Since the preliminary evaluation of 1999, a few statutory changes have affected board operations. As shown in **Exhibit 2**, the General Assembly extended the board's operations until 2012. In the following year, the General Assembly added a tenth exemption from the Maryland Collection Agency Licensing Act and added other exclusions.

Due to a desire to continue to regulate collection agencies effectively, and in order to stop the subsidization by other industries of the regulatory costs associated with collection agencies, the board is considering seeking legislation authorizing the board to set reasonable licensing fees in a manner that will produce the funds necessary to cover the direct and indirect cost of regulating collection agencies.

Exhibit 2 Major Legislative Changes Since 1999 Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	79	Extends board's termination date by 10 years to July 1, 2012.
2001	558	Subject to registration requirements, exempts a person that is collecting a debt for another person from the scope of the Maryland Collection Agency Licensing Act if both persons are related by "common ownership," the person who is collecting a debt does so only for those persons to whom the person is related by "common ownership," and the "principal business" of the person who is collecting a debt is not the collection of debts.
2007	472	Extends regulation by the board to debt purchasers that collect a consumer claim acquired when the claim was in default. Sets qualifications for licensure, clarifies the grounds for denial of an application, and establishes the right to a hearing before the board for persons that are denied a license. Expands the board's authority to reprimand a licensee or suspend or revoke a license.

Source: Laws of Maryland

Complaints Have Increased Over the Past Five Years

Collection agencies typically begin collecting debt by finding a consumer's mailing address and phone number and notifying the consumer of the alleged debt. The collection agency can request that the consumer pay the debt once the consumer has been notified. The consumer can dispute the alleged debt or ask the collection agency to verify the debt. If a consumer writes to the collection agency to dispute the debt, refuses to pay the alleged debt, or asks the collection agency to stop its communications, the federal Fair Debt Collection Practices Act requires an agency to either stop contacting the debtor and/or to try to recover the debt through a specified remedy, including a civil lawsuit.

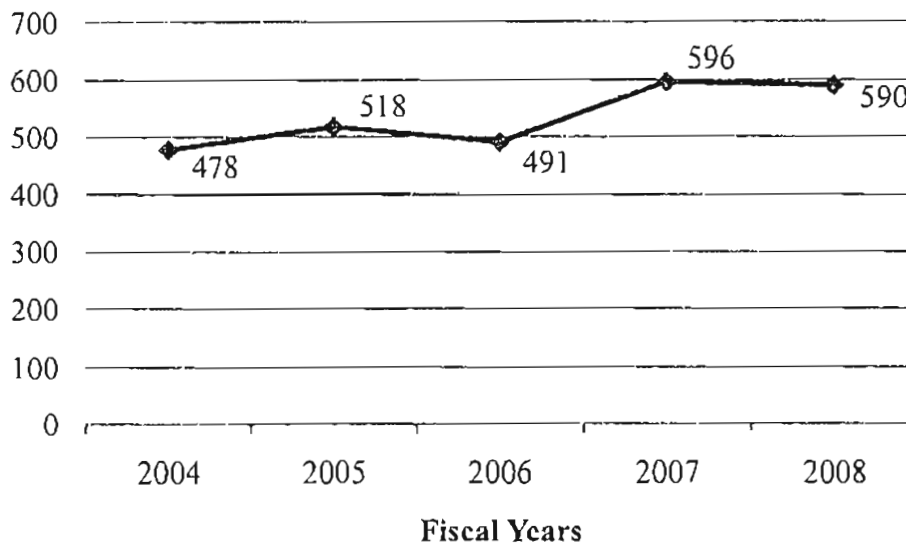
Collection agencies may either receive a percentage of the amount they collect or try to collect the debt after having purchased it themselves, usually at a deeply discounted price. Collection agencies may report debts to credit reporting bureaus or sue for the debt in addition to or instead of contacting customers through conventional means. The incentives to collect debt

and the methods that may prove successful may engender abusive and illegal practices like harassment, fraudulent activity, and discrimination. Consumers that believe a collection agency has engaged in illegal practices may submit a complaint to the board.

Board staff logs each complaint in a complaint database, and each complaint is assigned to an investigator within the Office of the Commissioner of Financial Regulation. The board administrator may also investigate complaints, particularly those that relate to collection agency practices. If investigative staff determines that enough evidence exists to charge a collection agency, then the board members review the charges.

Exhibit 3 illustrates a gradual increase in complaint activity from fiscal 2004 to 2008. In fiscal 2008, 491 of the 590 complaints were against collection agencies, 68 complaints were made against law firms, and 31 were filed against debt purchasers, who were required to be licensed in 2007.

Exhibit 3
Collection Agency Complaint History
Fiscal 2004-2008



Source: State Collection Agency Licensing Board

Of the complaints filed in fiscal 2008, 46% involved disputed claims, while 33% involved unprofessional or harassing conduct. Complaints categorized as payment history issues, fraudulent activity, lack of jurisdiction, payment mediation, inquiries, disputed fees, and client/agency relationship issues constituted the remaining 21%.

Of the 590 complaints, 86% involved debt recovery organizations based outside of Maryland, and 25 complaints (4%) were filed by out-of-state consumers.

The vast majority of complaints (82%) are resolved in fewer than 90 days, but as **Exhibit 4** demonstrates, some take longer to resolve. Complaint unit examiners received extensive training in the mechanics of the Fair Debt Collection Practices Act and the Maryland Consumer Debt Collection Act in February 2009. The training provided a basis for amendments to the Maryland Act, but the board does not plan to revisit the Act until after the sunset process is complete.

Exhibit 4
Collection Agency Complaint Resolution
Fiscal 2008

	<u>Up to 30</u> <u>Days</u>	<u>31 to 60</u> <u>Days</u>	<u>61 to 90</u> <u>Days</u>	<u>91 to 120</u> <u>Days</u>	<u>More Than</u> <u>120 Days</u>
Days to Complaint Resolution	35%	33%	14%	7%	11%

Source: State Collection Agency Licensing Board

Revenues and Expenditures Are Difficult to Ascertain

The commission is budgeted within the Office of the Commissioner of Financial Regulation. The office prepares five budgets: four special fund budgets for activities paid for by special funds and one small general fund budget for all other office activities and expenses. Since the State Collection Agency Licensing Board is general funded, a separate budget for the board is not available.

Upon request, the office estimated that, for fiscal 2009, it received \$270,000 in revenues from licensing fees. The office also projected a budget of \$474,142 in expenses. The expenses included \$55,853 for shared administrative and legal staff; \$150,600 for work performed by the office’s complaint unit; \$61,880 for work by the licensing unit; \$28,000 for executive staff time; \$47,413 for human resources and other DLLR support; \$45,938 for investigative staff; \$10,375 for legal enforcement; and \$74,083 for materials, rent, information technology, and other costs. However, DLS cannot attest to the reliability of these figures, and the commissioner’s office noted that providing greater budgetary detail would be of questionable reliability.

The commissioner’s office is currently planning to seek regulatory authority from the General Assembly to set its fees according to the cost of regulating the collection agency

industry. The office has also communicated a desire to regulate collection agencies more actively. The level of desired regulation, however, is not clear.

Recommendation

There is a continued need for regulation of collection agencies in the State to protect the public from harassment and illegal conduct. **However, given the board's placement within the larger Office of the Commissioner of Financial Regulation, as well as potential changes to the way the State regulates and funds the regulation of collection agencies, the Department of Legislative Services recommends that a full evaluation of the State Collection Agency Licensing Board be included as part of the proposed full evaluation of the Office of the Commissioner of Financial Regulation, and that it address the following issues:**

- **how the board functions within the Office of the Commissioner of Financial Regulation:** A full evaluation should collect more accurate data on the board's revenues and expenditures and determine whether it should be funded differently. It should also examine how the board's placement within the office of the commissioner affects its operation.
- **whether MCALA should be revised to enhance the board's capacity to regulate collection agencies, and if so, how:** A full evaluation should look at how the board is functioning, including whether collection agencies need more State regulation given the role of the Federal Trade Commission in enforcing federal statutes. That review should include a determination as to whether the board needs more authority or resources to regulate collection agencies effectively and resolve all complaints within a reasonable timeframe.

If a full evaluation of the Office of the Commissioner of Financial Regulation is not pursued, an independent full evaluation of the State Collection Agency Licensing Board should pursue the same issues identified above.

**Appendix 1. Written Comments of the
State Collection Agency Licensing Board**

DLLR

STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY G. BROWN, Lt. Governor
ALEXANDER M. SANCHEZ, Secretary

Office of the Commissioner of Financial Regulation
Sarah Bloom Raskin, Commissioner

www.dllr.state.md.us/finance
E-mail • finreg@dllr.state.md.us

December 3, 2009

Department of Legislative Services
Office of Policy Analysis
Attn: Michael C. Rubenstein, Principal Policy Analyst
90 State Circle
Annapolis, Maryland 21401-1991

Re.: Sunset Review---Preliminary Evaluation of the State Collection Agency
Licensing Board

Dear Mr. Rubenstein:

On behalf of the State Collection Agency Licensing Board (the "Board"), this will acknowledge our receipt of your letter of November 19, 2009 and the Preliminary Evaluation of the State Collection Agency Licensing Board. The Board has reviewed the draft and our staff has provided policy analyst Andrew Johnston with factual corrections and clarifications under separate cover.

If we can be of any further assistance in providing your office with additional information or clarification, please feel free to contact the Board's Administrator, Michael Jackson at 410-230-6017.

Sincerely,



Sarah Bloom Raskin, Chairman
State Collection Agency Licensing Board

cc: Alexander M. Sanchez, Secretary, Department Labor, Licensing, and Regulation
Mark Kaufman, Deputy Commissioner of Financial Regulation
Michael Jackson, Administrator, Collection Agency Licensing Board
Karl S. Aro, Executive Director, Department of Legislative Services

Office of the Commissioner of Financial Regulation
500 North Calvert Street • Suite 402
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(Fax) 410-333-3866 / 410-333-0475

Keeping Maryland Working and Safe

Preliminary Evaluation of the State Board of Pilots

Recommendations: Waive from Full Evaluation
Extend Termination Date by Nine Years to July 1, 2022
Require Follow-up Report by October 1, 2010

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Pilots was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this board – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. The State Board of Pilots last underwent a full evaluation as part of sunset review in 2001. The 2001 full evaluation found that the board is effective at ensuring the safe passage of ships through the Chesapeake Bay and Chesapeake and Delaware (C&D) Canal by licensing pilots to perform pilotage and that continued regulation of pilotage is necessary to ensure public safety. However, the evaluation also concluded that the board needed to revise several statutory funding provisions, develop a better methodology for determining the appropriate number of licensed pilots, formally adopt regulations regarding oversight of pilot work rules, and create a more comprehensive database containing specified data. DLS recommended an extension of the board’s termination date to July 1, 2013. Chapter 523 of 2002 extended the termination date to July 1, 2013, and required the board to report on its progress implementing recommendations of the 2001 evaluation. The board submitted the required progress report in October 2002.

In conducting this preliminary evaluation, DLS staff reviewed minutes from board meetings for the past four years, incident and complaint data, statute and regulations pertaining

to pilotage in the State of Maryland, the prior full sunset reviews of the board, the board's October 2002 report to committees of the General Assembly, and the board's licensing and financial data. In addition, DLS staff interviewed the president of the Association of Maryland Pilots, the board's acting executive director, the board president, and other staff. Finally, DLS staff observed a State bay pilot operating a cargo vessel from the Port of Baltimore through the C&D Canal.

The State Board of Pilots and the Association of Maryland Pilots reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

Regulation of the Marine Pilotage Profession

Pilotage is the act of guiding a marine vessel by a person who is licensed to conduct the ship into or out of port or through dangerous water. Oversight of the profession is maintained through federal and State regulation. Federal law states that "...pilots in the bays, rivers, harbors, and ports of the United States shall be regulated only in conformity with the laws of the States." Maryland law in turn requires that each "...American vessel engaged in foreign trade and each foreign vessel shall employ a licensed pilot to pilot the vessel when it is underway on the navigable waters of the State, including when the vessel is towing or being towed by another vessel." American vessels involved in coastwise, as opposed to foreign, trade are required to have federally licensed pilots. The U.S. Court of Appeals for the Second Circuit describes this division of responsibility in *Interport Pilots Agency, Inc. v. Sammis* as "... Congress has preempted state regulation of pilotage only with respect to vessels on the Great Lakes ... and American flag vessels sailing between American ports ("coastwise vessels"). Thus, the states have authority over the pilotage of all American vessels sailing under register, that is, engaged in foreign trade, and all foreign flag vessels ..."

In Maryland, pilotage is accomplished by pilots who are licensed by the State Board of Pilots and who are members of the Association of Maryland Pilots. The State regulates pilotage while the association manages the day-to-day implementation of pilotage services. As of July 2009, 65 individuals were licensed by the State to provide pilotage for the Port of Baltimore and other ports in the State. Most vessel movements in the State occur between the Port of Baltimore and the Chesapeake Bay entrance at Cape Henry, Virginia, the single longest pilot route in the United States at approximately 150 miles, or between the Port of Baltimore and Chesapeake City on the C&D Canal.

Responsibilities and Structure of the State Board of Pilots

The State Board of Pilots has been in existence for over 200 years, and its priorities and legislative mandate remain largely the same today as when the board was first established: to provide safety in navigation of Maryland's commercial waterways in the interests of the ships, the citizens of the State, and the environment. Specifically, the board's responsibilities include:

- licensing pilots at four different levels;
- collecting licensing fees;
- maintaining continuing education credentials of pilots;
- selecting individuals to become pilots-in-training and approving training programs;
- maintaining oversight of all incidents involving a pilot and disciplining pilots as necessary; and
- approving pilot work rules.

The State Board of Pilots consists of nine members appointed for two-year terms by the Governor, including the president of the association; three retired or licensed pilots with at least five years' experience providing pilotage; one consumer member; two members of the steamship industry who actively employ pilots; one representative of the ship docking tugboat industry in the Port of Baltimore; and the Secretary of Labor, Licensing, and Regulation or a designee of the Secretary. At this time, the board receives direct support from several Department of Labor, Licensing, and Regulation (DLLR) staff. DLLR advises that the board's executive director, who dedicated part of his time to the board, is on permanent disability leave, but there are plans to hire a new individual for this position. The executive director's responsibilities have been assumed by existing staff, which has resulted in additional strain on already limited resources. The board's acting executive director dedicates approximately 5% to 10% of her time to the board, with the remainder of her time dedicated to staffing five other DLLR boards. Other DLLR staff provides direct support by taking board meeting minutes and periodically reviewing pilot-in-training applications. Furthermore, additional DLLR staff provides indirect support to the board, which includes legal, information technology, budgeting, and personnel services.

To fulfill its various duties, the board has four committees. The incident committee reviews all incidents and complaints and makes recommendations to the full board on the disposition of each matter. The qualification committee evaluates pilot performance in order to make licensing recommendations to the full board. The committee on work rules evaluates work rules approved by the association that affect the safe operation of vessels by pilots and makes recommendations to the full board. The selection committee makes selections for the list of qualified applicants for the position of pilot-in-training.

The board has no authority over rates for pilotage services; rate setting has been handled by the Public Service Commission since 1984.

Association of Maryland Pilots

All pilots licensed by the State Board of Pilots are also members of the Association of Maryland Pilots, founded in 1852. A board of supervisors consisting of a president, first vice president, second vice president, treasurer, harbor list representative, and secretary administers the pilots' association. Pilots act as independent contractors in providing their services as State-licensed pilots. The association acts as a collection agent for the pilots, collecting fees from shipping lines and disbursing these fees to the association members after covering expenses and making other required payments. Payments must be made to specified inactive pilots and to the Maintenance and Replacement Fund for the replacement and repair of the association's major equipment. The association also has responsibility for developing and implementing pilot-in-training programs, proposing work rules, and recommending candidates for licensure to the board.

In addition to the roles described above, the association provides the actual service of pilotage by maintaining pilot work rotation schedules. The association assigns pilots to ships entering or leaving the port in accordance with approved work rules and shipping agents' requests for service. The association's work rules, as administered by the association's dispatchers, establish a rotation schedule so that each pilot is subject to approximately the same workload. The association also makes arrangements for transporting pilots to and from vessels and maintains pilot transfer stations and other capital equipment in Maryland at Solomons Island (Mid-Bay Station), Annapolis, Chesapeake City, Dundalk Marine Terminal, and the Baltimore headquarters office, and in Virginia at Cape Henry. The association includes all pilots-in-training and active pilots as well as approximately 50 full- and part-time employees.

Recent Trends and Developments

Statutory Changes Affecting the Board Since the 2001 Sunset Review

Since the full sunset evaluation in 2001, several statutory changes have affected board operations. As shown in **Exhibit 1**, Chapter 523 of 2002 extended the termination date of the board to July 1, 2013, clarified the board's funding, and changed several fiscal practices. Additional significant changes occurred in response to Chapter 520 of 2004, which expanded the definition of pilotage to include the docking and undocking of vessels and transferred the State Board of Docking Masters' functions and duties to the State Board of Pilots.

Exhibit 1
Major Legislative Changes Since the 2001 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	523	<p>Extends termination date by 10 years to July 1, 2013.</p> <p>Clarifies that the board is general funded and requires that board revenues be deposited into the general fund.</p> <p>Modifies eligibility for inactive pilot payments.</p> <p>Codifies specified fiscal practices carried out by the Association of Maryland Pilots and requires the association to submit annual financial audits concerning payments to pilots and payments from the Maintenance and Replacement Fund.</p>
2004	520	<p>Abolishes the State Board of Docking Masters, transfers its regulatory authority to the State Board of Pilots, and expands the definition of pilotage to include the docking and undocking of vessels.</p> <p>Expands and makes more stringent the qualifications for pilots-in-training.</p> <p>Adds an incident committee to the board with the authority to review complaints and recommend the disposition of each complaint.</p> <p>Changes the date on which licenses expire to two years after issuance.</p> <p>Expands the grounds for taking disciplinary action against licensees.</p> <p>Bars licensed pilots from participating in job actions or strikes.</p> <p>Replaces one of the two consumer representatives on the board with a representative of the ship docking tugboat industry.</p> <p>Defines situations in which a conflict of interest exists for pilots and prohibits licensed pilots from engaging in such conduct.</p>

Source: Laws of Maryland

Merger with the State Board of Docking Masters Implemented

Docking services involve tug boat-assisted berthing and unberthing of a vessel, or shifting a vessel within a port. Prior to 2000, docking masters were not subject to State licensing requirements, and accountability in the event of a docking incident was not clearly defined. Chapter 509 of 2000 established the State Board of Docking Masters to assume regulatory authority governing and licensing docking masters; ensure the safety of docking services; and maintain a list of all licensees. Four years later, in accordance with Chapter 520 of 2004, the functions and duties of the State Board of Docking Masters were transferred to the State Board of Pilots. As a result of this merger, 10 docking masters became unlimited licensed pilots, but their piloting authority only extends to before, during, and after docking or undocking of vessels with the assistance of tugboats in the various Maryland ports and navigating vessels without tugboats in the Port of Baltimore.

The board advises that its assumption of State Board of Docking Masters responsibilities went smoothly. The board clarified, in regulations, the training and experience requirements for a pilot to perform docking maneuvers and the authority of individuals who held docking master licenses prior to October 1, 2004, to pilot vessels in specified areas. As of September 2009, 10 individuals who were previously licensed docking masters are serving as pilots with the authority to perform docking maneuvers and shift vessels only within specified areas. Also, docking requirements were added to the association's pilot-in-training program to ensure that all new pilots are qualified to perform all docking and piloting assignments. In addition, five of the traditional bay pilots have now been cross trained and approved by the board to perform harbor work. In the future, the board may be required to establish training and experience requirements for previously licensed docking masters to perform all the tasks of an unlimited licensed pilot.

Pilot Licensing Trends: New Unlimited Licensed Pilots Anticipated

The board licenses and oversees a relatively small population. As illustrated in **Exhibit 2**, there were 65 pilots with licenses at the end of fiscal 2009. Licenses must be renewed every two years, and the term of licensure begins on the date of issuance. When a limited licensed pilot is approved for a higher draft license, which usually occurs in a year, DLLR recodes their license to the higher draft license level and no longer tracks the lower draft license, even though it is in effect for two years. Therefore, several of the 65 licensees in June 2009 may have had a second license as well, but DLLR does not track this information.

Exhibit 2
Pilot License Categories and Fees

<u>Type of License</u>	<u>Pilots with Licenses as of June 2009</u>	<u>Fee</u>	<u>Scope of License</u>	<u>Requirements</u>
Unlimited License – New or Renewal	53	\$600	Vessels of any draft	Meet licensing requirements of 37-foot draft limited licensure for one year
37-foot Draft Limited License – New or Renewal	4	\$300	Vessels not exceeding 37-foot draft	Meet licensing requirements of 34-foot draft limited licensure for one year
34-foot Draft Limited License – New or Renewal	3	\$300	Vessels not exceeding 34-foot draft	Meet licensing requirements of 28-foot draft limited licensure for one year
28-foot Draft Limited License – New or Renewal	5	\$200	Vessels not exceeding 28-foot draft	Serve as a pilot-in-training under unlimited licensed pilots for two years prior to issuance of 28-foot draft limited license
Total	65			

Source: State Board of Pilots and Laws of Maryland

The total number of licensees at the end of each fiscal year has shifted between 59 and 69 over the past six years, as illustrated in **Exhibit 3**. However, there have been significant shifts within the types of licensees. Between fiscal 2007 and 2008 unlimited licenses decreased by 20%, from 65 to 52 licenses. Also, while there were no limited licensed pilots in fiscal 2006, 12 limited licenses were granted in fiscal 2009. These licensing trends are the result of a number of pilots retiring as well as the board accepting new pilots-in-training every year for the past six years (fiscal 2004 through 2008). In recent years new pilots have been moving through the five-year training period that involves two years as a pilot-in-training and at least three years with a limited licensed pilot. These shifts in the total number and type of licenses have resulted in fewer unlimited licensed pilots being available and an increase in the workload associated with selecting and instructing pilots-in-training.

Exhibit 3
Total Number of Pilot Licenses
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Unlimited License	68	69	63	65	52	53
37-foot Draft Limited License	0	0	0	0	0	4
34-foot Draft Limited License	0	0	0	0	4	3
28-foot Draft Limited License	0	0	0	4	3	5
Total	68	69	63	69	59	65

Source: State Board of Pilots

Expand State Licensing Requirements to Require Federal License

Prior to obtaining an unlimited license, individuals must complete a rigorous two-year pilot-in-training program and a three-year limited license training program. To qualify as a pilot-in-training, an applicant must (1) be at least 21 years old; (2) provide the board with proof of recent satisfactory completion of the physical requirements for a first-class pilot license, as determined by the U.S. Coast Guard; (3) agree to participate in a U.S. Coast Guard-approved random drug testing program; (4) pass any mental or physical examination that the board requires to verify that the applicant is mentally and physically capable of providing pilotage; and (5) have one or more of the following maritime credentials:

- a degree from a four-year course of study at an accredited maritime institution acceptable to the board, and a current license as third mate, or greater grade, of steam and motor vessels, any gross tons upon oceans;
- a current license as a master of steam and motor vessels, any gross tons upon oceans, that is issued by the U.S. Coast Guard and that contains an appropriate radar endorsement; or
- a minimum of five years' experience in the maritime industry working on vessels in the deck department as a licensed master or mate on tugs or inspected vessels, of which at least two years' experience must be as the master of a ship-assist harbor tug.

Upon completion of the five-year training period, the association may recommend that a pilot be promoted to an unlimited licensed pilot. To obtain limited and unlimited pilot licenses, applicants must demonstrate to the satisfaction of the board by the actual observation of demonstrated performance that the individual possesses sufficient ability, skill, and experience. The board must consider recommendations of the qualification committee, the length of time spent piloting vessels, the number of vessels piloted, the pilotage routes, and other licenses obtained.

At this time, State licensing requirements do not require that pilots maintain a U.S. Coast Guard license. Federal licenses are required by the State only to qualify as a pilot-in-training. Recently, the U.S. Coast Guard determined that a Maryland pilot had been operating without a federal license for over a year. This incident raises concerns about the need to strengthen the link between State and federal licensing to ensure that all pilots maintain the same minimum credentials. Occasionally Maryland pilots guide vessels engaged in coastwise trade; a federal license is required for such assignments. Consideration should be given to making State pilot licenses contingent upon a valid federal pilot license. In October 2009, the board agreed to propose regulations that require each licensed pilot to maintain an active U.S. Coast Guard license. If approved, these regulations should address this concern.

In accordance with State statute, the board must seal each license it issues with its official seal. However, the board does not have a seal at this time, and the need for a seal is not clear. Therefore, consideration should be given to deleting this seemingly outdated statutory requirement.

Steady Pilot Incident and Complaint Rates, but Hefty Litigation Demands

Pilot incidents involve collisions, groundings, mechanical/equipment failure, fatalities, unsafe conduct, and substantial property damage. A licensed pilot involved in an incident must report the incident to the U.S. Coast Guard and submit a written report to the board within seven calendar days, detailing factually what happened and the actions taken by the pilot. The board's incident committee is responsible for investigating incidents and complaints and making recommendations to the full board on the disposition of each matter. The board reviews the recommendation and determines whether to close the incident without action, conduct a more extensive investigation, or take disciplinary action. Disciplinary action may range from issuance of a fine to suspension or revocation of a pilotage license.

The number of incidents brought to the board on an annual basis is low and has not changed significantly in recent years, as illustrated in **Exhibit 4**. Between 2004 and 2009, approximately half of the incidents involved collisions or allisions (a vessel coming in contact with a stationary object). In most cases, the U.S. Coast Guard investigated these incidents, no violation by the pilot was found, and the case was closed. Very few license actions have been taken against pilots in recent years. The three most recent license actions involved a November 2004 incident that was recently addressed by the Court of Special Appeals and is described in greater detail below, a February 2007 incident that resulted in a pilot retiring, and an April 2007 incident that was resolved through a special meeting with the pilot.

Exhibit 4
Pilot Incidents and Disciplinary Responses
Calendar 2004-2009

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Incident Reports:						
Mechanical problem or equipment failure	1	0	0	0	1	0
Collision/Allision	0	2	4	0	1	1
Grounding	1	1	0	1	0	1
Conduct	1	0	0	0	0	0
Other	0	0	0	2	1	0
Total:	3	3	4	3	3	2
Action Taken:						
No violation found	2	3	4	1	3	1
License actions taken	1	0	0	2	0	0
Still under investigation	0	0	0	0	0	1

Note: The 2009 incidents reflect only the eight-month period of January through August.

Source: State Board of Pilots

Unlike incidents, complaints involve issues such as allegations of unprofessional conduct by a pilot, unsafe docking by a pilot, and conflict of interest. **Exhibit 5** illustrates the number of complaints received in 2005 through 2009 and board actions taken on these complaints. The board has received a modest number of annual complaints, and the vast majority of the complaints result in a finding of no violation or insufficient evidence.

The board has recently seen an increase in the volume of litigation, and associated costs, as a result of two particular matters. One was a disciplinary case against a licensed pilot, which was appealed by the licensee from the board to the circuit court, and then by the board to the Court of Special Appeals. That court recently upheld the board's decision which found that the licensee had acted with the intent to benefit his family's tug assist company in violation of the statutory code of ethics provisions. That same licensed pilot and his family's tug-assist company have filed a civil suit in the Circuit Court for Baltimore City against the State of Maryland, the board, and the Association of Maryland Pilots and several of its members. The claims against the State challenge the statutory scheme to regulate pilots and seek \$5.0 million in compensatory damages. Defense of this lawsuit has and will continue to require a substantial amount of time on the part of the Office of the Attorney General as well as the out-of-pocket costs associated with a vigorously contested civil case.

Exhibit 5
Complaint Volume and Disposition
Calendar 2005-2009

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Complaints Filed	5	4	0	2	1
Disposition of Complaints					
Closed – no violation	3	1	0	0	0
Closed – insufficient evidence	2	1	0	1	0
Warning issued	0	1	0	0	0
Under review	0	1	0	1	1

Note: The 2009 incidents reflect only the eight-month period of January through August.

Source: State Board of Pilots

Total Board-related Expenditures Are Not Clear

The board meets just four times per year and licenses only approximately 65 individuals; consequently, it has a relatively small budget. The board's recent fiscal history, as provided by DLLR, is outlined in **Exhibit 6**. Board revenues are composed of licensing and pilot application fees, which are deposited into the general fund. Exhibit 6 illustrates that the board still receives the majority of its licensing revenue every two years, the artifact of a provision repealed in 2004 requiring that licenses expire in May of even numbered years, and that average biennial licensing revenues have not fluctuated significantly. Board expenditures, which are generally attributed and not necessarily charged and budgeted, are divided into direct, indirect, and direct legal costs. The board's minimal direct costs are coded primarily as contractual service costs. The indirect costs, which were first uniformly calculated by DLLR in fiscal 2005, reflect general assistance provided by DLLR's departmental and division-level staff, including budgeting, information technology, telephone center, and personnel services. Direct legal expenditures, which DLLR began discretely tracking in fiscal 2009, reflect legal services provided by the Office of the Attorney General. The board's expenditures decreased significantly between fiscal 2004 and 2008, but then increased significantly in fiscal 2009 when DLLR began tracking legal service costs. These expenditure trends are difficult to evaluate, as explained below.

Overall, DLLR's method of tracking the board's expenditures fails to account for significant costs and thus provides an incomplete picture of board operations. For example, the board's expenditures do not account for DLLR's personnel costs associated with staffing the board or periodic investigation of pilot incidents, when required by the Attorney General and not completed by the Coast Guard. Furthermore, since DLLR's methodology for calculating indirect

costs is based on personnel costs and the board's personnel costs are not tracked as direct labor, the board's indirect costs have been zero in recent years. Since all of the board's costs are not tracked, it is difficult to determine whether adequate resources are being dedicated to fulfilling the board's responsibilities. Furthermore, it is difficult to determine the extent to which, or whether, licensing revenue exceeds board expenditures.

Exhibit 6
Fiscal History of the State Board of Pilots
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Revenues	\$37,306	\$2,160	\$37,702	\$3,856	\$33,950	\$4,313
Total Costs	\$13,039	\$14,104	\$6,896	\$6,135	\$4,153	\$38,693
Direct	13,039	12,779	6,133	6,133	4,153	4,387
Legal*	-	-	-	-	-	34,306
Indirect**	-	1,325	763	2	0	0
Surplus/(Gap)	\$24,267	(\$11,944)	\$30,806	(\$2,279)	\$29,797	(\$34,380)
Biennial Basis	-	\$12,323	-	\$28,527	-	(\$4,583)

*DLLR began tracking legal resources dedicated to the board in fiscal 2009.

**DLLR began uniformly tracking indirect costs in fiscal 2005.

Note: Prior to October 2004, all licenses expired in May of even-numbered years.

Source: Department of Labor, Licensing, and Regulation

Application and Licensing Fees Could Increase

There have been few changes in the fees associated with pilot-in-training applications and pilot licenses in recent years. The current pilot-in-training application fee of \$25 has been in effect for over 25 years. As described earlier, limited and unlimited licenses range from \$200 for a 28-foot draft limited license to \$600 for an unlimited license. These licensing fees have not changed since the 37-foot draft license was introduced in 1996. Given the State's continuing fiscal crisis and the likelihood that board-related expenditures may be significantly greater than currently attributed, consideration should be given to adjusting these fees to reflect inflation and cover the board's operating costs.

2001 Sunset Evaluation Recommendations Addressed in Part

Legislative Services' 2001 full evaluation of the board contained many statutory and programmatic recommendations. The statutory recommendations were largely implemented by Chapter 523 of 2002, as previously described. The status of the board's implementation of each of the programmatic recommendations is described below.

- **The State Board of Pilots should report to the General Assembly by October 1, 2002, on the development of a methodology for determining the appropriate number of licensed pilots to ensure reliable pilotage service, including the source of future Port of Baltimore vessel call information, pilot complement, and future actions to be taken by the board to monitor this information.**

The board submitted a report in October 2002 describing several factors that would inform a methodology for determining an appropriate pilot complement in the future. The relevant factors identified in this report included the current length of service and age of pilots, planned retirements, current and potential work rules, the length and timing of most pilot trips, and vessel traffic and cargo tonnage trends. In the report, the board promised to create a monitoring process that involved data gathering on a three- to six-month basis and semiannual reports.

The board now monitors pilot complement data at every board meeting but has no formal process for forecasting vessel activity. The association has developed a series of charts that track vessel arrivals, vessel shifts within the harbor, pilots' years of service, pilot ages, planned pilot retirements, and total foreign cargo tonnage. The board has not developed a detailed, consistent methodology for determining the most appropriate pilot complement. However, the board does consider the data described above and has a proposed pilot complement table that tracks the number of licenses, pilots-in-training, and inactive pilots during the five previous years and five years into the future. This table is periodically adjusted to reflect new information and informal estimates of future vessel activity. Since formal forecasts of vessel activity are still not available, maintaining an appropriate pilot complement remains more of an inexact art than a defined methodology.

- **The State Board of Pilots should formally adopt regulations regarding oversight of pilot work rules, including hours of service and required rest periods. The board should regularly review the association's work rules.**

In 2003, regulations were adopted that established a committee on work rules, composed of three board members. The committee was given responsibility for evaluating work rules approved by the association that affect the safe operation of vessels by pilots and making recommendations to the full board. The board must approve safety-related work rules before they may go into effect. Safety-related work rules have not been proposed or considered since 2006. In 2006, the board approved three work rules that clarified policies concerning trading

ahead for pilotage assignments, the minimum number of pilots for large draft vessels, and the definition of a pilotage assignment.

In May 2009, the association completed a book that documents all work rules, not just those affecting pilot safety, that are in effect. The association advises that it intends to periodically update this work rule book in the future. In October 2009, the board agreed to propose regulations that would require the association to submit all proposed changes in work rules that affect pilot list administration, appointments, assignment intervals, or relief pilots to the board's committee on work rules. The committee on work rules would then determine whether any of the proposed changes affect safe operations of vessels by Maryland pilots, and, if so, would identify actions that should be taken and make recommendations to the full board for its consideration.

- **The State Board of Pilots should develop a more comprehensive database to include such information as incidents by type, resolution of incidents, licenses issued, licenses revoked or suspended, license terms, and applications received in addition to pilot continuing education credits.**

Due to the board's small size, it continues to receive limited staffing support and thus has limited recordkeeping capacity. Nevertheless, the board has made some improvements to its recordkeeping practices since 2001. Upon recent request, board staff was able to provide board meeting minutes, basic historical information about the number of licenses as well as a brief description of past incidents and complaints. The board has also developed more standardized and professional processes and records for selection of pilots-in-training. However, the board still does not actively track compliance with continuing education requirements. In addition, the board continues to rely upon the association to track other relevant trend information, such as port cargo trends and pilot work rules. Finally, much of information on the board's web site has not been updated since 2006, and it does not reflect some important changes to the two-year licensing period. Therefore, while some improvements have been made, the board has not addressed all the previously identified recordkeeping weaknesses.

Trends and Developments Impacting Pilotage in the Future

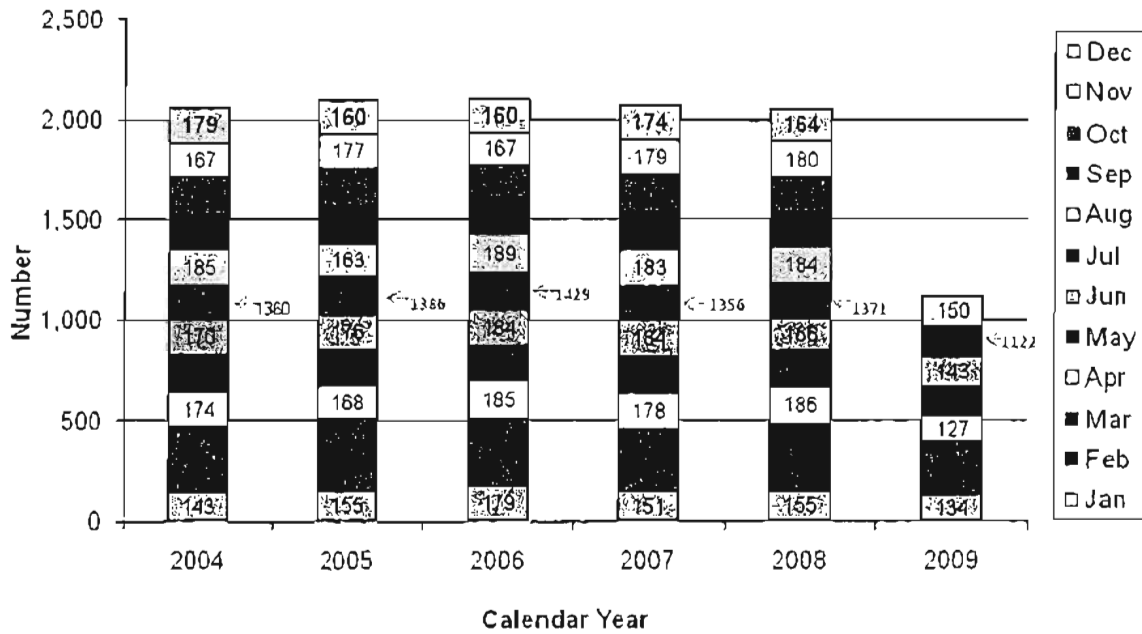
Over the next 10 years, several trends and developments may have a significant impact on pilotage in Maryland.

Sharp Decrease in Vessel Calls

While the number of vessels arriving in the Port of Baltimore remained steady from 2004 through 2008, there has been a dramatic reduction in year-to-date figures for 2009. As illustrated in **Exhibit 7**, vessel arrivals decreased by 249 vessels, or 18%, when the first eight months of 2009 are compared to the same period in 2008. According to the association, the reduction in

ship calls has led to a 15% to 20% reduction in the piloting workload over the past year. If this trend continues, the board may be required to adjust its pilot recruitment efforts.

**Exhibit 7
Vessel Arrivals
Calendar 2004-2009**



Note: This information is current as of August 31, 2009.

Source: Association of Maryland Pilots

Vessel Draft Continues to Increase Over Time

According to the Maryland Port Authority (MPA) and the association, there has been a steady increase in the average draft of vessels traveling the Chesapeake Bay. As a result, pilotage opportunities for limited licensed pilots have decreased and the demand on unlimited licensed pilot's services has increased. This trend has made it increasingly difficult to provide limited licensed pilots with adequate experience. It has been over 25 years since the minimum draft associated with a license was updated; in 1984 the minimum license draft was increased from 17 feet to 28 feet. At the June 2009 board meeting, the board approved a motion to pursue legislation that increases the draft levels associated with each of the three limited licenses. Under the proposal, the 28-foot draft license becomes a 32-foot draft license, the 34-foot draft license becomes a 36-foot draft license, and the 37-foot draft license becomes a 40-foot draft license. Since a pilot-in-training must be accompanied by an unlimited licensed pilot on all trips during

their first two years, they gain experience with a variety of vessel types and sizes. Therefore, the association advises that no changes to the pilot training program would be required if the licensing draft levels are adjusted.

Port Infrastructure Expansion Anticipated

While the pilotage workload has decreased over the past year, expansion efforts at the Panama Canal and the Port of Baltimore may prompt a significant pilotage workload increase in the future. Efforts are underway at the Panama Canal to construct a new set of locks to double capacity to permit additional traffic and wider vessels. MPA and the Panama Canal Authority finalized a memorandum of understanding agreement in June 2009 that seeks to increase economic growth and commercial activity between the two entities. MPA is exploring the use of a public-private partnership to operate Seagirt Marine Terminal and fund a 50-foot berth and other significant infrastructure improvements at the terminal. MPA plans to have that 50-foot berth in operation when the Panama Canal expansion project is completed in 2014. The Port of Baltimore is currently one of only two U.S. East Coast ports with a 50-foot channel.

Association Financial Audits Not Evaluated

Since the Association of Maryland Pilots has primary responsibility for pilotage operations, it manages significant financial responsibilities. In 2008, the association managed \$33.0 million in pilotage income as well as the Maintenance and Replacement Fund, which had net assets of \$359,717. In accordance with statute, the association is required to submit annual financial audit information about payments to pilots and the Maintenance and Replacement Fund to the board. The association has complied with this auditing requirement in recent years. Furthermore, the board is required to keep copies of these financial audits. There are no statutory or regulatory provisions requiring a formal review or assessment of the association's audit documents upon submission. To date, an assessment or review has not been conducted by DLLR or the board.

In light of the association's significant fiscal responsibilities, close review of its annual audit information is merited. It is possible that a basic assessment of the audit documents could be completed by DLLR budget and fiscal services staff. A periodic analysis of the audit documents may improve the board's understanding of the association's operations, result in better information about pilotage operations for board decision making, and help the association justify any financial challenges and operational needs.

Compliance with Continuing Education Requirements Not Ensured

In accordance with regulations, unlimited licensed pilots are required to complete board-approved courses in specified fields and provide the board with a certification of satisfactory completion of the courses, on a form approved by the board, within a six-month period. These

courses must be completed every five years. Currently, the association, not the board, notifies pilots of continuing education requirement deadlines and maintains continuing education records submitted by pilots. The board does not have an approved form or process for tracking and certifying pilot completion of the continuing education courses. Furthermore, the board has not sought to ensure pilot compliance with these continuing education requirements nor does it have clear statutory authority to enforce this requirement.

The five-year framework for completing pilot continuing education requirements was established in an attempt to align State and federal requirements. State regulations require completion of the four courses "... by May 1, 1998, and every 5-year period after that...". Federal pilot licenses require completion of one of these courses (radar operations) every five years. By aligning the time periods associated with the two sets of requirements, pilots may count their federally required course toward the State requirements. However, pilots currently do not adhere to the State's May 1 deadlines. In practice, the association advises that pilots simply complete each renewal course within five years of completing the course previously. While this approach ensures that each pilot has a full five years to comply with the requirement, having unique deadlines for each pilot makes it difficult to track compliance. Therefore, while a five-year cycle may be reasonable, consideration should be given to modifying current regulation to replace the specified May 1 completion dates with a more flexible approach that reflects current practice. In October 2009, the board agreed to propose regulations that would replace the May 1 deadline with a general requirement that the courses be completed once every five years.

Recommendations

State regulation of pilotage is required by federal statute and clearly necessary to ensure the safety of the ships, pilots, citizens of the State, and recreationalists using the bay or living along the transit routes of ocean vessels. The State Board of Pilots appears to be a well-run and professional entity. The board has made many improvements since the 2001 full evaluation and appears well positioned to meet piloting needs in the future. **Consequently, the Department of Legislative Services recommends that the Legislative Policy Committee waive the State Board of Pilots from full evaluation and that legislation be enacted to extend its termination date by nine years to July 1, 2022.** However, several ongoing and emerging concerns about the board's current licensing requirements, expenditures, recordkeeping practices, and monitoring and enforcement efforts should be addressed.

Therefore, the Department of Legislative Services also recommends that the Department of Labor, Licensing, and Regulation, in collaboration with the State Board of Pilots, submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2010, detailing the steps that have been taken to:

- **determine whether additional requirements, such as a federal pilot license, should be a requirement for State pilot licensing;**

- improve DLLR's accounting of board-related expenditures when staff are shared among several boards to ensure the majority of board-related costs, including personnel, are tracked;
- increase the pilot-in-training application and licensing fees to reflect inflation and help offset board expenses;
- revise the draft levels associated with licenses in response to overall increases in vessel draft;
- develop statutory, regulatory, or other provisions to ensure adequate review and evaluation of the association's annual audits; and
- improve the tracking of, and ensure compliance with, pilot continuing education requirements.

Appendix 1.
Written Comments of the State Board of Pilots

December 1, 2009

Ms. Jennifer B. Chasse
Senior Policy Analyst
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401-1991

Dear Ms. Chasse:

The Department of Labor, Licensing and Regulation (DLLR) has received the draft report of the preliminary evaluation of the State Board of Pilots (Board). We appreciate the time and attention that was spent reviewing the Board's operations.

We are pleased that the evaluation found that the Board is fulfilling its statutory duties and has recommended that the Legislative Policy Committee waive the Board from full evaluation and that legislation be enacted to extend the Board's termination date by 11 years to July 1, 2022.

After review, we have found the following factual errors/discrepancies:

Regulation of the Marine Pilotage Profession – Page 2

At the end of the second paragraph of this section, it may be appropriate to mention that State-licensed pilots also provide pilotage for the docking, undocking, and shifting of vessels in the Port of Baltimore and other ports in the State of Maryland.

Responsibilities and Structure of the State Board of Pilots – Pages 2 and 3

In the second-to-last paragraph in this section, the report states that the Board has three work committees. There are actually four committees of the Board. The fourth committee is the Selection Committee, which makes selections for the list of qualified applicants for the position of pilot-in-training. The term "work committees" is not one used by the Board. They are generally referred to simply as committees of the Board. One function of the qualification committee is listed as "develops model training programs." In fact the board has not found it necessary to carry out this part of the authority given by regulation. We suggest that the sentence state "The qualification committee evaluates pilot performance in order to make licensing recommendations to the full board."

Association of Maryland Pilots – Page 4

Referencing the second sentence of the first paragraph of this section, the Board of Supervisors presently consists of the president, first vice president, second vice president,

treasurer, harbor list representative, and secretary; “harbor list representative” should be substituted for “unlimited licensed pilot” in this sentence.

In the second paragraph of this section, the third and fourth sentences do not accurately reflect the Association’s system. We suggest those sentences be amended to read as follows:

The Association's Work Rules, as administered by the Association's dispatchers, establish the rotation schedule so that each pilot is subject to approximately the same workload. The Association also makes arrangements for transporting pilots to and from vessels and maintains pilot transfer stations and other capital equipment in Maryland at Solomons Island (Mid-Bay Station), Annapolis, Chesapeake City, Dundalk Marine Terminal, and the Baltimore headquarters office, and in Virginia at Cape Henry.

The last sentence of the paragraph should refer to “pilots-in-training”, rather than “apprentice” pilots.

Recent Trends and Developments – Page 4

Statutory Changes Affecting the Board Since the 2001 Sunset Review

In Exhibit 1 (page 5), it should be mentioned that the 2004 legislative changes included the addition of a conflict of interest provision.

Merger with the State Board of Docking Masters Implemented

At the end of the first paragraph of this sub-section, on page 6, we suggest that the last sentence be modified to read as follows: “As a result of this merger, 10 docking masters became unlimited licensed pilots, but their piloting authority only extends to before, during, and after docking or undocking of vessels with the assistance of tugboats in the various Maryland ports and navigating vessels without tugboats in the Port of Baltimore.

In the second paragraph of this sub-section, we suggest that the words “only within the port” be deleted at the end of the third sentence, as the docking pilots perform work at locations other than the Port of Baltimore, *e.g.*, at Piney Point and Cove Point. We suggest adding a sentence here that says, “In addition, 5 of the traditional bay pilots have now been cross trained and approved by the Board to perform harbor work.”

Pilot Licensing Trends: New Unlimited Licensed Pilots Anticipated

In the last paragraph of this sub-section, at the bottom of page 7, in the second-to-last sentence, “an apprentice” should be changed to “a pilot-in-training” and “with a limited pilot license” should be changed to “as a limited licensed pilot.” The term “apprentice” also needs to be replaced with “pilot-in-training” in Exhibit 2, requirements for the 28-foot limited license. With respect to the last sentence in this paragraph, while the shifts in the total number and types of licenses have resulted in fewer unlimited licensed pilots, the temporary reduction in the number of unlimited licensed pilots has been compensated for by an increase in the number of limited licensed pilots. Additionally, the Board is not aware of any measurable increase in the workload associated with selecting and instructing pilots-in-training.

Expand State Licensing Requirements to Require Federal License

DLLR State Board of Pilots-Sunset Review 2009

In the second full paragraph of this sub-section, at the top of page 9, we suggest that the word “senior” in the first sentence should be replaced by “unlimited licensed” and that the words “and be issued an unlimited license” should be deleted. We note that the Board approved a proposed regulation at its October 2009 meeting that would require each licensed pilot to maintain an active United States Coast Guard license.

Steady Pilot Incident and Complaint Rates, but Hefty Litigation Demands

In the second paragraph of this section, second sentence, the more correct statement is that approximately half of the incidents involved “collisions or allisions (a vessel coming in contact with a stationary object)”. The same change is suggested for Exhibit 4 on page 10. (In fact, there has been only one incident in this time period that involved a collision between two vessels. The other incidents have been allisions that occurred while docking or undocking vessels, or when a vessel came into contact with a navigational buoy.)

Total Board-related Expenditures Are Not Clear

In the third from last sentence in the first paragraph on page 11, there is an indication that there are legal services provided by DLLR and the Office of the Attorney General. This is incorrect. All legal services are provided by the Office of the Attorney General. In Exhibit 6, on page 12, it would make sense to drop a footnote to the FY 2009 legal expense to indicate that the civil lawsuit referred to on page 10 was filed at the beginning of FY 2009.

2001 Sunset Evaluation Recommendations Addressed in Part

The last sentence of the first full paragraph on page 14 is not accurate. Rather, we believe this sentence should be replaced by something along the lines of the following: “The Board reviewed the Association’s Work Rules following the prior sunset review. Pursuant to another recently proposed regulatory change, the Association will submit to the Committee on Work Rules ‘all proposed changes in the Association’s Work Rules that affect pilot list administration, appointments, assignment intervals, or relief pilots.’ The Committee on Work Rules will then determine ‘whether any of the proposed changes affect safe operations of vessels by Maryland pilots, and, if so, what action should be taken on them.’ Those changes will then be referred to the full Board for its consideration.”

Trends and Developments Impacting Pilotage in the Future

Sharp Decrease in Vessel Calls

In the last sentence of the first paragraph of this sub-section, we suggest that the word “curtail” might be replaced by the word “adjust” or a similar word to ensure flexibility with regard to recruitment efforts. In fact, according to the Association, the trend of reduced ship calls seems to have ended, as the number of ship calls in the fall of 2009 was approximately the same as the number of calls for the same period in 2008.

Association Financial Audits Not Evaluated

In the second sentence of the second paragraph, on page 16, there is a reference to “DLLR finance office staff.” DLLR does not have a “finance office” so it is not clear what is being suggested as an entity to review audit documents. The Board would need to secure

additional assistance, possibly through a contractual arrangement, to perform this financial review function.

Compliance with Continuing Education Requirements Not Ensured

We suggest the addition of a sentence at the end of the second paragraph of this section that would mention the regulations currently proposed by the Board and would say something along the lines of the following: "This has been addressed in a proposed regulation relating to the continuing legal education requirements, by which the May 1 completion date would be replaced by a requirement that the courses be completed once every five years, without a date specified."

Proposed Regulations

We have mentioned in three instances regulations proposed by the Board at its October 2009 meeting. The regulations have been transmitted to the AELR Committee, and it is anticipated that they will be published in the Maryland Register by the end of the year. These regulations directly address the concerns expressed in the draft report. While we were unsure whether it was appropriate to include them in the evaluation, we thought that they could be relevant to the analysis undertaken.

We would like to express our appreciation for the candor and professionalism provided by your office in conducting this review. We look forward to working with the legislative staff addressing issues that were raised in the report as well as future issue which may arise. If you office should require additional information or a clarification as to the corrections, please do not hesitate to contact me at (410) 230-6262.

Sincerely,

Jay Hutchins
Executive Director
Professional Licensing Boards

Cc: Secretary Alex Sanchez
Commissioner Stan Botts
Deputy Commissioner Harry Loleas
Robert B. Schulman, Esquire, Chairman, Board of Pilots
Captain Eric A. Nielsen, President, Association of Maryland Pilots

Preliminary Evaluation of the Office of the Commissioner of Financial Regulation and the Banking Board

Recommendation:

Full Evaluation

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The Office of the Commissioner of Financial Regulation and the Banking Board last underwent a full evaluation as part of sunset review in 2000. Ensuing legislation, Chapter 226 of 2001, extended the termination date of the Office of the Commissioner of Financial Regulation and the Banking Board from July 1, 2002, to the current termination date of July 1, 2012. Chapter 226 also required the commissioner to submit annual reports to both the Governor and the General Assembly.

In conducting this preliminary evaluation, DLS staff interviewed the Commissioner of Financial Regulation, the deputy commissioner, assistant commissioners, division directors, and staff; reviewed State statutes and regulations pertaining to the office and the board; and analyzed documents relating to the office’s finances and licensing, examination, complaint, and enforcement units.

The office reviewed a draft of this report, and its response is contained in **Appendix 5**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in office comments may not reflect the final version of the report.

Office of the Commissioner of Financial Regulation

The Office of the Commissioner of Financial Regulation is responsible for licensing and regulating mortgage lenders, brokers, servicers and originators, sales finance companies,

consumer loan companies, money transmitters, check cashers, installment loan lenders, credit reporting agencies, consumer debt collection agencies, and debt management service providers. The office also regulates and supervises State-chartered financial institutions including State-chartered banks, credit unions, and trust companies. Supervision includes periodic on-site evaluations as well as off-site monitoring programs. The office analyzes financial institutions' corporate applications for new banks, charter conversions, mergers and acquisitions, affiliates, new activities, and new branches. The office also oversees retail credit accounts, retail installment contracts, and credit grantor contracts.

Chapter 326 of 1996 established the office as a budgetary unit of the Department of Labor, Licensing, and Regulation (DLLR). The office assumed the duties, responsibilities, authority, and functions of the Commissioner of Consumer Credit and the State Bank Commissioner, which were abolished by the aforementioned law. The office is divided into six units: depository corporate activities; depository supervision; nondepository licensing; nondepository supervision and compliance; enforcement and consumer services; and internal policy (*see Appendix 1*). The commissioner is appointed by the Secretary of Labor, Licensing, and Regulation with the approval of the Governor and the advice and consent of the Senate. The deputy commissioner is appointed by the commissioner, with the approval of the Secretary.

For purposes of this evaluation, the depository and nondepository functions of the office are discussed separately. An overview of depository and nondepository complaint and enforcement activity precedes a summary of the office's financial structure and an overview of the most recent Banking Board activity.

The Banking Board

The Banking Board consists of nine members, including the Comptroller and eight members appointed by the Governor (*see Appendix 2*). By law, the Governor's appointees must include three representatives of the Maryland Bankers Association, one economist, one certified public accountant, one consumer representative, and two public members. Members serve six-year staggered terms until the Governor appoints their successors.

The Banking Board is intended to provide advice, as needed, on certain bank applications submitted to the commissioner. The board is available, if necessary, to provide advice to the commissioner on ways to protect the interests of the public, depositors, and stockholders of banking institutions and other matters concerning the general banking business in the State. Throughout the year, copies of bank applications submitted to the commissioner are sent to board members for their review. The commissioner determines the frequency and timing of Banking Board meetings.

Impact of Legislation on the Office of the Commissioner of Financial Regulation

Since 2007, changes in the real estate market and the economy in general have had a number of negative effects on lenders and borrowers, both nationwide and in Maryland. One of the most significant of these effects has been a marked increase in the number of foreclosures affecting homeowners and their mortgage lenders. Many such foreclosures have involved residential properties that were financed through sub-prime loans and nonbank loan originators, leading to increased concerns regarding the lending practices that surround these nontraditional financing methods.

Emergency legislation in the 2008 session revised the residential foreclosure process in the State. Chapters 1 and 2 of 2008 require a secured party to send a notice of intent to foreclose to a homeowner at least 45 days before filing an action to foreclose a residential mortgage. The notice must contain the names and telephone numbers of the secured party, the mortgage servicer, the mortgage broker or originator, and any agent of the secured party who is authorized to modify the terms of the mortgage loan. A copy of the notice must also be sent to the Office of the Commissioner of Financial Regulation. In fiscal 2009, the office received over 112,000 copies of Notices of Intent to Foreclose.

Chapters 7 and 8 of 2008 made a number of substantive changes to State law governing mortgage lending. For various types of mortgage loans, due regard must now be given to the borrower's ability to repay a loan in accordance with its terms. The Acts also prohibit lenders from imposing penalties or fees in the event certain mortgages are prepaid by the mortgagor. Chapters 7 and 8 authorize the Commissioner of Financial Regulation to participate in the establishment and implementation of a multistate automated licensing system for mortgage lenders and loan originators.

Other significant reforms include Chapters 3 and 4 of 2008, which create a comprehensive mortgage fraud statute and establish criminal penalties. In Maryland, prior to 2008, mortgage fraud was not a crime specifically defined in statute. Although mortgage fraud previously was prosecuted as theft by deception, the Maryland Homeownership Preservation Task Force found that prosecuting these cases under the general theft statute was cumbersome and difficult to explain to juries. Chapters 3 and 4 authorize the Attorney General, a State's Attorney, and the Commissioner of Financial Regulation to take action to enforce the comprehensive mortgage fraud statute.

Chapters 5 and 6 of 2008, the Protection of Homeowners in Foreclosure Act (PHIFA) prohibit foreclosure rescue transactions and expand consumer protections. Foreclosure rescue transactions typically involve a residence in default that is conveyed by a homeowner to a third party to prevent or delay foreclosure proceedings. Under PHIFA, foreclosure consultants are prohibited from engaging in, arranging, promoting, participating in, assisting with, or carrying out foreclosure rescue transactions. PHIFA granted the Commissioner of Financial Regulation concurrent jurisdiction, along with the Attorney General, to investigate, enforce, and enjoin persons involved in foreclosure rescue schemes.

Chapter 4 of 2009 overhauled the State's mortgage lender and loan originator laws to conform to the requirements of the federal Secure and Fair Enforcement Mortgage Licensing Act of 2008. Chapter 4 altered the licensing requirements, initial license terms, and renewal terms for mortgage lenders and loan originators. The Act requires applicants and licensees to submit certain information and fees to the Nationwide Mortgage Licensing System and Registry (NMLSR). The Act also increases civil penalties for violations of State mortgage lender and loan originator laws.

Other major legislative changes modified the funding structure of the Office of the Commissioner of Financial Regulation. Since the last sunset evaluation in October 2000, several regulatory areas under the purview of the Office of the Commissioner of Financial Regulation have become special funded operations. **Appendix 3** outlines all of the legislative changes affecting the Office of the Commissioner of Financial Regulation since the last sunset evaluation in October 2000. **Exhibit 1** provides details on each of the newly created special funds.

Exhibit 1
Office of the Commissioner of Financial Regulation
Special Funded Operations

<u>Fund Name</u>	<u>Created</u>	<u>Revenue Sources</u>
Money Transmission Fund	Ch. 539 of 2002	Initial and renewal licensing fees; investigation fees
Debt Management Services Fund	Chs. 374 and 375 of 2003	Debt management company initial and renewal licensing fees; investigation fees
Mortgage Lender-Originator Fund	Ch. 590 of 2005	Licensing fees (initial and renewal); examination and investigation fees; license amendment fees
Banking Institution and Credit Union Regulation Fund	Ch. 293 of 2008	Bank and credit union assessments; corporate application fees

Source: Laws of Maryland

Number of State-chartered Depository Institutions Declines, but May Rise

The Office of the Commissioner of Financial Regulation monitors and evaluates State-chartered banks, including examining and evaluating their capital, asset quality, management, earnings and liquidity position, sensitivity to market risk, as well as their internal

controls and risk management systems. As of June 2009, the office oversaw the condition of 48 State-chartered banks with assets exceeding \$21.7 billion, down from 62 State-chartered banks as of June 30, 2004. The office also examines and regulates six State-chartered trust companies, nine State-chartered credit unions, the Anne Arundel Economic Development Corporation, and the American Share Insurance Corporation. The total assets of State-chartered banks are shown in Exhibit 2.

Exhibit 2
Consolidated Financial Statement of State-chartered Banks
 As of June 30 of Each Year
 Fiscal 2004-2009
 (\$ in Thousands)

<u>Fiscal Year</u>	<u>State Banks</u>	<u>Total Assets</u>	<u>Total Loans</u>	<u>Securities</u>	<u>Total Deposits</u>	<u>Total Capital</u>
2004	62	\$33,337,923	\$22,129,584	\$7,918,866	\$25,046,174	\$3,002,066
2005	56	37,159,487	25,497,448	7,660,557	27,542,622	3,711,691
2006	56	39,619,518	27,115,636	7,627,391	29,262,128	4,147,295
2007	56	42,139,079	29,403,517	7,216,069	30,421,947	4,469,387
2008	51	29,381,521	21,881,597	4,415,664	21,813,397	2,728,926
2009	48	21,792,246	16,059,416	3,200,633	17,135,262	2,113,331

Source: Annual Reports, Office of the Commissioner of Financial Regulation

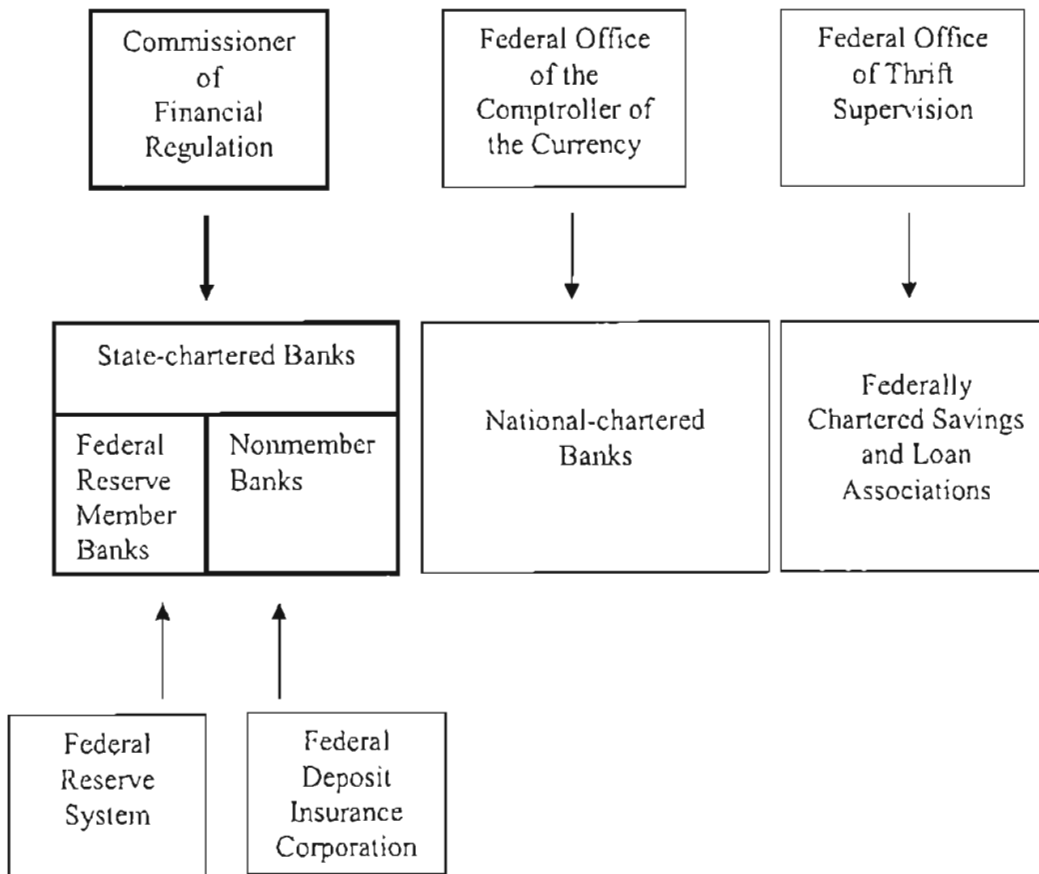
The Maryland banking industry comprises Maryland State-chartered banks, banks chartered by other states that operate in Maryland, and federally chartered national banks and savings banks. The primary regulator of Maryland State-chartered banks is the Commissioner of Financial Regulation. National banks are regulated by the federal Office of Comptroller of the Currency (OCC), and federal savings banks are regulated by the federal Office of Thrift Supervision (OTS). As shown in Exhibit 3, State-chartered banks are secondarily regulated by either the Federal Reserve Bank of Richmond or the Federal Deposit Insurance Corporation (FDIC).

Banks that choose membership in the Federal Reserve fall under the regulatory purview of that federal agency. FDIC regulates the remaining banks, also known as nonmember banks. Sandy Spring Bank, for example, operates under a State charter and is a Federal Reserve member bank. Therefore, the Commissioner of Financial Regulation and the Federal Reserve both regulate Sandy Spring Bank.

By offering a State charter, Maryland plays an important role in shaping the State's banking industry. The General Assembly identifies banking policies beneficial to the State and adopts laws to mandate or encourage these practices. In addition, State-chartered banks are said

to be more committed to investing in the State. For example, they tend to use local deposits to provide the loan services needed by area residents and businesses. Banks with many out-of-state locations could use the funds deposited by Maryland residents to provide more profitable loan services in other parts of the country.

**Exhibit 3
Dual Regulatory System for Depository Institutions**



Source: Department of Legislative Services

Federal Banking Reforms May Affect State Regulation

Potential federal legislation that modifies the roles of OCC, OTS, FDIC and the Federal Reserve System may impact the State financial regulatory environment. In June 2009, President Barack Obama proposed legislation that grants the Federal Reserve new authority to regulate bank holding companies and other large institutions that pose systemic risk to the nation's economy in the event of failure. The proposal, among other things, merges OTS and OCC to create a single national bank supervisor and establishes a new federal consumer protection

agency. In September 2009, Senator Christopher Dodd, chairman of the Senate Banking Committee, proposed an alternative plan that merges the supervisory authority of the Federal Reserve, OTS, FDIC, and OCC into a single, financial “super-regulator.”

The proposed overhaul of the federal financial regulatory system is intended to strengthen and improve supervision under the federal bank regulatory structure, with the overall goal of preventing a repeat of the recent financial crisis. From January 2008 to November 2009, 149 banking institutions failed nationwide – 124 of which failed in calendar 2009 so far. During this time, while no Maryland-chartered banks have failed, there were failures of two federally chartered thrifts located in Maryland. In August 2009, OTS shuttered Baltimore-based Bradford Bank and appointed FDIC as receiver. All deposits were subsequently acquired by M&T Bank. OTS closed Suburban Federal Savings Bank in January 2009, and the Bank of Essex acquired Suburban’s deposits via an agreement with FDIC. Prior to those failures, the last bank in Maryland to fail was Second National Federal Savings Bank in 1992; this bank was also a federally chartered institution.

The depository corporate applications unit is currently working with a national bank headquartered in Maryland to convert its charter to a State bank charter. Furthermore, if OTS is eliminated as part of the federal banking regulatory reform, 43 federal thrifts headquartered in Maryland will need to convert their charters to either a State charter or a national bank charter. As of October 2009, the depository corporate applications unit is aware of at least four institutions considering conversion to a State charter. Many of these institutions are regional or community banks that may prefer local supervision to a federal “super regulator” that will simultaneously regulate the largest banks in the nation (the “too-big-to-fail” banks).

The depository corporate applications unit currently consists of one assistant commissioner who reviews and processes applications from banks, credit unions, and trust companies. The applications include various corporate documents ranging from charter conversions and bank branch applications to ATM approvals and closings. Typically, the assistant commissioner, along with senior-level bank examiners, can review a national bank charter application within approximately 90 days. However, a significant backlog of applications may occur if a large percentage of the remaining 39 federal thrifts headquartered in Maryland choose a State charter. The effect of a potentially significant increase in workload due to proposed federal financial regulatory reforms should be monitored.

Depository Examinations Are Conducted in a Timely Fashion

The Office of the Commissioner of Financial Regulation supervises the safety and soundness of State-chartered banks through regular on-site examinations and a quarterly off-site monitoring program. The office also conducts joint examinations with FDIC, and some examinations are conducted with the Federal Reserve Bank of Richmond. As illustrated in **Exhibit 4**, between fiscal 2004 and 2009, the office performed 38 to 63 examinations per year.

Exhibit 4
Depository Examinations
Fiscal 2004-2009

<u>Fiscal Year</u>	<u>Independent Bank Exams</u>	<u>Joint Exams with the FDIC</u>	<u>Joint Exams with the Federal Reserve</u>	<u>Special Bank Exams</u>	<u>Independent Credit Union Exams</u>
2004	18	10	2	6	12
2005	18	7	7	9	11
2006	20	9	6	5	10
2007	15	7	3	3	10
2008	15	8	4	5	10
2009	15	21	6	11	10

Notes: Special bank exams include visitations, target exams, inter-agency exams, and the Anne Arundel Economic Development Corporation. Independent credit union examination totals include the American Share Insurance Corporation.

Source: Office of the Commissioner of Financial Regulation, September and December 2009

The Office of the Commissioner of Financial Regulation currently has 13 full-time bank examiners and 4 contractual examiners. The depository supervision unit conducts joint examinations with either FDIC or the Federal Reserve Bank of Richmond if a depository institution has at least \$1 billion in assets, or if an institution receives a composite CAMELS soundness rating of 3, 4, or 5. CAMELS is an acronym for capital, asset quality, management, earnings, liquidity, and sensitivity to market risk. A rating of 1 indicates a financially sound institution, while a bank with an extensive portfolio of nonperforming loans and delinquencies may receive a rating of 4 or 5. Banks and credit unions with a CAMELS rating of 1 or 2 are examined at least every 18 months, and institutions with ratings of 3, 4, or 5 are examined at least every 12 months.

When necessary, the commissioner has brought enforcement actions against institutions, either independently or jointly with FDIC or the Federal Reserve Bank of Richmond. Enforcement actions include formal cease and desist orders, written agreements, and memoranda of understanding. Institutions subject to enforcement actions are subject to heightened supervision and provide the office with plans on meeting certain requirements (such as capital plans) and regular process reports.

If a bank's capitalization levels are deemed insufficient, the Commissioner of Financial Regulation may require the bank to cease and desist from any unsafe or unsound banking practices. A cease and desist order may require a bank to take affirmative actions regarding

management policies, suspend certain dividends and distributions, and fix any capital deficiencies, as determined by the commissioner.

Decline in Mortgage-related Licensees Reflects Current Economic Conditions

As of June 2009, the Office of the Commissioner of Financial Regulation monitors the business activities of more than 11,270 nondepository licensees to ensure their compliance with both State and federal laws and regulations. These licensees provide mortgages, consumer loans, retail sales financing, as well as credit reporting, debt collection, debt management, check cashing, and money transmission services to Maryland consumers. The complete application and licensing fee schedule for all depository and nondepository licensees can be found in **Appendix 4**. The number of licensees in each nondepository category is shown in **Exhibit 5**.

The nondepository licensing unit currently consists of 11 permanent employees, 4.5 contractual employees, and 6 employees borrowed from other functions. These employees are assisting with the transition to the Nationwide Mortgage Licensing System and Registry. Due to deteriorating revenue in the Mortgage Lender-Originator Fund detailed later in this report, the number of contractual positions has been reduced from 12 as of July 2008, to 4.5 as of November 2009, necessitating the temporary transfer of staff from other functions.

Exhibit 5
Nondepository Licensee Totals
Fiscal 2005-2009

<u>License Type</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Check Cashier	493	412	470	531	493
Collection Agency	1,288	1,204	1,346	1,449	1,457
Consumer Lender	259	279	282	232	171
Debt Management	41	44	43	36	35
Installment Lender	235	240	293	249	122
Money Transmitter	74	80	87	76	75
Mortgage Lender	4,990	5,193	6,174	3,714	2,437
Mortgage Originator	0	0	9,663	11,171	5,900
Sales Finance Company	676	726	777	676	588
Total Licenses Issued	8,056	8,178	19,135	18,134	11,278

Note: Mortgage loan originator licensing started on January 1, 2007.

Source: Office of the Commissioner of Financial Regulation

With respect to mortgage lenders and originators, the office is responsible for licensing those companies and individuals that are not employed by, or affiliated with, banking institutions

(which are exempt). As noted in Exhibit 5, the number of licensed mortgage lenders has declined 34% from fiscal 2008 to 2009, while the number of licensed loan originators has declined 47% during the same period. The office attributes the drop in mortgage-related licensees to a combination of the deteriorating residential real estate market and a tightening of banks' lending standards in the wake of the credit crunch in 2008 and 2009. Broadly, the residential mortgage industry has contracted significantly and the impact on market participants licensed by the Office of the Commissioner of Financial Regulation has been disproportionately large.

In addition, several national bank and thrift affiliates with multiple locations in Maryland, such as Citi Mortgage and Wells Fargo Home Mortgage, have restructured operations into their respective banks and are no longer subject to the jurisdiction of the Commissioner of Financial Regulation. Other national bank and thrift affiliates, such as HSBC, have simply exited the mortgage industry in the wake of the credit crisis. Elevated licensing standards and costs have also reduced the number of licensees.

While the decline in the number of licensees is primarily driven by the failure of licensees to renew, there has also been a significant decline in new applications for lender licenses. The licensing unit issued 1,371 new mortgage lender licenses in fiscal 2007, compared with 707 in fiscal 2008 and only 357 in fiscal 2009.

Mortgage-related Supervision and Compliance Activity Has Increased

The compliance unit monitors the business activities of all nondepository licensees to ensure their compliance with State and federal laws and regulations. The unit consists of the director of compliance, 2 examiner supervisors, 1 lead financial examiner, 14 mortgage compliance examiners (including 5 examiners currently assisting with licensing), 4 compliance examiners responsible for nonmortgage related activities, and 2 support personnel.

To protect State financial services consumers, the unit has focused its attention on ensuring that mortgage companies doing business in the State are closely regulated. The Office of the Commissioner of Financial Regulation has a statutory mandate to perform examinations of all mortgage lenders licensed by the State within 18 months of licensure, and after their first examination, within 36 months of their prior examination.

The unit is moving away from a strictly compliance-based examination process to one that also examines lenders' underwriting standards. In 2008, the compliance unit began examining mortgage servicers and has gradually increased the scope of examinations to include mortgage lenders as well. As of August 2009, approximately half of the compliance examiners in the unit are trained to perform mortgage servicer compliance exams. The compliance unit is also responsible for providing advice on regulations concerning prelicensing and continuing education courses, fidelity and surety bond amounts, and licensing and application requirements.

Transition to the Nationwide Mortgage Licensing System and Registry Is Ongoing

Title V of the federal Housing and Economic Recovery Act of 2008, known as the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), mandated that all mortgage loan originators must be federally registered or state-licensed through a nationwide system jointly developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The resultant Nationwide Mortgage Licensing System and Registry is a web-based interface that utilizes a single set of applications and allows state-licensed mortgage lenders, brokers, and loan officers to apply for, update, and renew their licenses online. NMLSR streamlines the licensing process and allows state regulators to track violations of law and actions taken by regulators across the country. Although not yet operational, NMLSR is scheduled in the future to allow complaints to be processed through a centralized web-based database. As of September 2009, 33 states including Maryland and the District of Columbia are participating in NMLSR.

Chapter 4 of 2009 brought Maryland into compliance with the SAFE Act and mandated that the Office of the Commissioner of Financial Regulation transition to NMLSR for mortgage originator licensure. Among other things, Chapter 4 set minimum loan originator licensing standards and modified lender and loan originator license terms from two-year terms to one-year terms. Beginning in July 2009, the office's compliance and licensing units are overseeing an 18-month transitional period to NMLSR from the existing State licensing system. The nondepository compliance unit is heavily involved in all aspects of the NMLSR transition including the State component of the SAFE Mortgage Loan Originator Test and prelicensing and continuing education requirements.

Mortgage-related Complaints Increase as a Percentage of Total Workload

The consumer services unit consists of nine examiners and is responsible for the investigation and resolution of consumer inquiries. These inquiries involve banks, mortgage lenders, mortgage servicers, collection agencies, other regulated parties, and complaints regarding nonlicensed entities, such as debt settlement companies. In addition, the consumer services unit receives complaints about institutions outside of the office's jurisdiction. Most mortgages, for example, are serviced by national banks such as Bank of America or Wells Fargo, and the unit redirects these complaints to the appropriate regulator.

The residential foreclosure crisis has led to an increase in foreclosure-related complaints, including those involving loss-mitigation and foreclosure rescue consultants. Other mortgage-related complaints involve persons promising to negotiate with lenders or servicers to modify the terms of delinquent loans. The unit also addresses consumer inquiries about forced-placed insurance issues, the failure of servicers to credit a loan for mortgage payments, or the assessment of undue penalties and fees. The unit also fields a significant number of phone calls from homeowners seeking to avoid foreclosure. The latter are typically referred to the

Department of Housing and Community Development's Home Owners Preserving Equity (HOPE) Foreclosure Prevention and Assistance Program for counseling.

Written consumer complaints against nondepository licensees are logged into a computer database and assigned to an examiner upon receipt. An acknowledgment letter is sent to the complainant within three days of assignment to an examiner. If the complaint is within the office's jurisdiction, a letter is sent to the applicable licensee requesting information. Upon receipt of the requested information, the financial examiner reviews the licensee's written response. A licensee's books and records are subject to review during the complaint investigation. If the examiner is satisfied, a closeout letter is generated and forwarded to the complainant with a summary of findings; otherwise, additional information may be requested.

If the second communication from the licensee fails to resolve the complaint, the examiner documents his or her findings and contacts a supervisor. Alternatively, the enforcement unit or the compliance unit may conduct an on-site investigation or consult the Office of the Attorney General regarding consumer claims against the licensee's bond. The complaint unit retains closed files on-site for a minimum of 25 months.

As shown in Exhibit 6, the office received approximately 2,600 to 2,900 complaints per year from fiscal 2005 through 2009. These totals consist of written consumer complaints (including those received by facsimile and e-mail) and include complaints forwarded by legislative or executive offices. General consumer complaints include installment lender complaints, automobile repossessions, and other related credit contracts. Credit reporting agency complaints typically refer to entries on individuals' consumer reports kept by three major credit reporting companies: TransUnion, Equifax, and Experian.

Exhibit 6
Consolidated Written Consumer Complaints by Type
Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
Mortgage Complaints	492	451	419	602	653	2,617
Collection Agency Complaints	518	491	596	589	590	2,784
Maryland Bank & Credit Union	69	78	66	76	88	377
Nonjurisdictional Bank	885	771	649	559	637	3,501
Credit Reporting Agency	629	604	632	483	407	2,755
General Consumer Complaints	274	208	188	255	283	1,208
Miscellaneous	71	79	47	34	18	249
Total	2,938	2,682	2,597	2,598	2,676	13,491

Source: Office of the Commissioner of Financial Regulation

Mortgage-related complaints have risen from 16% of all complaints in fiscal 2007 to approximately 24% of all complaints in fiscal 2009. In addition, the average time to close a mortgage-related complaint has also risen steadily from 59 days in fiscal 2007, to 77 days in fiscal 2008, and 93 days in fiscal 2009. The office notes that it is taking longer to resolve mortgage complaints given the increased workload and the complexity of the complaints, which typically involve multiple parties including lenders, servicers, brokers, and settlement agents. The average time to close a nonmortgage-related complaint has also risen from 41 days in 2007 to 55 days in 2009. The impact of an increased workload of complex, mortgage-related complaints on the unit should be further examined.

Additional Enforcement Personnel Required

The enforcement unit is the investigative branch of the Office of the Commissioner of Financial Regulation and consists of six investigators and an assistant commissioner. Two investigators are fluent in Spanish to serve an increasingly targeted population. The unit investigates fraud, predatory lending, financial misappropriation, and any other violations of law applicable to depository and nondepository financial institutions whose activities fall under the regulatory oversight of the Commissioner of Financial Regulation.

The regulatory authority of the office includes broad investigative and subpoena powers, which allow for expeditious access to files, e-mail, financial records, and any other documentation appropriate to the investigation at hand. If a person engages in a practice over which the commissioner has jurisdiction and is violating State law, the commissioner may issue a cease and desist order or suspend or revoke the person's license. The commissioner may also issue civil penalties for initial and subsequent violations of the law or bring an action in circuit court for a temporary restraining order or permanent injunction. Finally, in order to take legal action, the commissioner must refer charges to the Maryland Assistant Attorney General assigned to litigate the office's enforcement actions.

The enforcement unit works in partnership with the complaint, compliance, licensing, and depository supervision units, as well as with its federal and other-state counterparts. The number of investigations initiated by the enforcement unit between fiscal 2005 and 2009 is shown in **Exhibit 7**.

Exhibit 7
Investigations Initiated by the Enforcement Unit
Fiscal 2005-2009

<u>Year</u>	<u>Total</u>	<u>% Increase Over Prior Year</u>	<u>Investigators</u>
FY 2005	110	–	5
FY 2006	123	17.5%	5
FY 2007	142	14.5%	7*
FY 2008	247	75.0%	8
FY 2009	316	23.5%	7

*Two contractual investigators were hired in fiscal 2007.

Source: Office of the Commissioner of Financial Regulation, Enforcement Unit

The significant increase in the number of investigations initiated between fiscal 2007 and 2008 can be attributed to the mortgage foreclosure crisis and the enactment of the Protection of Homeowners in Foreclosure Act, the Mortgage Fraud Act, and other legislation that enhanced the jurisdiction of the office. As shown in Exhibit 7, the unit's workload has nearly tripled over the last five fiscal years while the number of investigators has increased from five to seven. Investigators within the enforcement unit note that approximately 75% of investigations in fiscal 2009 were mortgage-related.

The enforcement unit has played a significant role in State-federal joint mortgage fraud investigations, several of which originated from complaints filed with the Office of the Commissioner of Financial Regulation. For example, in late 2006, the enforcement unit launched a mortgage fraud investigation that lasted for three years and involved over 100 homeowners who lost \$10 million worth of net equity in their homes. This mortgage fraud investigation by the enforcement unit was the largest in State history.

More recently, until the enforcement unit conducted an investigation, payday lenders had illegally been using confessed judgments to collect on loan defaults. In certain contracts or promissory notes, a confessed judgment clause typically waives a person's rights to defend against a legal action. Maryland law specifically prohibits consumer loan contracts, including payday lending agreements, from containing confessed judgment clauses.

Upon the conclusion of the enforcement unit's investigation, the Commissioner of Financial Regulation issued a 30-page cease and desist order outlining 1,500 judgments in Maryland courts that violated the Maryland Consumer Loan Law and the Maryland Mortgage Lender Law. As a result of this action, Maryland courts vacated several hundred actions pending against Maryland consumers.

Fines and Consumer Recoveries

The office generates fines and penalties paid to the State general fund and consumer recoveries paid directly to harmed individuals. Fines are generated by the licensing, compliance and enforcement units, while recoveries are generated by the compliance, consumer services, and enforcement units. Monetary recoveries for consumers, along with fines and penalties collected for the general fund, are shown in **Exhibit 8**.

Exhibit 8
Fines and Consumer Recoveries
Fiscal 2007-2009

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Fines and Penalties	\$415,651	\$392,239	\$1,122,789
Consumer Recoveries	\$1,997,632	\$1,318,938	\$2,906,241

Note: The fines for fiscal 2009 include a \$642,000 fine imposed on a licensee per a consent agreement signed in June 2009 and paid in July 2009 (fiscal 2010).

Source: StateStat; Office of the Commissioner of Financial Regulation

The increase in fines and penalties in fiscal 2009 is a function of the growing volume of consumer complaint activities and the increase in examinations and investigations completed. In addition, consumer recoveries include mortgage loan modifications that were achieved by the consumer services unit.

The significant year-over-year growth in fines and consumer recoveries is not likely to continue, as resources to pursue additional cases have not been provided. However, it should be noted that, since fiscal 2007, the workload has doubled, staffing levels have dropped, and total fines and consumer recoveries collected have increased by almost \$1.62 million. DLS notes that data provided by internal records, annual reports, and StateStat reporting are not consistent. Reasons include a shift to reporting fines on a cash-collected basis rather than fines imposed. The inconsistencies should be explored further.

All Funds Except the Mortgage Lender-Originator Fund Are Fiscally Sound

The Office of the Commissioner of Financial Regulation is now primarily funded by the supervision, examination, application, and licensing fees assessed upon individuals and institutions regulated by the office. Revenues collected from the regulation of check cashers, sales finance companies, installment lenders, consumer lenders, and collection agencies are

deposited in the general fund along with fines and penalties collected by the office. General fund revenues and expenditures for fiscal 2005 through 2009 are shown in **Exhibit 9**.

Exhibit 9
General Fund Revenue and Expenditures
Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Revenue	\$5,716,069	\$5,096,870	\$4,422,200	\$4,503,059	\$2,370,384
Expenditures	4,799,384	3,485,894	3,055,637	3,061,866	793,493
Net Revenue	916,885	1,610,886	1,366,563	1,441,193	1,576,891

Source: Office of the Commissioner of Financial Regulation, 2005-2008 Annual Reports; Department of Legislative Services

Prior to the creation of the Banking Institution and Credit Union Regulation Fund in fiscal 2009, depository assessments and filing fees also went to the general fund. General fund banking fees and assessments collected in fiscal 2008 shifted to the special banking fund in fiscal 2009, which accounts for the year-over-year drop in general fund revenues and expenditures. However, fines and penalties collected from licensing and compliance violations, which increased by \$730,550 from fiscal 2008 to 2009, remain general funds.

As noted earlier, four dedicated special funds are intended to pay the costs associated with regulating their respective licensees: the Debt Management Fund, the Money Transmission Fund, the Banking Institution and Credit Union Regulation Fund, and the Mortgage Lender-Originator Fund. Special fund balances as of June 30, 2009, are shown in **Exhibit 10**.

Exhibit 10
Financial Regulation Special Fund Balances
 As of June 30, 2009

<u>Fund</u>	<u>Beginning Balance</u> <u>FY 2009</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Ending Balance</u> <u>FY 2009</u>
Debt Management Fund	\$7,657	\$54,401	\$38,832	\$23,226
Money Transmission Fund	459,725	49,705	282,427	227,003
Mortgage Lender- Originator Fund	3,721,807	3,325,137	5,400,041	1,657,186
Banking and Credit Union Regulation Fund	N/A (new fund)	3,877,631	3,201,653	666,978

Note: Revenue totals exclude fines and penalties, which are directed to the general fund, and refunds, which are directed to consumers.

Source: Office of the Commissioner of Financial Regulation

Mortgage Lender-Originator Fund Expenditures Exceed Licensing Revenue

Prior to fiscal 2006, mortgage lender licensing fees were general fund revenue. However, with the establishment of the Mortgage Lender-Originator Fund in the 2005 session, mortgage lender licensing revenue shifted to the special fund. These funds included a \$100 investigation fee for new applicants, a \$1,000 fee for a new mortgage lender license, and a \$1,000 biennial license renewal fee. Mortgage loan originator licensing began January 1, 2007, with licensees paying a one-time \$100 investigation fee, a \$300 initial licensing fee, and a \$300 biennial renewal fee. Effective January 1, 2009, licensing fees for mortgage lenders increased to \$1,000 per year from \$1,000 every two years. Fees for mortgage originators increased to \$225 per year from \$300 every two years. Revenues and expenditures for the Mortgage Lender-Originator Fund are shown in Exhibit 11.

Exhibit 11
Mortgage Lender-Originator Fund Revenue and Expenditures
Fiscal 2006-2009

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Beginning Balance	\$0	\$3,036,084	\$5,510,927	\$3,732,089
Revenue	5,302,290	7,379,653	3,400,769	3,325,137
Expenditures	2,266,206	4,904,811	5,179,607	5,400,041
Net Revenue	3,036,084	2,474,842	(1,778,837)	(2,074,904)
Balance Carried Forward	3,036,084	5,510,927	3,732,089	1,657,186

Note: Revenue totals exclude fines and penalties, which are directed to the general fund, and refunds, which are directed to consumers. Numbers may not sum due to rounding.

Source: Office of the Commissioner of Financial Regulation

Revenue for the fund remained fairly stable from fiscal 2008 to 2009; an increase in license fees was largely offset by a significant decrease in mortgage licensees. The licensing fee for mortgage lenders effectively doubled between fiscal 2008 and 2009 when the license term was shortened from two years to one year to comply with federal law. However, the significant decrease in the number of lender and originator licensees during the same period has kept licensing revenues relatively stable. However, continued increases in the fund's expenditures raise concerns about its future solvency. Further examination may be needed to clarify the fund's finances, as inconsistencies exist within annual reports and the office's internal records.

Role of the Banking Board Should Be Reconsidered

Established in 1935, the Banking Board is intended to advise the Commissioner of Financial Regulation on matters concerning the business of any State banking institution and meets at the request of the commissioner. To comply with State law, the Office of the Commissioner of Financial Regulation must notify members of the Banking Board of certain events such as a merger, consolidation, or transfer of assets among State banks. Prior to giving consent to such transactions, the commissioner must first seek the advice of the Banking Board. However, the board has no statutory authority to approve or deny any applications or proposed transactions. Five of the board's nine seats are currently vacant.

The depository corporate applications unit handles all official correspondence sent to members of the board. During the past 10 years, the unit has mailed approximately 270 bank-related applications to Banking Board members for their review and comment; the

depository corporate applications unit received 16 responses. Fifteen of the 16 responses received stated that the members simply had no comment. One response stated that the member was not familiar with the subject in the application; therefore, if the commissioner wanted to approve the application, the board member would agree.

The Banking Board last met on February 27, 2007, six months prior to the appointment of the current commissioner on August 28, 2007. According to the meeting minutes, eight members attended along with five representatives from the Office of the Commissioner of Financial Regulation. Issues discussed included OCC preemption of State law, major depository corporate application activity during the past year, and problems associated with the retention of qualified bank examiners. At the 2007 meeting, the board also supported a resolution to petition the U.S. Congress to protect consumers from abusive credit practices. Prior to 2007, the last meeting of the Banking Board was held in 2005.

During the past two years, the Banking Board has not convened and has experienced considerable attrition. Given the constantly evolving regulatory environment, it is likely more efficient for the Commissioner of Financial Regulation to consult with banking experts on an as needed basis, rather than to convene a meeting of the board. Therefore, its purpose and function going forward should be further examined.

Recommendation

The Office of the Commissioner of Financial Regulation oversees a highly complex and constantly evolving industry involving billions of dollars and thousands of institutions. In the past year alone, the residential foreclosure crisis has swept the nation, Fannie Mae and Freddie Mac were placed in federal conservatorship, the Troubled Asset Relief Program (TARP) became a household name, and the nation's financial system reached the brink of collapse. All of these events directly or indirectly affected the State financial regulatory environment. However, the overall financial soundness of State depository charters and nondepository licensees – especially when compared to their federal and other-state counterparts – can be directly attributed to the efforts of the Office of the Commissioner of Financial Regulation.

This evaluation has identified issues that should be studied further to ensure that effective regulation continues into the future. **As a result, the Department of Legislative Services recommends that the Office of the Commissioner of Financial Regulation and the Banking Board undergo full evaluation.** The full evaluation should evaluate the ability of the office to effectively regulate the mortgage industry as well as State-chartered depository institutions. In particular, the full evaluation should examine:

- the structural integrity of the Mortgage Lender-Originator Fund;
- the impact of proposed federal banking reforms on the depository corporate applications unit and the depository supervision unit;

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- the ability of the complaint unit to close mortgage-related complaints in a timely fashion, given the increased workload and complexity of the complaints;
- the needs of the enforcement unit to effectively respond to constantly evolving threats to State consumers, as predatory lending activities shift to loan modification and other schemes;

- DLLR procedures to ensure consistent reporting of general and special fund revenues and expenditures among internal records, annual reports, State budget documents, and StateStat reports; and

- the role of the Banking Board going forward, and whether its purpose meets the identified needs of the Office of the Commissioner of Financial Regulation.

Appendix 1. Organizational Structure of the Office of the Commissioner of Financial Regulation

**Commissioner of
Financial Regulation**

**Deputy
Commissioner**

Depository Corporate Activities	Depository Supervision	Nondepository Licensing	Nondepository Supervision / Compliance	Enforcement & Consumer Services	Internal Policy
Assistant Commissioner	Assistant Commissioner	Director	Director	Assistant Commissioner	Director

Appendix 2. Banking Board Membership

Ex Officio: The State Comptroller

The Honorable Peter V. R. Franchot
Comptroller of the Treasury

Three Representatives from the Maryland Bankers Association

John R. Lane, President and CEO
Congressional Bank

Vacant Position

Vacant Position

One Economist

Kamran A. Khan

One Certified Public Accountant

Vacant Position

One Consumer Interest Representative

Helen Won

Two Public Members

Vacant Position

Vacant Position

Note: Section 2-202 of the Financial Institutions Article designates the membership of the Banking Board as follows: (1) the State Comptroller and (2-9) appointed by the Governor with the advice of the Secretary of Labor, Licensing, and Regulation. Of the appointed members: three shall represent the Maryland Bankers Association; one shall be an economist; one shall be a certified public accountant; one shall represent consumer interests; and two shall be public members. Chapter 136 of 1997 increased the board to nine members and added the representative of consumer interests.

Appendix 3. Major Legislative Changes Since the 2000 Session

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2001	226	Extends the termination date for the office of the Commissioner of Financial Regulation and the Banking Board by 10 years to July 1, 2012, in accordance with the provisions of the Maryland Program Evaluation Act (Sunset Law); requires the office to submit annual reports to the Governor and the General Assembly.
2001	147, 148	Makes substantial changes to State credit union law by revising: the membership, powers, and duties of boards of directors; the default and mandatory rules for credit union officers; the powers and duties of supervisory committees; the criteria for merger of more than one credit union; deposit insurance criteria; the tax-exempt status of credit unions; and the requirements and formalities of dissolution and liquidation.
2002	540	Requires credit union share guaranty corporations to be certified by the Office of the Commissioner of Financial Regulation; arranges for the dissolution of the Credit Union Insurance Corporation.
2002	539	Requires the licensure of persons engaged in the money transmission business by the Office of the Commissioner of Financial Regulation and establishes the Money Transmission Special Fund.
2003	374, 375	Requires the licensure of debt management service providers by the Office of the Commissioner of Financial Regulation; establishes the Debt Management Services Special Fund.
2004	473	Authorizes the commissioner to issue a mortgage lender license to a sole proprietor who lacks the required three years' experience under specified conditions.
2004	342	Authorizes a savings bank to have any State banking institution, other bank in the State, or a federal or State savings and loan association merge into the savings bank with the written consent of the Commissioner of Financial Regulation.
2005	590	Requires mortgage originators to become licensed by the Office of the Commissioner of Financial Regulation effective January 1, 2007; creates the Mortgage Lender-Originator Fund; and allows persons aggrieved by the conduct of a licensed mortgage originator to file a complaint with the Office of the Commissioner of Financial Regulation.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2005	574	Establishes fees for a debt management service license based on annual gross revenue; requires debt management service providers to be licensed regardless of whether the provider maintained an office in the State; and modifies the application requirements and surety bond requirements for licensure.
2005	132	Repeals an exemption from State licensing for mortgage lenders that are federally approved seller-servicers.
2006	84	Authorizes the Office of the Commissioner of Financial Regulation to determine whether a consumer credit licensee may produce certain documents at a location within the State rather than submit to an on-site examination.
2007	307, 308	Authorizes an individual to place a security freeze on the individual's consumer credit report.
2008	605, 606	Repeals the requirement that a licensed debt management service provider be a nonprofit entity; modifies the licensing requirements for debt management service applicants and alters the requirements for consumer education programs.
2008	499	Authorizes the Commissioner of Financial Regulation to enter into cooperative and information-sharing agreements with any federal or state regulatory agency that has authority over financial institutions, provided the agreements prohibit the agency from disclosing certain information without the prior written consent of the commissioner.
2008	293	Creates the Banking Institution and Credit Union Regulation Fund to receive all bank and credit union assessments and pay all associated regulatory expenses incurred by the Office of the Commissioner of Financial Regulation; establishes new assessments and fees for State-chartered depository institutions.
2008	89	Eases requirements for banks to install ATMs; institutes new requirements regarding fingerprinting, criminal background checks, capital requirements, and bank affiliate formation in order to conform State law with existing federal law.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2008	7, 8	Prohibits lenders from charging prepayment penalties for mortgages and requires lenders to verify a borrower's ability to repay a mortgage loan; authorizes the commissioner to set mortgage lender licensing fees, examination requirements, and participate in the implementation of a multistate licensing system for mortgage lenders and loan originators; expands the licensing requirements for mortgage lenders and loan originators.
2008	5, 6	Extends legal protections for homeowners in foreclosure or mortgage default; prohibits foreclosure rescue transactions and grants the commissioner concurrent jurisdiction with the Attorney General to investigate, enforce, and enjoin action in cases involving violations of the bill.
2008	3, 4	Creates a comprehensive mortgage fraud statute with criminal penalties and authorizes the Commissioner of Financial Regulation, among others, to take action to enforce the statute.
2008	1, 2	Modifies laws governing the recordation and foreclosure of mortgages and deeds of trust; alters the requirements for recordation, notice, service of process, court filings, and cure of defaults; requires a secured party to send a copy of a notice of intent to foreclose to the Office of the Commissioner of Financial Regulation.
2009	741	Allows an out-of-state bank to open a <i>de novo</i> branch in Maryland only if that bank's home state has reciprocal laws and creates an expedited application process for the establishment of bank branches; authorizes the commissioner to issue civil penalties against banks and credit unions under specified circumstances.
2009	4	Revises the State's mortgage lender and mortgage loan originator laws to conform to the requirements of the federal Secure and Fair Enforcement (SAFE) Mortgage Licensing Act; alters the licensing requirements, initial license terms, and renewal license terms for mortgage lenders and mortgage loan originators; requires licensees to submit certain information to the Nationwide Mortgage Licensing System and Registry (NMLSR); increases civil penalties; and permits the commissioner to issue interim mortgage loan originator licenses.

Source: Laws of Maryland

Appendix 4. Application and Licensing Fee Schedule

Affiliated Insurance Producers – Mortgage Loan Originators

Initial license fee: \$700.00

Investigation fee (nonrefundable/not applicable to renewals): \$100.00

NMLS processing fee: \$30.00

Amendments:

Change of employer: \$75.00

Change of name: \$75.00

Request for placement on nonactive status: \$0

Request for return to active status (without change of employer): \$0

Banks & Credit Unions

Affiliate: \$750.00

Articles of amendment: \$20.00

Bank holding Company: \$1,500.00

Branch: \$600.00

Certified copies of documents: \$50.00

Conversion to State charter: \$7,000.00

Credit union branch: \$100.00

Foreign bank representative office permit: \$500.00

Mergers/acquisitions –

among 2 banks: \$3,000.00

among 3 or more banks: \$5,000.00

New bank charters: \$15,000.00

New credit union charters: \$500.00

New nondepository trust company: \$15,000.00

Miscellaneous Fees

Certificate of valid charter requested by bank or on behalf of: \$25.00

Certificate of valid charter requested by a person other than a bank: \$50.00

Check Cashers

Initial License – Original Office: \$1,000.00

Initial License – Branch Office: \$1,000.00

Investigation Fee: \$100.00

License Renewal: \$1,000.00

Collection Agencies

Initial License – Original Office: \$400.00

Initial License – Branch Office: \$400.00

License Renewal: \$400.00

Surety Bonding Requirement: \$5,000.00

Consumer Lenders

Initial License – Original Office: \$1,700.00
Initial License – Branch Office: \$1,700.00
Investigation Fee: \$100.00
License Renewal: \$1,700.00
Surety Bonding Requirement: \$12,000.00

Credit Services Businesses

Initial License – Original Office: \$1,700.00
Initial License – Branch Office: \$1,700.00
Investigation Fee: \$100.00
License Renewal: \$1,700.00
Surety Bonding Requirement: \$12,000.00

Debt Management Companies

Initial License – Original Office: Ranges from \$1,000.00 to \$8,000.00 (if license is issued in an odd-numbered-year, license fee is half of stated amount).
Initial License – Branch Office: \$100.00
Investigation Fee: \$100.00
License Renewal: Ranges from \$1,000.00 to \$8,000.00
Surety Bonding Requirement: \$10,000.00 to \$1,000,000.00 depending on annual volume of State transactions.

Installment Lenders

Initial License – Original Office: \$1,700.00
Initial License – Branch Office: \$1,700.00
Investigation Fee: \$100.00
License Renewal: \$1,700.00
Surety Bonding Requirement: \$12,000.00

Money Transmitters

Initial License (application submitted in even-numbered year): \$4,000.00
Initial License (application submitted in odd-numbered year): \$2,000.00
Investigation Fee: \$1,000.00
License Renewal: \$4,000.00
Surety Bonding Requirement: \$150,000.00 to \$1,000,000.00, determined by the commissioner

Mortgage Lenders/Brokers/Services

Initial License – Principal Office or Individual: \$1,000.00

Initial License – Branch Office: \$1,000.00

Investigation Fee: \$100.00

License Renewal: \$1,000.00

NMLS Processing Fee (Company): \$100.00

NMLS Processing Fee (Branch): \$20.00

Surety Bonding Requirement: \$50,000.00 to \$750,000.00, depending upon aggregate lending activity

Mortgage Loan Originators

Initial License: \$225.00

Investigation Fee: \$100.00

License Renewal: \$225.00

NMLS Processing Fee: \$30.00

Amendments:

Change of Employer: \$75.00

Change of Name: \$75.00

Request for placement on nonactive status: \$0

Request for return to active status (without change of employer): \$0

Request for return to active status (with change of employer): \$75.00

Sales Finance Companies (Two-year License)

Initial License – Original Office: \$250.00

Initial License – Branch Office: \$250.00

Investigation Fee: \$100.00

Three or more applications submitted at once: \$300.00

License Renewal: \$250.00 (There is no statutory provision for a renewal license. Consequently, every application for a license must be accompanied by the \$100.00 investigation fee.)

**Appendix 5. Written Comments of the Office of the
Commissioner of Financial Regulation and the Banking Board**

DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY G. BROWN, Lt. Governor
ALEXANDER M. SANCHEZ, Secretary

Office of the Commissioner of Financial Regulation
Sarah Bloom Raskin, Commissioner

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December 2, 2009

Department of Legislative Services
Office of Policy Analysis
Attn: Michael C. Rubenstein, Principal Policy Analyst
90 State Circle
Annapolis, Maryland 21401-1991

Re.: Sunset Review—Preliminary Evaluation of the Office of Commissioner of Financial Regulation and the Banking Board

Dear Mr. Rubenstein:

This will acknowledge our receipt of your letter dated November 17, 2009 and the draft Preliminary Evaluation of the Office of the Commissioner of Financial Regulation and the Banking Board. We have reviewed the draft and my staff has provided policy analyst Jason Weintraub with factual corrections and clarifications under separate cover.

As the draft Preliminary Evaluation aptly notes, the Office of the Commissioner of Financial Regulation (the "Office of Financial Regulation") "oversees a highly complex and constantly evolving industry involving billions of dollars and thousands of institutions." This industry is currently in the throes of a massive crisis, with significant consequences to both the safety and soundness of financial institutions and to the consumers who interact with them. The financial crisis is national—in fact global—in scope, and Maryland has not escaped its brutal effects.

In response to and in preparation for the duration and depth of the nation's current economic crisis—triggered in part by weak oversight of a securitized and complex mortgage market—the Office of Financial Regulation, in conjunction with Governor O'Malley and the Secretaries of DLLR and DHCD, prepared and directed a monumental legislative reform of Maryland's regulatory oversight of the mortgage market and the state's foreclosure laws. As the crisis has unfolded, the Office of Financial Regulation has, among other actions:

- o completed more bank and non-bank examinations than ever before;
- o generated record levels of fines and recoveries,

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- o investigated a growing caseload and referred high profile cases for criminal prosecution;
 - o implemented a variety of new tools such as a data reporting system for mortgage servicers;
 - o substantially increased outreach to consumers including mailing over 165,000 information packages to borrowers facing foreclosure; and
 - o strengthened its licensing process through conversion to the Nationwide Mortgage Licensing System ("NMLS").

While demands for the services of the Office of Financial Regulation have increased with the financial crisis, funding streams are limited and have been declining. In general, the Office of Financial Regulation has jurisdiction over only part of the industry, yet is impacted by all. For example, most mortgages are serviced by national banks (e.g., Wells Fargo, Bank of America) which are not under the jurisdiction of the Commissioner and pay no licensing fees. Desperate and vulnerable Marylanders facing foreclosure, however, continue to reach out for assistance which the Office of Financial Regulation has sought to provide. At the same time, revenues from licensing have fallen with a decline in the number of licensees under the jurisdiction of the Commissioner and the shift to a one-year license term required as part of the NMLS conversion.

The Office of Financial Regulation has achieved significant results despite dramatic reductions in personnel, excluding bank examiners, from approximately 82 as of July 2008 to 66 today. However, the reality is that the effectiveness of the Office cannot be sustained in the future without adequate staffing levels. Moreover, the level of expertise required only increases as the complexity of financial services and regulation grows, thus creating a need for a larger number of better qualified and trained employees. We therefore suggest that the Office's budget constraints and serious staffing situation be highlighted in the evaluation.

The Preliminary Evaluation also notes that the full evaluation should examine "the impact of proposed federal banking reforms on the depository corporate applications unit." While wholeheartedly agreeing, we should clarify that any federal banking reforms require the passage of controversial federal legislation. While several proposals are being considered in Congress as noted, the scope and ultimately the enactment of such legislation may not be certain until the end of the Congressional session in late 2010. Moreover the significant turmoil in the financial markets generally, and the mortgage market most particularly, may limit the ability to make meaningful assessment in the immediate term. Given these factors, we respectfully suggest that your office give consideration to commencing the full evaluation after the issue of federal legislation has been resolved and the turmoil in the financial and mortgage markets has subsided.

December 2, 2009

If you have any questions regarding this letter or the information we have sent to Mr. Weintraub, please feel free to contact Deputy Commissioner, Mark Kaufman, at (410) 230-6361 or me.

Very truly yours,



Sarah Bloom Raskin
Commissioner of Financial Regulation

cc: Alexander M. Sanchez
Secretary, Department of Labor, Licensing and Regulation

Karl S. Aro
Executive Director, Department of Legislative Services

Preliminary Evaluation of the State Board of Environmental Sanitarians

Recommendation: **Full Evaluation in 2011**

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Environmental Sanitarians (BES) was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this board – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. BES last underwent a full evaluation in 2001. In the 2001 evaluation report, DLS concluded that BES serves an important function in licensing and overseeing individuals who enforce compliance with federal, State, and local health laws. DLS recommended that the board’s termination date be extended by 10 years and that BES report to certain standing committees of the General Assembly on the implementation of other recommendations in the report. Chapter 172 of 2002 extended BES’ termination date to July 1, 2013, and required BES, by October 1, 2002, to submit a follow-up report on issues raised in the evaluation.

To collect information and data for this evaluation, DLS staff reviewed meeting minutes, financial data, complaint data, licensing data, and other information obtained from BES, as well as previous sunset evaluations, statute and regulations, and background literature on the field of public health. Interviews were conducted with board members, the board’s counsel, administrator, and administrative specialist, as well as members of relevant professional associations. Staff also attended two board meetings.

BES reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 6**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

Environmental Sanitarians

Environmental sanitarians enforce compliance with federal, State, and local environmental and health laws and regulations. Most environmental sanitarians are employed in the public sector. In Maryland, “practice as an environmental sanitarian” means, as a major component of employment, to apply academic principles, methods, and procedures to the inspections and investigations necessary to collect and analyze data and make decisions necessary to comply with environmental and health laws and regulations, including those regarding:

- the manufacture, preparation, handling, distribution, or sale of food and milk;
- water supply and treatment;
- wastewater treatment and disposal;
- solid waste management and disposal;
- vector control;
- insect and rodent control;
- air quality;
- noise control;
- product safety;
- recreational sanitation; and
- institutional and residential sanitation.

Regulation of environmental sanitarians, or their equivalent, varies among the states. According to the 2009 State Environmental Health Registration Survey conducted by the National Environmental Health Association (NEHA), 32 states have licensing programs for environmental sanitarians or their equivalent, 19 of which are mandatory. The minimum levels of education and training required for licensure also vary by state, though there is a trend toward using NEHA’s examination as part of licensure.

The State Board of Environmental Sanitarians

BES was created in 1969 to ensure that individuals practicing as environmental sanitarians in Maryland meet minimum professional standards. BES is one of three environmental licensing boards currently operating within the Maryland Department of the Environment (MDE). BES carries out its mission by licensing individuals as “registered environmental sanitarians,” regulating “sanitarians-in-training” (individuals who meet the educational requirements for licensure but are obtaining relevant supervised experience), approving continuing education courses for licensees, and occasionally imposing disciplinary

sanctions. BES also keeps a current record of all environmental sanitarians and sanitarians-in-training in the State, sets and collects fees, and provides informational resources to practicing environmental sanitarians and the public through the board's web site.

Major Statutory and Regulatory Changes Since the 2001 Sunset Evaluation

Following the 2001 sunset evaluation, two laws made substantive changes to the Maryland Environmental Sanitarian Act. These changes are summarized in **Exhibit 1**.

Exhibit 1 Major Legislative Changes Since the 2001 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	172	Extends the board's termination date by 10 years to July 1, 2013. Requires DLS to conduct a sunset review of BES by July 1, 2012. Alters the membership of BES. Requires BES to report to certain committees of the General Assembly on or before October 1, 2002, on the board's progress in implementing the recommendations of the 2001 DLS sunset evaluation report.
2004	230	Exempts milk safety inspectors performing duties under the National Conference on Interstate Milk Shipments and employed by the Department of Health and Mental Hygiene from the State licensure requirement for environmental sanitarians.

Source: Laws of Maryland

Chapter 172 of 2002 altered the membership of BES by reducing the number of members from MDE from two to one; creating a member position for a Department of Health and Mental Hygiene (DHMH) employee; repealing a requirement that one member be employed by a local health department in certain jurisdictions; and creating a position for a person employed by a local government.

Chapter 172 also required BES to report to certain standing committees by October 1, 2002, on the implementation of DLS' recommendations in the 2001 sunset report. DLS notes that there is no record that BES completed this reporting requirement.

In 2005, in response to a DLS recommendation in the 2001 sunset evaluation, BES adopted regulations (Code of Maryland Regulations, 26.07.05.01 and .02) establishing a code of ethics for applicants and licensees. This code of ethics is included at the end of this document as **Appendix 1**.

Demand for Environmental Sanitarians Exceeds Supply

BES advises that the demand for environmental sanitarians is growing, and there are currently more positions than qualified candidates. The board anticipates that this gap will increase significantly over the next few years, based on its own estimate that 40% of licensees are approaching retirement. In response to this projected trend, BES has taken a greater role in strengthening recruitment and retention of qualified environmental sanitarians in the State.

BES is composed of nine members: seven registered environmental sanitarians and two consumers. A current roster of board members is included as **Appendix 2**. Members are appointed by the Governor with the advice of the Secretary of the Environment and the advice and consent of the Senate. BES members are appointed to five-year terms and may not serve more than one consecutive term. At the end of a term, a member continues to serve until a successor is appointed and qualifies. As currently structured, of the board members serving on BES:

- one must be employed by private industry;
- one must be employed by MDE;
- one must be employed by DHMH;
- one must be employed by a local health department and be employed under the State Personnel Management System;
- one must be employed by a local government and not be employed under the State Personnel Management System;
- two must be appointed at large from a jurisdiction not already represented to balance geographical representation; and
- two must be consumers.

BES is only required to meet twice a year but currently meets monthly to conduct its business. BES members are unpaid volunteers, though they are entitled to reimbursement for expenses under standard State travel regulations.

BES has access to an Assistant Attorney General at MDE as necessary. BES advises that the nature of this access has never been made clear. BES also shares a part-time administrator and a part-time administrative specialist with the State Board of Waterworks and Waste Systems Operators. The administrator and administrative specialist also often assist the State Board of Well Drillers.

Due to limited staff resources, BES members have taken over many administrative duties, including creating executive summaries of BES meeting minutes, occasionally responding to correspondence, and updating the board's web site. **The sufficiency of staff support for BES should be evaluated to see if additional staff resources are necessary.**

Maryland Has a Mandatory Licensure Program with Many Exceptions

In Maryland, environmental sanitarians are governed by the Maryland Environmental Sanitarian Act, Title 11 of the Environment Article. Except if expressly exempt, to practice as an environmental sanitarian or use the title "registered environmental sanitarian" or the initials "R.S.," a person must be licensed by BES. BES requires applicants for licensure to meet minimum education and training standards and to pass a qualifying examination, discussed in more detail later in this section.

There are currently 25 statutory exceptions to the licensure requirement, as shown in **Appendix 3** of this document. Some of these exceptions are specific and targeted (*i.e.*, chemists), while others are more broad (*i.e.*, persons employed by industrial operations whose environmental services are performed solely for their employer). Statute does not address some exceptions that exist as a matter of practice. For example, certain waterworks and wastewater works operators seem to fall under the requirement for licensure as they handle water supply and treatment and wastewater treatment and disposal. In practice, these individuals are licensed through the State Board of Waterworks and Waste Systems Operators, though no specific exemption is provided.

The 2001 sunset evaluation of BES recommended that the board, in conjunction with MDE and the Department of Natural Resources (DNR), evaluate the exemptions to Maryland's licensure requirement for environmental sanitarians and report to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee on any exemptions that could be eliminated and the reasons for eliminating them. This recommendation was not implemented. Instead, Chapter 230 of 2004 added a new category of exemption. The board advises that it did not follow this recommendation because of insufficient resources. During the course of this sunset evaluation, concerns were again raised that the list of statutory exceptions may merit evaluation. **These exemptions should be revisited to determine whether any should be added, eliminated, or clarified.**

Career Path to Become an Environmental Sanitarian Is Lengthy

Licensure as an environmental sanitarian in Maryland requires applicants to meet minimum education and training requirements as shown in **Appendix 4**. There are currently four possible combinations of education and training that can lead to licensure. A fifth path was previously available to certain individuals who (1) applied for licensure before July 1, 1995; (2) possessed 10 years experience in the field of environmental health; and (3) passed the licensure examination within two years of application for licensure.

Under the four current paths to licensure, applicants generally must have at least a baccalaureate degree and 12 months of experience as a sanitarian-in-training. Applicants also must pass a qualifying examination and pay the required fees. Current fees charged by BES are shown in **Appendix 5**. The process for applicants to meet licensing requirements, described in more detail below, can be lengthy. On average, three to four years are needed beyond completing the educational requirements to obtain the required specialized training and pass the qualifying examination.

To obtain an initial license to practice as an environmental sanitarian, an individual must first file an application for licensure with BES, accompanied by (1) an official transcript of the applicant's baccalaureate and post-baccalaureate studies; (2) verification of the applicant's relevant previous work experience, if any; and (3) the required application fee. The board's administrative specialist reviews each application to determine if the minimum education requirements for licensure have been met and then makes a preliminary recommendation on the application to the administrator. The administrator reviews the application materials and the administrative specialist's recommendation and then presents it to BES for final action. When questions arise about the sufficiency of an applicant's qualifications, the board evaluates the application directly.

Following board approval of an application, BES issues the applicant a certificate of eligibility (COE) for obtaining employment as an environmental sanitarian. A COE is valid for 12 months but may be renewed by BES on submission by the applicant of a request for renewal and payment of the appropriate fee.

Once the applicant has found employment as an environmental sanitarian, the applicant is required to return the COE to BES with a description of the applicant's new job title and duties. The administrator reviews the job description to ensure that it falls within the experience requirements for an environmental sanitarian and makes a recommendation to BES. The applicant is also required to obtain an environmental health sponsor who must certify that the applicant has the required experience to take the qualifying examination.

If BES approves the applicant's employment and the applicant obtains a sponsor, BES issues the applicant a sanitarian-in-training certificate (SITC). Depending on the applicant's qualifications, the SITC is valid for 12 or 24 months. This certificate allows the applicant to

temporarily work in the State as an environmental sanitarian in order to accumulate enough experience to qualify to take the examination required for licensure. The SITC specifies a date of eligibility to take the qualifying examination, based on the amount of experience that the applicant needs to meet the minimum experience requirement. An applicant may request board approval to take the licensing examination before the date specified if the applicant will complete the required training during the same month the examination will be held or in the month after.

The qualifying examination for environmental sanitarians is created and administered by a contractor and currently offered three times a year. BES requires a passing score of 70%. If an applicant does not pass the examination by the third attempt, the applicant is prohibited from sitting for the examination again until the applicant has completed additional training in accordance with a written plan, which must be approved by BES. A person may not participate in a sanitarian-in-training program for more than three years, unless approved by the board. In practice, due to low pass rates on the qualifying examination, BES advises that it frequently extends the SITC period to allow sanitarians-in-training to continue to gain additional experience while preparing to retake the examination.

Board Responds to Low Examination Pass Rate by Securing A New Examination Contractor

As shown in **Exhibit 2**, in recent years most applicants have not passed the examination on their first sitting. The low pass rate is attributable to many factors. First, the examination covers a wide range of specialized subjects, from food safety to lead, but applicants usually only have the opportunity to train in a few subject areas. Second, BES is authorized to approve study plans, but not create them, and the testing contractor used by BES until August 2009, the Professional Examination Service (PES), did not provide study guides or other test preparation resources. As a result, applicants were on their own in terms of developing an appropriate study plan. Finally, the board advises that PES' examination was not frequently revised and did not always reflect current practice.

To address the low pass rate, BES voted in September 2008 to switch examination contractors. Beginning in August 2009, NEHA became the official testing service in Maryland. NEHA's Examination for Registered Sanitarians or Registered Environmental Health Specialists is currently accepted by a majority of states, and BES advises that it better reflects current practice. Test-takers also now have access to NEHA study guides and other test preparation resources, as well as the option of taking the examination online at a testing center for an additional fee.

Exhibit 2
Environmental Sanitarian Examination Pass Rates
August 2004-April 2009

<u>Date</u>	<u>Total # of Examinees</u>	<u># Passed</u>	<u>Pass Rate</u>
April 6, 2009	26	16	61.5%
December 1, 2008	23	3	13.0%
August 4, 2008	22	5	22.7%
April 7, 2008	19	4	21.1%
December 3, 2007	21	9	42.9%
August 6, 2007	19	11	57.9%
April 2, 2007	22	12	54.5%
December 11, 2006	13	4	30.8%
August 7, 2006	8	3	37.5%
April 3, 2006	25	20	80.0%
December 5, 2005	21	10	47.6%
August 1, 2005	22	13	59.1%
April 4, 2005	15	6	40.0%
December 13, 2004	27	16	59.3%
August 9, 2004	14	0	0.0%

Source: State Board of Environmental Sanitarians

Board Lacks Authority to Waive Licensure Requirements Based on Experience

BES is authorized to waive the qualifying examination requirement if an applicant meets certain criteria or is licensed in another state with which BES has a reciprocal agreement. However, as BES does not currently have any reciprocal agreements with other states, applicants from other states seeking waiver of the qualifying examination are reviewed on a case-by-case basis. BES advises that use of NEHA's examination should facilitate this process because the examination is so widely used.

Once an applicant meets the education and training requirements and passes the qualifying examination, BES issues the applicant a license to practice as a registered environmental sanitarian.

Concerns have been raised about the rigidity of the licensing process, given the unmet demand for environmental sanitarians in the State. Highly specialized positions remain vacant in part because often candidates with sufficient specialized knowledge do not have the broader general knowledge base required of registered environmental sanitarians. BES does not currently have the authority to waive education or training requirements for applicants with other relevant experience. **The authority of BES to waive requirements should be evaluated to determine if a waiver process would be beneficial.**

License Renewal – Continuing Education Requirements Could Be More Targeted

Licenses are required to renew their licenses every two years. An applicant for license renewal must submit an application to BES demonstrating completion of 20 hours of continuing education during the two-year period, along with the renewal fee.

Continuing education is the most significant way that BES currently oversees individuals once they are licensed. Licensees self-report their continuing education hours. BES reviews all continuing education submitted and determines the amount of credit hours that will be awarded. BES does not require the licensee to submit official proof of attendance from the course provider that confirms the exact number of hours in which the licensee participated. General proof of attendance is required. A licensee may receive credit for education hours that do not directly relate to the type of work the licensee specifically does (*i.e.*, a licensee who tests pools may receive credit for a course on food safety).

BES is beginning to take a more proactive approach to approval of continuing education and has begun working with professional organizations and other course providers to pre-approve continuing education courses. In November 2009, BES revised its policy on continuing education to require stricter accounting of continuing education hours.

At present, BES does not offer any guidance to licensees as to which courses to take in order to pursue particular career paths or to obtain cross-training that is valuable to employers. This type of guidance could aid recruitment and retention of environmental sanitarians.

Now that a new continuing education policy has been adopted, BES should periodically review the policy to determine whether it is sufficient to ensure uniform accountability for credit hours. Also, BES should consider creating guidelines for continuing education to assist licensees in attaining the training necessary for career advancement.

Licensing Activity Appears in Decline

As of August 1, 2009, there were 599 registered environmental sanitarians and 79 SITC holders in the State. BES advises that, of these individuals, 537 registered environmental sanitarians (90%) and 76 SITC holders (96%) practice in the public sector (including federal, State, or local government). Though BES keeps a list of current licensees and SITC holders, it does not keep a record of the total tally for each category by year. The board keeps hard copy files, but its electronic database is antiquated with very limited sorting capacity. As a result, it is difficult to track trends in licensing. **BES should revise its database to track the total number of licensees more effectively.**

DLS was able to obtain limited historical licensing data. Exhibit 3 shows the total number of registered environmental sanitarians and SITC holders as of October 2001, August 2008, and August 2009. When comparing October 2001 and August 2009 data, it does not appear that the number of licensees and SITC holders has fluctuated significantly. However, between 2008 and 2009, the number of registered environmental sanitarians declined by 8.3%, while the number of SITC holders declined by 16.0%.

Exhibit 3 Registered Environmental Sanitarians and Sanitarians-in-training

	<u>October 2001</u>	<u>August 2008</u>	<u>August 2009</u>
Registered Environmental Sanitarians	610	653	599
Sanitarians-in-training (SITC Holders)	<u>81</u>	<u>94</u>	<u>79</u>
Total	691	747	678

Source: State Board of Environmental Sanitarians, Department of Legislative Services.

As previously noted, in response to the board's projected shortage of environmental sanitarians over the next few years (due to the number of current licensees whom the board expects to retire), BES has begun to devote significant energy, in coordination with local health departments, DHMH, and MDE, to developing strategies to strengthen the recruitment and retention of environmental sanitarians.

Board's Disciplinary Action Is Limited; No Formal Complaint Policy

Any person may make a written, specific complaint, referred to as a "charge," of a violation that is grounds for disciplinary action under the Maryland Environmental Sanitarian

Act or the code of ethics for environmental sanitarians. A registered environmental sanitarian who knows of an action or condition that might be grounds for disciplinary action is required to report to BES. The person making the charge has immunity from liability.

The board does not have express investigatory authority; however, it does carry out limited investigations on receipt of a charge. Due to limited staff resources and expertise, BES relies heavily on information provided by employers with respect to a charge. Following investigation of a charge, if BES finds that a violation has occurred, the board may deny licensure, reprimand a licensee, place a licensee on probation, or suspend or revoke a license.

If BES votes to take disciplinary action, the charge is referred to the board counsel. A separate attorney from the Office of the Attorney General acts as prosecutor if the board takes formal action against a licensee. BES advises that it generally takes between six and eight months to resolve a charge. In practice, BES rarely exercises its disciplinary authority. Over the last six years, only seven charges have been filed with the board. Of these, three have been filed since the spring of 2009 and are currently pending. As shown in **Exhibit 4**, of the remaining four charges, only two resulted in formal discipline, while one case was closed.

Exhibit 4
Charges Investigated by the State Board of Environmental Sanitarians
Fiscal 2003-2009

<u>Source of Charge</u>	<u>Allegation</u>	<u>BES Action</u>
Employer	Falsified inspection records	Flagged file, after individual left the job
Employer	Conflict of interest	Revoked sanitarian-in-training certificate
Employer	Failed to maintain license	Issued a reprimand letter
Employer	Failed to follow the proscribed inspection procedures	Cleared the individual of the charge
Coworker	Failed to follow the proscribed inspection procedures	Pending
Employer	Conflict of interest	Pending
Employer	(1) Sexual harassment and (2) failed to follow the proscribed inspection procedures	Pending

Source: State Board of Environmental Sanitarians

The small number of charges may be due in part to the nature of the self-reporting system in place. BES is required to respond to all charges of violations, but it is outside the scope of BES' mandate to proactively seek out violations. Therefore, BES is reliant upon employers and others to report violations. A concern has been raised that employers have preferred to handle discipline through internal personnel channels, bypassing BES. BES advises that it has never received a charge from the private sector.

The State Board of Physicians requires employers to report disciplinary action taken against certain board licensees that may justify disciplinary action by the board. This provides additional information on the conduct of licensees. BES should consider whether a similar reporting requirement may be appropriate for BES.

BES does not have a policy about how to process complaints, including what documentation to maintain but is working to develop one. The board keeps hard copy records regarding each charge in the folders it maintains for each licensee and SITC holder but does not have detailed information about charges accessible through its database. BES advises that it is currently developing a standard disciplinary policy and intends to have the policy in place by June 30, 2010.

BES should develop a policy for processing charges and maintaining easily searchable records related to them. The board should also consider whether an employer reporting requirement may be appropriate to identify violations of the Maryland Environmental Sanitarians Act that are not currently reported to the board.

BES Is General Funded with Expenditures Exceeding Revenues

BES is budgeted through MDE and funded with general funds. Although general funded, the board also has fee setting authority. Likewise, fee revenue is deposited in the general fund. Board fees have not been altered since the 2001 sunset evaluation. Exhibit 5 provides a fiscal summary of BES for fiscal 2003 through 2009. Because environmental sanitarian licensees are issued on a two-year renewal cycle, BES generally takes in higher revenues in odd-numbered fiscal years. While fee revenues often exceed the board's general fund appropriation in those years, BES revenues do not consistently cover its appropriation in all years.

Board expenditures are not included in Exhibit 5 because BES shares some staff and overhead expenses with other boards, and MDE was unable to give a precise account of BES' share of these costs. This makes it difficult to assess whether the board has sufficient funds to meet its staffing needs, particularly recently as members of the board have taken on numerous administrative tasks. BES advises that it has no control over its budget. Some members expressed concern about the lack of transparency and control over the budget, as it constrains certain BES activities (such as participation in national conferences). Others have said that BES does not have the capacity to oversee its own budget, or even part of it.

While BES' fees could be increased to bridge the gap between fee revenues and general fund appropriations, it does not appear necessary given the nature of the board. First, at least 90% of registered environmental sanitarians and SITC holders are employed in the public sector, many serving local governments. Second, environmental sanitarians working for the State generally earn base salaries beginning at \$34,000 to \$45,000. Third, the impact of the board on the general fund has ranged from no more than \$37,000 to \$48,000 in any given year since fiscal 2003. Thus, DLS finds that it is not unreasonable for the State to cover a portion of board costs. Furthermore, BES advises that it does not wish to raise fees in order to keep financial barriers to entering the field low and attract new licensees in a time of projected shortage.

MDE should provide BES with more specific information about board expenditures so that the board can determine whether additional funds for staffing are available.

**Exhibit 5
State Board of Environmental Sanitarians Fiscal Data
Fiscal 2003-2009**

	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY2009</u>
General Fund Appropriation	\$55,588	\$56,334	\$59,440	\$62,672	\$67,277	\$68,317	\$73,316
Fee Revenues	66,650	19,675	68,765	18,465	66,400	20,610	69,825
Revenue Excess/(Gap)	11,062	(36,659)	9,325	(44,207)	(877)	(47,707)	(3,491)
% Appropriation Covered by Revenues	19.9%	34.9%	115.7%	29.5%	98.7%	30.2%	95.2%

Notes: Expenditures are not included as some overhead costs and BES staff members are shared with other boards. MDE could not provide expenditure numbers for the board alone.

Source: Department of Legislative Services, State Board of Environmental Sanitarians

Board Uses Work Teams to Carry Out Its Duties

Since 2008, BES has divided itself into three work teams to carry out its duties: the housekeeping team, the policy team, and the Environmental Health Liaison Committee (EHLIC) advisory team. The housekeeping team is responsible for BES' web site and all correspondence not handled by BES staff. BES recently significantly revised its web content as part of increasing outreach efforts and is beginning to see additional traffic to its site.

The policy team drafts board policies to guide decision-making or clarify procedure to the public. The policy team is currently drafting policy statements on disciplinary procedures.

The EHLC advisory team acts as BES' liaison to the Long-Term Workforce Work Group of EHLC. Formed in 2007, the work group is a joint project of DHMH, MDE, and local health departments to develop strategies to meet the State's environmental health workforce needs over the next decade. The work group intends to issue a report in the coming months with a series of recommendations to increase recruitment and retention of environmental health workers, including environmental sanitarians.

Moving Board from MDE to DHMH Under Consideration

One of the key anticipated recommendations of the Long-Term Workforce Work Group is to move BES from MDE to DHMH. At its inception, BES was part of DHMH but was moved to MDE when the department was created in 1987. The transfer of BES from DHMH to MDE was controversial at the time and remains so. Advocates for moving BES to DHMH assert that most environmental sanitarians work at DHMH or in local health departments; environmental sanitarians are more involved in the public health aspect of environmentalism; and DHMH does more professional licensing than MDE and has better resources for this work such as the capacity to accept applications and manage continuing education hours online. No one interviewed during this sunset evaluation advocated against the move, but some expressed indifference. The board's position is that DHMH is the most logical location for the board.

DLS should evaluate the proposal that BES be moved from MDE to DHMH and make a recommendation as to the best departmental location for BES.

Summary of Recommendations

The State Board of Environmental Sanitarians continues to serve an important function in licensing and overseeing individuals who enforce compliance with federal, State, and local health and environmental laws. In particular, under the leadership of its current chair, BES has become much more proactive about managing the work of the board and reaching out to licensees and the public. The current board members have also taken greater initiative, dedicating many hours to improving the board's services. Many changes in the board's policies, procedures, and services are currently underway. **However, several ongoing and emerging issues indicate that further evaluation could assist BES in furthering its mission. Therefore, DLS recommends that a full evaluation of the board be conducted but be delayed until the 2011 interim to allow the board time to implement the changes it has begun. In the meantime, DLS recommends that the board and MDE take the following actions:**

- **Board Resources:** BES should update its licensing tracking system to make it easier to evaluate licensing trends, including the change in total licensees from year to year.

- **Exemptions from Licensure Requirement:** MDE and DHMH, in conjunction with other relevant stakeholders including DNR, should revisit the current statutory exceptions to licensure to determine if the exceptions remain appropriate and whether any should be added, eliminated, or clarified.
- **Continuing Education:** BES should consider including guidelines that help licensees determine which courses they should take to obtain training necessary for advancement along certain career tracks.
- **Disciplinary Processes:** BES should continue its efforts to develop guidelines for processing charges, including records maintenance, and consider requiring employer reporting of internal disciplinary actions.
- **Staff Resources and Board Budget:** MDE should provide BES with specific information about board expenditures, including prorated information about staff salaries, so that BES has a more accurate understanding of its expenditures and can determine whether a change is needed in the current level of staff support

During the 2011 interim, DLS should conduct a full evaluation of the board that follows up on these recommended actions and other issues identified in this report. More specifically, the full evaluation should:

- evaluate improvements to the board's licensing tracking system, continuing education guidelines, any recommendations regarding adoption of an employer reporting requirement, guidelines for processing charges, revised accounting practices for the board's budget, and if the board has sufficient staff resources;
- consider and expand on MDE's initial review of exemptions to the licensure requirement;
- determine whether the board should be given the authority to waive education or training requirements for licensure to meet demand from employers for registered environmental sanitarians with certain specialized credentials; and
- examine the anticipated proposal that the board be moved from MDE to DHMH and make a recommendation as to the best departmental location for BES.

Appendix 1. Code of Ethics

An applicant for a license as an environmental sanitarian or a licensee is required to protect and promote the health and safety of the public and the environment through:

1. the advancement of public and environmental health; and
2. experience and continuing education training.

It is unethical for an applicant for a license as an environmental sanitarian or a licensee to engage in conduct prohibited by:

1. Environment Article, § 11-312(b), Annotated Code of Maryland, or COMAR 26.07.04.01;
2. State Public Ethics Law, State Government Article, §§15-501—15-509, Annotated Code of Maryland; or
3. a county or municipal ethics law adopted pursuant to State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland.

In addition, it is unethical for an applicant for a license as an environmental sanitarian or a licensee to:

1. refuse a professional service based on race, creed, color, or national origin;
2. willfully disregard any observed, known, or continued violation of any federal, State, or local law or regulation regarding public or environmental health;
3. falsify or misrepresent any qualifications or information required to be set forth in any application for licensure or other submission to the board required under Environment Article, Title 11, Annotated Code of Maryland;
4. unless the conflict can be legally waived and waiver is obtained in writing from all affected parties, knowingly become involved in an actual or perceived conflict of interest;
5. fail to disclose a conflict of interest that arises to all affected parties;
6. accept gifts or gratuities in exchange for preferential regulatory treatment;
7. offer gifts or gratuities to a regulatory authority with expectation of preferential regulatory treatment; or
8. disclose confidences or other proprietary information.

Source: Code of Maryland Regulations 26.07.05.01 and .02

Appendix 2. State Board of Environmental Sanitarians Membership and Staff

Members

<u>Name</u>	<u>Title</u>	<u>Interest Represented</u>	<u>Term Ends</u>
Elizabeth Scott	Chairman	At large	7/1/10
William Peterson	Vice Chair	Department of the Environment	7/1/13
Ann Caldwell	Secretary	Consumer	7/1/11
Paul Hetzer	Member	Consumer	7/1/10
Gail Lynn Kelley	Member	At large	7/1/14
Pamela Engle	Member	Department of Health and Mental Hygiene	7/1/10
Vacant	Member	Local government	Appointee Charles Smyser Resigned 7/09
D. Elayne Warren	Member	Local health department (employed under the State Personnel System)	7/1/11
Robert Sheesley	Member	Private industry	7/1/14

Staff

E. Lee Haskins, Environmental Sanitarian Board Administrator (part-time)
Kathy Glass, Administrative Specialist (part-time)
Jacqueline Russell, J.D., AAG, Board Counsel (part-time)

Source: State Board of Environmental Sanitarians

Appendix 3. Statutory Exemptions from the Licensure Requirement

The following individuals are exempt under the Maryland Environmental Sanitarian Act from the licensure requirement:

- a sanitarian-in-training;
- a student participating in a field experience as part of an educational program;
- an applicant for licensure in accordance with 11-304(b)(5) of this subtitle; and
- a qualified individual in any of the following job classifications:
 1. industrial hygienists as defined by the American Industrial Hygiene Association;
 2. certified industrial hygienists and industrial hygienists-in-training as defined by the American Board of Industrial Hygiene;
 3. health planners or natural resource planners;
 4. building and housing inspectors;
 5. geologists;
 6. chemists;
 7. meteorologists;
 8. laboratory scientists;
 9. professional engineers who are licensed in this State under Title 14 of the Business Occupations and Professions Article and whose professional activities are normally included in 11-101(e) of this title;
 10. public health engineers and water resources engineers employed by the State or a local subdivision;
 11. hydrographers and hydrographic engineers;
 12. natural resources managers;

13. natural resources biologists;
14. program administrators, administration directors, administrators, administrative officers, and administrative specialists;
15. paraprofessional personnel, aides, and technicians whose routine duties include monitoring, sampling, and recording of data;
16. persons employed by the Department of Natural Resources or related county departments who perform duties and responsibilities under the Natural Resources Article;
17. persons employed by the Maryland Department of the Environment or related county departments who perform duties and responsibilities for erosion and sediment control, stormwater management, or oil pollution control under Title 4 of this article;
18. persons employed by the Maryland Department of the Environment or related county departments who perform duties and responsibilities for ambient air monitoring under Title 2 of this article or for motor vehicle pollution control under Title 2 of this article or Title 23 of the Transportation Article;
19. persons employed by the Division of Labor and Industry of the Department of Labor, Licensing, and Regulation who perform duties and responsibilities under the Maryland Occupational Safety and Health Act;
20. occupational safety and health technologists as defined by the American Board of Industrial Hygiene and the Board of Certified Safety Professionals;
21. safety professionals as defined by the American Society of Safety Engineers;
22. certified safety professionals and associate safety professionals as defined by the Board of Certified Safety Professionals;
23. persons employed by industrial operations whose environmental services are performed solely for their employer; and
24. State milk safety inspectors performing duties under the National Conference on Interstate Milk Shipments and employed by the Department of Health and Mental Hygiene.

Source: Environment Article § 11-301(b), Maryland Annotated Code.

Appendix 4. Education and Experience Requirements for Licensure as a Registered Environmental Sanitarian

<u>Option</u>	<u>Education Requirements</u>	<u>Related Experience Requirements</u>
1.	A baccalaureate degree in environmental health or environmental science.	12 months of experience in a sanitarian-in-training program approved by the board.
2.	A baccalaureate degree in the physical, biological, or environmental sciences that includes (1) at least 60 semester credits of physical, biological, or environmental sciences, including at least one laboratory course in two of the following: chemistry, physics, or biology; and (2) a course in mathematics.	12 months of experience in a sanitarian-in-training program approved by the board.
3.	A baccalaureate degree that includes (1) at least 30 semester credits in the physical, biological, or environmental sciences, including at least one laboratory course in two of the following: chemistry, physics, or biology; and (2) a course in mathematics.	24 months of experience in a sanitarian-in-training program approved by the board.
4.	A master's degree in public or environmental health science that includes the course work described under option 3 above.	3 months in an internship approved by the board (if not previously completed)

Note: Certain environmental sanitarians became licensed through a grandfathering process. These individuals were required to (1) apply for licensure before July 1, 1995; (b) possess 10 years experience in the field of environmental health acceptable to the board; and (c) pass the licensure examination within two years of application for licensure.

Source: Maryland Annotated Code, Code of Maryland Regulations 26.07.01.03

Appendix 5. State Board of Environmental Sanitarians Schedule of Fees

Application and Issuance Fees

Application for license or certificate of eligibility for obtaining employment	\$50
Application for licensure by reciprocity	\$50
License approval and issuance	\$50

License Renewal Fees

12-month renewal or certification of eligibility for obtaining employment	\$25
Biennial license renewal	\$100
Late renewal of biennial license (in addition to required license fee)	\$50
Reinstatement of license (in addition to required license renewal fee)	\$100

Examination Fee

Established by examination service (National Environmental Health Association)	\$125/ examination for the 1 st 50 examinations \$115/ examination thereafter \$80 if examination is taken online (in addition to examination fee above)
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Miscellaneous Fees

Returned check charge (in addition to bank charges)	\$25
Replacement of license	\$25
Examination score verification	\$25
Copy of roster of current license holders	\$25

Source: State Board of Environmental Sanitarians, Code of Maryland Regulations 26.07.02.09

**Appendix 6. Written Comments of the
State Board of Environmental Sanitarians**



Martin O'Malley,
Governor

Shari T. Wilson
Secretary

Anthony G. Brown
Lt. Governor

Robert M. Summers, Ph.D.
Deputy Secretary

BOARD OF ENVIRONMENTAL SANITARIANS

December 3, 2009

Department of Legislative Services
Office of Policy Analysis
Attention: Ms. Jennifer B. Chasse
Senior Policy Analyst
Legislative Services Building
90 State Circle
Annapolis, Maryland 21501-1991

Dear Ms. Chasse:

The Maryland Board of Environmental Sanitarians has received and reviewed the Department of Legislative Services (DLS) Exposure Draft Sunset Review Evaluation report of the Board. The Maryland Department of the Environment respectfully provides the following comments to report:

1. Page 14, under "Moving Board from MDE to DHMH"

The Board's position on this issue is that the Department of Health and Mental Hygiene is the logical location from which the Board should operate. The Board understands that this may not be possible due to the current fiscal and economic situation.

2. Page 14, under "Board Resources"

The Board agrees with the DLS assessment that the updating of the licensing tracking system would certainly make it easier to evaluate licensing trends. However, funding for this activity is lacking. It should be noted that the Board in cooperation with MDE's IT staff has crafted a greatly improved web-site. The Board views this accomplishment as a first step toward improving the licensing process.

3. Page 15, under “Exemptions from Licensure Requirement”

The Board agrees with the DLS assessment that a review of legislative exceptions to licensure is necessary; however staff resources to accomplish this activity are lacking. The Board suggests that this activity should be carried out between the Personnel Departments of both MDE and DHMH with the assistance and active cooperation of the Board.

4. Page 15, under “ Continuing Education”

The Board completed this recommendation and has issued a newly revised policy for handling requests for the approval of continuing education. The policy will be published on the MDE web-site for the widest possible distribution.

5. Page 15, under “Disciplinary Processes”

The Board has identified the need for a clear disciplinary review process and is currently developing a policy that is fair and legally accurate. Recent cases have substantiated the need for the Board to review the disciplinary process in addition to Personnel Divisions actions. The Board recognizes that although COMAR 26.07.04.01 specifically addresses disciplinary actions, it appears to lack guidelines for implementation. The Board is currently drafting a new policy to clarify the COMAR regulations in this area.

6. Page 15, under “Staff Resources and Board Budget”

The Board agrees with the DLS assessment. However, the Board also recognizes the difficulty of identifying commingled costs among shared MDE Environmental Boards staff resources. The Board is looking into the possibility of changing the renewal cycle to more evenly reflect actual Board costs. Board Members actively provide environmental health services to assist the Environmental Health Liaison Committee, Environmental Health Professional Organizations, the Conference of Environmental Health Directors and also serve as a source of emergency management resources.

Conclusion

Finally, on page #15 the report recommends that the Maryland Board of Environmental Sanitarians should undergo a Full Sunset Review during the interim of 2011. The Board welcomes this opportunity to work with DLS.

Sincerely,

Elizabeth Scott, MPH, RS, REHS
Chair
Maryland Board Environmental Sanitarians

Preliminary Evaluation of the State Board of Physical Therapy Examiners

Recommendations: Waive from Full Evaluation

Extend Termination Date by 10 Years to July 1, 2022

Require Follow-up Report by October 1, 2011

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Physical Therapy Examiners (SBPTE) last underwent a preliminary evaluation as part of sunset review in 1999, having undergone a full evaluation in 1990. Based on the DLS recommendation in 1999 to waive a full evaluation, the General Assembly extended the termination date of this board to July 1, 2012.

In conducting this preliminary evaluation, DLS staff reviewed applicable State law and regulations, recent relevant legislative and regulatory actions, prior evaluations of the board, the board’s recent operating budget history, board meeting minutes, licensing data, disciplinary action data, and other information provided by the board. DLS also examined data on national industry trends, attended a board meeting, and conducted interviews with board staff and board members.

SBPTE 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 board comments may not reflect the final version of the report.

The Practice of Physical Therapy

Physical therapy, as a profession, dates from the beginning of the twentieth century when advances in health care made possible the survival of people affected by polio and war injuries. Physical therapy is a health specialty that plans, organizes, and administers a wide range of physiotherapeutic treatments designed to restore functional mobility, relieve pain, and prevent or limit permanent disability for those suffering from a disabling injury or disease.

Therapists examine patients' medical histories, then test and measure strength, range of motion, balance and coordination, posture, muscle performance, respiratory function, and motor function. They also determine patients' abilities to be independent and reintegrate into the community or workplace after injury or illness. Physical therapists develop treatment plans based on the assessments that describe the treatment strategy, purpose, and anticipated outcome. After developing a treatment plan, physical therapists often delegate specific procedures to physical therapist assistants and aides; therefore, physical therapists are increasingly taking on supervisory roles.

There are several national organizations associated with physical therapy. The Commission on Accreditation of Physical Therapy Education (CAPTE) develops the credentials for accreditation of physical therapy schools. The American Physical Therapy Association (APTA) focuses on professional development and offers specialty certification examinations. The Federation of State Boards of Physical Therapy (FSBPT) is focused on public protection.

Physical Therapy Industry Expected to Continue to Grow Quickly

According to the U.S. Department of Labor's Bureau of Labor Statistics' *Occupational Handbook*, approximately 173,000 physical therapists were employed nationwide in 2006, and projections show that the industry will increase 27% by 2016 – much faster than the average for all occupations. Similarly, employment for physical therapist assistants and aides is anticipated to grow 32% and 24%, respectively. This growth is due, in part, to the increasing numbers of individuals with disabilities or limited function, including the growing elderly population. Physical therapy is also evolving to include new treatments and techniques as the science behind the practice develops. However, proposed federal legislation imposing limits on Medicare reimbursement for physical therapy services may restrict short-term employment prospects.

The State Board of Physical Therapy Examiners

The practice of physical therapy in Maryland is regulated by SBPTE. The board was created by the General Assembly in 1947 and is housed within the Department of Health and Mental Hygiene (DHMH). From the outset, the purpose of the board has been to license and regulate members of the profession to ensure that the public receives safe and healthful physical therapy.

SBPTE is composed of eight members. Five members are licensed practicing physical therapists, one member is a practicing physical therapist assistant, and two are consumers. Licensed members must have at least five years of experience. Consumer members may not have any connection with the practice of physical therapy. The licensed members are appointed by the Governor with the advice of the Secretary of Health and Mental Hygiene, who selects the recommendations to the Governor from a list provided by APTA of Maryland. The Governor appoints the consumer members with the advice of the Secretary of Health and Mental Hygiene and the consent of the Senate. Members are appointed for staggered four-year terms and may not serve more than two consecutive terms. Generally, members continue to serve until a replacement is appointed. The board currently has no vacancies.

Meetings of the board are held monthly, and the minutes reflect that they are well attended. The minutes give a clear picture of what business was conducted during meetings, and open session minutes are easily accessible on the board's web site.

In Maryland, Some Chiropractors Are Authorized to Practice Physical Therapy

Until recently, there was a nationwide shortage of physical therapists. Due to the shortage, practitioners in other allied health professions expanded their scope of practice to include certain elements of physical therapy. Occupational therapists, athletic trainers, recreational therapists, physical fitness trainers, massage therapists, and nurse practitioners are a few of the health professions that receive training in some aspect of physiotherapeutics.

In Maryland, the potential for scope of practice overlap is recognized in the Health Occupations Article by including "scope of title" provisions that do not limit the right of an individual to practice any health occupation that the individual is authorized to practice. However, in order to practice physical therapy in the State, an individual must be licensed by the appropriate State authorities. SBPTE licenses physical therapists and physical therapist assistants to practice physical therapy or limited physical therapy. Additionally, the State Board of Chiropractic and Massage Therapy Examiners licenses certain qualified chiropractors to practice chiropractic with physical therapy privileges. To qualify for physical therapy privileges, a chiropractor must complete at least 270 hours of physical therapy training in chiropractic college and satisfactorily complete a national physiotherapy examination administered by the National Board of Chiropractic Examiners.

Chiropractors have been permitted to practice physical therapy since SBPTE was established in 1947. However, some SBPTE members are concerned that chiropractic training may no longer be aligned with the practice of physical therapy. While there was no indication of problems with chiropractors practicing physical therapy in this preliminary evaluation, the two boards that license individuals to practice physical therapy have previously not collaborated on this issue. Since undergoing preliminary evaluation, they now have plans to meet.

Licensing Is Major Focus of Board Activity

The board's principal function is to issue and renew licenses for physical therapists and physical therapist assistants. Both new and renewal licenses are valid for a two-year period. Over the fiscal 2008-2009 biennial license renewal period, the board issued a total of 980 new physical therapist licenses and 402 new physical therapist assistant licenses, while renewing licenses for 3,758 physical therapists and 1,050 physical therapist assistants. The number of licenses issued by the board is shown in Exhibit 1.

Exhibit 1
Number of Licenses Issued
State Board of Physical Therapy Examiners
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
<u>Physical Therapists</u>						
New Licenses	348	397	316	546	494	486
Renewed Licenses ¹	1,922	1,841	1,952	1,501	1,642	2,116
Reinstated Licenses	39	29	27	8	88	73
Duplicate Licenses	5	6	3	11	8	27
Restricted Licenses ²	19	15	2	19	15	21
<u>Physical Therapist Assistants</u>						
New Licenses	79	129	94	151	256	146
Renewed Licenses ¹	437	456	465	426	468	582
Reinstated Licenses	6	13	8	2	22	24
Duplicate Licenses	2	3	0	1	1	0

¹ Licenses are renewed biennially.

² Restricted licenses are issued to physical therapists licensed in other states who wish to present continuing education courses where there will be hands-on demonstrations of treatments.

Source: State Board of Physical Therapy Examiners

One component of license renewal is monitoring the acquisition of continuing education units by licensees. Physical therapists and physical therapist assistants are expected to continue their professional development through continuing education courses. To maintain licensure in

Maryland, a physical therapist must earn three continuing education units (equal to 30 contact hours), while physical therapist assistants must earn two units (20 contact hours) per license renewal cycle. There are many opportunities to earn continuing education credits, and as a convenience for its licensees, the board maintains a list of approved and nonapproved courses on its web site.

Move to Doctoral Degree in Physical Therapy Largely Explains Fluctuations in Number of New Licenses Issued

In recent years, a national trend in physical therapy education has emerged. The degree typically offered to individuals seeking to enter the profession has escalated from a two-year master's degree to a three-year doctorate degree as the practice of physical therapy has evolved. As of July 2009, there were 212 accredited physical therapy programs nationally. Of the accredited programs, 95% offer doctorate degrees, while the remainder offer master's degrees.

In 2006, the two physical therapy programs in Maryland transitioned from offering master's degrees to offering only doctorate degrees. Only students opting to receive a master's degree graduated in 2006, while in 2007 students receiving both master's degrees and doctorate degrees graduated. This transition, in part, accounts for the decrease in new physical therapy licenses issued in fiscal 2006 and the large increase in new licenses issued in fiscal 2007.

Licensing Trends Among Renewal Applicants Fluctuate

While the fluctuation in new licenses issued may be partially explained by the change in educational attainment by licensees, the number of renewal licenses issued has also varied. Licenses are renewed every two years. Thus, all licensees that renew in an even-numbered year, along with those individuals newly licensed that year, are expected to renew again in the following even-numbered year. For example, in fiscal 2006, 1,952 individuals renewed their physical therapy licenses and 316 individuals were issued new physical therapy licenses. All 2,268 of these individuals should have renewed their licenses in fiscal 2008. However, only 1,642 renewal licenses were issued in fiscal 2008. This figure suggests significant attrition of more than 600 licensees. These individuals may have retired, moved to another jurisdiction, chosen not to renew, or later sought to reinstate their licenses. According to the board, the physical therapy workforce is very fluid.

Responsibilities of Both Assistants and Aides Are Regulated; Only Assistants Must Be Licensed

Physical therapist assistants provide limited physical therapy services under the direction and supervision of a physical therapist. Most states, including Maryland, require physical therapist assistants to be licensed or certified. Physical therapist assistants are limited in what they do by State law and regulations. Generally, they may assist in providing physical therapy treatments after the patient has been evaluated and the plan of care has been developed by a

physical therapist. Physical therapist assistants are required to follow the direction and plan of care of the supervising physical therapist.

To become a physical therapist assistant in Maryland, an applicant must graduate from a program approved by APTA and satisfactorily complete the required clinical training. Physical therapist assistant programs are generally at the associate's degree level. There are five accredited physical therapist assistant programs in the State.

Physical therapy aides are not licensed and must work under the direct supervision of a licensed physical therapist. Physical therapy aides help make therapy sessions more productive and are also usually responsible for keeping the treatment area clean and organized, preparing the patient for therapy, and helping patients to or from a treatment area. Aides may also perform some clerical tasks such as ordering supplies, answering telephones, completing insurance forms, and maintaining patient records.

Statutory Changes Affecting the Board Since the 1999 Sunset Review

Exhibit 2 details the statutory changes affecting the board since the 1999 preliminary sunset review. In general, the board has kept pace with the legislative changes that have affected the practice of physical therapy through the timely promulgation of appropriate regulations. It has also worked to keep its regulations current. Its legislative committee meets regularly to make recommendations for statutory changes and to update regulations to implement changes to statute and the practice of physical therapy.

Temporary Licenses Eliminated in 2008

One of the most significant legislative changes for licensees was the elimination of temporary licenses by Chapter 657 of 2008. According to the board, the law that authorized temporary licenses was passed at a time when the national licensing examination was given only twice a year, allowing new graduates to work long before they took the examination. However, new graduates may now sit for the national examination immediately upon graduation, and licenses may be issued immediately to those who pass.

Foreign-educated Students Exempt from Preceptorship in 2004

Licensing of foreign-educated students has also changed; Chapter 518 of 2004 eliminated the requirement that foreign-educated applicants complete a supervised clinical experience known as a preceptorship. The preceptorship requirement was deemed to no longer be necessary because the quality of foreign physical therapy programs had improved. Chapter 518 also changed the education requirements for foreign-educated students to align with those of students educated in the United States.

Exhibit 2
Major Legislative Changes Since the 1999 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	365	<p>Allows the board to disclose information contained in a board record to any other health occupations regulatory board under certain circumstances.</p> <p>Allows the board to waive the preceptorship requirement for a physical therapy license if the applicant is licensed in another state.</p> <p>Expands the board's authority to deny a license or to reprimand or discipline a licensee to include unprofessional conduct or failure to meet accepted standards in limited physical therapy.</p> <p>Allows the board chair to delegate hearing authority to a committee consisting of three or more board members.</p>
2000	391	Extends the termination date of the board by 10 years to July 1, 2012.
2004	518	<p>Increases the misdemeanor penalty for a person convicted of violating any part of the Maryland Physical Therapy Act from a maximum fine of \$1,000 to a maximum fine of \$5,000 and/or three years imprisonment.</p> <p>Establishes a civil fine of up to \$50,000 for practicing physical therapy or limited physical therapy without a license.</p> <p>Requires an affirmative vote by a majority of the board before it can disclose information from records that would protect the public.</p> <p>Alters the application requirements for individuals educated in another country.</p> <p>Requires the board to elect a vice chairman.</p> <p>Requires ongoing rather than periodic supervision of licensed physical therapist assistants.</p>
2005	80	<p>Repeals the authority of the board to waive the preceptorship requirement for any physical therapy license applicant who currently is licensed in another state.</p> <p>Repeals the limitation that a licensed physical therapist must provide on-site supervision and instruction to a licensed physical therapist assistant practicing limited physical therapy.</p>
2008	657	Repeals the authority of the board to issue temporary licenses.

Source: Laws of Maryland

Increased Fines for Statutory Violations

Chapter 518 of 2004 also establishes a civil fine of up to \$50,000 for practicing physical therapy or limited physical therapy without a license, which allows the board to discipline those practicing without a license. In addition, the misdemeanor penalty for a person convicted of violating any part of the Maryland Physical Therapy Act was increased from a maximum fine of \$1,000 to a maximum fine of \$5,000 and/or three years imprisonment. Earlier, Chapter 365 of 2000 expanded the statutory authority for the board to deny a license or to reprimand or discipline a licensee to include unprofessional conduct or failure to meet accepted standards in limited physical therapy.

Complaints Have Increased; Some Require Extensive Time to Resolve

The board is charged with investigating and acting on complaints against licensed physical therapists and physical therapist assistants. The majority of complaints are from licensees, patients, staff, insurers, or other regulatory bodies. Complaints are submitted for such actions as inappropriate use of physical therapist assistants and aides, billing overcharges, fraud, malpractice, sexual misconduct, and poor recordkeeping. Federal law requires the board to report all disciplinary actions to the federal Centers for Medicare and Medicaid Services (CMS). To meet this requirement, the board has contracted with FSBPT to transmit its disciplinary actions to CMS once a final agreement is reached.

As shown in **Exhibit 3**, the number of complaints submitted to the board has increased in recent years. The significant peak in complaints in fiscal 2007 can be attributed to 180 complaints received against one individual who was practicing physical therapy without a license. Without these complaints, the board would have received only 52 complaints that year.

Exhibit 3
Resolution of Complaints Received Since Fiscal 2005
Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
New Complaints	51	55	232	131	110
<i>Complaints Resolved</i>					
Within 1 Year	29	21	26	93	93
Within 2 Years	11	19	180	21	N/A
Within 3 Years	11	14	16	N/A	N/A
Within 4 Years	0	1	N/A	N/A	N/A
<i>Complaints Unresolved as of July 2009</i>	0	0	10	17	17

Source: State Board of Physical Therapy Examiners, Department of Legislative Services

According to the board, the increased number of complaints received since fiscal 2008 is attributable to patients and their families becoming more aware of the complaint process, as well as stricter adherence by licensees to the regulatory requirement that they report any incidents of unacceptable practice.

In addition to an increase in complaints received in recent years, DLS also found that some complaints take the board an extended period of time to resolve. Over the five-year period reviewed, 42 cases took more than three years to resolve. The board attributes the long resolution period to a lengthy appeals process, complicated cases, and delays once cases are submitted to the Office of the Attorney General for prosecution. Verifying the reasons for delay is difficult because data on the status of complaints through the disciplinary process has been inconsistently tracked and the terminology used to label complaints has shifted over time, prohibiting appropriate comparison or analysis in this preliminary evaluation. DLS notes that board staff has proactively improved the complaint tracking system in recent years. The board's records show that its investigations are comprehensive, and attendance at a board meeting confirmed the intensity of investigation necessary for the board to build strong cases. **Further investigation is required to determine the reasons behind delays in the complaint resolution process and to identify steps that could be taken to facilitate the process.**

Board's Penalty Authority Against Practice Owners and Operators Limited

In Maryland, physical therapy practices may be owned and operated by individuals who are not licensed as physical therapists. As the board's disciplinary authority is limited to licensees and individuals practicing without a license, the board cannot discipline owners or operators of a physical therapy practice for inappropriate or illegal activities, such as fraudulent billing, in the same way that the board may discipline its licensees. The board may refer cases that involve owners and operators to other disciplinary authorities such as CMS, which pays Medicare claims, or DHMH's Office of Health Care Quality (OHCQ), which licenses physical therapy offices along with other health care facilities. However, there is no guarantee that other disciplinary authorities will take action or that such action will be timely. **Further investigation into this discord in the board's disciplinary authority is needed.**

Board Has Charged Lower Fees Than Authorized Under Regulation

All but one of the health occupations boards are entirely special funded by the fees collected for licensing, certification, registration, and other board services. In the case of SBPTE, all fees are deposited into the State Board of Physical Therapy Examiners Fund. The fee schedules for physical therapists and physical therapist assistants, set in regulation, are shown in Exhibit 4.

Exhibit 4
Regulatory Fees for Physical Therapists and Physical Therapist Assistants

Application fee for licensure	\$150
<i>Biennial renewal fee:</i>	
Physical therapist	325
Physical therapist assistant	300
Reinstatement fee	400
Restricted license	125
Duplicate license fee	75
Penalty for returned checks	40
Verification of licensure	25
Law booklet (free to applicants)	20
Approval for CEUs to course sponsor	50
Penalty for failure to maintain correct address with the board	100

CEU = continuing education unit

Source: Code of Maryland Regulations 10.38.07.02

While Exhibit 4 displays the fees authorized under regulation, for several years the board has chosen to charge licensees renewal fees less than those authorized in regulation in order to reduce its fund balance, which exceeded annual expenditures by 69% or more from fiscal 2004 through 2008. The actual license renewal fees charged by the board are listed in **Exhibit 5**.

Exhibit 5
Biennial Renewal Fees Charged for Physical Therapists
and Physical Therapist Assistants
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005-2007</u>	<u>FY 2008-2009</u>
Physical Therapists ¹	\$225	\$175	\$225
Physical Therapist Assistants	200	150	170

¹Physical therapists also must pay a professional fee that is collected by SBPTE on behalf of the Maryland Health Care Commission. The professional fee was \$34 in fiscal 2009.

Source: State Board of Physical Therapy Examiners

Difference in Licensing Fees Small Considering Income Gap

Historically, the biennial license renewal fee charged physical therapists has been \$25 more than the fee charged physical therapist assistants. In fiscal 2008, the fee differential was increased to \$55 when the fees charged were raised for both types of licenses. **However, despite the increase, the fee differential is still small when it is noted that the average annual salary for physical therapists is almost double that of physical therapist assistants.**

Fund Balance Anticipated to Be Very Low in Fiscal 2010

Along with a full-time executive director, the board has five other full-time staff to handle the licensing function, secretarial/reception duties, and investigations. Legal support is provided by a part-time Assistant Attorney General and a part-time staff attorney. The board also shares the services of information technology staff, fiscal analysts, and legislative staff with other health occupations boards. Due to statewide fiscal constraints, until recently the board was unable to hire the number of staff it requires to carry out its mandated responsibilities. The appropriate numbers of staff are now authorized, and the board is currently trying to fill a vacant investigator position for a total of seven full-time staff.

According to statute, fees should reflect the operating costs of the board. Due to concerns about excessive fund balances in the late 1990s, the health occupations boards developed target fund balance levels based on a percentage of their annual budget. Boards with smaller budgets need larger fund balances because they have less ability to absorb unexpected expenses. Due to the size of its budget, SBPTE has a target fund balance of 30%. As shown in **Exhibit 6**, the fund balance greatly exceeded the targeted amount from fiscal 2004 to 2008. As mentioned previously, the board took appropriate action to reduce its fund balance by temporarily reducing license renewal fees from fiscal 2005 through 2007. Foreseeing increased expenditures, the board reinstated higher licensing fees in fiscal 2008; however, expenses were greater than anticipated and the fund balance is projected to be only 6% of anticipated expenditures in fiscal 2010. The fund balance needs to be rebuilt in order to meet future unforeseen expenditures.

One reason the fund balance significantly decreased is that, in fiscal 2008, the board faced approximately \$23,000 in unanticipated relocation and renovation expenses. In addition to these expenses, the board's rent increased by about \$30,000 annually due to the board increasing its total space to accommodate more staff, a \$3 per-square-foot increase in the building rental charge, and additional costs from a new building security contract.

Exhibit 6
Fiscal History of the State Board of Physical Therapy Examiners
 Fiscal 2004-2010

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>Projected FY 2009</u>	<u>Projected FY 2010</u>
Authorized Positions ¹	6	6	6	6	6	7	7
Beginning Fund Balance	\$445,268	\$594,470	\$581,716	\$589,475	\$559,039	\$492,495	\$360,083
Revenues Collected	682,076	572,398	607,345	600,274	646,293	775,000	715,000
Total Funds Available	1,127,344	1,166,868	1,189,061	1,189,749	1,205,332	1,267,495	1,075,083
Total Expenditures	532,874	585,152	599,587	630,710	712,837	907,412	1,009,596
Direct Costs	366,712	421,008	473,933	517,395	562,196	754,044	843,092
Indirect Costs	166,162	164,144	125,654	113,315	150,641	153,368	166,504
Ending Fund Balance	\$594,470	\$581,716	\$589,475	\$559,039	\$492,495	\$360,083	\$65,487
Balance as % of Expenditures	112%	99%	98%	89%	69%	40%	6%
Target Fund Balance	\$159,862	\$175,546	\$179,876	\$189,213	\$213,851	\$272,224	\$302,879

¹In addition to authorized positions, the board shares the costs for the services of information technology staff, fiscal analysts, and legislative staff with other health occupations boards.

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

Source: State Board of Physical Therapy Examiners

Other expenditure increases include a one-time expense for a new digital imaging system to reduce the amount of paperwork that the board needs to keep in its files and the ongoing expense of an additional half-time staff attorney. The fiscal 2010 budget also contains a contractual position to evaluate applications from foreign-educated students and reflects cost estimates that are not based on actual expenditures in recent years.

The board has chosen to manage its anticipated low fund balance by closely controlling office expenditures and possibly limiting the number of spaces for its popular free continuing education class. The board is reluctant to raise licensing fees for fiscal 2010; however, it is charging its licensees less than the amount authorized under board regulations, and its licensing fees are less than those charged by other health occupations boards. Due to statewide budgetary constraints, it is likely that the board will spend less in fiscal 2010; thus, the board may be in a better financial situation at the end of the fiscal year. The board anticipates that the fund balance will increase by the end of fiscal 2011 to approximately 22% of expenditures. Furthermore, the board indicates that, if needed, board fees may be increased to support the fiscal 2012 budget.

Office Space Arrangement Has Led to Privacy Concerns

Based on a compliance advice memo from the Office of the Attorney General, the board became concerned with securing its files because many contain confidential medical information. With that in mind, the board requested that enclosed and locked areas for the investigators and other staff members be included in the office renovations. Despite being self-funded and being required to pay for the renovations, the board was not allowed to renovate the space to its desired specifications. Instead of enclosed offices, the building manager approved adding a lock for the entire suite.

Board staff indicates that the locked suite does not adequately meet privacy needs. In addition to storing confidential medical information, board staff conducts sensitive telephone conversations. To deal with this situation, the investigators convinced the building manager to upgrade the enclosed conference room to include a phone with an outgoing line. The board has formally expressed its displeasure with the situation in a letter to the Secretary of Health and Mental Hygiene. **Further investigation is recommended to assess whether the board's privacy concerns present obstacles to the confidentiality of board operations.**

Recommendations

The board has a solid reputation and is clearly interested in ensuring that the public receives safe and healthful physical therapy. Throughout the evaluation process, the board and its staff were easy to work with, professional, and responsive. On its own, the board has continued to evaluate how it can best regulate the practice of physical therapy and improve its internal processes. In fact, many of the issues discussed in this preliminary evaluation were

identified by board members and staff themselves. Therefore, the Department of Legislative Services recommends that the Legislative Policy Committee waive the State Board of Physical Therapy Examiners from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2022. Thus, another preliminary evaluation will be conducted in 2019.

To further address concerns raised in this evaluation, DLS recommends that the board, in conjunction with DHMH, submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by October 1, 2011. The follow-up report should address the following issues:

- **Fund Balance:** The board's fund balance has decreased in recent years. DLS recognizes that this decrease is due in part to unanticipated expenditures including moving and renovation expenses. However, it is important that the board have a sound fiscal plan and maintain a sufficient balance to cover future unanticipated expenses. The follow-up report should include board financial information for fiscal 2010 and 2011 and indicate how the board is balancing its finances to ensure a sufficient fund balance.
- **Practice of Physical Therapy by Chiropractors:** To address its concerns, the board needs data regarding the practice of physical therapy by chiropractors. The board should work with DHMH to examine the type of training chiropractors receive in physical therapy, the practice of physical therapy by chiropractors in other states, and the number and nature of complaints against chiropractors with physical therapy privileges in Maryland. In addition, the board and the State Board of Chiropractic and Massage Therapy Examiners should follow through on their plans to facilitate communication and collaboration about licensing individuals to practice physical therapy. The follow-up report should outline the board's findings and activities related to this issue.
- **Penalty Authority:** The board does not have authority to penalize physical therapy practice owners or operators who are not licensed by the board for offenses such as fraudulent billing practices. The board should work with DHMH to review the penalty authority of other Maryland health occupations boards and physical therapy boards in neighboring states over practice owners and operators. Options for gaining more authority over these individuals and for more effectively referring cases involving these individuals to entities with existing jurisdiction over the practice (*e.g.*, CMS and OHCQ) should also be explored. The follow-up report should update the committees on the status of this review and include any actions taken by the board or recommendations for statutory changes.
- **Complaint Resolution:** Although the board has a reputation of diligently researching complaints and appears to take appropriate disciplinary action, some complaints take

three or four years to be fully resolved. The follow-up report should provide an analysis of reasons behind delays in complaint resolution and steps that could be taken to accelerate the process.

- **Privacy Concerns:** Board staff indicates that the current office configuration does not adequately meet privacy needs. DHMH should assist the board, along with other health occupations boards housed in the same building, to address these privacy concerns. The follow-up report should include options or actions taken to enhance the ability of the boards to maintain confidentiality.

**Appendix 1. Written Comments of the
State Board of Physical Therapy Examiners**



Maryland Department of Health and Mental Hygiene
Board of Physical Therapy Examiners

November 30, 2009

Ms. Jennifer B. Chasse, Senior Policy Analyst
Department of Legislative Services
Legislative Services Building
90 State Circle
Annapolis, MD 21401-1991

Dear Ms. Chasse:

The Maryland Board of Physical Therapy Examiners has received and reviewed the draft report on the preliminary evaluation of the Board that was prepared by the Department of Legislative Services. The Board and its staff appreciate the time and effort that Ms. Caroline Boice spent in review of the Board's activities. Minor factual corrections have been discussed with Ms. Boice.

The overall positive report and conclusion of the Department of Legislative Services was that the Board has a solid reputation and has interest in ensuring that the public is safe from harm. Therefore, the Board respectfully requests that in lieu of a full review it provide the Legislature with a report in October 2010 that addresses the issues cited in the report.

Issues:

Licensing Trends and Board Resources

Applicants for initial licensure have remained stable. Renewal of licenses fluctuates. There are various reasons why licensees do not renew their licenses. For example, some are ill, retire, leave practice to raise a family, and move to other jurisdictions. The physical therapy workforce includes physical therapists and physical therapist assistants who are employed by companies providing temporary staffing. They obtain a Maryland license for the time they are assigned to a Maryland position. Once the assignment ends and they move on, they rarely renew the license to practice, preferring to reinstate that license if they are re-assigned to Maryland at some future date.

Department of Legislative Services

Re: Physical Therapy Board Preliminary Evaluation

Fund Balance

Through 2011 the Board will have 22% in its special fund balance. The Board feels that achieving a fund balance of 25% is unnecessary, at this time, since its budget reflects a line item for litigation. The Board remains cognizant of its mandated responsibility to collect sufficient funds to cover its costs. It will revisit its fee schedule for the 2012 budget.

Licensing Fees

The Board provides the same service to both physical therapists and physical therapist assistants. Fees charged to physical therapist assistants have consistently been lower than those fees charged to physical therapists.

Practice of Physical Therapy by Chiropractors

The Board echoes the concerns raised by the analyst that the Chiropractic Act allows chiropractors to practice the entire scope of physical therapy interventions under a chiropractor's license. The concern is based on the vast disparity between the physical therapy educational curriculum and professional examination versus the education and examination that chiropractors must complete in order to have "physical therapy privileges." As physical therapy practice continues to advance, these discrepancies in competency grow and raise questions about whether the public is adequately protected by the current law. The right to practice physical therapy was placed in the Chiropractic Act over 60 years ago as a concession to achieve licensure for physical therapists. Today, such concession appears to be outdated.

Board's Penalty Authority Against Unlicensed Practice Owners and Operators is Limited.

The Board concurs that more study into this issue is required. The problem lies with private practice owners who are not licensees and thus have no regulatory oversight.

Complaint Resolution

Reasons for a significant increase in the number of complaints are known by the Board. Patients and their families have become more aware of the complaint process. Licensees are adhering to the Board's regulation that they report any incidences of unacceptable practice. Third party payors, employers, law enforcement and the courts all report their complaints or findings to the Board for potential consideration. Further, the Board has improved its tracking system and reports in the State Stat process monthly. The Board's tracking system was changed to mirror the docket system in the Attorney General's office. Complaint resolution is handled as

Jennifer Chasse, Senior Policy Analyst

Department of Legislative Services

November 24, 2009

Jennifer Chasse, Senior Policy Analyst
Department of Legislative Services
November 24, 2009

Re: Physical Therapy Board Preliminary Evaluation

expediently as possible giving consideration to the coordination with the Office of the Attorney General, law enforcement, and staffing resources. All licensees are assured due process which often is lengthy.

Privacy Concern

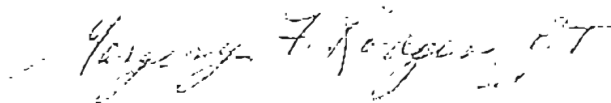
The Board staff explored ways on how to comply with HIPAA regulations when its offices were moved in 2008. The solution from the Department of General Services is the configuration that the entire PT Board suite is locked. The Board remains concerned that the current locking system does not conform to the intent of HIPPA regulations especially in the investigative area where investigators are in open cubicles where their telephone conversations can be heard by others and their case files reside.

Board Request

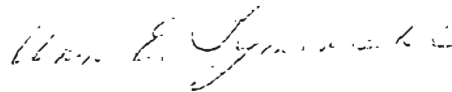
The Board respectfully requests that due to the positive nature of the preliminary evaluation, these issues be addressed without a full Sunset Evaluation. Rather, the issues can be addressed in a full report to the Legislature in the fall of 2010.

The Board thanks you for this positive review.

Sincerely,



Margery F. Rodgers, PT
Board Chairperson



Ann E. Tyminski
Executive Director

Cc: Caroline Boice
Secretary John M. Colmers
Karl S. Aron, Executive Director, Legislative Services
Board Members
J. Aaron, Deputy Director, Physical Therapy Board

Preliminary Evaluation of the State Real Estate Commission

Recommendation: **Full Evaluation**

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The commission last underwent a full evaluation as part of sunset review during 2000. Chapter 143 of 2001 extended the commission’s termination date by 10 years to July 1, 2012. In conducting this evaluation, DLS staff reviewed relevant State statutes and regulations, commission meeting minutes, and prior sunset evaluations; interviewed commission members and staff; analyzed licensing, financial, and complaint data provided by the commission; and attended one commission meeting.

The commission 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 commission comments may not reflect the final version of the report.

The Real Estate Industry in Maryland

Licensed real estate professionals arrange the transfer of property from seller to buyer. Licensees commonly take on tasks of listing available properties, establishing clear title, mediating price negotiations, meeting all legal requirements, and suggesting sources of financing, among other things. Aside from participating in this aspect of the property market, licensees may rent and manage properties. They may also be involved in commercial, industrial, or agricultural real estate transactions.

As defined by statute, providing real estate brokerage services in Maryland includes providing any of the following services for another person in exchange for compensation:

- selling, buying, exchanging, or leasing any real estate;
- collecting rent for the use of real estate; or
- assisting a person in locating or obtaining real estate for purchase or lease.

Providing real estate brokerage services also includes engaging in a business:

- dealing in real estate or leases or options on real estate;
- whose primary purpose is promoting the sale of real estate through a listing service; or
- that subdivides land that is located in any state and sells the divided lots.

Like most states, Maryland uses a tiered licensing structure. Real estate brokers serve as the fiduciary agent of record in real estate transactions for which they or their firm acts as intermediary. Associate brokers have the option of working as independent brokers but have chosen instead to work for a licensed broker. Real estate salespeople may work only under affiliation with a real estate broker and maintain a fiduciary tie to the broker for whom they work. Brokers actually retain the licenses for salespeople who work for them so they cannot work for more than one broker at any time.

State Real Estate Commission

The State Real Estate Commission was formed in 1939 (Chapter 351 of 1939). Laws regulating the commission are found in Title 17 of the Business Occupations and Professions Article of the Annotated Code. The commission was created to protect the health, safety, and welfare of the public through its examination, licensing, and regulatory activities in regard to real estate. Specifically, the commission:

- licenses all real estate brokers, associate brokers, and salespersons;
- processes complaints against licensees; and
- administers the Real Estate Guaranty Fund, which provides limited restitution to consumers who have filed valid claims against licensees.

Composition of the Commission

The commission is one of 22 occupational and professional licensing boards housed within the Department of Labor, Licensing, and Regulation (DLLR). The commission consists of nine members appointed by the Governor with the advice of the Secretary. The Governor may remove a commission member for incompetence or misconduct. The chairman is elected by

members of the commission but serves at the pleasure of the Secretary. The members' terms are staggered, and there is no limit to the number of consecutive terms each member may serve. Although the commissioners do not receive a salary, they receive reimbursements for expenses, including travel.

According to statute, the nine members should include five industry representatives and four consumer members, but the commission currently has a vacancy for one consumer member. Current commission members are listed in **Appendix 2**. The commission has had difficulty both retaining consumer members and in enforcing the attendance of consumer members at monthly commission meetings. Over the past year, the commission has lost two consumer representatives and one industry representative. A new industry representative and one new consumer member were appointed in March 2009. At this time, no one has expressed interest in filling the remaining vacant consumer position.

Commission staff expressed concern that consumer members, with little professional interest in the activities of the commission, may not be prepared for the level of commitment required to serve, which includes attendance at monthly full-commission meetings, hearing panel meetings, and individual preparation to hear complaint cases in panel review. Some members found these commitments to be beyond their initial expectations. The State requires commission members to attend at least half of full meetings to remain active as a member. Meetings are rescheduled at times to accommodate the members' calendars. Recently, two members resigned because they were unable to fulfill their commission obligations.

Of the eight current commission members, six have been on the commission for at least four years. When all positions have been filled, new commission members will receive training in hearing procedures, interviewing procedures, and real estate law to assist in deciding complaint cases. Training of commission members has come both from internal commission orientation and from training programs offered by the Association of Real Estate License Law Officials (ARELLO). A training program offered by ARELLO is the Commissioner College, a two-day training for members of state real estate commissions that a number of current commission members, including the chair and the executive director, have attended. Attendees have given the program high praise.

Standing Committees, Hearing Boards, and Staff

The State Real Estate Commission has two standing committees devoted to legislative and educational matters. Other committees are formed to advise the commission on emerging concerns on an *ad hoc* basis. The standing committees report to the full commission at the monthly business meetings.

The commission is authorized to establish one or more real estate hearing boards with the approval of the Secretary. The commission has established two hearing boards. Each hearing board consists of three members and meets once a month to hold exception or application

hearings. Each hearing board must have at least one public member and one industry member. Current hearing board assignments are listed in **Appendix 3**. The commission has also created hearing panels to review cases that have been investigated to determine if the case should be referred to the Office of the Attorney General to file charges or be dismissed.

The State Real Estate Commission has 17 authorized staff members to support its operations. The executive director manages the staff. In addition to the executive director, the staff consists of an assistant executive director; an education administrator; a licensing supervisor; a person who works on education, complaints, and Guaranty Fund claims; a complaint intake coordinator; two paralegals; a licensing secretary; a receptionist; an auditor; and four investigators. The other two authorized investigator positions became vacant in fall 2009. The auditor and four investigators work largely from their homes. The executive director position was instituted in 1978. The current executive director has held the position since 2006.

Guaranty Fund

The Guaranty Fund is administered by the commission to compensate consumers suffering financial loss as a result of licensee misconduct. The fund covers an act or omission that occurs in the provision of real estate brokerage services by a licensed broker, associate broker, salesperson, or unlicensed employee of a licensed broker. A claim must be based on an act or omission in which money or property is obtained by a licensee by fraud, theft, embezzlement, false pretenses, or forgery. A complainant must prove actual loss to receive damages. All new licensees pay a fee of \$20 toward the Guaranty Fund; no Guaranty Fund fee is assessed for license renewals.

By law, the Guaranty Fund must maintain a minimum balance of \$250,000. Should fund resources go below this figure, each licensee is assessed a one-time fee to restore the minimum balance. Individuals licensed by the commission who have claims awarded against them from the Guaranty Fund are required to reimburse the fund for the claims made. If the licensee fails to reimburse the fund in full with interest within 30 days, the licensee is suspended and the matter is referred to the State's Central Collection Unit. The licensee may be reinstated when the fund is fully reimbursed, plus 10% interest.

License Requirements and Fees Reflect Tiered Structure

The State Real Estate Commission grants licenses to qualified real estate brokers, associate brokers, and salespersons. To become licensed, an applicant must complete the necessary training, successfully pass the examination required for the license, submit the required application with all requested information, pay a \$20 Guaranty Fund assessment, and pay a licensing fee that varies by license type.

To become licensed as a real estate salesperson, an individual must successfully complete a basic course in real estate, or, if approved by the commission, college-level courses in real estate subjects. The basic course must include a three-clock-hour course in real estate ethics approved by the commission. In addition, an applicant must obtain a commitment from a

licensed real estate broker that the applicant will become affiliated with the broker after receiving a real estate salesperson license. The biennial licensing fee for a salesperson is \$90.

To be licensed as an associate broker, an individual must successfully complete 135 classroom hours of pre-licensing broker courses and have been a licensed salesperson for at least three years. In addition, an applicant must obtain a commitment from a licensed real estate broker that the applicant will become affiliated with the broker after receiving an associate real estate broker license. The biennial licensing fee for an associate broker is \$130.

To obtain a real estate broker's license, an applicant must successfully complete 135 classroom hours of pre-licensing broker courses and have been a licensed salesperson for at least three years. The biennial licensing fee for a real estate broker's license is \$190.

Drop in Number of Licensees Reflects Downturn in Real Estate Sales

As **Exhibit 1** shows, the vast majority of licensees are salespersons, with much smaller numbers of brokers and associate brokers. According to commission staff and members, the downturn in the residential real estate market has resulted in the total number of licensees significantly decreasing over the past few years, which is also reflected in Exhibit 1. According to the Maryland Association of Realtors, year-over-year sales of existing homes dropped by about 50% between 2006 and 2009. For example, 2,209 existing homes sold in January 2009, compared with 4,675 in January 2006, almost a 53% drop. With a decline in the number of real estate transactions, fewer licensees are needed to serve consumers. A more complete listing of licensing activity is provided in **Appendix 4**.

Exhibit 1
Licensees by License Type
Fiscal 2005-2009

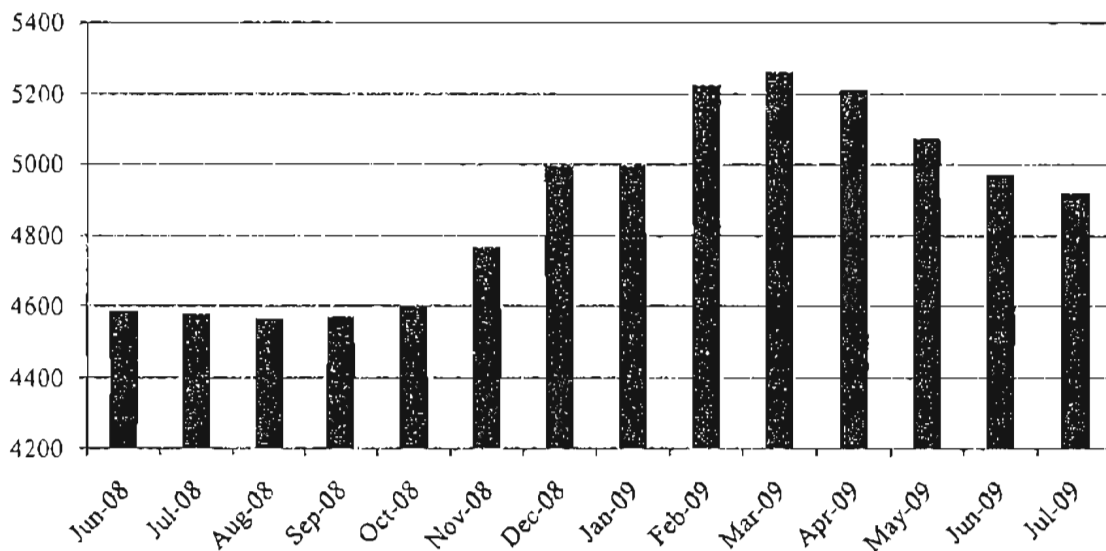
	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Broker					
New	385	593	479	500	357
Renewal	2,000	2,041	2,095	2,117	2,126
Associate Broker					
New	303	488	414	357	294
Renewal	1,224	1,338	1,272	1,404	1,318
Salesperson					
New	9,098	9,392	6,734	4,631	2,361
Renewal	13,295	15,038	17,094	17,352	16,194
Total	26,305	28,890	28,088	26,361	22,650

Note: License renewal is biennial; renewal numbers do not reflect existing licensees that were not due for renewal in a given fiscal year.

Source: State Real Estate Commission

A license holder may apply for inactive status with the commission, provided the applicant qualifies for an active license and continues to pay the biennial license renewal. Unless a license on inactive status is reactivated, the license expires four years after the date it is placed on inactive status. To reactivate a license, a licensee must apply, meet all active licensing requirements, and pay a reissuance fee, currently set by the commission in regulation at \$50. The number of inactive licensees began rising in October 2008, but tapered off beginning in April 2009, as shown in Exhibit 2. Just as the total number of licensees is in decline, the rise in inactive licensees may be explained by the decrease in real estate activity.

Exhibit 2
Inactive Licensees



Source: State Real Estate Commission

The commission uses staggered expiration dates to distribute staff time spent on licensing work. A licensee may reinstate an expired license without re-examination if the licensee:

- applies to the commission for reinstatement within four years after the license expires;
- meets the requirements of good character and reputation;
- complies with the applicable continuing education requirement for the period during which the individual was not licensed; and
- pays to the commission a reinstatement fee, currently set in regulation at \$150.

License Renewal Requires Continuing Education

Licenses expire two years from issuance and may be renewed for all applicants who meet the statutory requirements and pay the renewal fee. Renewal is contingent upon successful completion of at least 15 clock hours of continuing education instruction. Every two years, each licensee must complete at least:

- a three-clock-hour course that outlines relevant changes that have occurred in federal, State, or local laws and regulations;
- a 1.5-clock-hour course that outlines federal, State, and local fair housing laws and regulations; and
- a three-clock-hour ethics course that includes the Maryland Code of Ethics and a discussion of the practices of flipping and predatory lending.

The commission has adopted regulations that provide for the conduct of continuing education instruction courses by remote access satellite, closed-circuit video, transmission over the Internet, home study, and any other approved delivery system. Internet courses are popular amongst licensees for their convenience both in terms of location and scheduling but are limited by the number of courses offered by continuing education providers. Providers find these courses more expensive and time consuming to create than traditional courses.

Courses must be approved by the commission to meet the continuing education requirement. The commission processes these requests within 30 days of receipt. Providers may submit a course for approval online. The course is approved for two years, with automatic renewal unless the commission indicates otherwise.

The 1999 preliminary sunset evaluation raised the issue of performance measures for continuing education courses, such as testing of licensees at the conclusion of a course, to ensure that the licensee is gaining the full benefit of the continuing education instruction. The commission has not implemented any formal performance measures for continuing education. Most online courses, however, include a final test as a component of the coursework. The commission is not alone, however. The lack of performance measures is an issue for a number of regulatory boards that may warrant further study across industries.

Statutory Changes Affecting the Commission

As a result of the 2000 full evaluation, the commission's termination date was extended for 10 years to July 1, 2012. Significant changes in the laws governing the commission since that evaluation are shown in **Exhibit 3**.

Exhibit 3
Major Legislative Changes Since the 2000 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2001	143	<p>Extends the termination date of the commission by 10 years to July 1, 2012; adds the study of relevant changes to regulations to the list of subject matter of continuing education courses that the commission approves.</p> <p>Requires the commission to adopt regulations that provide for the conduct of continuing education instruction courses by remote access satellite, closed circuit video, computer and Internet transmission, home study, and any other delivery system approved by the commission.</p>
2001	228	Requires a real estate broker to deposit trust money in a trust account maintained by the real estate broker within seven business days, increased from the previous three-day requirement, after the acceptance of a contract of sale by both parties.
2002	583	Prohibits licensed real estate salespersons and licensed associate real estate brokers from advertising unless certain requirements regarding the display of their names or trade names are met; authorizes a salesperson or associate broker to provide brokerage services under a trade name approved by the commission.
2004	541	Requires an applicant for licensure as a real estate salesperson, associate real estate broker, or real estate broker to take a course in real estate ethics; alters the continuing education requirements for a licensee to renew a license; authorizes a licensee holding a license from another state to substitute clock hours of continuing education instruction earned in another state under certain circumstances; expands the continuing education subject matter that may be approved by the commission to include coursework that assists a licensee in providing real estate brokerage services to the public in a more efficient manner.
2005	377	Authorizes one or more licensed real estate salespersons and licensed associate real estate brokers who are affiliated with a licensed real estate broker, with the consent of the licensed real estate broker, to form a limited liability company (LLC) under the Maryland Limited Liability Company Act and to direct that any commission due the salesperson or associate broker be paid to the LLC.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2005	399	Establishes the State Real Estate Commission Fund as a special, nonlapsing fund in the Department of Labor, Licensing, and Regulation to cover the actual documented direct and indirect costs of fulfilling the commission's duties. Repeals licensing fees specified in statute and authorizes the commission to set certain fees based on calculations provided by the Secretary. A fee may not be increased annually by more than 12.5% of the existing and corresponding fee.
2006	200	<p>Authorizes the commission to deny, suspend, or revoke a license, or reprimand a licensee, if the applicant or licensee has been disciplined under a real estate licensing law of another jurisdiction.</p> <p>Authorizes the commission to issue a reciprocal license to a person under certain circumstances; grants personal jurisdiction to the commission and the courts of the State over a holder of a reciprocal licensee in certain transactions.</p>
2008	450	Requires all real estate licensees to keep and provide access to transaction records for five years, and authorizes a licensee to keep an electronic record of the information under certain circumstances.
2008	151	Includes instruction provided by: remote access satellite, closed-circuit video, computer and Internet transmission, home study, and any other delivery system approved by the commission, as satisfying basic education requirements for licensure as a real estate salesperson.
2008	154	Authorizes the commission to summarily suspend a license if the licensee has been convicted of a felony or if the licensee fails to disclose to the commission that the licensee has been convicted of a felony within 10 days after the conviction or release from incarceration.
2008	282	Increases the maximum penalty that may be imposed for certain subsequent violations of the Maryland Real Estate Business Act from a \$5,000 fine and imprisonment of one year to a \$25,000 fine and imprisonment of three years and extends the applicability of the penalties to additional offenses.

Source: Laws of Maryland

The Commission Is Now Special Funded

As noted above, Chapter 399 of 2005 converted the State Real Estate Commission to a special funded entity and granted fee-setting authority to the commission. Prior to fiscal 2007, the commission operated by using State general funds, and all revenue collected by the commission was paid into the general fund. Revenues for the commission include licensing fees and other fees charged for services provided, which previously had been set in statute. Following the enactment of Chapter 399, the commission raised many fees by at least 100%, as reflected in **Exhibit 4**. The services provided by the commission and corresponding fees charged are shown in **Appendix 5**.

Exhibit 4 Licensing Fee Increases Approved by the Commission

	<u>Broker</u>	<u>Associate Broker</u>	<u>Salesperson</u>
Current Fee	\$190	\$130	\$90
Previous Fee	\$95	\$65	\$45

Source: State Real Estate Commission, Department of Legislative Services

Despite the recent decrease in the number of licensees, the fee increases approved by the commission resulted in a continued increase in commission revenue. The commission's revenue continues to exceed total expenditures, though by a smaller margin, as shown in **Exhibit 5**.

In repealing the statutory fees and authorizing the commission to set most of its own fees, however, Chapter 399 made no change to § 17-521 of the Business Occupations and Professions Article, which requires a person who tenders a check to the commission that is dishonored to pay a \$25 fee to the commission for the cost of collection. Section 15-802 of the Commercial Law Article sets the standard collection fee for dishonored checks at \$35. Though the commission controls most of its fees, it does not have the authority to change the collection fee.

There are two additional fees that the commission would like to change, but it lacks the authority to do so. The fee to issue a new license to a broker for an address change is set in statute at \$5. When a broker changes addresses, however, the commission may be required to print up to several hundred new licenses for the licensees that move to the new address with the broker. The commission would like to charge a fee for each new license issued as a result of a broker's address change.

Exhibit 5
Revenues and Expenditures of the State Real Estate Commission
Fiscal 2005-2010

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u> <u>(est.)</u>
Total Revenues	\$1,987,096	\$2,142,510	\$1,728,989	\$2,022,188	\$2,283,699	\$2,600,000
Direct Expenditures	1,095,480	830,422	767,223	1,128,950	1,396,747	1,578,487
Direct Legal Expenditures	0	0	299,376	297,346	297,995	--
O & P Cost Allocation	304,144	246,183	309,382	375,741	308,770	397,649
DLLR Indirect Costs	120,657	130,173	98,211	118,266	160,466	--
Total Expenditures	1,520,281	1,206,778	1,474,192	1,920,303	2,163,978	--
Operating Surplus	466,815	935,732	254,797	101,885	119,721	NA
Fund Balance	NA	NA	\$269,978	\$381,121	\$345,240	

Notes: The State Real Estate Commission became a special funded entity effective July 1, 2006. DLLR indirect costs were first uniformly calculated in 2005, so do not appear for fiscal 2004. Legal expenditures are not calculated for generally funded boards, so do not appear prior to fiscal 2007. DLLR indirect costs are allocations for activities and services provided at the departmental level such as Budget, Personnel, General Services, and Office of the Secretary. O&P Allocation represents services provided to boards and commissions by the Division of Occupational and Professional Licensing such as central licensing, telephone center, Commissioner's Office, and IT costs.

Fiscal 2010 figures represent an estimate of the State Real Estate Commission's revenues and certain expenditures. Indirect costs, direct legal expenditures, and total expenditures are omitted from the 2010 estimates. DLLR does not predict indirect costs because they are based on a federal cost allocation formula, which varies from year to year, and the percentage has not yet been determined for 2010. Direct legal expenditures are derived from the budget of the legal services division, and 2010 estimates cannot yet be calculated by DLLR. Total expenditures cannot be estimated without calculations of indirect costs and direct legal expenditures.

Source: Department of Labor, Licensing, and Regulation

A fee that is not currently allowed by the Real Estate Brokers Act would apply to a licensee that transfers from one branch office of a broker to another branch. This "in-house transfer" is not considered a brokerage transfer, but a new license must be issued to reflect the address change. There is no statutory fee for this transfer; therefore, there is no signal to the

commission's computer system to generate a new license. Often, these new licenses are not created until a complaint comes from a licensee months later. The commission would like to charge the same fee for this "in-house transfer" that is charged to licensees for a transfer from one company to another because the same service is provided by the commission for each transaction.

Technological Advances Benefit the Commission

Ten years ago, technological progress for the commission came in the form of individual computers for each staff member and a web site devoted to the commission that provided information to licensees and allowed licenses to be renewed online. More recently, these advancements have been honed to provide an electronic means of serving the public and licensees, and to improve efficiency for commission staff. The executive director reported that between 80 and 95% of licenses are now renewed online.

The commission maintains a web site as part of the larger DLLR page. The commission web site includes information about the commission and news and information for consumers and the public. Web site visitors can access information on educational requirements, out-of-state licenses, reciprocity, and a quarterly online newsletter. The executive director has worked to include links to other important web sites in the newsletter. In addition to its posting on the web site, the newsletter is sent to every licensee with a current email address on file.

With recent upgrades to the web site, prospective licensees can find information on license requirements and on taking the required exam, including a link to the examiner's web site. The public can use the web site to download a complaint form and search for active licensees practicing in the State. The commission also maintains the outcomes of disciplinary proceedings for the prior 10 years on its web page. The commission would prefer its own "homepage" to provide greater services to licensees and consumers, such as a searchable database of licensees including each licensee's address, disciplinary record, and continuing education status.

The commission has worked to increase automatic electronic communication with licensees. Licensees receive an email 60 days before their license expires, notifying them of the impending deadline and the continuing education requirements they must fulfill. A second email is generated three days before the license is terminated if it still has not been renewed. A representative of the Maryland Association of Realtors (MAR)¹ reported that licensees have found this to be a particularly helpful use of new technology. When a licensee changes his or her broker affiliation, an automatic email is generated and sent to the licensee and to both the new and former broker affiliations. This has helped licensees and brokers to be notified of changes and react quickly if there is an error in the assignment.

¹ A list of real estate professional associations, including MAR, is included in Appendix 6.

The commission staff currently uses the AS/400 server for data warehousing, email, and project sharing. None of the staff have received formal training to use the AS/400 program, and the executive director believes the staff is not taking advantage of all of its features.

Licenses have begun to take advantage of the opportunity to take continuing education courses online, discussed previously under "Continuing Education."

Consumer Complaints

From the time a consumer discovers, or by the exercise of ordinary diligence should have discovered, loss or damage due to a violation by a licensee, the consumer has three years to file a complaint with the commission. Complaints received by the commission are initially received by the complaint intake coordinator. The complaint intake coordinator makes an initial determination as to whether the commission has jurisdiction over the complaint. If the commission lacks jurisdiction, the coordinator sends a letter returning the complaint to the complainant. If the case is accepted, it is assigned a case number, and a letter is sent to the complainant acknowledging receipt of the complaint. A copy of the complaint is sent to the licensee requesting a timely response. The case is then reviewed by commission staff to determine if the issue is appropriate for commission review. This review is conducted by paralegals trained to recognize legal issues surrounding real estate transactions. If the complaint is not under the jurisdiction of the commission or lacks merit, the paralegal dismisses the case or redirects it to the appropriate agency. The paralegal must include justification for the decision to dismiss a case or send it to investigation. The commission attempts to process new complaints at this initial stage within 30 days of receipt. The full commission must approve the administrative dismissal of cases recommended to it by the paralegals. Beginning in 2007, all accepted cases, including those that are dismissed or transferred, are logged in the commission's complaint database.

If a case has merit and is within the jurisdiction of the commission, it is sent to the investigative phase and a second letter is sent to the complainant indicating the transition and providing contact information of the investigator assigned to the case. Investigators are trained using sample investigations during an orientation phase at the beginning of employment, and attend ARELLO programs throughout their employment. The investigators also receive mediation training through the Office of Administrative Hearings (OAH). Investigators actively investigate 20 cases at a time. An investigator reported that she begins by requesting supporting documents from each side and, on average, begins investigating a case several months after it is assigned to her, upon receipt of the requested documents. A complaint may take several months to investigate, with the most common problems prolonging investigation being difficulty locating witnesses, the limited memories of witnesses, and problems producing adequate records.

Once the investigator has completed a case report, the case is directed to one of two review panels. If the review panel decides to issue charges, the complaint is referred to the

Office of the Attorney General for precharge review and then moves to OAH. At the hearing phase, the commission acts independently, and does not represent either the complainant or the licensee. Both the complainant and the licensee may bring private counsel, but few exercise this right. After the recommendation of OAH is reviewed by one of two commission hearing panels, the affected parties are advised of the decision. Exceptions may be filed against regulatory decisions. If such an exception is filed, the hearing panel conducts an argument hearing to make a final decision, which may be appealed to the circuit court.

Disciplinary actions against licensees for regulatory violations may include a fine, suspension, or revocation of a license. Decisions that involve a Guaranty Fund payout are always accompanied by either suspension or revocation of a license. The commission does not keep statistics on the number of disciplinary actions by outcome type, but a list of disciplinary actions by year is available on the commission web site.

In fiscal 2009, the commission received 585 complaints. This represents a significant decrease in the number of complaints from fiscal 2008. Members of the commission have speculated that this is because of the decrease in the number of real estate transactions. The number of complaints for the previous five years is listed in **Exhibit 6**.

The data reflects a significant jump in the number of complaints between fiscal 2005 and 2006 and again between fiscal 2006 and 2007, with a corresponding drop in the number of investigations. This can be explained by the fact that complaints typically lag the market by a year or more. The rise in complaints in fiscal 2006 reflects the real estate market boom that occurred in 2005. At that time, the commission had several vacant investigator positions and could not begin a search to fill the vacancies until after the special funding went into effect in July 2006. Filling the positions took almost a year. Once the investigators were hired, each required six to nine months of training before taking on official investigations. One of these new investigators left the position for health reasons. One of the two investigators employed in April 2006 was promoted to assistant director in August 2006. This shortage led to the drop in investigations performed in fiscal 2006 and 2007, and subsequent significant increase in investigations when the commission became fully staffed in 2008.

Exhibit 6
Complaint Data for the State Real Estate Commission

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Complaints Received	124	407	777	892	585
Investigations	148	128	102	206	256
Hearings Held by Commission	69	47	52	53	62

Note: During fiscal 2005 and 2006, cases that were dismissed or returned to the complainant were not tracked. Beginning in 2007, all cases were given a case number and tracked, regardless of whether they were dismissed or returned to the complainant. An investigation may originate from a complaint placed the previous fiscal year.

Source: State Real Estate Commission

Guaranty Fund Balance Remains High

As shown in **Exhibit 7**, the Guaranty Fund balance has been in excess of \$1.75 million for the past four years, well in excess of the statutory minimum balance of \$250,000. The \$250,000 minimum balance has not been increased since the Guaranty Fund was established by Chapter 648 of 1971. House Bill 68 of 2008 would have increased the Guaranty Fund level to \$500,000 by 2012. When the full sunset evaluation of 2000 was conducted, the fund balance had been in excess of \$1.2 million for eight years.

Exhibit 7 Guaranty Fund Data

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Guaranty Fund Balance at the End of Each Fiscal Year	\$1,770,910	\$2,025,901	\$2,209,690	\$2,339,061
Amount Claimed	\$3,779,518	\$6,332,117	\$10,898,007	\$9,310,964
Amount Paid	\$110,163	\$58,766	\$42,942	\$114,839
Total Number of Awards	14	8	9	9
Awards for Less than \$3,000	4	4	4	2
Awards Between \$3,000 to \$24,999	9	3	5	6
Awards for \$25,000	1	1	0	1

Source: State Real Estate Commission

Consumer complaints involving a claim against the Guaranty Fund far exceed the amount paid from the fund each year. The total amount claimed and total amount paid for each of the previous five fiscal years is also shown in Exhibit 7. Often, consumers claim money damages for punitive damages or emotional distress, neither of which can be paid from the fund. Consumers may also request real damages above the statutory cap of \$25,000 instituted by Chapter 586 of 1984. The commission does not track the total amount of claims actually eligible for payment from the fund as opposed to the total amount requested by claimants, so a comparison between eligible claims and payments made is not possible. The decision as to eligibility of a claim for reimbursement is made by the administrative law judge at the Guaranty Fund hearing.

The \$25,000 payout cap has not been increased since it was first instituted in 1984. There were 40 cases resulting in Guaranty Fund payouts between fiscal 2006 and 2009. Of these, only three cases had a payout of \$25,000. The number of Guaranty Fund awards by amount awarded is included above in Exhibit 7. During the period covered by the 2000 sunset evaluation, however, awards of \$25,000 were more common, with between two and five such

awards each year from fiscal 1996 to 2000, totaling 16 awards of \$25,000 over that five-year span.

Recommendation

The commission is meeting its statutory obligations. However, several issues merit additional attention and should be studied further. The commission identified several of these issues and is exploring ways to resolve problems. **Nevertheless, the Department of Legislative Services recommends that the State Real Estate Commission undergo full evaluation.** The justification for, and issues to be addressed in, a full evaluation are discussed below.

Fewer Licensees May Lead to Funding Problems

The commission is currently operating at a budget surplus. Though the number of annual license transactions has decreased by more than 5,000 over the past two years, this drop in revenue is more than compensated by the significant increases in fees. The commission slightly increased its operating surplus from approximately \$102,000 in fiscal 2008 to approximately \$120,000 in fiscal 2009. The fiscal 2010 surplus cannot yet be projected. In the future, however, fees may only be increased by 12.5% annually. A full evaluation should examine whether the current or a potential future drop in the number of licenses may lead to budgetary deficits, or whether these issues may be overcome by further increasing licensing fees. A full evaluation should also examine whether the cap on fee increases is warranted.

Additional commission projects may require greater funding than the current funding level allows, putting further strain on commission resources. For example, the lack of a stand-alone web site devoted to commission functions was raised in the last evaluation, and remains a concern of the commission. The commission web page is housed with other occupational and professional licensing commissions, but the commission would prefer its own homepage to give it greater flexibility to provide additional online services. A full evaluation should study the costs and feasibility of adding online services to the commission web site, including those associated with establishing a training program for staff on the use of technology available to them.

Guaranty Fund Balances and Payouts Should Be Examined

Since fiscal 2006, the Guaranty Fund's ending balance has not fallen below \$1.75 million. The fund's minimum balance requirement has not been increased in nearly 40 years, and it is unclear whether the fund balance should be maintained at such a high level. A full evaluation should determine whether the \$20 Guaranty Fund fee is too high.

One factor accounting for the high fund balance may be the low level of payouts. Payments from the Guaranty Fund are limited to a maximum of \$25,000 – a figure that has not been increased since 1984. Ten years ago, 16 payments of \$25,000 had been made in the years

prior to the full evaluation, but today only 3 such payments have been made in recent years. Representatives of the commission believe this low number of \$25,000 awards demonstrates that a larger cap is not required. It seems counterintuitive, however, that damages would not rise with home prices. Though only 7.5% of claims in the past four fiscal years have exceeded the award cap, some claimants may suffer genuine losses beyond this amount. A full evaluation should examine whether the \$25,000 award cap is adequate to meet the needs of claimants in today's market, whether the rules governing payouts are appropriate, and whether homebuyers are sufficiently aware of the Guaranty Fund.

The majority of Guaranty Fund payouts are not repaid by the licensee at fault. Commission staff explained that many licensees who have a Guaranty Fund judgment against them often prefer to not repay the fund and therefore suffer the loss of their license, rather than repay the fund and attempt to continue practicing with a tarnished reputation. A full evaluation should study statistics on complaint processing, fund payouts, and licensee repayment rates to determine if the Guaranty Fund is being used effectively to redress complainant grievances.

Information on Disposition of Complaints Is Incomplete

As noted earlier, the commission does not track the disposition of complaints against licensees, and it is not clear from the data provided by the commission whether all complaints are processed and resolved in a timely manner. Available information indicates that the commission was not able to investigate all complaints in fiscal 2005 and 2006 due to vacant investigator positions, which may have generated a backlog. Indeed, commission staff reports that investigations sometimes do not begin in earnest for several months after a complaint is received, indicating that a substantial backlog may exist. A full evaluation should determine whether a backlog of complaints exists, the causes of the backlog, and potential strategies for alleviating any delays in processing complaints.

The Commission's Authority Over Certain Fees Should Be Reviewed

Control over licensing fees has largely been transferred to the commission but, as discussed earlier, there are several fees that remain outside the commission's authority. A full evaluation should consider whether the commission should be given authority to institute or raise those fees.

Continuing Education Is Not Tracked

Licensees are expected to complete continuing education courses throughout their real estate careers so that the licensees remain qualified to engage in the activities for which they are licensed. Completion of the required number of continuing education course hours is mandatory for license renewal. Prior to online license renewal, licensees would submit records of continuing education course completion with the application for license renewal. The current online renewal process, however, relies on the honesty of the licensee accurately representing

that they have completed the required courses. An online continuing education tracking system, however, could replace this “honor system” with an efficient means for both the commission and licensees to ensure that the requirements are being met. A full evaluation should study the feasibility of introducing a program that would allow for online tracking of course credits.

Potential Commission Members May Need Pre-appointment Training

The 2000 full evaluation recommended implementing a program to improve the training of new and existing commission members on their respective duties as industry regulators. While the commission has taken steps to improve training for members after their appointment to the commission, there is no orientation for members before their appointment. Consumer members, in particular, may be unaware of the time commitment expected of them, and some have failed to meet their commission obligations. A full evaluation should examine the feasibility of implementing a pre-appointment education program targeted toward potential commission members, to the extent that the commission is aware of candidates to fill vacant positions.

Appendix 1. Written Comments of the State Real Estate Commission

DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY BROWN, Lt. Governor
ALEX SANCHEZ, Secretary

Div. of Occupational & Professional Licensing
Maryland Real Estate Commission

MREC home page: <http://www.dllr.state.md.us/licensr/occpof/recomm.html>
DLLR E-mail: mrec@dllr.state.md.us

December 1, 2009

Mr. Michael C. Rubenstein
Principal Policy Analyst
Department of Legislative Services
90 State Circle
Annapolis, MD 21401-1991

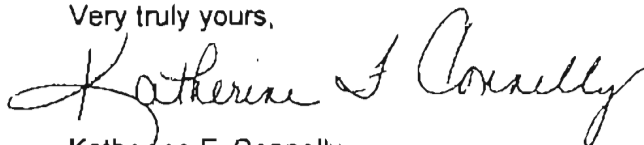
Dear Mr. Rubenstein:

On behalf of the Maryland Real Estate Commission I wish to acknowledge receipt of the draft Preliminary Evaluation of the Maryland Real Estate Commission.

Under separate cover I have provided your Legislative Analyst, Lindsay Eastwood with factual corrections to the report. I would like to express my appreciation to the Department of Legislative Services for the professionalism shown by Ms. Eastwood while gathering the information necessary for the compilation of this evaluation.

The Real Estate Commission agrees with many of the recommendations made in the Preliminary Evaluation and believes that they are currently on the right track to overcome some of the issues mentioned. Although we believe there has been some misunderstanding of our complex processes, we look forward to discussing these recommendation and any others that are noted during the recommended full evaluation.

Very truly yours,



Katherine F. Connelly
Executive Director

KFC/slf

cc: Alexander M. Sanchez, Secretary
Stanley J. Botts, Commissioner
Harry Loleas, Deputy Commissioner
John Nicholas D'Ambrosia, Chair, Maryland Real Estate Commission
Ms. Lindsay Eastwood, Legislative Analyst.

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TTY Users, Call via Maryland Relay Service

Appendix 2. Commission Membership

Industry Representatives

J. Nicholas D'Ambrosia, Chair
Nancy Simperts, Vice Chair
Anne S. Cooke
Marla S. Johnson
Georgiana S. Tyler

Consumer Representatives

Surina A. Jordan
Robin L. Pirtle
Colette P. Youngblood
(Vacant since 9/17/08)

Appendix 3. Hearing Board Assignments

Board 1

J. Nicholas D'Ambrosia
Surina Jordan
Marla Johnson

Board 2

Anne S. Cooke
Robin L. Pirtle
Georgiana S. Tyler

Appendix 4. Licensing Activity

	<u>FY2005</u>	<u>FY2006</u>	<u>FY2007</u>	<u>FY2008</u>	<u>FY2009</u>
Broker License (Initial)	385	593	479	500	357
Broker License (Renewal)	2,000	2,041	2,095	2,117	2,126
Reciprocal Broker (Initial)	0	0	6	37	20
Reciprocal Broker (Renewal)	0	0	0	0	0
Associate Broker (Initial)	303	488	414	357	294
Associate Broker (Renewal)	1,224	1,338	1,272	1,404	1,318
Reciprocal Associate Broker (Initial)	0	0	1	13	4
Reciprocal Associate Broker (Renewal)	0	0	0	0	0
Salesperson License (Initial)	9,098	9,392	6,734	4,631	2,361
Salesperson License (Renewal)	13,295	15,038	17,094	17,352	16,194
Reciprocal Salesperson (Initial)	0	0	9	141	57
Reciprocal Salesperson (Renewal)	0	0	0	0	0
License Transfers	7,028	8,202	9,403	9,195	8,323
Total License Transactions	33,333	37,092	37,507	35,747	31,054

Note: Total does not reflect licensees that were not due for bi-annual renewal in a given fiscal year.

Source: State Real Estate Commission

Appendix 5. Commission Fees

<u>Fee Type</u>	<u>Broker</u>	<u>Associate Broker</u>	<u>Salesperson</u>
Initial Application	\$190	\$130	\$90
Examination	\$78	\$78	\$78
Guaranty Fund Assessment	\$20	\$20	\$20
License Renewal	\$190	\$130	\$90
Exchange of License	\$190	\$130	\$90
Replacement of Lost or Destroyed License	\$25	\$25	\$25
Replacement of Lost or Destroyed Pocket Card	\$25	\$25	\$25
Reissuance from Inactive Plus \$25 Transfer Fee	\$50	\$50	\$50
Reinstatement / Late Fee	\$150	\$150	\$150
Initial or Renewal Branch Office Certificate	\$25	\$25	\$25
Licensee Name Change	\$25	\$25	\$25
Change Firm Name (Plus Each Licensee Under Broker Name)	\$25	\$25	\$25
Transfer to Another Broker	\$25	\$25	\$25
Certificate of License History			
Five-Year History	\$25	\$25	\$25
Full History	\$75	\$75	\$75

Note: \$10 of the examination fee is paid to the commission; the balance is paid to the examination contractor; license renewals are for two-year terms

Source: State Real Estate Commission; Code of Maryland Regulations (COMAR) 09.11.09.02

Appendix 6. Real Estate Professional Associations

Association of Real Estate License Law Officials (ARELLO)
8361 S. Sangre de Cristo Road
Suite 250
Littleton, Colorado 80127

Maryland Association of Realtors
200 Harry S. Truman Parkway
Suite 200
Annapolis, Maryland 21401

Maryland Real Estate Educators Association
William Frost, President of the Maryland Real Estate Educators Association
c/o Chesapeake Real Estate Referral
304 Railroad Avenue
St. Michaels, Maryland 21663

Preliminary Evaluation of the State Board of Plumbing

Recommendations: **Waive from Full Evaluation**

Extend Termination Date by 10 Years to July 1, 2023

Require Follow-up Report by October 1, 2011

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Plumbing was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this board – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. The State Board of Plumbing last underwent a preliminary evaluation as part of sunset review in 2000. The board was waived from full evaluation and subsequently reauthorized for another 10 years, with a termination date of July 1, 2013.

In conducting this preliminary evaluation, DLS staff attended board meetings and interviewed board members, the acting director, and the executive director of the Maryland Plumbing, Heating, and Cooling Contractors Association. Staff also reviewed relevant statutes, regulations, and board minutes and analyzed board licensing, complaint, and budgetary data.

The State Board of Plumbing reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 2**. Appropriate factual corrections and clarification have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

The Plumbing Industry

The plumbing trade is an ancient one, dating as far back as 2000 B.C. The greatest advances in plumbing were made in the nineteenth century, when towns grew to cities and the need for proper public sanitation was recognized.

Most people are unfamiliar with the full range of services that plumbers provide. Plumbers install and repair the water, waste disposal, drainage, and gas systems in homes as well as commercial and industrial buildings. They also install plumbing fixtures and appliances, such as bathtubs, sinks, toilets, dishwashers, and water heaters. In the performance of their trade, plumbers use many different materials and construction techniques. For example, residential water systems use plastic, copper, or steel pipes that can be handled and installed by one or two workers. Municipal sewerage systems are made of large cast-iron pipes, and installation normally requires crews of workers. Plumbers must be able to follow blueprints and instructions from supervisors, plan the job, and work efficiently with the materials and tools of the trade. Physical stamina is also a requirement since plumbers frequently lift heavy pipes, stand for long periods of time, and sometimes work in cramped spaces or uncomfortable positions.

The plumbing trade has observed significant improvement in the materials and methods used in the trade. Joining materials, for instance, have become more adaptable. The use of plastic piping and fixtures has increased the number of plumbing options, whereas the materials replaced were less adaptable. With improved materials of plastic or copper, plumbers can put in 1,000 feet of plumbing per day compared with 100 feet using older materials. Due to the increased use of plastic, some licensees are unhappy that they are tested on procedures involving older materials. The board advises that the requirements are still valid given the number of older structures in the State that are outfitted with nonplastic plumbing fixtures.

New industry standards for “lead free” materials have taken hold in recent years as a result of a California law enacted in 2008 that limits the lead content in pipes, fittings, and fixtures used to convey drinking water. Although contamination from lead-based paint, dirt, and dust accounts for most lead exposure, exposure to lead from drinking water is still a problem. Most faucets purchased prior to 1997 were constructed of brass or chrome-plated brass, which contain up to 8% lead. Water sitting for several hours or overnight in a brass faucet can leach lead from the brass faucet interior, which may produce high lead levels in the first draw of drinking water. Most faucets purchased after 1997 contain less lead than previously used, thereby reducing the possible leaching of lead. Some faucet manufacturers produce plastic faucets that have virtually no lead. Other manufacturers are substituting other metals for the lead in the brass, inserting copper tubes inside the brass faucets, or applying special coatings on the inside of the faucets to minimize or eliminate lead leaching.

The State Board of Plumbing

The State Board of Plumbing is housed in the Department of Labor, Licensing, and Regulation's (DLLR) Division of Occupational and Professional Licensing. Maryland statute sets out three purposes for the board:

- to protect the integrity of the potable water supply;
- to provide for the efficient and safe discharge of storm drainage and sanitary drainage; and
- to ensure that qualified individuals carry out the board's charge.

Under State law, the board regulates the plumbing industry throughout most of Maryland, but lacks jurisdiction in Baltimore County or in areas of Montgomery and Prince George's counties that are under the jurisdiction of the Washington Suburban Sanitary Commission. The propane gas fitter certificate granted by the board applies statewide; the remaining licenses issued by the board are not valid in the excluded jurisdictions previously mentioned.

The board consists of nine members: seven plumbers and two consumers. The Governor appoints the members of the board with the advice of the Secretary of Labor, Licensing, and Regulation and with the consent of the Senate. The Governor may remove a member for incompetence or misconduct. Members serve three-year terms. The members of the board are listed in **Appendix 1**. Currently, one consumer seat on the board is vacant.

Statute specifies that board members representing the industry must each reside in specific geographic areas of the State. One plumber must be from Anne Arundel, Calvert, Charles, Prince George's, or St. Mary's county. A second is required to be from Caroline, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, or Worcester county, and a third must be from Allegany, Frederick, Garrett, Montgomery, or Washington county. Two plumbers are required to be from Carroll, Cecil, Harford, or Howard counties; the final two plumbers must be from Baltimore City. A consumer member may not reside in the same county as a plumber member, and a member may not reside in a county or area of the county that is exempted from the Maryland Plumbing Act.

The board's executive director divides time among the Board of Plumbing and three other State boards. The executive director position has been vacant since February 2009. The board has one administrative aide who provides needed support related to licensing and complaint resolution issues, as well as attending to other duties related to the board. Currently, the executive director of the Maryland Home Improvement Commission – one of the busiest and most demanding of the division's commissions and boards – serves as the acting director of the

four boards. DLLR advises that it was in the final stages of the hiring process to fill the vacant executive director position but halted its search due to fiscal constraints.

Licensing Activity

To provide plumbing services throughout most of the State, a person must be licensed by the board. The board, with considerable support from the division's Central Licensing Unit, issues three different plumbing licenses: master, journey, and apprentice. These licenses are typically held in conjunction with the equivalent gas fitter license. Apprentice plumbers may assist a master plumber or a limited master plumber. Journey plumbers are licensed to provide plumbing services while under the direction and control of a master plumber. The board also certifies propane gas fitters and licenses plumbing inspectors. Licenses are valid for two years and are issued on a staggered basis.

Qualifications required for obtaining plumbing licenses increase by the level of the license. Individuals must be at least 16 years of age to obtain an apprentice license. To qualify for a journey license, an applicant must have held an apprentice license for four years, completed 7,500 hours of training under the control and direction of a licensed master plumber, completed 32 hours of training in backflow prevention, and passed a comprehensive written examination. To qualify for a master license, an applicant must have held a journey license for at least two years, completed 3,700 hours of training under the direction of a licensed master plumber, and passed a comprehensive written examination. Unless a plumber's license is limited, it allows the plumber to conduct natural gas fitter and propane gas fitter work. The board advises that 40% of examination questions relate to the provision of gas fitter services. The requirements to obtain a master, journey, or apprentice natural gas fitter license are similar to those specified above for master, journey, or apprentice plumbers.

There are three ways to obtain a propane gas fitter certificate. An individual may hold a current certification of completion of the National Propane Gas Association-certified training program for distributed systems operations; hold a gas fitter's license from a county or municipal corporation under a licensing program in existence prior to July 1, 1995; or demonstrate to the board that his or her qualifications are at least equivalent to the qualifications required by the National Propane Gas Association training program for distribution systems.

Inspectors work for the State or local governments and inspect plumbing projects. Under State law, each county must enforce the State Plumbing Code or adopt and enforce a local plumbing code that meets or exceeds the minimum standards of the State code for proper design, installation, and maintenance of plumbing systems. To receive a plumbing inspector card, a master or journey plumber puts his or her license on inactive status and provides proof of employment as an inspector. An individual without a plumbing license can qualify for a plumbing inspector's card based on four years of relevant experience and passage of an examination administered by DLLR. Inspectors are required to attend continuing education classes each year that are approved by the board. A plumbing inspector may not have a financial

interest in any plumbing business while employed as an inspector. Upon ending employment as an inspector, the plumbing license may be reactivated.

Exhibit 1 shows the number of active licenses by year and by type from June 2005 to June 2009. The total number of plumber/gas fitter licenses has increased by 1,944 in the last five years, almost a 20% increase. New apprentice licenses accounted for the bulk of the increase; master and journey licenses increased to a lesser extent during this period. The number of individuals licensed by the board has increased significantly since 2000. In June 2000, the board had 2,862 active master plumber licenses, 2,022 journey licenses, and 3,299 apprentice licenses. Currently, there are more than 300 additional master plumbers licensed in the State, and about twice as many apprentice plumbers.

Exhibit 1
Number of Active Licensees, by Type of License

	<u>June</u> <u>2005</u>	<u>June</u> <u>2006</u>	<u>June</u> <u>2007</u>	<u>June</u> <u>2008</u>	<u>June</u> <u>2009</u>
Master Plumber/Gas Fitter	3,099	3,133	3,123	3,209	3,222
Journey Plumber/Gas Fitter	2,074	2,088	2,063	2,189	2,255
Apprentice Plumber/Gas Fitter	4,741	5,339	5,737	6,109	6,108
Total Plumber/Gas Fitter Licenses	9,914	10,560	10,923	11,507	11,585
Master Inspector	59	64	57	66	53
Journey Inspector	0	2	1	1	2
Plumbing Inspector	36	39	44	47	42
Master Natural Gas Fitter	499	492	489	485	488
Journey Natural Gas Fitter	956	835	844	784	802
Apprentice Natural Gas Fitter	77	91	171	250	199
Propane Gas Fitter Certificate	483	490	505	525	538
Total Licenses	12,024	12,573	13,034	13,665	13,709

Source: State Board of Plumbing

Chapter 735 of 1997 reduced several fees charged by the board to their current levels. Prior to the change the fees for a master plumber's license, journey plumber's license, and propane gas certificate were \$100, \$50, and \$50, respectively. **Exhibit 2** displays the current fees administered by the board for the various types of licenses issued.

Exhibit 2
Fees for Licenses as of June 2009

	<u>License Fee</u>	<u>Application or Examination Fee</u>	<u>Renewal Fee</u>
Master Plumber/Gas Fitter	\$70	\$65	\$70
Journey Plumber/Gas Fitter	\$35	\$65	\$35
Apprentice Plumber/Gas Fitter	\$15	\$0	\$15
Master Natural Gas Fitter	\$70	\$65 Examination Fee \$50 Application Fee	\$35
Journey Natural Gas Fitter	\$35	\$65 Examination Fee \$25 Application Fee	\$35
Apprentice Natural Gas Fitter	\$15	\$0	\$25
Propane Gas Fitter Certificate	\$35	\$25 Application Fee	\$35

Source: State Board of Plumbing

Legislative Changes Since the Last Review

Since the 2000 evaluation, legislation has been enacted strengthening the board's authority to penalize unauthorized practice or licensee misconduct. These changes were made to address the prevalence of plumbing businesses that are not owned by licensed plumbers. Although plumbing businesses must employ a master plumber to obtain local permits for plumbing jobs, the individuals who provide plumbing services in the targeted businesses are not employed by the master plumber. Under the prior statute, the board could not take disciplinary action against a master plumber who failed to train or control individuals who provided plumbing services when the master plumber was not their employer. **Exhibit 3** summarizes legislative changes affecting the board since the 2000 evaluation.

Exhibit 3
Major Legislative Changes Since the 2000 Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2001	73	Extends the termination date for the State Board of Plumbing to July 1, 2013.
	187	Authorizes the board to impose civil penalty fines on licensees who violate the licensing law and raises the maximum civil fine for unlicensed plumbers from \$1,000 to \$5,000.
	325	Requires an applicant for a journeyman natural gas fitter license to complete an approved training course relating to natural gas services and pass a board examination.
2004	495	Authorizes the board to deny a license to any applicant, reprimand any licensee, or suspend or revoke the license of an individual who: (1) violates any provision of the Maryland Plumbing Act; (2) violates any regulation adopted by the board; or (3) fails to train or adequately control any person who, while under the direction of a master plumber, provides plumbing services.
2007	422	Authorizes the Washington Suburban Sanitary Commission to issue a plumber/gas fitter license without examination to an individual holding a valid plumber/gas fitter license from the State Board of Plumbing, regardless of whether the licensee resides within the commission's jurisdiction.
2009	731	Exempts individuals licensed as master plumbers, journey plumbers, or gas fitters in specified jurisdictions outside the State from the board's licensing examinations, if those individuals relocate to the State because of a family member's reassignment due to the Base Realignment and Closure (BRAC) process. The request for a waiver must be made before July 1, 2012.

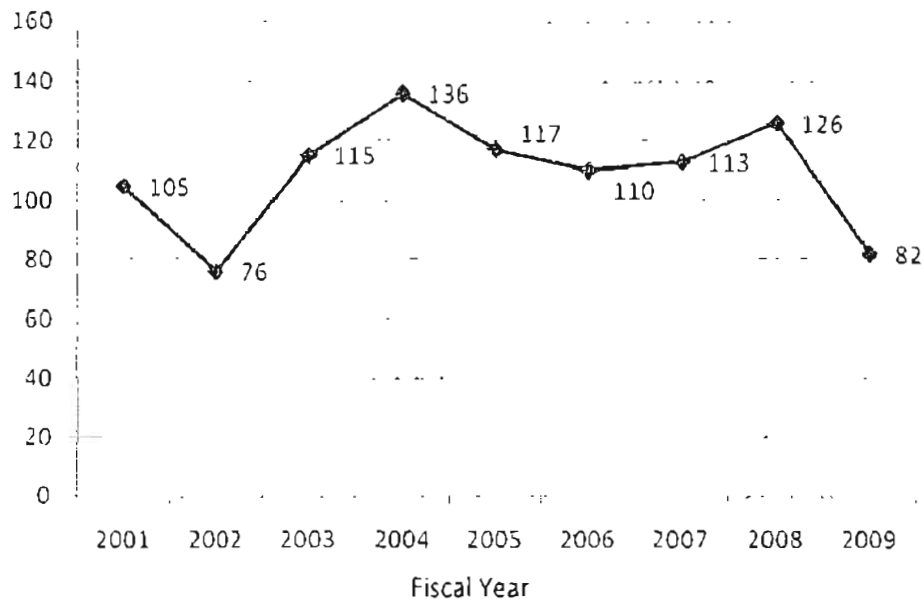
Source: Laws of Maryland

Complaints Stable in Recent Years, but Higher Than Previous Decade

Exhibit 4 shows the volume of consumer complaints received from fiscal 2001 to 2009. The average number of complaints received annually during this period was 109. The number of complaints received by the board between 2001 and 2009 is significantly higher than the annual number received during the 1990s. According to DLLR, the increase in complaint volume resulted from (1) the increase in the number of licensees; (2) a significant rise in the amount of plumbing work conducted, particularly expensive home remodeling projects, during this decade; (3) an increase in the average cost of plumbing services, which results in a greater likelihood of consumer complaints; and (4) greater public awareness of the board and its complaint resolution practices.

The board did not provide a complete breakdown of complaints by type, but the board advises that complaints generally relate to poor workmanship, unlicensed work or advertising services without a license, abandonment of a contract, or dispute about costs of services.

Exhibit 4
Complaint Volume
Fiscal 2001-2009



Source: State Board of Plumbing

Complaint Resolution Process

When the board receives a complaint, it first determines if the board has jurisdiction. The administrative aide sends out acknowledgement letters to the complainant and respondent. If possible, the executive director attempts to work out a mutually agreeable resolution to the complaint prior to a board meeting. However, because the acting executive director also works with several other boards and commissions, he has not been available to resolve as many complaints prior to board meetings as is the norm.

If a complaint is not resolved, the executive director presents the complaint to the board's complaint committee and provides the committee with an opinion on how to proceed. The committee consists of three members of the full board and meets before the full board meeting each month. DLLR advises that at least three times during the last year the committee has met twice monthly to expedite the resolution of complaints. The committee may recommend that the board pursue further action or close a complaint based on actions already taken. If the board accepts a close-out recommendation, the administrative aide sends a letter to the complainant with a copy to the respondent.

If further action is required, the board either advises the executive director on a course of action or refers the case to counsel for a precharge review. Counsel prepares a charge letter and presents it at the next meeting. The case is then referred to the Office of Administrative Hearings (OAH). Upon completion of a hearing, the proposed decision from the hearing officer is presented to the entire board for concurrence or amendment. The board has a low number of complaints that are referred to OAH; it is expected that fewer than 15 complaints will result in an OAH hearing in fiscal 2010. The board did not provide complaint resolution data for prior years.

The board has the authority to fine individuals for malpractice, such as practicing without a license, failure to obtain the proper permit for a plumbing project, or failure to carry the proper insurance. One board member notes that in some cases the fines are low enough that disreputable persons may consider the fine an acceptable "cost of doing business." This may result in an increased number of complaints received by the board; some violators may be repeat offenders.

Board Applying Technological Advances

Since the last review in 2000, the board has taken steps to improve its online services. The board's web page offers a variety of services to licensees, prospective licensees, consumers, or other interested parties. Information is available about the application process, requirements for licensure, fees, and laws and regulations. Consumers can search for active licensees by personal or trade name, city, or zip code; access the board's complaint form; or review meeting minutes online. Plumbers can access a variety of forms and renew their licenses online. In

addition, the board uses its web site to provide access to news stories about issues related to its work and links to other organizations of interest to consumers or practitioners.

In the coming years, the board hopes to further improve its online services in several ways. Most important, the board wants to allow consumers to file complaints online. Although the complaint form is currently available on the web site, complainants must print it, complete it by hand, and mail it to the board. Online complaint filing would cut down on some of the bureaucratic delay associated with the complaint resolution process. The board also aims to provide complainants with the ability to check the status of their complaint online.

The board's database software, which is 20 years old, will be upgraded in the next 12 to 24 months. Once this upgrade is complete the board expects to be able to provide more online services, including those mentioned above.

Board's Revenues Cover the Cost of Regulation

The board's expenditures are divided into four types: direct costs, indirect division costs, indirect departmental costs, and legal costs. Direct costs are largely staff salaries or contractual expenses. Indirect division costs include the cost of services provided to the board by the Division of Occupational and Professional Licensing within DLLR. These costs include the board's telephone expenses, the use of the central licensing services, and the salaries of certain division staff, including the commissioner and deputy commissioner. Indirect departmental costs include expenses related to the board incurred by the Office of the Secretary, and the department's budget, personnel, and general services offices; these costs were first calculated for the general fund boards for fiscal 2005. Indirect division and departmental costs are allocated to each board or commission by a formula based on the agency's usage of these services. Last, legal expenditures reflect the amount of time the department's Assistant Attorneys General worked on issues related to the board. The board incurs litigation costs and expenses related to the need for legal counsel.

DLLR advises that legal expenditures are a new field for all general fund boards in fiscal 2009. In past years, legal expenditures were calculated for special fund boards in order to accurately account for their costs (as they must be self sufficient). Legal expenditures are derived from the budget of the legal services division within DLLR's Office of the Secretary. The legal costs were included in fiscal 2009 to more accurately depict each board or commission's costs and make the expenditure reports consistent with the special fund boards. **Exhibit 5** displays the board's revenues and expenditures from fiscal 2004 to 2009.

The board's direct costs declined significantly in fiscal 2009 due in large part to the effects of cost containment, reorganization within the division, and the vacancy of the board's executive director position. DLLR advises that funding for the vacant executive director position was eliminated during recent cost containment measures. The 2009 decrease was preceded by less significant declines in direct costs in previous years; these resulted from the resignation of

the board's former administrative aide and the subsequent abolition of that vacant position. The division shifted several of its remaining administrative aides to mitigate the loss. This restructuring resulted in the board continuing to have a full-time administrative aide; however, while funding for the former aide was allocated to the plumbing board, funding for this staff member is split among several boards (including the Board of Plumbing). The marked decrease in indirect departmental costs is also related to the reduction in staff. According to DLLR, these costs are linked to the level of funding the board receives for salaries. Thus, a significant drop in departmental indirect costs occurred when the positions were no longer active.

Exhibit 5
Fiscal History of the State Board of Plumbing
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Revenues	\$237,805	\$242,245	\$227,864	\$246,158	\$244,866	\$243,900
Direct Costs	135,335	162,107	91,292	73,027	93,218	36,386
Legal Expenditures	0	0	0	0	0	47,085
O&P Cost Allocation	44,106	69,607	52,312	70,578	59,938	52,540
DLLR Indirect Costs	0	21,954	19,415	10,966	11,659	1,990
Total Costs	\$179,441	\$253,668	\$163,019	\$154,571	\$164,815	\$138,001
Surplus/(Gap)	\$58,364	(\$11,423)	\$64,845	\$91,587	\$80,051	\$105,899

O&P: Occupational and Professional Licensing.

Source: Department of Labor, Licensing, and Regulation

Because license renewals are staggered, board revenues are relatively constant. From fiscal 2004 to 2009, the board averaged \$240,673 in annual revenue. The revenue for these years is about 14% higher than it was between fiscal 1996 and 2001, when the board averaged \$210,605 annually. (The board assessed higher fees for several years during that period.) The increase in revenue received by the board is due to the rise in the number of licenses issued. The board has operated with a surplus in five of the last six years. In fiscal 2004 and 2006, the surplus was approximately \$60,000. However, due to cuts in staff and cost containment, surpluses for fiscal 2007, 2008, and 2009 ranged between \$80,000 and \$106,000.

Operational Impact of Staff Losses

Due to the responsibility of overseeing other boards and the Maryland Home Improvement Commission, the acting director is not able to fully address the board's day-to-day

operations and respond as quickly or effectively as necessary to resolve consumer complaints. Board members have taken on more responsibility in complaint resolution, in addition to the significant amount of time they dedicate to regulatory issues, code updates, reviewing examination questions, and various other tasks. The executive director is responsible for working with local jurisdictions regarding permitting, inspections, and other issues.

DLLR advises that it believes a permanent executive director is essential for the board to adequately regulate the plumbing industry and protect consumers in the State. However, because it does not have the funding necessary to fill the vacant position, it plans to restructure the division to dedicate greater staff attention to the board's day-to-day operations, specifically regarding the efficient resolution of complaints.

Recommendations

The State Board of Plumbing and all associated regulations and provisions will terminate as of July 1, 2013, unless reauthorized. The board provides important services in numerous areas, particularly by protecting the citizens of Maryland from health hazards resulting from poorly installed or maintained plumbing fixtures and backflow devices. The board also reviews new codes and new technologies to ensure best practices in the industry and responds to complaints lodged by consumers. **Therefore, the Department of Legislative Services recommends that the board be continued without undergoing further evaluation and that legislation be passed extending the board's termination date by 10 years to July 1, 2023.**

However, this evaluation has identified several issues related to board operations that merit follow up. **The Department of Legislative Services, therefore, recommends that DLLR submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2011, which reports on:**

- **the status of efforts to restructure the division to better serve the board's day-to-day operations, particularly related to its complaint backlog and other responsibilities;**
- **the board's disposition of consumer complaints going back at least to 2006, including its effectiveness in resolving complaints in a timely manner;**
- **the imposition of fines on licensees or individuals who engage in malpractice, in particular the frequency and average amount of such fines and whether or not industry regulation and consumer protection would benefit from increasing fine amounts;**

- the size of the board's fiscal 2010 surplus or funding gap following the restructuring of the division, and any changes to the board's staffing or fees necessary to address its fiscal status; and
- whether the board has been successful in filling the vacant consumer member seat.

Appendix 1. Members of the State Board of Plumbing

Industry Representatives

Charles J. Morgan, Jr., Chair, Baltimore City

Keith R. Horton, Vice Chair, Baltimore City

Jon Garner, Garrett County

Michael J. Kastner, Jr., Howard County

Charles Lenderking, Worcester County

Joseph A. Radtka, Anne Arundel County

Russell A. Wiebking, Howard County

Consumer Members¹

Nicole J.C. Daniels

¹ There are two seats on the board for consumer members; one is currently vacant.

Appendix 2. Written Comments of the State Board of Plumbing

December 1, 2009

Mr. Michael C. Rubenstein
Department of Legislative Services
90 State Circle
Annapolis, MD 21401

Dear Mr. Rubenstein:

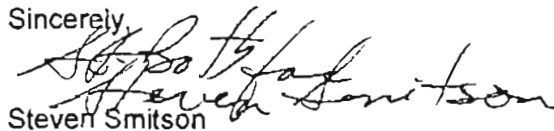
On behalf of the Department of Labor, Licensing and Regulation and the Board of Plumbing, I wish to thank you for your letter and the draft copy of the Preliminary Evaluation of the State Board of Plumbing. I appreciate the support of the Department of Legislative Services and the professional manner in which Michael Vorgetts worked with DLLR staff to complete this report.

We agree with the report's recommendations and will be pleased to submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee by October 1, 2011. In addition to responding to the issues raised in this report, I expect the Board's follow-up report to include a discussion about the impact of emerging green technologies and conservation efforts on the industry and the Board. For example, we expect to see an increase in the use of solar panels as well as water systems designed to recycle grey water; these and other issues will require regulatory standards.

I do have several suggestions for the report. On pages 3 and 11, the report indicates that the board's current administrative aide splits her time with another State board. This board does have a fulltime administrative aide, which the DLLR leadership believes is essential due to the large number of licensees and complaints. In addition, the Board receives considerable support from the Central Licensing Unit of the Division of Occupational and Professional Licensing, which is not noted in the report. Also on pages 3 and 11, the report indicates that the DLLR is in the process of hiring a permanent executive director. Although the Department's leadership continues to believe that the executive director is essential, due to current fiscal constraints, the Department is no longer seeking to fill the position at this time. Finally, on page 9, it may be noted that the complaint committee has met twice per month, instead of monthly, three times during 2009, in order to resolve more cases in a timely manner.

Thank you for your support. If you have any questions, please contact me at 410-230-6169.

Sincerely,



Steven Smitson
Maryland State Board of Master Electricians

cc: Alexander M. Sanchez, Secretary
Stanley J. Botts, Commissioner
Harry Loleas, Deputy Commissioner
Charles J. Morgan, Jr., Chair, Board of Plumbing



Preliminary Evaluation of the State Board of Examiners of Landscape Architects

Recommendations: Waive from Full Evaluation

Extend Termination Date by 11 Years to July 1, 2024

Require Follow-up Report by October 1, 2011

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Examiners of Landscape Architects (SBELA) was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this board – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. The board last underwent a full evaluation as part of sunset review in 1991. DLS conducted a preliminary evaluation of SBELA in 2000, which found that the board was successfully fulfilling its statutory responsibilities and recommended a waiver from full evaluation. Chapter 73 of 2001 extended the board’s termination date by 10 years to July 1, 2013.

In conducting this preliminary evaluation, DLS staff reviewed applicable State law and regulations; recent legislative and regulatory actions; prior full and preliminary sunset reviews; annual reports submitted by the Department of Labor, Licensing, and Regulation (DLLR) related to the State Occupational and Professional Licensing Design Boards’ Fund; and other information provided by the board regarding expenditures, revenues, licensing, examinations, complaints, and disciplinary actions. In addition, DLS staff communicated by phone and e-mail with the chairman of the board, board administrative staff, the Deputy Commissioner of Labor, Licensing, and Regulation, and a trustee and members of the legislative committee of the Maryland Chapter,

of the American Society of Landscape Architects (ASLA). The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 2**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

The Practice of Landscape Architecture

The profession of landscape architecture in the United States dates back to the late 1800s. Today, landscape architecture focuses on land analysis, planning, design, management, preservation, and rehabilitation. Landscape architects draw on a number of fields – such as engineering, architecture, art, planning, environmental science, and computerized design – to provide land beautification, environmental impact assessments, grading, and limited drainage system design. Although landscape architecture does not include the design of structures that are normally designed by licensed architects or engineers, landscape architectural services are often provided in coordination with these services on several types of projects. Landscape architects are involved in the planning of such sites as office plazas, public squares, parks, and thoroughfares.

Currently, every state but Vermont and the District of Columbia regulate landscape architecture. Four states have title acts or certification programs that only grant the right to use the title “landscape architect” or “certified landscape architect.” Forty-five states, including Maryland, have practice acts, which specify the type of work landscape architects may perform.

The profession of landscape architecture is represented primarily by ASLA, the Maryland chapter represents more than 370 professionals.

The State Board of Examiners of Landscape Architects

Landscape architects in Maryland became regulated 38 years ago, when the State Board of Examiners of Landscape Architects was created by Chapter 645 of 1971. Originally, the board was created as part of the Department of Natural Resources. The board was transferred to the jurisdiction of the Department of Licensing and Regulation (now the Department of Labor, Licensing, and Regulation or DLLR) in 1974, where it currently operates as part of the Division of Occupational and Professional Licensing. The board is one of five “design boards” under DLLR’s purview.¹ The purpose of SBELA is to safeguard public welfare, health, and property and to promote the public good by regulating persons who practice landscape architecture in the State.

¹The five design boards include the State Board of Architects, State Board of Certified Interior Designers, State Board of Examiners of Landscape Architects, State Board for Professional Engineers, and State Board for Professional Land Surveyors.

The Need for Regulation

The regulation of landscape architecture ensures that consumers of landscape architectural services are protected from unqualified or incompetent practitioners. Regulation was instituted to establish and enforce certain minimum standards of competency and behavior within the industry.

Regulation is still viewed as a safeguard against poor workmanship. Substandard design has the potential to harm consumers, their property, and the environment. The regulation of landscape architects protects the public health, safety, and welfare of consumers who cannot be reasonably expected to know or recognize unsatisfactory or flawed design work. In the absence of regulation, consumers would have difficulty gauging the competency of practitioners and would have little or no recourse for poor workmanship.

Board Membership Potentially Insufficient to Meet Needs

The board consists of five members. Three members must be licensed landscape architects with at least five years of landscape architectural practice within Maryland. The remaining two members must be consumers. All members of the board are appointed by the Governor with the advice and consent of the Senate, and members serve three-year staggered terms. Under statute, at the end of a term a member continues to serve until a successor is appointed; however, in practice once a member's term has ended they do not continue to serve. Currently, there is one vacancy on the board (a consumer member). The board is required to meet at least twice annually, although it generally meets four times each year.

SBELA has the fewest members of any of the design boards. The State Board of Architects and the State Board for Professional Engineers each comprises seven members – five professionals and two consumers each. The State Board of Certified Interior Designers also has seven members – five certified interior designers, one licensed architect who provides interior design services, and one consumer. The State Board for Professional Land Surveyors comprises six members – three professional land surveyors, one licensed property line surveyor, and two consumers.

By law, a quorum for SBELA is a majority of the authorized members (three members). Thus, if more than two board members are unable to attend a meeting, a quorum requirement is not met. Given that there is currently one vacancy on the board, no more than one board member may be absent from a given meeting until that vacancy is filled. The assistant executive director indicated that it can be problematic convening a quorum. **DLLR, in consultation with the board, should consider proposing departmental legislation increasing board membership from five to seven by adding two additional professional members. This would make the composition of the board more closely mirror the makeup of the other design boards and eliminate the potential difficulty in achieving a quorum.**

Shared Staffing Sufficient for Board Needs

The board has four permanent and three contractual staff members available to it. One position, secretary to the board, is shared with the State Board for Professional Land Surveyors. All other positions, including an executive director, an assistant executive director, an investigator, and three contractual employees – an office secretary, an examination coordinator, and an outreach coordinator – are shared among all of the design boards. SBELA receives legal assistance from DLLR and other clerical and licensing assistance from the central staff of the Division of Occupational and Professional Licensing within DLLR. Though staffing is shared, it appears sufficient to meet the administrative needs of the board.

Major Legislative Changes Affecting the Board Since the 2000 Sunset Review

Chapter 73 of 2001 extended the termination date of the board from by 10 years to 2013. As shown in **Exhibit 1**, other major legislative changes since the last evaluation relate to the establishment of the design boards' special fund, the scope of practice for landscape architects, and the definition of design coordination provided by all design board professionals.

Five Design Boards within DLLR Work Cooperatively and Share Special Fund

As mentioned previously, there are five design boards within DLLR, including SBELA. The other boards regulate architects, interior designers, professional engineers, and professional land surveyors. Chapter 227 of 2003 established the State Occupational and Professional Licensing Design Boards' fund as a special, nonlapsing fund in DLLR. One of the major goals of this Act was to cluster the design boards, since they regulate similar types of professions, in order to equalize the licensing fees among the design boards. Through this clustering approach, the Act required the design boards to work more cooperatively together through a Joint Chairs Committee. The creation of the special fund and the formalization of the Joint Chairs Committee were implemented in response to recommendations made by DLS in the 2002 Sunset Evaluation of the State Board of Certified Interior Designers. The special fund will be discussed in greater detail later in this report.

Exhibit 1
Major Legislative Changes Since the 2000 Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2001	73	Extends the termination date of the board by 10 years from July 1, 2003, to July 1, 2013.
	193	Clarifies the scope of practice for professional land surveyors and licensed property line surveyors.
2003	227	Requires the chairs of the five design boards to meet annually to discuss issues of mutual importance and post a joint newsletter on the DLLR web site.
		Establishes a State Occupational and Professional Licensing Design Boards' Fund, a special fund for the collection of license and permit fees from the five design boards.
		Repeals license and permit fees set in statute and instead requires the Secretary of Labor, Licensing, and Regulation to calculate the direct and indirect costs attributable to each of the design boards and to establish fees based on those calculations.
		Caps any fee increase by a design board at no more than 12.5% annually.
2005	129	Lowers the standard for specified disciplinary actions against a landscape architect applicant or licensee by removing the requirement that an individual "knowingly" committed a violation.
		Broadens the scope of violations by making a violation of any regulation the basis for a disciplinary action.
2008	273	Extends the termination date to June 30, 2013, for the special fund that serves all five design boards and related provisions, including the board's fee-setting authority.

Note: The five design boards include State Board of Architects, State Board of Certified Interior Designers, State Board of Examiners of Landscape Architects, State Board for Professional Engineers, and State Board for Professional Land Surveyors.

Source: Laws of Maryland

Chapter 227 also requires that the chairmen of each of the five design boards meet annually to discuss issues of mutual importance and publish a joint newsletter. In practice, the Joint Chairs Committee meets several times a year and has proven to be a useful and efficient way for the design boards to communicate amongst themselves and with DLLR. **The Joint Chairs Committee serves as an effective forum for the design boards to share ideas, work cooperatively, and support the combined interests of the design industry as a whole in the State.**

2001 Legislation Clarified Scope of Practice for Landscape Architects

Over the past decades, the landscape architecture industry has broadened to encompass such specializations as landscape design, site planning, urban planning, regional landscape planning, park and recreation planning, land development planning, ecological planning and design, historic preservation and reclamation, and the social and behavioral aspects of landscape design. To address the broadening scope of what it means to practice landscape architecture, Chapter 193 of 2001 clarifies the scope of practice of landscape architecture under State law. The Act changes the definition of “practice landscape architecture” to mean:

- to provide any service or creative work in the analysis or design of land and natural resources that requires training and experience in the application of the biological, physical, mathematical, and social sciences; and
- to perform design coordination of a project or portion of a project provided that the licensed landscape architect holds a current license issued by the board and has adequate education and experience in, and understanding of, the project or portion of the project being coordinated.

Chapter 193 also specifies that the definition of “practice landscape architecture” includes:

- consultation, research, analysis, assessment, selection, and allocation of land and natural resources;
- development of graphic, written, digital, and other appropriate criteria to govern the planning and design of land development and construction programs;
- in conjunction with site plan preparation, the performance of determining a grade, determining drainage, preparing and designing stormwater drainage systems (within specified limitations).

Furthermore, Chapter 193 also defines “design coordination” for each of the other four design boards as the review and coordination of services provided by individuals licensed or certified by any of the five design boards. An individual licensed or certified by any of the design boards may perform design coordination for a project or portion of a project provided that the

licensed individual holds a current license or certification by their respective board and has adequate experience in, and understanding of, achieving the purpose of the project or portion of the project being coordinated.

Board Operations

The major functions of the board include the issuance of licenses and permits, administration of examinations, investigation of complaints about landscape architects, and enforcement of the Maryland Landscape Architects Act.

Exhibit 2 shows key board performance measures for fiscal 2005 through 2009. During that five-year period, the board processed approximately 3,100 applications, averaging around 600 each year, and directly administered a total of 433 examinations, or about 87 each year. Over the same period, the board issued over 2,300 licenses and permits. The board advises that over this period, it did not revoke, deny, or suspend any licenses, nor did it hold any disciplinary hearings.

Exhibit 2
Board Performance Measures
Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>	<u>Average</u>
Applications Processed	631	642	563	581	635	3,052	610
Exams Administered	91	80	84	98	80	433	87
Licenses/Permits Issued	437	448	436	515	512	2,348	470
Board Meetings Held	4	4	3	5	4	20	4

Note: Exams administered only includes a count of those exams directly administered by the board.
Source: Board of Examiners of Landscape Architects

Board Licenses Landscape Architects and Issues Permits to Corporations

The primary function of the board is to examine and license individuals who wish to practice landscape architecture in the State. The board also grants permits to corporations or partnerships practicing landscape architecture in Maryland. In addition to allowing businesses to practice landscape architecture, corporate permits allow firms to use the term “landscape architecture: in any titles or advertisements that represent the firm.

To become a licensed landscape architect in Maryland, applicants must first meet educational and experience requirements to the satisfaction of the board. All applicants must then pass a nationally administered examination, the Landscape Architect Registration Examination (LARE). Statute also requires that all applicants be at least 18 years of age.

A corporation or partnership must hold a permit issued by the board before it may operate a business through which landscape architecture is practiced. To qualify for such a permit, corporations or partnerships must have at least one officer or partner who is a licensed landscape architect. If the corporation or partnership meets the requirements and submits an application fee to the board, the board issues a permit authorizing the holder to:

- operate a business through which a licensed landscape architect practices landscape architecture; and
- represent to the public that the business provides the services of a licensed landscape architect.

Reciprocity

The board's examination and qualification processes are facilitated by its membership in the Council of Landscape Architecture Registration Boards (CLARB). The council, a national coalition of state landscape architectural boards, formulates and grades the professional exam, directly administers parts of the exam, and sets uniform national standards to facilitate reciprocity among states.

The board may waive requirements for an applicant who is licensed to practice landscape architecture in another state. Such reciprocity requires that the applicant pay an application fee and provide evidence that, at the time the applicant was licensed in the other state, the applicant was required to pass an examination and meet qualifications that were substantially equivalent to the examination and qualifications in Maryland.

Number of Licensees Has Increased Substantially Since 2000

The board currently issues three different types of licenses or permits to practice landscape architecture in the State: (1) a landscape architect license; (2) a partnership permit; and (3) a corporation permit. While permits are issued to both partnerships and corporations that provide or offer to provide landscape architectural services, the permit type is uniform and is issued to business entities. Licenses and permits are valid for two years and can be renewed online at DLLR's web site.

Exhibit 3 compares the number of licenses and permits issued in fiscal 2000 to those issued in fiscal 2009. As of June 2009, there were 907 licensed landscape architects, 74 permitted corporations, and 4 permitted partnerships – this represents an increase of 52% in the number of licensed landscape architects and a 32% increase in the number of permitted corporations since the

2000 preliminary sunset evaluation. In that year, there were 598 licensed landscape architects, 56 permitted corporations, and 9 permitted partnerships. DLLR advises that such an increase is not aberrant when compared to the other design boards. According to the department, the design boards have seen an increase in the number of applications for reciprocal licenses in recent years, as individuals and corporations are conducting more business across state borders. While the percentage of permitted partnerships has decreased quite significantly, the absolute number of permitted partnerships is so low that such a fluctuation is relatively minor.

Exhibit 3
Number of Licenses and Permits Held
Fiscal 2000 and 2009

	<u>FY 2000</u>	<u>FY 2009</u>	<u>Percent Change</u>
Individual Licenses	598	907	51.7%
Corporate Permits	56	74	32.1%
Partnership Permits	9	4	-55.6%
Total	663	985	48.6%

Source: State Board of Examiners of Landscape Architects; Department of Labor, Licensing, and Regulation

Board Should Consider Expanding Academic Pathway to Licensure

LARE is a uniform national test sanctioned by the CLARB and administered nationally on dates established by CLARB. It consists of five sections: (A) project and construction administration; (B) inventory, analysis, and program development; (C) site design; (D) design and construction documentation; and (E) grading, drainage, and stormwater management. Generally, examinees do not pass all sections of LARE when they first take it.

Beginning in 2004, the three multiple choice sections (A, B, and D) of LARE are administered directly by CLARB twice each year (March and September) using a computer-based test administration system. The two nonmultiple choice sections (C and E) are administered by the board twice each year (June and December). Thus, the fees for sections A, B, and D are collected by CLARB from the examinee, while the fees for sections C and E are paid directly to the board. The examination fees that are collected by the board are deposited into a separate special fund. The money in this special examination fund is used to cover all costs associated with administering the examination – renting a testing location, purchasing the exams from CLARB, and other costs associated with proctoring the exam. According to DLLR, any money unused for any particular examination cycle reverts to the general fund.

Applicants can qualify to sit for LARE in two ways – the academic option and the nonacademic option. Under the academic option, applicants must show that they have graduated from an approved college or school of landscape architecture and have practical work experience in landscape architecture that is satisfactory to the board. In addition, the applicant’s education and experience must total at least six years. Individuals without formal educational training in landscape architecture may apply to take the professional exam under the nonacademic option. Under this option, applicants must demonstrate that they have eight years of practical work experience that is satisfactory to the board. Such experience may be gained by working under a licensed landscape architect, as long as the individual does not have “responsible” charge of the project. The board may also give credit toward the eight-year experience requirement for academic study at an approved college or school of landscape architecture.

There has been discussion in recent board meetings to allow individuals who possess a degree related to landscape architecture to sit for LARE. The chairman of the board indicated that the board was in preliminary discussions about this issue. Moreover, one member of the legislative committee of ASLA-MD indicated that this topic is under consideration nationally because there is a growing demand for landscape architects to perform duties that are not, in the strictest sense, landscape architecture (*e.g.*, planning and environmental science). **Therefore, the board should continue to explore the option of allowing individuals who possess degrees related to landscape architecture to sit for LARE under the academic option.**

Board Receives Few Complaints Against Landscape Architects

Enforcement of the State’s landscape architecture laws, rules, and regulations is a cooperative effort between SBELA and DLLR. Any consumer may file a complaint with the board for alleged violations committed by a licensee or an applicant for a license. Filed complaints are reviewed by a Complaint Committee comprising two members of the board (one professional member and one consumer member), which then makes a recommendation to the board. If the board believes that the licensee or applicant may have violated the law or regulations, the board refers the complaint to the Assistant Attorney General for review for possible administrative charges. After a hearing is held, the board issues a final order, which may be appealed to the circuit court. Any violation of the Maryland Landscape Architects Act is subject to criminal and civil penalties.

The board may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

- fraudulently or deceptively obtains or attempts to obtain a license for himself or someone else;
- fraudulently or deceptively uses a license;
- is convicted of a felony or a misdemeanor that is directly related to the fitness and qualification of him to practice landscape architecture;

- is guilty of gross negligence, incompetence, or misconduct while practicing landscape architecture;
- has had a license to practice landscape architecture in another state revoked or suspended by the other state for a cause that would justify revocation or suspension under Maryland law; or
- violates any regulation adopted by the board or provision of the statute governing landscape architecture.

Since 2005, the board has taken a total of four disciplinary actions against licensees. This is consistent with the low number of complaints the board receives (seven since 2005). Of the four disciplinary actions taken by the board, each resulted in a monetary fine ranging from \$250 to \$1,000.

Board Does Not Have Continuing Education Requirements

Of the five design boards, three (State Board of Architects, State Board of Certified Interior Designers, and State Board for Professional Land Surveyors) have a continuing education requirement as part of their license renewal process. In contrast, SBELA (and the State Board for Professional Engineers) does not have continuing education requirements. A number of other states require landscape architects to fulfill a continuing education requirement as a condition for continued licensing, including Delaware, Pennsylvania, and West Virginia.

Available Resources Cover Board Operations

A pilot program established by Chapter 227 of 2003 created a State Occupational and Professional Licensing Design Boards' Fund to ensure that costs for the five design boards, in the aggregate, were covered by their revenues, in the aggregate. The fund and fee-setting authority were set to terminate on June 30, 2008; however, Chapter 273 of 2008 extended the termination date for the special fund to June 30, 2013. Prior to the enactment of Chapter 227, the fees for the board were set in statute, the revenues were credited to the general fund, and the Governor included a general fund allowance for the board within the budget of DLLR.

Since 2003, the Secretary of Labor, Licensing, and Regulation has been charged with annually calculating the direct and indirect costs attributable to each of the design boards and providing this information to the boards. With consent of the boards, the Secretary is authorized to average the direct and indirect costs among the boards in order to establish fees that more equitably distribute the costs associated with the operation of each board across all five boards. With these calculations in mind, SBELA is charged with setting reasonable fees for its services by regulation. The fees charged are required to be set so as to produce funds to approximate the cost of maintaining the boards and may not be increased more than 12.5% over the previous year's fees.

In 2007, the design boards determined that the fund balance merited a fee reduction, and the across-the-board license fee of \$78 was reduced to the current fee of \$68. Prior to the enactment of the special fund, SBELA charged a \$100 fee for an original license and \$200 fee for biennial renewal. Appendix 2 provides the board's current fee schedule.

As shown in Exhibit 4, board expenditures continue to exceed revenues attributable to it. As one of the smaller design boards, SBELA is unable to fully fund all of its expenditures from its own revenues, and thus must rely on fee revenues from the larger design professions to subsidize its operations. As such, when the board's revenues are combined with the revenues of the other design boards, it does not actually operate with a deficit. This was the legislative intent of Chapter 227, which created the special fund. As a whole, the design boards' special fund ended fiscal 2009 with a surplus of \$679,991.

Exhibit 4
Fiscal History of the State Board of Examiners of Landscape Architects
Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Revenues	\$43,030	\$46,890	\$50,099	\$50,124	\$62,949
Total Costs	53,484	101,178	95,357	94,096	99,990
Direct Costs	30,408	1,293	65,497	71,685	70,046
Direct Legal Costs	0	16,228	11,145	9,796	18,628
Indirect Costs	14,802	70,334	6,530	7,852	6,713
DLLR Indirect Costs	8,274	13,323	12,185	4,763	4,603
Surplus/(Deficit)	(\$10,454)	(\$54,288)	(\$45,258)	(\$43,972)	(\$37,041)

Source: Department of Labor, Licensing, and Regulations

The board's direct costs include salaries and benefits for staff, office supplies, and legal fees from the Office of the Attorney General within DLLR. The board's indirect costs are incurred at the departmental level, and include costs for activities and services related to budget, personnel, general services, and the Office of the Secretary. Indirect costs are allocated to each board by the Secretary's office using a federal cost allocation formula. In addition, the Secretary's office generates the occupational and professional (O&P) cost allocation for each board in DLLR, which reflects the costs incurred at the level of the Division of Occupational and Professional Licensing, including central licensing, the telephone center, the commissioner's office, and information technology costs. The O&P cost allocation is determined by a formula that, among other things, considers the number of licensees and the number of employees who support each board. The allocated costs are charged against the operations of the board.

Revenues and expenditures for the board have been relatively stable since fiscal 2007. Between fiscal 2005 and 2007, however, there was significant variation in accounting for direct costs and indirect costs. DLLR advises that there were issues in the board's budget for these years because the department was implementing new accounting standards and bringing on a new accounting team.

Recommendations

The State Board of Examiners of Landscape Architects is fulfilling its statutory requirements to the best of its abilities. **The Department of Legislative Services recommends that the Legislative Policy Committee waive the board from full evaluation and that legislation be enacted to extend the board's termination date by 11 years to July 1, 2024.**

After discussions with the current board chairman, the assistant executive director, and with representatives from the ASLA-MD, several issues merit further consideration by both the board and DLLR.

DLS recommends that SBELA, in conjunction with DLLR, submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2011. The report should include an update on:

- continuing education credits for landscape architects; and
- the possibility of allowing individuals with a degree related to landscape architecture to qualify to sit for LARE under the academic option.

Board Should Consider Requiring Continuing Education Credits

As a result of technological advances and the further development of the profession of landscape architecture, it is important that members of the profession acquire and improve work-related skills. Of the five design boards, the State Board of Architects, the State Board of Certified Interior Designers, and the State Board for Professional Land Surveyors each have a continuing education requirement. In addition, a number of states require landscape architects to fulfill a continuing education requirement as a condition for continued licensing, including Delaware, Pennsylvania, and West Virginia. **The board should consider instituting a continuing education requirement, and report to the appropriate committees on the outcome of these discussions.**

Board Should Consider Expanding the Academic Option to Sit for LARE

As described earlier, there are two ways that an applicant may qualify to sit for LARE – the academic option and the nonacademic option. Only those individuals who possess a degree in landscape architecture may sit for the examination under the academic option. The board has discussed expanding the academic option to those who possess a related degree; however, this would require a statutory change. **The board should report to the appropriate committees on the result of its further discussions to expand the academic option to those individuals who possess a degree that is related to landscape architecture.**

Appendix 1. Schedule of Fees for the State Board of Examiners of Landscape Architects

License and Permit Fees

<u>Type of License/Permit</u>	<u>Fee</u>
Landscape Architect License – New and Biennial Renewal	\$68
Permit (Business Entity) – New and Biennial Renewal	100
Reinstatement of License	100
Reciprocal License Application Fee	50
One-time Application Fee	35

Landscape Architect Registration Examination (LARE) Fees

<u>Section of Examination</u>	<u>Exam Fee</u>	<u>Admin. Fee</u>	<u>Total Fees</u>
Section A – Project and Construction Administration	\$90	\$65	\$155
Section B – Inventory, Analysis, and Program Dev.	120	70	190
Section C – Site Design	276		276
Section D – Design and Construction Documentation	200	80	280
Section E – Grading, Drainage, and Stormwater Mgt.	270		270
Total Examination Fees	\$956	\$215	\$1,171

Notes: The examination fees for Sections A, B, and D reflect the fees for the September 2009 examination, while the examination fees for Sections C and E reflect the fees for the December 2009 examination. Sections A, B, and D are administered directly by CLARB and the fees for those sections are paid directly to CLARB by the examinee. Sections C and E are administered by the board and examination fees for these sections are paid to the board. There is also a \$40 standard review fee or a \$120 red-line review fee for Sections C and E that are payable to CLARB. The board also charges a \$60 testing service fee for sections C and E, regardless if the examinee takes one or both parts.

Source: Code of Maryland Regulations, 09.28.03.03

**Appendix 2. Written Comments of the
State Board of Examiners of Landscape Architects**

December 1, 2009

Ms. Jennifer B. Chasse
Senior Policy Analyst
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401-1991

Dear Ms. Chasse:

The Department of Labor, Licensing and Regulation (DLLR) has received the draft report of the preliminary evaluation of the State Board of Examiners of Landscape Architects (Board). We appreciate the time and attention that was spent reviewing the Board's operations.

We are pleased that the Report found that the Board is fulfilling its statutory duties to the best of its abilities and recommended that the Legislative Policy Committee waive the Board's full evaluation. Furthermore, we are pleased that legislation will be enacted to extend the board's termination date by 10 years to July 1, 2023.

After review of the Report, we have found the following factual errors/discrepancies:

On *Page 8*, in the paragraph titled "Reciprocity" it should be noted that CLARB is a national coalition of state landscape architectural, rather than architectural, boards.

On *Page 8*, in the first paragraph titled "Number of Licensees Has Increased Substantially Since 2000," it should be clarified that while permits are issued to both partnerships and corporations that provide or offer to provide landscape architectural services, the permit type is uniform and is issued to business entities, as noted on *Appendix I*.

On *Page 9*, the second word in the last sentence of the paragraph on the top of the page should be "partnerships," not "corporations."

We also note that the Report states that a number of other states require landscape architects to fulfill a continuing education requirement as a condition for continued licensing and recommends that the Board consider requiring continuing education as part of the license renewal process. Also, the Report recommends that DLLR and the Board consider submitting legislation to allow individuals with a degree related to landscape architecture to qualify to sit for the Landscape Architect Registration Examination. Finally, the Report recommends that DLLR, in consultation with the Board, consider proposing Departmental legislation increasing Board membership from five to seven members by adding two professional members in order to both mirror the composition of other design boards and eliminate the potential difficulty in achieving a quorum. As requested, DLLR will submit a follow-up report to the Legislative Policy Committee addressing these issues on or before the requested date of October 1, 2011.

We would like to express our appreciation for the candor and professionalism provided by your office in conducting this review. We look forward to working with the legislative staff addressing issues that were raised in the Report as well as future issues that may arise. If your office should require additional information or a clarification as to the corrections, please do not hesitate to contact me at (410) 230-6262.

Sincerely,

Jay Hutchins
Executive Director
Maryland Board of Land Surveyors

Cc: Secretary Alex Sanchez
Commissioner Stan Botts
Deputy Commissioner Harry Loleas
Board of Land Surveyors President Charles Maloy

Preliminary Evaluation of the Maryland Home Improvement Commission

Recommendation: Full Evaluation

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The Maryland Home Improvement Commission (MHIC) last underwent a full evaluation as part of sunset review in 1999. The board was authorized for another 10 years, with a termination date of October 1, 2012.

In conducting this preliminary evaluation, DLS staff attended commission meetings and interviewed commission members, commission staff, and the executive director of the Maryland Home Improvement Contractors Association. Staff also reviewed relevant statutes, regulations, and meeting minutes; and analyzed licensing, complaint, and budgetary data.

MHIC reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 5**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in commission comments may not reflect the final version of the report.

The Home Improvement Industry in Maryland

Statute defines home improvement to be the addition to or alteration, repair, or replacement of a building used as a residence. The definition explicitly excludes the construction of a new home or activities that fall under other occupational licensing categories such as plumbing. The definition is also somewhat fluid as standards for homes and their amenities change over time. (The complete statutory definition of home improvement is

included in **Appendix 1**.) Home improvements range in size and complexity and are priced accordingly, with large projects costing in the hundreds of thousands of dollars. The quality of workmanship and overall performance of a home improvement worker can evoke strong emotions on the part of homeowners. Complaints may be aggravated by homeowners' high personal expectations, which may not coincide with minimum industry standards.

The home improvement industry is large and loosely organized, with more than 80 categories of work that require licensure (see Appendix 1). Many contractors do not specialize in specific home improvement trades; instead they provide multiple services. Because home improvement contractors are licensed by the State, these practitioners may be perceived as competent at performing the tasks for which they are hired; however, the required examination for licensure in Maryland does not include a skills-based assessment. Instead the examination tests the applicant's regulatory understanding and business management aptitude. Maryland home improvement law and regulations require at least two years of "trade experience." Related education or business management experience may be substituted for one year of trade experience. Maryland does not have a tiered licensing structure for home improvement contractors based on experience or the value of projects undertaken.

Some states, notably Virginia, take a different regulatory approach. Virginia offers three tiers of licenses, each based on the value of projects undertaken by a contractor. Virginia's Class A license is required for a contractor to take a project valued at \$70,000 or more, or if the total value of the work in a 12-month period is greater than \$500,000. Class B licenses are valid for contractor's that have a single project valued between \$7,500 and \$70,000, or if the total value of work in a 12-month period is between \$150,000 and \$500,000. Class C licenses are valid if a contractor's value of work is less than \$150,000 per year. For a contractor's license, MHIC requires proof of financial solvency and proof of general liability insurance but allows licensees to use their discretion regarding the type, value, and complexity of projects undertaken. Regulation of this industry is difficult because some licensees may contract only for small projects, and some licensees – who work for or own large home improvement businesses – may take on expensive projects like home remodeling or other major renovations. Regardless, a Maryland contractor's license allows an individual to undertake home improvement projects large and small.

The home improvement industry experienced explosive growth over the last decade, which can be attributed in part to the rise in home values. During this time, an "equity boom" prompted many homeowners to borrow heavily against their homes to finance home improvement projects. A result of this growth was many new entrants into the industry, both licensed and unlicensed, with some operating almost entirely out of their work trucks. Many home improvement contractors operate well-capitalized and managed businesses; other contractors, particularly during the current economic downturn, operate on the margins of solvency. Unlicensed contractors, in particular, can enter the home improvement industry with very little capital. For example, with a vehicle, paint brushes, and business cards printed on a home computer, an individual can work as a home improvement contractor. The commission's subcontractor and salesperson licenses do not have a financial solvency requirement.

The Maryland Home Improvement Commission

MHIC was created by Chapter 133 of 1962. The commission is responsible for protecting the public in home improvement transactions. Specifically, the commission;

- licenses home improvement contractors, subcontractors, and salespersons;
- requires an examination for original licensees to test their business acumen;
- processes complaints, files charges against unlicensed workers, and processes claims against licensed contractors; and
- administers the Home Improvement Guaranty Fund for the purpose of providing limited restitution – a maximum of \$20,000 per claim and \$100,000 total per contractor – to consumers who file valid claims against licensed home improvement contractors with the commission.

The commission was placed under the authority of the Department of Labor, Licensing, and Regulation (DLLR, formally the Department of Licensing and Regulation) in 1970. The commission currently operates under the provisions of Title 8 of the Business Regulation Article.

The Governor appoints all seven commission members, with the advice of the Secretary of Labor, Licensing, and Regulation. The Governor may remove a member for misconduct or incompetence. The chairman is appointed by the Governor and serves at the pleasure of the Secretary. The members of the commission include three industry representatives, three consumer representatives, and one banking and finance representative. Commission members serve staggered four-year terms. Current commission members are listed in **Appendix 2**.

The commission has 17 staff to support its operations. Staff responsibilities are divided into three areas: investigations, licensing, and complaint and claims processing. Most staff resources are concentrated in the investigation unit. An executive director and assistant executive director manage the staff. The executive director is appointed by the Secretary of Labor, Licensing, and Regulation and serves at the pleasure of the Secretary. The executive director position was instituted in 1978, and the current executive director has held this position since February 2008. In addition to the executive director and assistant executive director, a licensing supervisor and two clerical staff provide support to the commission's licensees. The commission also receives support from the division's Central Licensing Unit. Currently, the commission has seven full-time investigators; investigators must have knowledge of the laws and regulations governing the work of home improvement contractors, as well as a practical understanding of the work performed by licensees. One investigator is bilingual in English and Spanish.

The Guaranty Fund: Restitution for a Homeowner's Loss

The Home Improvement Guaranty Fund was established to compensate a homeowner for the "actual loss" created by a licensed home improvement contractor. Losses due to actions of

unlicensed individuals are not eligible for restitutions from the Guaranty Fund. "Actual loss" is defined as the costs of restoration, repair, replacement, or completion that arise from an unworkman-like, inadequate, or incomplete home improvement. A homeowner may receive up to \$20,000 in compensation from the Guaranty Fund per claim. If the total amount of awards on behalf of one contractor exceeds \$100,000, then the fund limits the total awards to \$100,000. When numerous claims are approved for the acts or omissions of a contractor and total more than \$100,000, the commission must divide the awards among injured homeowners. If the contractor later reimburses the fund, the commission pays additional amounts to the homeowners in the amount that the contractor has reimbursed the fund until each homeowner is reimbursed in full according to the awards.

Contractors must repay the fund for claims awarded against them within 30 days or their licenses are suspended until the debt is settled. Home improvement law prevents an individual with a suspended license from operating in the industry. However, the commission reports that some individuals continue to operate using the license of a friend or relative. Although this is unlawful, it is difficult to monitor. If the commission is unable to collect a repayment from a contractor, the debt is forwarded to the State's Central Collection Unit. The commission advises that licensees often do not repay the Guaranty Fund and collection is often unsuccessful.

A claim may not be brought against the Guaranty Fund after three years from the date the homeowner discovered, or should have discovered, the loss or damage caused by the licensed contractor. Actual loss does not include attorney's fees, personal injury, court costs, interest, consequential damages, or punitive damages. No action can be taken on a Guaranty Fund claim if there is (1) a pending civil lawsuit until there is a final judgment in the civil case or, (2) on a claim involving a contract that contains a mandatory arbitration clause until the dispute has been submitted to arbitration and there is a final arbitration award. The homeowner carries the burden of proof in all Guaranty Fund claims.

The Guaranty Fund is maintained through fees charged to licensed home improvement contractors at the time of their original licensure and when they renew their licenses (subcontractors and salespersons do not pay this fee). Currently, new licensees pay \$100; renewal licensees pay \$75 every two years. The commission may assess each contractor up to \$150 in a calendar year if the fund balance is likely to drop below the statutory minimum of \$250,000.

Major Legislative Changes Since Last Sunset Review

Since the 1999 evaluation numerous statutory changes affecting the commission have been enacted, two of which expanded the commission's purview. Chapter 537 of 2008 required licensure of firms that provide mold remediation services at residential properties; Chapter 537 goes into effect on June 1, 2010. Chapter 119 of 2008 modified the definition of "home improvement" to include shore erosion control projects on residential property; this change strengthens oversight of qualifying residential projects by requiring that the commission be

notified of alleged violations of the State's Critical Area Law. **Exhibit 1** summarizes legislative changes affecting the board since the 1999 full evaluation.

Exhibit 1
Major Legislative Changes Since the 1999 Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	144	Extends the termination date for the Maryland Home Improvement Commission to October 1, 2012. Increases the amount that an individual may claim from the Home Improvement Guaranty Fund for acts or omissions by one contractor from \$10,000 to \$15,000.
	616	Alters the amount of approved claims against a home improvement contractor that must be submitted before the commission may pay the approved claims proportionately from the Home Improvement Guaranty Fund. The amount is increased from \$50,000 to \$100,000.
2002	176	Requires licensed home improvement contractors to maintain at least \$50,000 of general liability insurance.
2004	244	Requires the commission to provide written notification to an applicant for a license on whether the application has been approved or denied within 30 days of the first meeting of the commission following submission of the completed application.
2006	90	Clarifies that an administrative hearing and adjudication by the commission is not a prerequisite to criminal prosecution of a home improvement contractor, subcontractor, or salesperson for acting without an appropriate license.
2008	119	Modifies the definition of "home improvement" to include a shore erosion control project for a residential property.
	272	Raises the threshold below which the commission may pay a claim against the Home Improvement Guaranty Fund without a hearing from \$2,500 to \$5,000. Raises the limit on an award to a single claimant for an act or omission of a contractor from \$15,000 to \$20,000.
	421	Requires an application form for a home improvement license to include the applicant's Maryland Department of the Environment lead paint abatement accreditation number and expiration date, if appropriate.
	537	Establishes licensure of mold remediation companies and firms by the commission, effective June 1, 2010. These requirements do not apply to mold remediation on nonresidential property.

Source: Laws of Maryland

Number of Licensees at All-time High, but Recession Depresses Growth

To obtain a contractor's license an individual must submit the required application, pass the licensing examination, pay the \$100 Guaranty Fund assessment, and pay a \$225 licensing fee per place of business. Subcontractors and salespersons must submit applications, pass the licensing exam, and pay a \$125 or \$75 licensing fee, respectively; these individuals are not required to pay a Guarantee Fund assessment. Applicants for a contractor's license must also provide a credit report, proof of \$50,000 in liability insurance, and a personal financial statement. A licensed subcontractor may only work for a licensed contractor; a salesman may not work for more than two contractors at once. License fees were last raised in 1991; the fee for each type of license increased by \$50. Commission fees, when factoring in the Guaranty Fund assessment for a contractor's license, are among the highest of the division's boards and commissions.

Exhibit 2 shows the number of commission licensees for each year between fiscal 2005 and 2009. The number of licensees increased gradually between fiscal 2005 and 2008 but leveled off in fiscal 2009. The licensing trends reflect the growth in the home improvement industry that occurred prior to 2008 and the industry's decline, largely due to the economic recession. The general increase in the number of licensees in recent years may also be attributed, in some part, to the commission's public awareness efforts that encourage unlicensed practitioners to become licensed, and inform consumers of home improvement scams and the benefits of hiring a licensed contractor. A licensee may choose to place a license on inactive status if he or she discontinues home improvement work but plans to resume such work in the future. The commission charges a \$50 fee to shift a license to inactive status; the licensee must renew the license to keep it valid but avoids repeating the application process. The number of licensees on inactive status has increased by nearly 100 each year since 2007 after having remained fairly stable.

Exhibit 2
Number of Licensees by Type of License

	<u>June 2005</u>	<u>June 2006</u>	<u>June 2007</u>	<u>June 2008</u>	<u>June 2009</u>
Contractor	14,219	14,526	14,814	15,979	16,016
Subcontractor	570	586	616	672	668
Salesman	1,932	1,915	2,043	2,276	2,167
Inactive Licenses	562	619	625	723	819
Total Valid Licenses	17,283	17,646	18,098	19,650	19,670

Source: Maryland Home Improvement Commission

Enforcement Activity

Hearing Processes Vary for Complaints Against Licensed and Unlicensed Contractors

There are two distinct processes for complaints against home improvement contractors, one for complaints against licensed contractors and one for complaints against unlicensed contractors. In either instance, the commission investigates the complaint.

For a licensed contractor, if informal attempts at resolution are unsuccessful, attempts to engage the parties in alternative dispute resolution fail, and the contractor refuses to correct the problem, a Guaranty Fund hearing is scheduled. The commission refers all claims against the Guaranty Fund in excess of \$5,000 to the Office of Administrative Hearings (OAH), and an administrative law judge issues a recommended decision within 90 days of the hearing date. The commission panel, which consists of two commission members, meets monthly to review OAH's recommended decisions and small claims against the Guaranty Fund (less than \$5,000). The panel then issues the commission's proposed order. If neither party files an exception, the order becomes final. However, if an exception is filed, the panel conducts an argument hearing and makes a final recommendation, which may be appealed to the circuit court. Homeowners may instead take the case to District Court to seek a monetary award against the contractor, but they cannot file a claim simultaneously for repayment from the Guaranty Fund. The commission advises that its investigators' initial response to a complaint is to resolve the issue by meeting with the aggrieved parties and informally negotiating a resolution, thereby avoiding further commission involvement. Such a resolution is possible in many cases and, for various reasons, not feasible in others.

Complaints filed against unlicensed home improvement contractors also go through an investigative process. After the contractor is determined to be unlicensed, either criminal charges are filed in District Court, regulatory charges are sent to the Office of the Attorney General (OAG) for pre-charge review, or in the case of a first offense, the contractor is given the opportunity to make restitution. Once regulatory charges are reviewed by OAG, heard in OAH, and reviewed by the commission panel, the affected parties are advised of the decision. If an exception is filed, the panel conducts an argument hearing to make a final decision, which may be appealed to the circuit court. Home improvement workers who agree to make restitution are issued a cease and desist letter before the file is closed, pending their licensure.

State law establishes that a contractor, subcontractor, or salesperson who operates without a license is guilty of a misdemeanor and is subject to a fine of \$1,000, imprisonment up to 30 days, or both. On a subsequent conviction, unlicensed practitioners are subject to a fine of \$5,000, imprisonment up to two years, or both. The commission does not estimate the amount of unlicensed work being conducted but advises that unlicensed contractors are pervasive and present licensed contractors with unfair competition. Unlicensed contractors may not be bonded or insured, do not pay licensing or Guaranty Fund fees, and may not have properly classified employees. Because of these and other short cuts, unlicensed contractors have an unfair

advantage when bidding on projects. Meanwhile, licensed contractors pay the costs of the commission, which also investigates complaints against unlicensed contractors.

Under State law, counties and municipalities have limited authority to enforce the licensing requirement. However, local governments may regulate the character, performance, or quality of a home improvement by having a system of inspections and permits. Montgomery County's Office of Consumer Protection has adopted a policy to uphold the licensing requirement. If the county receives a complaint against an unlicensed contractor it can either issue a \$500 civil fine for a deceptive trade practice or work with the commission and local police to file criminal charges. The civil fine carries no jail time and, depending on the circumstances, the District Court judge may reduce or uphold the fine. The county also reviews home improvement advertisements in local papers to check for unlicensed contractors.

The commission advises that licensees often report misleading advertisements, work vehicles without a posted MHIC license number, or suspicious work sites. Often these individuals are disappointed because they expect the commission to be able to immediately arrest the violator and stop that individual from advertising or working without a license. The commission used to employ more investigators, which allowed at least one investigator to dedicate a portion of his or her time to review home improvement advertisements to identify unlicensed contractors or scams. Due to budget and operational constraints, the commission cannot assign investigators to that kind of work.

Complaints Have Declined for Three Consecutive Years

Complaint and claim data between fiscal 2004 and 2009 are provided in **Exhibit 3**. The exhibit also displays the number of contested cases and appeals that arose from those filings. The number decreased from 2,436 in fiscal 2008 to 1,838 in fiscal 2009 – a nearly 25% reduction. Although many factors can influence the number of complaints received by the commission, it is likely that the decline in complaints is related to the reduced activity in the industry due to the recession. Complaints were highest between fiscal 2004 and 2007, when home improvement activity in the State was booming. Complaints against unlicensed contractors also rose between fiscal 2004 and 2007. In fiscal 2005 the proportion of complaints regarding unlicensed practitioners increased to 41% from 36% in the previous year. By fiscal 2006 the proportion had increased to 45%. DLLR advises that during the 1990s, the proportion of complaints against unlicensed contractors was about 25%, but it is not clear why this change has occurred.

Exhibit 3
Complaint Data for the Maryland Home Improvement Commission
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Complaints Received	3,220	3,139	3,030	2,858	2,436	1,838
Complaints Against Unlicensed Contractors	1,171	1,297	1,353	1,248	1,013	778
Percentage of Total Complaints	36%	41%	45%	44%	42%	42%
Guaranty Fund Claims Received	507	518	465	494	402	351
Cases Sent to OAH	311	373	222	304	208	298
Appeals from MHIC to Circuit Court	14	21	22	11	12	17
Appeals from Circuit Court to Court of Special Appeals	1	1	2	2	0	1

Source: Department of Labor, Licensing, and Regulation

Commission Plans Expanded Online Services

Since the last review in 1999, the commission has taken steps to improve its online services. The commission's web page offers a variety of services to licensees, prospective licensees, consumers, and other interested parties. Information is available about the application process, requirements for licensure, fees, and laws and regulations. Consumers can search for active licensees by personal or trade name, city, or zip code; access the commission's complaint form; or review meeting minutes online. Licensees can access a variety of forms and renew their licenses online. In addition, the commission uses its web site to provide access to news stories about issues related to its work, such as home improvement scams, and links to other organizations of interest to consumers or practitioners.

In the coming years, the commission hopes to further improve its online services in several ways. The commission's database software is about 20 years old and will be upgraded in the next 12 to 24 months. Once this upgrade is complete, the commission expects to be able to allow consumers to file complaints online. Although the complaint form is currently available on the web site, complainants must print it, fill it out by hand, and mail it to the commission. The commission has two full-time staff members dedicated to entering complaint data. Online

complaint filing should conserve scarce administrative resources by having the complainants enter the names and contact information for both parties directly into the commission's database and automatically generating the acknowledgement letter to the complainant. This task is currently performed by two complaint secretaries, who also generate the commission's form letters. The commission also expects the upgrade to give complainants the ability to check the status of their complaints online. Currently, the commission receives a high volume of inquiries from individuals who want to know how their complaint is progressing. This requires a significant dedication of staff time that could be reduced with improved online services.

Funding

The Commission Operates with an Annual Funding Gap

The commission is general funded and all revenue collected by the commission is paid into the State's general fund. The commission's primary revenue source is fees paid by individuals obtaining a license or renewing an existing license. Licenses are issued for staggered two-year terms. License fees for the three types of licenses issued by the commission are set in statute: \$225 for a contractor's license (per place of business), \$125 for a subcontractor's license, and \$75 for a salesperson's license. Individuals obtaining or renewing a contractor's license also must pay a Guaranty Fund assessment to ensure the solvency of the fund; currently this assessment is \$100 for a new licensee and \$75 for a renewing licensee. As shown in **Exhibit 4**, the staggered system results in a relatively consistent level of revenue each year.

Commission expenditures are divided into four types: direct costs, indirect division costs, indirect departmental costs, and legal costs. Direct costs are largely staff salaries and contractual expenses necessary to carry out the commission's core functions. Indirect division costs include the costs for services provided to the commission by the Division of Occupational and Professional Licensing within DLLR, including the commission's telephone expenses, the use of the central licensing services, and the salaries of certain division staff, including the commissioner and deputy commissioner. Indirect departmental costs include expenses related to the commission incurred by the Office of the Secretary and the department's budget, personnel, and general services offices. Indirect division and departmental costs are allocated to each board or commission by a formula based on the agency's usage of these services. Finally, legal expenditures reflect the amount of time the department's Assistant Attorneys General devote to work for the commission. The commission incurs litigation costs and expenses related to the need for legal counsel.

DLLR advises that legal expenditures were not calculated for general fund boards and commissions prior to fiscal 2009. In past years, legal expenditures were calculated only for special fund boards in order to accurately account for their costs (as they must be self sufficient). These costs were included to more accurately depict the costs of each board or commission and make the expenditure reports consistent with those of the special fund boards.

Exhibit 4
Fiscal History of the Home Improvement Commission
Fiscal 2004-2009
(\$ in Thousands)

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Revenues	\$1,673	\$2,066	\$1,855	\$2,175	\$1,907	\$2,244
Direct Costs	\$2,606	\$2,493	\$2,155	\$2,701	\$2,421	\$2,470
Legal Expenditures	\$0	\$0	\$0	\$0	\$0	\$444
O&P Cost Allocation	\$187	\$321	\$216	\$314	\$283	\$234
DLLR Indirect Costs	\$0	\$213	\$203	\$166	\$156	\$161
Total Costs	\$2,793	\$3,027	\$2,575	\$3,181	\$2,861	\$3,309
Surplus/Gap	(\$934)	(\$961)	(\$720)	(\$1,006)	(\$954)	(\$1,065)

O&P = Occupational and Professional Licensing

Source: Department of Labor, Licensing, and Regulation, Maryland Home Improvement Commission

The fiscal 2010 budget includes 17 authorized positions for the commission. Over the last 18 months, however, the commission has lost two investigator positions and the complaint supervisor position due to cost containment measures.

As depicted in Exhibit 4, the commission operates with an annual funding gap. The amount of the gap fluctuates but is roughly \$1 million annually. While adding legal expenditures to the calculation gives a more complete accounting, it obscures the fact that, if expenditures were calculated for fiscal 2009 as they had been calculated for years prior, the commission's deficit would have been \$621,212, which is lower than any of the previous six years. At roughly \$444,000, the commission's legal expenditures are the highest of any of the division's boards and commissions.

The annual funding gap can largely be attributed to the commission's expenditures for cases heard by OAH and the associated legal expenditures. The commission's fiscal 2010 allocation for contested cases heard by OAH is about \$1.7 million. It is estimated that about 225 cases will be referred to OAH by the commission, resulting in about 5,400 OAH case hours and roughly 13% of OAH's hearing schedule. The commission advises that the limited resources it has to procure expert witness testimony in contested cases can result in more cases

being sent to OAH or prolonged OAH hearings. Without an expert witness's testimony, a defendant is less likely to settle out of court. Thus, more cases end up at OAH because an expert report is not available. A defendant may also fight a case more fervently if he or she knows no expert witness is involved. An increase in the allocation for expert witness reports could reduce commission costs by decreasing the number of contested cases at OAH or by reducing the time it takes to render a decision.

Home Improvement Guaranty Fund Balance Declining

Exhibit 5 depicts the number of approved Guaranty Fund claims, total damages reported in these claims, and the total amount of settlements annually from fiscal 2004 to 2009. The settlement figures represent the amount of money that homeowners have received directly from contractors through efforts of investigators to negotiate a settlement with the contractors, through informal settlements, or through formal mediation beginning in fiscal 2009, when the commission launched its formal mediation program. They do not include payments from the Guaranty Fund. The commission reports that 166 claims totaling \$1.1 million were paid from the Guaranty Fund in fiscal 2009. It could not provide payout figures for prior fiscal years.

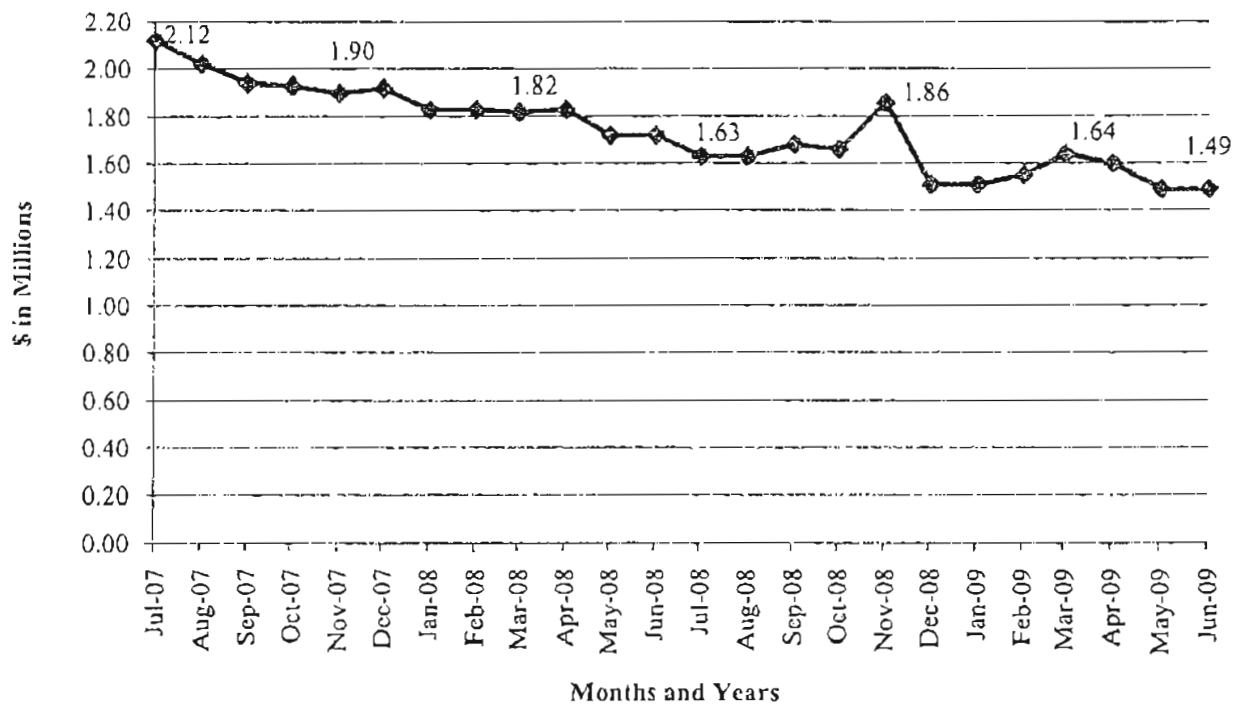
Exhibit 5
Guaranty Fund Claim Data
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Number of Claims	507	518	465	494	402	161
Cases Sent to OAH	311	373	222	304	208	298
Total Amount Included in Claims	\$2,958,595	\$4,621,826	\$4,184,445	\$4,831,618	\$6,027,963	\$5,520,821
Total Amount of Settlements	\$1,009,576	\$1,796,260	\$1,237,104	\$1,665,263	\$1,989,434	\$1,629,394

Source: Maryland Home Improvement Commission

Exhibit 6 displays the monthly Guaranty Fund balances from July 2007 to June 2009. In general, the fund balance has trended downward during this period from a balance of approximately \$2.1 million in July 2007 to approximately \$1.49 million in June 2009. The commission tries to keep the fund balance at a level that is high enough to maintain its solvency, while avoiding charging licensees an unnecessarily high assessment. The decline in the fund balance may be attributed to several factors, including increasing the maximum award from \$15,000 to \$20,000, and having more contractors going defunct, which tends to increase the number of claims and makes reimbursement of the fund more difficult. In 2006, with the balance above \$2 million, the commission lowered the assessment on renewal licensees. Therefore, the decline can also be attributed to a decrease in fund revenue due to the lower assessment on licensees.

Exhibit 6
Guaranty Fund Balances between 2007 and 2009



Source: Maryland Home Improvement Commission

The decline in home values resulting from the economic recession eliminated available credit for many home improvement projects. Similarly, the economic downturn reduced available credit extended to contractors from manufacturers or suppliers. The dearth of home improvement work resulted in some contractors severely underbidding projects, which they were forced to abandon. Ultimately many businesses went bankrupt. The commission advises that

most Guaranty Fund claims are related to abandonment, and roughly 75% of claims are awarded to consumers for companies that are no longer in business.

The commission is concerned that the economic downturn has forced many contractors into insolvency. Many homeowners may seek restitution from the Guaranty Fund, but it is unlikely that the contractors (if they can be located) will reimburse the fund. At the commission's September 2009 business meeting, the executive director advised that 11 claims for the maximum \$100,000 award against a contractor may be paid from the Guaranty Fund in the next two to four years.

The commission acknowledges that the number of impending maximum claims is higher than ever before, but because these claims are paid out incrementally over time, the commission anticipates that the Guaranty Fund will remain sound as long as the number of renewal licensees does not drop significantly. Given the depressed state of the home improvement industry, such a drop may occur.

Due to the industry's unstable condition it is possible that an influx of unexpected claims against the Guaranty Fund could arise. If this happens, the commission may be forced to increase the Guaranty Fund assessment on licensed contractors. Consumers, especially in the current economic climate, are inclined to choose a contractor primarily on price. Competition from unlicensed contractors may prompt legitimate contractors to underbid jobs and end up abandoning them because they are not profitable, resulting in complaints filed with the commission and, eventually, Guaranty Fund claims.

New Commission Initiatives May Increase Efficiency and Reduce Costs

Since February 2008, the commission's new executive director has developed numerous initiatives to reduce, directly or indirectly, the commission's costs and increase its efficiency. Several of these approaches are designed to reduce the commission's OAH expenditures either by reducing the number of cases that require an administrative hearing or by streamlining the hearing process to reduce the length of time a case is active at OAH (OAH fees are determined by the number of hours to resolve cases).

Use of Alternative Dispute Resolution

When a new complaint is filed with the commission, the investigator usually attempts to bring the parties together to resolve the issue without further commission involvement. In some cases, particularly with disputes over workmanship, the investigator may be able to negotiate a satisfactory agreement. Even if the investigator cannot close the case, commission staff may determine that the complaint could be resolved through formal alternative dispute resolution. Over the last 18 months, the commission has partnered with Community Mediation Maryland, which has dedicated five centers to handle commission complaints. These centers are located in Anne Arundel, Montgomery, Prince George's, and Talbot counties and Baltimore City.

Alternative dispute resolution can help the commission process its caseload faster and in a more cost-efficient manner by avoiding delays associated with administrative or civil court proceedings.

Commission Hearings

The commission attempts to adjudicate three to five cases per month on its own. The commission advises that the average OAH case lasts two to three days and costs the commission between \$5,000 and \$10,000. Taking a proactive role in case adjudication may save the commission between \$15,000 and \$50,000 per month in OAH costs.

Cooperation with Local Jurisdictions

The commission has prioritized relationships with local jurisdictions to improve home improvement regulation in the State. Particularly, the commission has worked with local building and permits departments and encouraged them to issue permits for home improvement work to licensed contractors only (licensure status can easily be determined on commission's web site). Unfortunately, unlicensed contractors often convince consumers to obtain permits themselves, which they are allowed to do if they intend to do the work themselves. **Appendix 3**, a press release from the Montgomery County Department of Permitting Services, exemplifies how a local jurisdiction can work with the commission to deter unlicensed activity. Some local governments, such as Montgomery and Howard counties, have consumer protection agencies that work in partnership with the commission to identify and prosecute unlicensed contractors.

The commission has worked with the District Court in jurisdictions that hear many commission cases in an effort to have them bundle home improvement cases, which could significantly reduce the amount of time an investigator spends in court. Currently, an investigator may spend hours in court waiting for one case to be heard. If a docket includes several of an investigator's cases in one day, he or she could spend less time in court and more time working in the field.

Community Interactions and Public Awareness

The commission attempts to inform consumers about the importance of hiring reputable, licensed contractors through press releases to the news media and by posting information on its web site. Through public awareness campaigns the commission can inform the public of home improvement scams and instruct homeowners about the work of the commission, the protection of the Guaranty Fund, and how to ensure a contractor is legitimate (e.g., contacting his or her references, making a copy of his or her license, etc.). Local news outlets occasionally, and usually at their own initiative, report on homeowners who have been taken advantage of by unscrupulous contractors. The commission also sponsors workshops for prospective licensees to help them with the application process and inform them about the commission's work.

To the extent that this information reaches the public, it may reduce the number of complaints the commission receives. While the efforts are useful and should be continued, it is unlikely – given the limited resources the commission has to dedicate to this purpose – that public awareness campaigns would result in a meaningful reduction in the commission’s workload. **Appendix 4** is an example of a public awareness notification released by the commission.

Recommendation

MHIC is responsible for oversight of the home improvement industry in the State to protect consumers from unscrupulous activity and to provide a restitution process for alleged misconduct by a licensee. The commission’s regulatory obligation is significant and staff and commission members work efficiently to execute the agency’s mission. The commission has demonstrated its effectiveness at protecting consumers by investigating thousands of complaints each year, identifying home improvement scams, providing restitution from the Guaranty Fund for poor or inadequate work by licensees, and working with various stakeholders to generally improve the industry in Maryland. The commission’s leadership has developed numerous ideas to improve the agency’s functionality and effectiveness. Nonetheless, the commission is faced with various administrative, statutory, and industry challenges that inhibit its work.

This evaluation has identified issues that should be studied further to ensure that effective regulation continues into the future. **As a result, the Department of Legislative Services recommends that the Maryland Home Improvement Commission undergo a full evaluation.** The full evaluation should evaluate the needs of the commission to effectively regulate the home improvement industry. In particular, the full evaluation should examine:

- the factors contributing to the commission’s persistent annual funding gap;
- the solvency of the Guaranty Fund;
- the impact of changing the commission’s licensing fees, which have not been raised since 1991;
- the commission’s annual OAH costs and measures that could reduce its legal expenses, such as greater funding for expert witness testimony;
- the advantages and disadvantages of instituting a statutory change to require that contractor’s licenses be issued using a tiered format, based on a contractor’s workload volume or size of projects undertaken;

- the pervasiveness of unlicensed contractors, and possible strategies to reduce their activity, such as increasing criminal penalties for unlicensed practice;
- the number and types of complaints and claims processed by the commission and the efficiency of complaint and claim resolution;
- the effectiveness of collection efforts by the State's Central Collection Unit;
- the effect of allowing commission investigators to issue civil citations against licensees for minor regulatory violations; and
- the implementation of the licensure program for individuals in the mold remediation industry, as this is outside of the current purview of the commission.

Appendix 1. Definition of Home Improvement in Maryland

According to § 8-101 (g) of the Business Regulation Article:

“Home Improvement” means: (i) the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or a structure adjacent to that building; or (ii) an improvement to land adjacent to the building.

(2) “Home improvement” includes: (i) construction, improvement, or replacement, on land adjacent to the building, of a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool; (ii) a shore erosion control project, as defined under § 8-1001 of the Natural Resources Article, for a residential property; (iii) connection, installation, or replacement, in the building or structure, of a dishwasher, disposal, or refrigerator with an icemaker to existing exposed household plumbing lines; (iv) installation, in the building or structure, of an awning, fire alarm, or storm window; and (v) work done on individual condominium units.

(3) “Home improvement” does not include: (i) construction of a new home; (ii) work done to comply with a guarantee of completion for a new building project; (iii) connection, installation, or replacement of an appliance to existing exposed plumbing lines that requires alteration of the plumbing lines; (iv) sale of materials, if the seller does not arrange to perform or does not perform directly or indirectly any work in connection with the installation or application of the materials; (v) work done on apartment buildings that contain four or more single-family units; or (vi) work done on the commonly owned areas of condominiums.

Classifications Usually Required to Be Licensed by MHIC (Not All Inclusive)

- | | | |
|--------------------------------|-------------------------------|------------------------------|
| 1. Acid Cleaning | 28. Gas Burners | 55. Roofing |
| 2. Acoustical Treatment | 29. Glaziers | 56. Sandblasting |
| 3. Awnings | 30. Grating | 57. Screens – Doors/Windows |
| 4. Bathrooms | 31. Guards – Door/Window | 58. Sealants – Deck/Driveway |
| 5. Bricklaying | 32. Hot Tubs – Permanent | 59. Sheet Metal Works |
| 6. Bulkheads | 33. House Movers | 60. Shower Bath Enclosures |
| 7. Cabinet Installation | 34. Insulation | 61. Sidewalks |
| 8. Carpentry | 35. Iron, Ornamental | 62. Siding |
| 9. Carports | 36. Jalousies | 63. Sinks & Counter Tops |
| 10. Caulking | 37. Kitchen Cabinets | 64. Skylights |
| 11. Ceilings | 38. Landscaping | 65. Sod (when landscaping) |
| 12. Chimneys | 39. Linoleum | 66. Solar Film on Windows |
| 13. Club Rooms | 40. Locks | 67. Solar Systems |
| 14. Decks | 41. Marble | 68. Stained Glass |
| 15. Doors | 42. Mirror Installation | 69. Stairs |
| 16. Driveways | 43. Painting | 70. Stone – Cast |
| 17. Dry Walls | 44. Paneling | 71. Stone Masonry |
| 18. Excavating | 45. Patios | 72. Storm Windows & Doors |
| 19. Fallout Shelters | 46. Paving | 73. Stucco |
| 20. Fences | 47. Piers | 74. Swimming Pools |
| 21. Fire Alarm Systems | 48. Plastering | 75. Tile |
| 22. Fire Escapes | 49. Plastic Screening | 76. Terrazzo |
| 23. Fireplaces | 50. Pointing | 77. Vanities |
| 24. Flagstone | 51. Porch Enclosures | 78. Wallpapering |
| 25. Floor Laying & Refinishing | 52. Radon Gas Mitigation | 79. Wall Coverings |
| 26. Foundations | 53. Railings | 80. Waterproofing |
| 27. Garages | 54. Replacement of appliances | 81. Windows |

Appendix 2. Commission Membership

Industry Representatives

John Borz, Chairman

Andrew M. Snyder

Joseph A. Tunney

Consumer Members

James O. Chiracol

Rossana T. Marsh

I. Jean White

Banking and Finance Representative

Marilyn Jumalon

Appendix 3. Montgomery County News Release



MONTGOMERY COUNTY, MARYLAND

News Release

For Immediate Release: 3/14/2008

County's Permitting Services to Require Licensing Information from Contractors

Beginning April 1, the Department of Permitting Services (DPS) will require all contractors applying for building permits for home improvement projects to provide their valid Maryland Home Improvement Contractor's license number before a building permit may be issued in their name.

A home improvement is any repair, replacement, remodeling or modernization of a residential property. Under Maryland law, a contractor is required to be licensed to perform these jobs. Permitting Services staff will check that the contractor's license is in good standing with the Maryland Home Improvement Commission (MHIC).

In a letter sent last December, the Secretary of the Maryland Department of Labor, Licensing and Regulation (DLLR) urged all counties in the state to take the following two steps to protect consumers from unlicensed home contractors:

- require the contractor to show proof of his/her MHIC license number and verify that the license is valid; and
- educate homeowners about the risks of using unlicensed contractors.

"Consumers lose millions of dollars to unlicensed, fraudulent contractors and we want it known that this type of activity is not tolerated in Montgomery County," said County Executive Isiah Leggett. "I commend DLLR Secretary Thomas Perez for his efforts to protect consumers from unlicensed home improvement contractors."

Permitting Services is partnering with the MHIC and the Montgomery County Office of Consumer Protection to protect homeowners from unlicensed contractors who do not follow-through on the agreed upon services. Unlicensed contractors can cost consumers thousands of dollars resulting from poor or incomplete workmanship.

State law protects the consumer by screening contractors for criminal records, requiring them to have trade experience, and testing contractors to ensure they know how to comply with Maryland's home improvement laws. Most importantly, if they suffer a loss when doing business with a **licensed** contractor, consumers can file a claim of up to \$15,000 from the Home Improvement Guaranty Fund.

Montgomery County's Office of Consumer Protection advises consumers never to hire an unlicensed contractor and to follow these steps before contracting for any home improvement work:

1. Contact the Maryland Home Improvement Commission at 410-230-6309 or online at www.dllr.state.md.us to see if a firm is licensed.
2. Check to see if any complaints have been filed against the contractor with the Office of Consumer Protection by calling 240-777-3636 or go to www.montgomerycountymd.gov/consumer. Also check with the Better Business Bureau at 202-393-8000 or at www.dc.bbb.org. Consult CHECKBOOK Magazine at local public libraries or at www.checkbook.org for recommendations regarding good contractors.
3. Check the Maryland Judiciary Case Search at <http://casesearch.courts.state.md.us/inquiry/inquiry-index.jsp> to see if an individual is involved in any legal actions.
4. Beware of any contractors who solicit business by saying that they "have material left over from another job in the area and can give you a real good price." This is a classic sign that the contractor may be unlicensed and just passing through the area.
5. Read OCP's brochure, "Guide to Home Improvements," before selecting a contractor. By law, a contractor must provide a written contract stating the contractor's license number and he/she cannot charge a down payment that exceeds 33 percent of the total job.

For more information, call the Department of Permitting Services at 240-777-6370 or the Office of Consumer Protection at 240-777-3636.

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Appendix 4. DLLR News Release

DLLR
STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY G. BROWN, Lt. Governor
THOMAS E. PEREZ, Secretary
Office of Communications

DLLR Home Page • <http://www.dllr.state.md.us>
DLLR E-mail • md.dllr@dllr.state.md.us

For Immediate Release

Contact: Dori Berman
Office: 410.230.6012
Cell: 410.207.6693

MHIC Investigation Helps Secure Restitution for Eastern Shore Widow *Unlicensed contractor sentenced to jail time*

BALTIMORE (June 17, 2009) – Department of Labor, Licensing and Regulation Secretary Thomas E. Perez today announced that the diligent work of the Maryland Home Improvement Commission helped secure \$15,225 in restitution for an elderly widow in Worcester County whose home was damaged by an unlicensed contractor.

Stephen Sawka, who was operating without a license and caused \$10,000 in damage to the victim's home, was sentenced in Worcester County Circuit Court to 18 months in jail, with all but 60 days suspended. He was also ordered to pay \$15,225 in restitution to the victim, and to pay \$470 in fines. The original complaint against Sawka was filed with the Home Improvement Commission, which investigated the case and turned it over to the Worcester County State's Attorney for prosecution. This case was Sawka's second conviction for acting without a license, the first occurring in 1997.

"This case should send the message that we will not tolerate unlicensed contractors preying upon unsuspecting Maryland homeowners, particularly the most vulnerable among us," Secretary Perez said. "I applaud the work of the Maryland Home Improvement Commission investigators in this case."

Each year, MHIC investigates approximately 3,000 complaints against licensed and unlicensed contractors. In the last fiscal year, MHIC recovered close to \$2.5 million for homeowners who were cheated by unlicensed contractors. Acting as a contractor, subcontractor, or selling a home improvement without a license is a misdemeanor and, upon conviction, is subject to a fine up to \$1,000 or imprisonment up to 30 days, or both. Each subsequent conviction is subject to a fine up to \$5,000 or imprisonment up to 2 years, or both.

The Maryland Home Improvement Law requires each contractor, subcontractor and salesperson to possess a home improvement license. To inquire about the licensing status of any individual or company, a homeowner may call MHIC at 410-230-6309 or 1-888-218-5925 or visit www.dllr.state.md.us.

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**Appendix 5. Written Comments from the
Maryland Home Improvement Commission**

December 1, 2009

Michael C. Rubenstein
Principal Policy Analyst
Department of Legislative Services
90 State Circle
Annapolis, MD 21401

Dear Mr. Rubenstein:

On behalf of the Department of Labor, Licensing and Regulation and the Maryland Home Improvement Commission ("MHIC"), I wish to thank you for your letter and the draft copy of the Preliminary Evaluation of the MHIC. I appreciate the support of the Department of Legislative Services and the professional manner in which Michael Vorgetts worked with DLLR staff and stakeholders to complete this report.

We agree with the report's recommendations, including the plan for a full evaluation to evaluate the needs of the Commission to effectively regulate the home improvement industry. The Commissioners are closely monitoring the Guaranty Fund in order to ensure that it remains viable during the current economic downturn. We believe a full evaluation will be a valuable tool for the MHIC as it continues to evolve to meet the challenges of regulating the home improvement industry.

I have several points of clarification, which are attached to this letter. While the majority of these clarifications involve relatively minor details, the Commission believes that other points are important tools that may help inform policy decisions. These clarifications will strengthen an already excellent report.

We look forward to working with your staff to complete the upcoming full evaluation to study the recommendations and other issues that may arise. If you have any questions, please contact me at 410-230-6169.

Sincerely,



Steven Smiltson

Maryland Home Improvement Commission

cc: Alexander M. Sanchez, Secretary
Stanley J. Botts, Commissioner
Harry Loleas, Deputy Commissioner
John Borz, Chair, Maryland Home Improvement Commission



Preliminary Evaluation of the State Board of Chiropractic and Massage Therapy Examiners

Recommendations: Waive from Full Evaluation

Extend Termination Date by 10 Years to July 1, 2022

Require Follow-up Reports by October 1, 2010 and 2011

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Chiropractic and Massage Therapy Examiners (BCMTE) last underwent a preliminary evaluation as part of sunset review in 1999. The preliminary evaluation recommended that the board be waived from full evaluation and that legislation be enacted to extend the board’s termination date by 10 years to July 1, 2012. The evaluation also recommended that the board submit specific follow-up reports in 2000 and 2001. The board submitted these reports, and Chapter 78 of 2000 extended the board’s termination date as recommended.

In conducting this preliminary evaluation, DLS staff reviewed minutes from BCMTE and Massage Therapy Advisory Committee meetings, licensing and complaint data, board publications, publications of national chiropractic associations, federal government publications, the prior sunset review of the board, Maryland General Assembly bill files, and DLS operating budget analyses and fiscal notes. DLS staff conducted personal and telephone interviews of board staff, board members, and board counsel, and attended a board meeting and disciplinary hearing.

BCMTE reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 3**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

The Practice of Chiropractic and Massage Therapy in Maryland

Maryland statute defines the practice of chiropractic as a “drugless system of health care” based on the principle that interference with the transmission of nerve impulses may cause disease. State law defines the scope of practice as the diagnosing and locating of misaligned or displaced vertebrae and, through the manual manipulation and adjustment of the spine and other skeletal structures, treating disorders of the human body. Blood tests and urinalysis are also within the scope of practice according to the Attorney General. Chiropractors are able to prescribe dietary and hygiene measures and diagnostic x-rays for their patients. Maryland also allows chiropractors to practice physical therapy after taking extra training in the field and passing a national physiotherapy examination. Most chiropractors opt for this expanded license since it broadens their patient base and the extra training hours required are already included in most chiropractic school curriculums. Maryland expressly prohibits chiropractors from using drugs or surgery or from practicing osteopathy, obstetrics, or any other branch of medicine.

Chiropractors are aided in their duties by chiropractic assistants, whose scope of practice is limited by board regulations. Without direct supervision, a chiropractic assistant may take vital signs and remove and apply assistive and supportive devices. With direct supervision, a chiropractic assistant may perform gait practice and ambulation, infrared ultraviolet irradiation and nonlaser light therapy, muscle stimulation, traction therapy, and ultrasound.

The practice of massage therapy is the use of manual techniques on soft tissues of the human body including stroking, kneading, tapping, stretching, compression, vibration, and friction, with or without the aid of heat, cold, water, or certain types of topical applications for the purpose of improving circulation, enhancing muscle relaxation, relieving muscular pain, reducing stress, or promoting health and well-being. The diagnosis or treatment of illness, disease, or injury and the adjustment, manipulation, or mobilization of the bone tissue of the body or spine are prohibited in the practice of massage therapy. Massage therapy is practiced by both certified massage therapists and registered massage practitioners, as discussed in greater detail later in this report.

The State Board of Chiropractic and Massage Therapy Examiners

In Maryland, as in all other states, Puerto Rico, and the District of Columbia, a regulatory board oversees the practice of chiropractic. The Maryland State Board of Chiropractic Examiners was created by the General Assembly in 1920. Chapter 678 of 1996 gave the board responsibility for certifying and regulating massage therapists and established a Massage Therapy Advisory

Committee. In 2008, this committee was repealed, massage therapists were added to the board membership, and the board was renamed the State Board of Chiropractic and Massage Therapy Examiners to reflect its full oversight authority. The purpose of the board is to license and regulate practitioners to ensure that the public receives safe and healthful chiropractic care and massage therapy.

BCMTE is composed of 11 members: 6 licensed chiropractors, 3 licensed massage therapists, and 2 consumer representatives with no ties to the profession. Chiropractors and massage therapists who serve on the board must have at least five consecutive years of experience. All members are appointed by the Governor with the advice of the Secretary of Health and Mental Hygiene and the advice and consent of the Senate. Members serve staggered terms of four years and may not serve more than two consecutive terms. At the end of a term, a member continues to serve until a successor is appointed. There is currently one vacancy on the board for a licensed chiropractor member. According to the board, the Office of Executive Appointments has requested a list of nominees from the Maryland Chiropractic Association.

Duties and Functions of the Board

BCMTE is part of the Department of Health and Mental Hygiene (DHMH). Statutory authority for the board is provided in the Maryland Chiropractic Act (Title 3 of the Health Occupations Article). BCMTE's oversight responsibilities for chiropractors, chiropractic assistants, massage therapists, and massage practitioners include:

- establishing qualifications for all applicants;
- approving the curriculum and teaching facilities of educational institutions preparing applicants for practice;
- promulgating rules and regulations for standards of practice, education requirements, and marketing of chiropractic and massage services;
- developing examinations to be given to chiropractic and chiropractic assistant applicants and as required for massage therapists and massage practitioners;
- developing regulations and the permitted scope of practice;
- issuing, suspending, or renewing licenses, certificates, and registrations;
- investigating complaints and taking disciplinary action;
- approving training and in-service supervision programs;
- approving and reviewing continuing education credits;

- approving trade names for the practice of chiropractic;
- establishing a Chiropractic Rehabilitation Committee and rehabilitation program;
- collecting and establishing license, certification, and registration fees; and
- maintaining the State Board of Chiropractic and Massage Therapy Examiners Fund.

Legislative and Regulatory Changes Affecting the Board Since the 1999 Sunset

The most significant legislative change affecting the board since the 1999 preliminary sunset evaluation is the statutory requirement that massage therapists be licensed. Other legislative changes include clarifications of the statutory definition of massage therapy and who is subject to massage therapy licensing requirements, as well as the inclusion of massage therapists as board members. For a detailed explanation of the major legislative changes since the 1999 preliminary sunset evaluation, see **Exhibit 1**.

Exhibit 1

Major Legislative Changes Since the 1999 Preliminary Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	78	Extends the termination date of the board by 10 years to July 1, 2012.
2001	131	Exempts from the definition of massage therapy the laying on of hands, consisting of pressure or movement on a fully clothed individual, to specifically affect the electromagnetic energy or energetic field of the human body.
	653	Repeals the exemption from certification or registration for individuals who practice massage in certain health clubs. Specifies that an individual working in a beauty salon may be exempt from certification or registration as a massage therapist only if the operator of the salon has a permit from the State Board of Cosmetology and the individual provides cosmetology and esthetic services.
2002	501	Prohibits an individual in Charles County from performing or offering to perform a massage for compensation unless the individual is certified or registered by the board. Authorizes Charles County law enforcement to demand proof of certification or registration. Authorizes county commissioners to adopt ordinances or regulations related to massage establishments and individuals who perform massage for compensation.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2003	317	Adds Washington County to the provisions of Chapter 501 of 2002.
2005	327	Authorizes specified individuals to meet educational requirements for certified massage therapists and registered massage practitioners if the applicant, on or after March 1, 2004, was enrolled in a board-approved school and graduated from that school no later than December 31, 2004.
2008	242, 243	Requires massage therapists to be licensed rather than certified. Renames the State Board of Chiropractic Examiners as the State Board of Chiropractic and Massage Therapy Examiners. Repeals the Massage Therapy Advisory Committee. Adds three licensed massage therapists and one additional chiropractor to the board's membership and specifies criteria for the massage therapist board members. Alters the definition of massage therapy to include specified manual techniques affecting the electromagnetic energy or energetic field of the human body. Requires the board to establish advertising and soliciting standards for licensed massage therapists and registered massage practitioners. Authorizes a licensed massage therapist and registered massage practitioner to use a trade name in connection with the practice of massage therapy within specified limitations. Provides for waivers for a registered, certified, or licensed massage therapist from another state if he or she passes an examination approved by the board in addition to meeting other waiver requirements. Subjects licensed massage therapists to the same hearing and appeals process as chiropractors and conforms the criminal penalties for massage therapists to those for chiropractors.
2009	312, 313	Authorizes the three massage therapy members and one additional chiropractor member added to the board under Chapters 242 and 243 of 2008 to begin their terms on May 1, 2009, rather than July 1, 2009.

Source: Laws of Maryland

Since 2008, Massage Therapists Must Be Licensed to Practice

Prior to 2008, the board certified massage therapists and registered massage practitioners. However, as a result of Chapters 242 and 243 of 2008, massage therapists must be licensed rather than certified by the board in order to practice massage therapy in the State. The regulation of

massage therapy in Maryland is differentiated by the setting in which it is practiced. If outside of a health care facility, it is deemed to be nontherapeutic massage, and the individual practicing must be a registered massage practitioner (RMP). Otherwise, a practitioner must be a licensed massage therapist (LMT). LMTs must complete 60 college credits in any subject matter and may practice massage outside of a health care facility. RMPs may not practice massage in a health care facility nor may health care providers refer patients to RMPs. Because a massage therapy license offers more flexibility than a registration, most massage therapy practitioners are LMTs. Chapters 242 and 243 also required the board to adopt rules and regulations to establish advertising and soliciting standards for LMTs and RMPs.¹

Chapters 242 and 243 renamed the board as the State Board of Chiropractic and Massage Therapy Examiners and repealed the Massage Therapy Advisory Committee. In lieu of this committee, the Acts required the addition of three licensed massage therapists and one additional chiropractor to the board's membership. The terms for these new members were to begin on July 1, 2009. However, Chapters 312 and 313 of 2009 authorized these new members to begin their terms on May 1, 2009.²

In addition to the legislative changes discussed above, major regulatory changes since the 1999 preliminary sunset include:

- regulations promulgated in 2002 require certified or registered massage therapy practitioners to participate in at least 24 hours of continuing education every 24 months; and
- regulations promulgated in 2003 limit the entities that can accredit or approve a massage therapy education program to the Commission on Massage Training Accreditation or the U.S. Department of Education.³

Licensing Is One of the Board's Primary Functions

One of the board's primary functions is to register massage practitioners and license chiropractors, chiropractic assistants, and massage therapists. Licenses are renewed every two years. Massage therapists renew in October of even-numbered years, chiropractic assistants in April of odd-numbered years, and chiropractors in September of odd-numbered years. **Exhibit 2** displays the number of licenses issued by the board since fiscal 2001.

¹ The board is preparing to begin work on these regulations and has been advised by DHMH that it has until November 2010 to promulgate the regulations.

² Nevertheless, the massage therapy members of the board were not appointed until August 2009.

³ Prior to these regulations, the board could also approve certain massage therapy programs.

Exhibit 2
Total Number of Individuals Licensed by the
State Board of Chiropractic and Massage Therapy Examiners
Fiscal 2001-2009

<u>License</u>	<u>Fiscal Years</u>								
	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Chiropractors	624	660	696	704	736	743	781	753	797
Chiropractic Assistants	205	210	319	328	403	474	420	464	472
Licensed Massage Therapists	1,550	1,655	2,296	2,638	2,673	2,563	2,302	2,540	2,402
Registered Massage Practitioners	N/A	45	73	195	376	486	599	678	670

Note: A licensed massage therapist may work in any setting, including a health care facility, and must complete 60 college credits as part of the application process. A registered massage practitioner may not work in a health care facility and is not required to complete any college credits.

Source: State Board of Chiropractic and Massage Therapy Examiners

Number of Individuals Regulated by the Board Has Increased

As illustrated in Exhibit 2, the numbers of chiropractors, chiropractic assistants, licensed massage therapists, and registered massage practitioners regulated by the board have increased over the past nine years. Between fiscal 2001 and 2009, the number of chiropractors has increased by 28%, chiropractic assistants by 130%, and licensed massage therapists by 55%. Since first regulated by the board in fiscal 2002, the number of registered massage practitioners has increased nearly 15-fold.

Nationally, the number of chiropractors has also steadily increased. According to a report by the U.S. Bureau of Labor Statistics (BLS), approximately 53,000 chiropractors were employed in the United States in 2006, and this number is expected to grow to 60,000 by 2016. Despite this increase, there may be a slight decline in the number of licensed chiropractors in fiscal 2010. According to the board, as of December 2009, only 719 chiropractors have renewed their licenses for fiscal 2010. This may be a reflection of the economy since chiropractic is mainly a cash business that is often not covered by insurance and is dependent on disposable income.

Licensing Trends Among Chiropractic Assistants and Massage Therapists Are Unpredictable

As shown in Exhibit 2, though the number of chiropractic assistants and massage therapists has increased, licensing trends among these professions have not reflected board expectations and have been difficult to predict. This poses a significant problem to the board with respect to accurately predicting licensing activity and fund balances. One of the reasons behind these fluctuations is the typical demographic for chiropractic assistants. Chiropractic assistants tend to be young women who have yet to complete their education. They enter the profession through part-time positions, and their employers typically pay their education and training costs. Eventually, they leave their jobs to pursue other careers or advanced education in other fields. As for massage therapists, though their educational requirements are more extensive, the profession does not follow economic trends, since it is still viewed by many as a potential source of supplemental income. Thus, even as disposable income decreases, the number of massage therapists can decrease due to a lack of available educational funds or increase because of a need for supplemental income or career change. For instance, even though the board and local massage therapy schools predicted a decrease in the number of new massage therapists in fiscal 2009, the board continued to receive a steady stream of new massage therapist applicants. The board recognizes the need for improved forecasting of licensing activity and is looking at new variables, such as the availability of scholarships, to predict licensing activity for these professions.

Board Staffing Appears Adequate, but Deputy Director Position Is Vacant

The board is staffed by an executive director, deputy director, two full-time investigators, four administrative support staffers, one part-time assistant to the investigators, and one attorney. By all accounts, current staffing levels are adequate to handle and investigate complaints. However, the board's deputy director position has been vacant since July 8, 2009. The board's request that the position be exempted from the current hiring freeze was granted. The board is in the process of interviewing applicants and anticipates that the vacancy will be filled by January 1, 2010. One of the board's senior investigators is serving as acting deputy director until a replacement is found.

Board's New Office Suite May Not Provide Adequate Privacy for Investigators

In 2007, the board moved into a new suite of offices. The suite primarily consists of cubicles and two individual offices. There appears to be adequate filing and functional space in the suite. Though the entrance to the suite is restricted by a coded entry system, the offices occupied by the board's two senior investigators do not have a door, which does not afford any privacy to the investigators to carry out their duties. The board attempted to obtain individual offices for the investigators but was told that the investigator positions were not at a salary grade high enough to qualify for individual offices. Other boards housed in the building were given the same response. As a result, multiple boards in the building must coordinate the use of a separate

interview room on the third floor. This situation has led to some inconvenience and tension among the boards housed in the building.

Board Is Special Funded by Fees on Licensees

Chapter 272 of 1992 made most health occupations boards special funded, effective fiscal 1993. Since then, the boards have been responsible for their own revenues and expenditures. The board derives income from fees paid by applicants and licensees and payment for other board services. **Appendix 1** provides the current fee schedules applicable to chiropractors, chiropractic assistants, and massage therapists and practitioners.

Fees go into the State Board of Chiropractic and Massage Therapy Examiners Fund. The fund is to be used to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board. Fund balances should normally be used only for unanticipated costs relating to legal expenses and legislative initiatives. Any unspent funds cannot be transferred or revert to the general fund. Neither can any other State money be used to support the fund. The board has designated the executive director as the administrator of the fund.

Exhibit 3 displays a fiscal history of the board from fiscal 2002 through 2010. The board has consistently maintained positive cash flow. With the exception of fiscal 2006 and 2008 (and projected figures for fiscal 2010), the board's annual revenues have exceeded expenditures. Board revenues have ranged from a low of \$667,477 to a high of \$1.1 million, with typically higher peaks in odd-numbered fiscal years when both chiropractors and chiropractic assistants renew their licenses (massage therapists renew in even-numbered fiscal years). Board expenditures have ranged from \$605,064 to a high of \$840,915.

In fiscal 2005, the board experienced an almost 14% increase in revenues and a 15% increase in expenditures. That same year, the number of chiropractic assistants increased by 23% over fiscal 2004. This increase, combined with new fees collected for supervising chiropractors and license verification, resulted in increased revenues. The increase in board expenditures was due to new furnishings and computers, as well as an increase in enforcement efforts to root out bogus massage practitioners and prostitutes posing as massage practitioners.

In fiscal 2007, the board experienced a 25% increase in revenues and a 14% increase in expenditures due to significant increases in fees for licensing by credentialing, certification fees for supervising chiropractors, continuing education verification fees, and penalties for providing the board with an incorrect address. The board also incurred significant moving expenses related to the renovation of its current office, rent the board had to pay while its current office was unoccupied during the renovation, and the purchase of new furniture that would fit in the board's current office suite.

Exhibit 3
Fiscal History of the State Board of Chiropractic and Massage Therapy Examiners
Fiscal 2002-2010

	Fiscal Years:										Est. 2010
	2002	2003	2004	2005	2006	2007	2008	2009	2009	9	
Authorized Positions	6	7	7	7	8	9	9	9	9	9	9
Beginning Fund Balance	\$59,328	\$190,851	\$268,947	\$301,410	\$334,260	\$283,460	\$297,635	\$172,831	\$172,831	\$172,831	\$517,269
Revenues Collected	<u>736,587</u>	<u>683,160</u>	<u>667,477</u>	<u>765,226</u>	<u>667,259</u>	<u>836,653</u>	<u>716,111</u>	<u>1,148,855</u>	<u>1,148,855</u>	<u>1,148,855</u>	<u>690,000</u>
Total Funds Available	795,915	874,011	936,424	1,066,636	1,001,519	1,120,113	1,013,746	1,321,686	1,321,686	1,321,686	1,207,269
Total Expenditures	605,064	605,064	635,014	732,376	718,059	822,478	840,915	804,417	804,417	804,417	870,000
Ending Fund Balance	\$190,851	\$268,947	\$301,410	\$334,260	\$283,460	\$297,635	\$172,831	\$172,831	\$172,831	\$172,831	\$337,269
Balance as a % of Expenditures	31.5%	44.4%	47.5%	45.6%	39.5%	36.2%	20.6%	64.3%	64.3%	64.3%	38.8%
Maximum Recommended Fund Balance (30% of Expenditures)	\$181,519	\$181,519	\$190,504	\$219,713	\$215,418	\$246,743	\$252,275	\$241,325	\$241,325	\$241,325	\$261,000

Source: State Board of Chiropractic and Massage Therapy Examiners

Board Fee Increase in 2008 Overcorrected for Anticipated Shortfall

As shown in Exhibit 3, in all but fiscal 2006 and 2008, board revenues collected exceeded expenditures. The board also maintained an average fund balance of 40.6% of expenditures. However, in fiscal 2008 the board's fiscal analyst advised that the board would have to raise its fees in order to avoid having an ending fund balance of only \$56,000 in fiscal 2009 and a projected deficit of \$110,000 in fiscal 2010. Thus, in fiscal 2008 the board raised its licensing fees for the first time since fiscal 1991.

According to the board, the projected revenue for fiscal 2009 with the fee increases was \$745,000; however, actual fiscal 2009 revenue with the fee increases was \$1.1 million. Prior to the fee increase, there were approximately 30 to 40 new applicants for massage therapy licenses each month. The new fees were determined based on the assumption that the influx of new massage therapists had leveled off and an anticipated decrease in the number of monthly new applicants. However, the number of new applicants remained steady. This trend, combined with the unexpected departure of an investigator and the board having to share its attorney with three boards rather than one, resulted in a carryover of \$517,000. Generally, the health occupations boards have set a target fund balance of 20% to 30% of expenditures. The fund balance protects boards from unexpected costs that may occur. With a fiscal 2009 budget of \$804,000, the maximum recommended carryover was \$241,200. In an effort to reduce the fund balance, renewal fees for chiropractors during the renewal cycle that expired on September 1, 2009, were temporarily reduced from \$700 to \$500. This fee reduction will reduce the board's fiscal 2010 fund balance by at least \$143,000. In a further attempt to align the board's fund balance with the 30% target, the board has reduced exam fees for both massage therapists and chiropractic assistants by \$100 in fiscal 2010.

The board correctly predicted that there would be a decrease in renewals for chiropractors and chiropractic licenses. As of December 2009, 719 of the 797 chiropractic licensees have applied for active renewals. In addition, the board's deputy director position has been vacant since July 2009. Despite both of these factors, the board anticipates and is willing to make further fee reductions as necessary in order to bring its fund balance within acceptable parameters.

A change in fees requires a change in the regulations. The board needs to anticipate changes to the fund balance based on projected revenue and expenses and submit new proposed regulations in a timely manner to ensure that there is neither a deficit nor excessive fund balance.

Board Complaint Process Appears Organized and Timely

Approximately one-third of the board's time is spent handling complaints. The board usually receives complaints from patients and members of the public. Typical grounds for complaints involve billing and advertising issues. Formal complaints typically take 120 days from receipt to completion of investigation. However, cases involving complicated issues or

administrative/legal proceedings may take additional time to conclude. In general, the board only accepts written complaints. The board does not accept anonymous complaints unless the information provided can be independently verified. The board has an organized and detailed process in place for the handling of complaints from intake to resolution, including an investigation policy manual. The executive director serves as the chief of compliance and is assisted by the deputy director, who serves as the deputy compliance chief. The board also assists other law enforcement entities when needed. A history of disciplinary action taken by the board is provided in **Exhibit 4**.

Exhibit 4
**Disciplinary Action by the State Board of Chiropractic
and Massage Therapy Examiners**
Fiscal 2004-2010

	Fiscal Years						Est. <u>2010</u>
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	
Complaints pending from previous year	17	17	42	37	23	14	27
New complaints	61	54	55	30	70	74	75
Total complaints	78	71	97	67	93	88	102
Cases referred to Attorney General	13	8	8	6	7	6	10
Cases closed without action	30	4	41	26	48	45	45
Formal action taken	10	11	5	7	9	4	11
Informal action taken	8	6	6	5	15	6	14
Unresolved complaints carried over	17	42	37	23	14	27	22

*Cases are typically closed without action due to a lack of board jurisdiction.

Source: State Board of Chiropractic and Massage Therapy Examiners

On average, the board receives 60 new complaints per year and carries over 25 complaints from one year to the next. From fiscal 2004 through 2006, the number of new complaints remained relatively consistent. However, in fiscal 2007, the number of new complaints dropped significantly, only to increase steadily since then. The board indicates that the drop in new complaints during fiscal 2007 may be due to a major joint effort between the board and law enforcement agencies to close illegal massage parlors. Once the board receives a complaint, the executive director reviews it to determine if the complaint falls within the board's jurisdiction. If the complaint does not fall within the board's jurisdiction, it is closed without action. If the complaint is out of the board's jurisdiction but falls within the jurisdiction of another board, the

complaint is formally referred to the appropriate board and the complainant is notified of the referral in writing. If the board has jurisdiction over the complaint, the complaint is referred to an investigator. Following an investigation, the investigator's report is forwarded to the board, which typically has three options: (1) dismiss the charges for lack of evidence; (2) handle the charges informally (*e.g.*, cease and desist orders, letters of education, or reprimands); or (3) formally refer the case to the Office of the Attorney General (OAG) for administrative prosecution. If the board pursues formal action, there is a formal administrative evidentiary hearing. However, a case resolution conference (CRC) is usually convened before the hearing. At a CRC, the licensee may reach a settlement with OAG on the charges without having to go through a formal hearing.

Board Complaint Carryover Rate Improving, but Still Requires Continued Attention

Though the board carried over a large number of complaints in fiscal 2006 and 2007, this trend appears to have stabilized. The ability to resolve complaints within a given fiscal year depends on when the complaint is received, the amount of time it takes to investigate the complaint, and the amount of time it takes OAG, if the case is referred for prosecution, to conclude the case.

Though the implementation of pre-charge orders (negotiated plea bargains in the form of formal, public orders issued prior to formal charges without a formal hearing) and case resolution conferences has helped move some cases along, the board expressed some difficulty in getting cases through OAG due to the large backlog of cases attributable to the larger health occupations boards. The board has informed OAG on numerous occasions of the time taken by their attorneys to review and process cases. The board advises that even though OAG has diligently attempted to reduce the backlog of health occupations board cases, OAG requires more staff attorneys to efficaciously handle increasing board caseloads in a timely manner.

Board Should Continue Its Progress on Timely Complaint Resolution

During the 2009 legislative session, DLS raised concerns over the board's ability to process disciplinary cases in a timely manner. The board was one of five health occupations boards that were unable to process complaints according to their respective target timeframes. According to *Managing for Results*, the board has a target of completing 40% of its investigations within 75 days. In fiscal 2008, the board investigated 22% of its cases within this 75-day period. However, upon further examination, the board's targeted timeframe is the second shortest of the 18 health occupations boards.⁴ While the goal for each board varies, the targeted goals are typically within a 180-day timeframe. A complete list of target goals for all of the health occupations boards can be found in **Appendix 2**.

⁴ The only board with a shorter targeted timeframe is the Board of Residential Child Care Administrators, whose goal is 100% of complaints investigated within 30 days.

The board advises that, while it completed 22% of its investigations within 75 days during fiscal 2008, it completed 67% of its investigations within 75 days during fiscal 2009. The board also notes that, though the goal of completing 40% of its investigations in 75 days is admirable, it does not account for the varying complexity of cases the board handles. Thus, commencing in fiscal 2010, the board will have a goal of completing 100% of its investigations within 180 days. One of the three main responsibilities of each health occupations board is to receive and resolve complaints from the public, courts, employees, insurance companies, and other licensees. Complaints must be investigated and resolved in a timely manner in order for the public and the professional community to have confidence in the board.

Summary and Recommendations

Based on this preliminary evaluation, DLS finds that the State Board of Chiropractic and Massage Therapy Examiners operates responsibly and efficiently. The board provided timely responses to all inquiries and was cooperative throughout the evaluation process. The board appears to have a good working relationship with the professions it regulates and is well regarded among its peers, as evidenced by its receipt of the 2003 Dr. Earl L. Wiley Outstanding Board Award by the Federation of Chiropractic Licensing Boards.

While this preliminary evaluation did note some areas of concern, the deficiencies are correctable within a short timeframe, and a full review is unlikely to provide additional value. **Therefore, DLS recommends that LPC waive the State Board of Chiropractic and Massage Therapy Examiners from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2022. Furthermore, DLS recommends that the board submit two follow-up reports to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee addressing the concerns identified in this evaluation, as specified below.**

While it is likely that the board's large fund balance in fiscal 2009 was due to increases in fees and variances between projected and actual licensing trends, confusion remains over the impact of licensing trends on the board's fiscal situation. **The board should submit a report to the specified committees by October 1, 2010, containing a detailed analysis and accounting of the board's fiscal 2009 financial activities that contributed to the fund balance, as well as any measures implemented during fiscal 2010 to decrease the fund balance (including any staff vacancies) and their impact.**

The board should also submit a report to the specified committees by **October 1, 2011, on its progress in maintaining a more appropriate fund balance, meeting its revised Managing for Results goals for complaint resolution, and implementing formal routine data retrieval and analysis procedures.** With respect to the board's fund balance, this report should discuss projected licensing trends, variance from previously projected licensing trends factors, vacant positions and the length of such vacancies, and any changes in fees.

Regarding complaint resolution, this report should include a summary of the number of complaints received, the basis for the complaints received, the length of time needed to complete investigations and to dispose of a case, the board's most recent complaint carryover statistics, and factors contributing to lengthened investigations or resolution of complaints.

The board had some difficulty producing accurate licensing data during the evaluation process. While these issues were resolved quickly, BCMTE should implement formal and routine data maintenance and reporting procedures. Routinely checking licensing data will assist the board in accurately spotting licensing trends as soon as possible and will allow the board to make any necessary changes in a timely manner. BCMTE advises that it has a new computerized database that allows board staff to conduct instant, accurate queries that were previously conducted manually. BCMTE further advises that one of its investigators is compiling monthly licensing statistics for review. These efforts will definitely assist the board in its routine functions. However, the report should include a detailed explanation of formal procedures implemented by board staff for regular data maintenance and reporting.

Appendix 1. Current Fees Charged by the State Board of Chiropractic and Massage Therapy Examiners

Chiropractors

Application fee for licensure	\$200
Examination fee	300
Licensure fee	200
Reexamination fee	400
Renewal license	700
Late renewal fee (in addition to renewal fee)	500
Reinstatement fee	300
Duplicate license fee	50
Duplicate license fee (if ordered at time of renewal)	25
Inactive status renewal fee	350
Reactivation fee	200
Preceptorship application fee	300
Extern application fee	50
Licensure by credentials	750
Penalty for returned checks	50
Mailing labels or roster	200
Penalty for failure to maintain a correct address with the board	200

Chiropractic Assistants

Examination fee for chiropractic assistant	\$300
Application fee for supervising chiropractor	300
Registration fee for chiropractic assistant	100
Renewal fee for chiropractic assistant	250
Late renewal fee for chiropractic assistant	200

Massage Therapists

Application fee for licensure	\$150
Jurisprudence examination fee	200
Licensure fee	200
Renewal license	250
Late renewal fee (in addition to renewal fee)	200
Reinstatement fee	200
Duplicate license fee	40
Duplicate license fee (if ordered at time of renewal)	20
Inactive status fee	50
Reactivation fee	100
Extern application fee	50

Source: Code of Maryland Regulations, 10.43.06.02 and .03

Appendix 2. Target Goals for Investigation of Complaints by Health Occupations Boards in Fiscal 2008

<u>Board/Commission</u>	<u>Target Goal</u>
Acupuncture	100% in 180 days
AUD/HAD/SLP*	100% in 180 days
Chiropractic Examiners*	40% in 75 days
Dental Examiners*	85% in 180 days
Dietetic Practice	100% in 180 days
Kidney Disease	100% in 180 days
Morticians	100% in 90 days
Nurses	70% in 270 days
Nursing Home Administrators	100% in 195 days
Occupational Therapists	100% in 180 days
Optometry	100% in 180 days
Pharmacy	85% in 90 days
Physical Therapy Examiners	100% in 120 days
Physicians*	95% in 18 months
Podiatric	98% in 180 days
Professional Counselors and Therapists	100% in 180 days
Psychologists	100% in 180 days
Residential Child Care Administrators	100% in 30 days
Social Work*	95% in 190 days

AUD/HAD/SLP: Audiology, Hearing Aid Dispensers, Speech-language Pathologists

*Did not meet processing goal in fiscal 2008

Source: Department of Health and Mental Hygiene, Department of Legislative Services

Appendix 3. Written Comments of the State Board of Chiropractic and Massage Therapy Examiners



DHMH Board of Chiropractic & Massage Therapy Examiners

Maryland Department of Health and Mental Hygiene

4201 Patterson Ave., Baltimore, MD 21215-2299

Chiropractic: 410.764-4726 * Massage Therapy: 410.764-4738 * FAX: 410.358-1879

Martin O'Malley, Governor - Anthony G. Brown, Lt. Governor - John M. Colmers, Secretary

November 20, 2009

Department of Legislative Services
Office of Policy Analysis
Attn: Ms. Jennifer Chase, Senior Policy Analyst
Legislative Services Bldg.
90 State Circle
Annapolis, MD 21501-1991

Dear Ms. Chase:

The Board has received the draft *Preliminary Evaluation of the State Board of Chiropractic and Massage Therapy Examiners* on November 19, 2009. That Evaluation recommended Waiver from Full Evaluation and extending the termination date to July 1, 2022. The Board unanimously concurs with this recommendation and submits that the report accurately reflects the status and operations of this Board.

The Board commends the evaluator, Ms. Amy A. Devadas, J.D., for the professional, thorough, and cordial review and analysis. Ms Devadas was consistently friendly and tactful and insured that the Board staff was given ample opportunity to provide data, and insight to fully address questions and issues. Her patience with staff members is appreciated and it was a pleasure to work with her.

The Board acknowledges the recommendations of the draft Evaluation Report and the required follow-up reports due by this Board respectively in October 2010 and 2011. This Board will diligently commence procedures to address all recommendations and shall file the required reports in a timely manner. Should you or your staff have any questions or require further clarifications, please contact the undersigned at 410-764-5985.

Sincerely,

J. J. Vallone, J.D.
Executive Director
For Kay B. O'Hara, D.C.
By direction of the Board

cc: John Colmers, DHMH Secretary
Grant Gerber, Esq., Board Counsel

Preliminary Evaluation of the State Board of Examiners in Optometry

Recommendations: **Waive from Full Evaluation**

 Extend Termination Date by 10 Years to July 1, 2023

 Require a Follow-up Report by October 1, 2011

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Examiners in Optometry was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this board – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. The board last underwent a preliminary evaluation in 2000. Based on those findings, LPC waived the board from further evaluation. Chapter 24 of 2001 extended the board’s termination date by 10 years to July 1, 2013.

In conducting this preliminary evaluation, DLS staff reviewed minutes for both open and executive session board meetings, the Maryland Optometry Act (Title 11 of the Health Occupations Article) and related regulations, prior full and preliminary sunset reviews of the board, the board complaint database for the past 10 years, licensing data, and board financial information. DLS staff conducted interviews with the board’s executive director, the board president, and the government relations director of the Maryland Optometric Association (MOA). In addition, DLS staff attended open and executive session board meetings, as well as an informal disciplinary meeting.

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

The Practice of Optometry in Maryland

Maryland, along with all other states, regulates the practice of optometry. Doctors of optometry are providers of vision care. They examine patients' eyes to diagnose vision problems, such as nearsightedness or farsightedness, and test patients' depth and color perception and ability to focus and coordinate the eyes. Optometrists may prescribe eyeglasses or contact lenses and other treatments such as vision therapy or low-vision rehabilitation.

Optometrists also test for glaucoma and other eye diseases and diagnose conditions caused by systemic diseases such as diabetes and high blood pressure, referring patients to other health practitioners as needed. Optometrists may administer drugs to patients to aid in the diagnosis of vision problems and to treat eye diseases; however, the administration of drugs by optometrists in Maryland is limited in that optometrists may only prescribe topical pharmaceutical agents. Most states permit optometrists to prescribe and administer oral, as well as topical pharmaceutical, agents.

The practice of optometry differs from the practice of ophthalmology. Ophthalmologists are physicians who perform eye surgery, as well as diagnose and treat eye diseases and injuries.

The State Board of Examiners in Optometry

The optometry profession in Maryland is regulated by the State Board of Examiners in Optometry, one of 18 health occupations boards housed within the Department of Health and Mental Hygiene (DHMH). The purpose of the board is to protect the residents of Maryland in the area of eye health through the licensing and regulation of optometrists. Established in 1914, the board licenses candidates who qualify through education and examination and disciplines licensees where cause exists. The board also monitors and approves continuing education programs in Maryland.

The board is composed of seven members: five licensed optometrists and two consumers. Optometrist members must reside in and practice optometry in Maryland for five years prior to appointment. The Governor appoints the optometrist members, with the advice of the Secretary of Health and Mental Hygiene, from a list of names submitted by MOA. For each optometrist vacancy, MOA must notify all licensed optometrists in the State to solicit nominations and conduct a balloting process to select the list of names submitted to the Governor. MOA believes that this appointment process does not necessarily ensure a balanced representation of board members; however, the board has no complaints with this process as the board is currently balanced in terms of race and gender.

The term of a member is four years, and the member may not serve more than two consecutive full terms. The Governor is required, to the extent possible, to fill any vacancy on the board within 60 days. At the end of a term, a member continues to serve until a successor is appointed. The board is currently fully appointed.

The board has 2.5 authorized positions to support its activities: an executive director, a licensing coordinator, and a part-time office secretary. The office secretary position is shared with the State Board of Social Work Examiners. Other shared personnel support the board. Investigators are hired on a contractual basis and paid hourly wages by the board. An Assistant Attorney General is provided by DHMH for which the board pays its share of associated costs. A regulations coordinator and fiscal and information technology personnel are shared with other boards and paid for by each board. DHMH charges the board for certain support services, such as personnel, timekeeping, and training, through an indirect cost assessment.

Statutory Changes Affecting the Board Since the 2000 Sunset Evaluation

Several legislative changes have affected the practice of optometry and the board since the last preliminary sunset review. Major legislative changes are noted in **Exhibit 1**. Among those changes were restricting the selling and dispensing of contact lenses and expanding the scope of practice of optometry to allow therapeutically certified optometrists to administer and prescribe topical steroids.

Exhibit 1

Major Legislative Changes Since the 2000 Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2001	24	Extends the termination date of the board by 10 years to July 1, 2013.
2003	245	Requires DHMH to adopt regulations that govern the selling and dispensing of plano and zero-powered (cosmetic) contact lenses and replacement contact lenses. Prohibits a person from selling or dispensing contact lenses or replacement contact lenses without a valid and unexpired prescription or replacement contact lens prescription; violators are guilty of a misdemeanor and on conviction are subject to a fine of up to \$1,000.
2005	391	Requires licensed optometrists to successfully complete an eight-hour course in the management of topical steroids approved by the board as a condition of certification as a therapeutically certified optometrist. Repeals provisions prohibiting a therapeutically certified optometrist from administering or prescribing topical steroids. Requires the board, in consultation with and subject to the approval of the State Board of Physicians, to adopt a collaborative practice protocol for the administration and prescription of topical steroids by therapeutically certified optometrists.

Source: Laws of Maryland

Licensing Is the Major Focus of the Board

An individual is required to have a license from the board to practice optometry in Maryland. To be granted a license, an individual must be of good moral character and at least age 18. Applicants must complete two years of pre-optometric college study in an accredited institution of higher learning or its equivalent; complete four years of study at an accredited college of optometry, a university school of optometry, or an equivalent that is endorsed by the Association of Regulatory Boards of Optometry; and pass the National Board of Examiners in Optometry examinations and a State examination given by the board.

The board requires each applicant for licensure to obtain a score of 300 on the basic science, clinical science, and patient care portions of the National Board examinations. Applicants are also required to obtain a minimum score of 75 on the board's State examination. The examination is offered online and covers State law, regulations, and scope of practice issues.

Subject to the conditions and provisions set forth in the Maryland Optometry Act, the board may waive the examination requirements for an individual who is licensed to practice optometry in another state. Students participating in a residency training program under the direct supervision of a licensed optometrist are not required to be licensed.

The licensing activity of the board for the past six fiscal years is shown in **Exhibit 2**.

Exhibit 2 Licensing Activity Fiscal 2004-2009

<u>License</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
New	56	64	56	48	50	45
Renewal	50	708	39	715	37	639*
Total	106	772	95	763	87	684

*The number of renewal licenses issued in fiscal 2009 does not include 115 renewals that were instead recorded as fiscal 2010 renewals that in the past would have been recorded as fiscal 2009 renewals. Because the online renewal period ended on June 30, 2009, these renewals will be attributed to fiscal 2010.

Source: State Board of Examiners in Optometry

In addition to licensure, an optometrist may also seek certification from the board to administer diagnostic pharmaceutical agents (DPA) – medications that directly or indirectly affect the pupil of the eye or the sensitivity of the cornea – or therapeutic pharmaceutical agents (TPA) – medications used for the treatment of a disease or condition of the eye. Licensed optometrists with such certification or referred to as a diagnostically certified or therapeutically certified optometrist. Additional discussion of therapeutically certified optometrists can be found later in this report.

Number of New Licenses Issued Is Declining

In fiscal 2005, the number of new licenses issued by the board increased by 14% to a high of 64, presumably due to Chapter 391 of 2005, which expanded the scope of practice for optometrists by allowing therapeutically certified optometrists to administer and prescribe topical steroids. However, in subsequent years, the number of new licenses issued per year generally declined. The decline in new licensees is likely attributable to the relatively limited scope of practice of optometry in Maryland, which is discussed in the following section of this report. **The board should continue to monitor trends in the number of new licenses issued and assess whether any action should be taken to address the decline.**

The vast majority of licensees renew in odd-numbered years. The small number of renewals that are reflected in even-numbered years are late renewals that come in after the June 30 renewal deadline and the close of the board's fiscal year. The board offers a 30-day grace period for late renewals with a late fee of \$100.

Restrictive Scope of Practice May Affect the Number of Optometrists Practicing in Maryland

Since the last full sunset evaluation conducted in 1991, two pieces of legislation have affected the scope of practice for optometrists. The most significant legislation, Chapter 521 of 1995, allows licensed optometrists to administer and prescribe topical therapeutic pharmaceutical agents (TPAs). Even though optometrists receive pharmaceutical training in optometry school, Maryland was the last state to formally grant pharmaceutical authority to the profession.

Chapter 391 of 2005 was groundbreaking in Maryland because it allows a therapeutically certified optometrist to administer and prescribe topical steroids (topical steroids are now considered a TPA). Chapter 391 was also unique in that practice protocol for the administration and prescription of topical steroids by therapeutically certified optometrists required approval from the State Board of Physicians.

Maryland currently imposes the strictest regulations in the nation regarding TPAs. Chapter 521 required the board to establish a quality assurance program. The program involves a continuing study and investigation of therapeutically certified optometrists. In 1996, the board established a Quality Enhancement and Improvement (QEI) Committee. The QEI Committee reviews patient optometric records. Ten percent of TPA-certified optometrists are randomly

selected for annual peer review of TPA records. Other components of the quality assurance program include TPA self-assessment, glaucoma co-management, adverse reaction reporting, and 72-hour follow-up with patients. While the board initially found the quality assurance program to be restrictive and burdensome, the board now believes that this program allows it to be proactive in assuring the safe practice of optometry in Maryland.

Though the scope of practice of optometry has been expanded, Maryland continues to be one of the most restrictive states in the nation. Maryland, along with three other states (Florida, Massachusetts, and New York), prohibits optometrists from administering and prescribing oral pharmaceutical agents. Maryland is also the only state to prohibit or restrict the use of an Alger brush to remove foreign bodies from the eye.

The board has consistently been supportive of legislation to expand the scope of practice of optometry though it recognizes that its primary role is to protect the health and safety of consumers rather than promote the practice of optometry. Nonetheless, the board recognizes that the restrictions in Maryland may be causing a decline in new licensees. At this time, the board believes there is sufficient access to eye care through optometrists. **The board should continue to track developments in the scope of practice for optometry and their potential impact on entry into the profession in order to ensure that access to eye care in Maryland does not become a problem.**

Board Working to Repeal Obsolete Limited License

In addition to new and renewal licenses, the board is authorized to issue a limited license to individuals licensed in another state who are participating in a postgraduate teaching, research, or training program in Maryland. A limited license is valid for one year and allows the licensee to practice only at the specific institution designated on the license. The board indicates that it no longer issues such licenses and is currently working with the Assistant Attorney General and regulations coordinator to repeal statutory and regulatory language relating to this obsolete license.

Nearly All Licensees Renew Online

Licenses are renewed every two years. Licensees can complete and file the renewal form online. The board recently implemented the online renewal process with positive results. In the first year of implementation, 90% of licensees renewed online. As discussed above, the biennial renewal cycle leads to significant fluctuations in renewals, typically with fewer than 50 renewals in even-numbered years and over 700 renewals in odd-numbered years. Though to date the board has been able to handle these fluctuations administratively and, in most years, fiscally, the board is considering staggering the renewal period so that half of the optometrists are renewing their license each year. Staggering the renewal period would allow for the board to maintain more consistent revenues and spread out administrative demands on board staff.

Renewal Requirements Include 50 Hours of Continuing Education

To renew a license, optometrists that do not hold additional certification (non-certified optometrists) must complete 36 hours of continuing education each license renewal cycle. A diagnostically certified optometrist must also complete 36 hours, as well as an additional six hours relating to the use of diagnostic pharmaceutical agents. A therapeutically certified optometrist must complete 50 hours of continuing education, 30 hours of which must be in the use and management of therapeutic pharmaceutical agents. Credits completed must be submitted on the renewal application form and must be for courses that have been approved by the board. An optometrist must maintain a complete record of the credits completed along with supporting documentation. The board randomly audits 20% of renewal applications to ensure compliance with continuing education requirements.

Complaint Resolution Process Appears Fair and Adequate

The board may deny a license application or reprimand, suspend, revoke, or place on probation any licensee or holder of a limited license for a violation of any of the 27 provisions listed in the Maryland Optometry Act. Board disciplinary action can range from a letter of education to initiating formal charges against an optometrist. A monetary penalty of up to \$5,000, payable into the general fund, can also be levied by the board but is rarely imposed. When assessing the severity of penalties, the board considers willfulness, extent or potential extent of harm, investigative costs, the licensee's records, and whether the licensee received any financial gain from the violation.

Once a complaint is received by the board, the board first determines whether it has jurisdiction to investigate the complaint. If the individual is neither a licensed optometrist nor an applicant for licensure, the board may ask the Office of the Attorney General to refer the complaint for prosecution by the State's Attorney in the locality where the individual lives, provided that the individual appears to have been either practicing optometry illegally or has misrepresented himself or herself as an optometrist. In some circumstances, the board may choose to write a letter to the individual asking that he or she cease or desist from illegal activity.

If the individual is a licensed optometrist or an applicant for licensure, the board determines whether the complaint alleges that the individual committed any acts specified under § 11-313 of the Health Occupations Article. The complaint information is sent to the optometrist for a response, unless the board deems the optometrist a risk to the public. After reviewing the response, the board determines if further information is needed and refers the complaint to the board's investigator. The investigator then interviews all relevant parties, including both the complainant and the practitioner, and subpoenas all necessary records and documents.

When the investigation is complete, the investigator submits a factual report to the board. The board reviews the report to determine if there is probable cause to charge the licensee. The board may decide not to charge the individual, to informally sanction him or her, or to charge the

individual with violating the Maryland Optometry Act. If the board does charge the individual, he or she is notified of the charges and a hearing is scheduled. It is only after such a hearing that the board may take formal action against the individual. If action is taken against the optometrist, the optometrist has the right to appeal the board's decision. The board's final decision is based only on the evidence presented by both sides during the hearing procedure.

Prior to holding an evidentiary hearing, the board usually holds a case resolution conference. At this time, there is an opportunity for the optometrist and the board to settle the case by means of a consent order. In a consent order, the board and the optometrist may mutually agree on certain penalties. For example, depending upon the circumstances, an optometrist may agree to provide financial restitution, fulfill certain educational requirements, engage in supervised or limited practice, or fulfill one or more additional requirements relevant to the situation. In such cases, a formal hearing would not be held, but the optometrist would be bound by the consent order and would surrender his or her right to appeal the case.

Whether a case is settled through a formal hearing process or by consent order, adherence to the statutory and regulatory procedures normally takes several months. When a final determination is made, the board notifies the complainant and the licensee.

Board Resolves Complaints in a Timely Fashion

Exhibit 3 details the board's complaint resolution actions for the past five years. On average, the board received 56 complaints per year. However, the majority of complaints in fiscal 2006 and 2007 were initiated by the board. The board found that a significant number of the therapeutically certified optometrists were not submitting the self-assessment required under the Code of Maryland Regulations (COMAR). The board sent letters of admonishment to all licensees failing to comply with this regulation. Excluding board-initiated complaints, the number of complaints received between fiscal 2005 and 2009 averaged 21 per year.

The board appears to resolve complaints in a timely fashion. Currently, most complaints are resolved within four months of the board receiving the complaint. Since the board meets six times per year, this time frame allows for review time, referral for investigation, receipt of complainant and licensee responses, and receipt of investigative reports. In fiscal 2006 and 2007, the board-initiated complaints were resolved within two months.

Three complaints from fiscal 2008 and 2009 have not yet been resolved. A sexual misconduct case from fiscal 2008 is ongoing because of the detailed nature of the investigation. The unresolved complaints from fiscal 2009 were filed late in the year and are still under investigation.

Exhibit 3
Resolution of Complaints Received
Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
New Complaints Received	15	92	119	26	27
<i>Complaints Resolved</i>					
Within 6 Months	14	90	119	22	22
Require More than 6 Months	1	2	0	3	3
<i>Average Months for Resolution</i>	4	2	2	4	4
<i>Outstanding Complaints as of November 2009</i>	0	0	0	1	2
<i>Disposition of Resolved Complaints</i>					
Closed/Dismissed without Action	9	5	20	6	9
Letter of Admonishment	2	83	95	5	8
Letter of Education/Informal Letter	2	4	4	13	7
Formal Charges/Consent Order	2	0	0	1	1
Consent Agreement	0	0	0	0	0
Cease and Desist Order	0	0	0	0	0
Other	0	0	0	0	0

Note: A consent order is a public action, while a consent agreement is a nonpublic action.

Source: Department of Legislative Services; State Board of Examiners in Optometry

Many Complaints Dismissed or Closed; Informal Action Most Common When Issues Found

As shown in Exhibit 3, many complaints are dismissed or closed without action. Of those where the board determines that a violation has occurred, the majority are handled through informal action by the board, such as letters of admonishment or education.

Fiscal Status of the Board

The board is self-supported entirely by special funds raised through licensure fees. The majority of revenue stems from license renewal fees, which are collected every two years. Fees for new or initial licensure, the next highest source of revenue, are collected annually. Initial licensure fees are accepted upon the submission of the application. If a new license is issued at the beginning of a new license period, the license is valid for two years; if a license is issued at the mid-point of the license period, the license is valid for one year.

Board Fees Last Increased in 2003

The board charges fees for a variety of services it provides to licensees and the public. The fees range from application fees to a fee for a duplicate license. **Exhibit 4** shows the current fees. These fees went into effect in 2003 and have been charged by the board since that time.

Exhibit 4 Comparison of Board Fees Fiscal 1999 vs. Current Fees

	<u>Fee in 1999</u>	<u>Current Fee</u>
License Fees		
Application	\$300	\$300
Limited license	100	100
Inactive license (fee to placed on inactive status)	250	250
License Renewal Fees		
Biennial license renewal	500	600
Late renewal	100	100
Reinstatement Fees		
Reinstatement fee*	50	50
Reinstatement to active licensure	100	100
Other Fees		
Second office certificate	5	5

*A licensee must also pay renewal fees for the number of years the license has lapsed.

Source: November 1999 Preliminary Evaluation of the State Board of Examiners in Optometry; Code of Maryland Regulations 10.28.07.02

Exhibit 4 also shows the changes in fees that occurred since the last preliminary sunset evaluation. The only fees that have been increased are the biennial license renewal fee and the reinstatement fee. Fees are based on budgetary projections and at this time, the board is considering increasing the biennial license renewal fee by between \$100 to \$150 in fiscal 2011, which would bring the fee to between \$700 and \$750.

Board Revenues Are Inconsistent Due to Biennial Renewal

Over the past five years, board revenues have averaged about \$280,000. However, as **Exhibit 5** demonstrates, total annual revenue fluctuates from year to year, reflective of the biennial license renewal process. For a two-year renewal period, total revenue approximates

\$500,000. The board relies on its fund balance from odd-numbered years (when the majority of licenses are renewed) to cover expenditures during even-numbered years. Expenditures for the past five years averaged approximately \$251,340 annually, ranging between \$213,505 and \$273,419. DHMH charges all health occupations boards for indirect costs such as technology support and legal counsel. Both direct and indirect costs have gradually increased over time.

Exhibit 5
Fiscal History of the State Board of Examiners in Optometry
Fiscal 2005-2010

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Projected FY 2010</u>
Beginning Fund Balance	\$90,113	\$286,733	\$120,574	\$318,606	\$95,756	\$233,394
Revenues Collected	438,588	47,347	455,314	47,676	411,057	100,000
Total Funds Available	\$528,701	\$334,080	\$575,888	\$366,282	\$506,813	\$333,394
Total Expenditures	\$241,968	\$213,505	\$257,282	\$270,526	\$273,419	\$276,094
Direct Costs	206,966	176,077	218,911	228,626	224,091	231,172
Indirect Costs	35,002	37,428	38,371	41,900	44,119	44,922
Ending Fund Balance	\$286,733	\$120,574	\$318,606	\$95,756	\$233,394	\$57,300
Fund Balance as % of Expenditures	118%	56%	124%	35%	85%	21%

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

Source: State Board of Examiners in Optometry

Biennial Renewal Cycle Causes Fluctuations in the Fund Balance

Generally, the health occupations boards have set a target fund balance of 20% to 30% of expenditures. The fund balance protects boards from unexpected costs that may occur. As shown in Exhibit 5, the board's fund balance as a percentage of expenditures has ranged from 35% to 124%. Boards with a biennial renewal cycle, such as the State Board of Examiners in Optometry, have to maintain a higher fund balance in one year to account for limited revenues in the other year.

While the board's fund balance has met or exceeded the 30% target in past years, as seen in Exhibit 6, the board's projected fund balance for fiscal 2010 is \$57,300, 21% of projected

expenditures. While this is a sizeable decrease from prior years, board revenues are anticipated to increase to approximately \$420,000 in fiscal 2011 as the majority of licensees renew in odd-numbered years. Revenues may be higher as the board is considering increasing the biennial license renewal fee by between \$100 and \$150 in fiscal 2011.

Exhibit 6
State Board of Examiners in Optometry: Fund Balance Levels
Fiscal 2009 and 2010

Actual Fund Balance for Fiscal 2009

Balance from Fiscal 2008	\$95,756
Revenues	411,057
Total Available Revenues	506,813
Actual Expenditures	(273,419)
Ending Fund Balance	\$233,394
Target Fund Balance @ 30% of Budget	82,026
Excess Fund Balance	\$151,368

Projected Fund Balance for Fiscal 2010

Balance from Fiscal 2009	\$233,394
Projected Revenues	100,000
Projected Total Available Revenues	333,394
Projected Expenditures	(276,094)
Projected Ending Fund Balance	\$57,300
Target Balance @ 30% of Budget	82,828
Excess Fund Balance	(\$25,528)

Source: State Board of Examiners in Optometry

It is unclear that this fee increase will be necessary. If the board collects \$420,000 in revenues in fiscal 2011 (a conservative estimate based on actual revenues in past years), it will have total funds available of \$477,300 for fiscal 2011. If fiscal 2011 expenditures are roughly \$303,703 (a generous 10% increase over projected expenditures for fiscal 2010, unlikely given the State's current fiscal situation), the board will end fiscal 2011 with a fund balance of \$173,597, 57% of board expenditures. **The board should consider future revenue and expenditure trends going forward and determine if a fee increase may be necessary over time.**

Since the board has a biennial license renewal period, it is important to consider the target fund balance over a two-year period. Exhibits 5 and 6 both indicate the extreme fluctuations in

the board's revenues and fund balances. Actual fund balances range between \$95,756 and \$318,606. As discussed earlier, the board is considering staggering the renewal period so that half of the optometrists are renewing their license each year rather than most renewing in odd-numbered years. Staggering the renewal period would allow for the board to maintain a more consistent fund balance. **The board should pursue plans to move to staggered license renewal periods.**

Recommendations

The State has an interest in licensing optometrists to protect the public from harm. Based on this preliminary evaluation, DLS finds that the board appears to perform its duties sufficiently. The board resolves complaints in a timely manner, meets its statutory obligations, efficiently issues licenses, and consistently regulates the practice of optometry in Maryland. The board was very responsive and cooperative during the evaluation process, responding quickly to requests for information. There are, however, a few issues that the board should continue to monitor or address, specifically the number of new licensees, the impact of the limited scope of practice, and the board's proposal to move to a staggered license renewal process.

Therefore, **DLS recommends that LPC waive the State Board of Examiners in Optometry from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2023. DLS also recommends that the board submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by October 1, 2011, on the actions the board has taken to:**

- **monitor the situation regarding the decline in new licenses issued and assess whether the board should take any action to address the decline;**
- **track developments in the scope of practice for optometry and their potential impact on entry into the profession in order to ensure that access to eye care in Maryland does not become a problem;**
- **review future revenue and expenditure trends to determine if a fee increase may be necessary; and**
- **implement a biennial license renewal cycle to maintain a more consistent fund balance.**

**Appendix 1. Written Comments of the
State Board of Examiners in Optometry**



STATE OF MARYLAND

DHMH Board of Examiners in Optometry

Maryland Department of Health and Mental Hygiene
4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

December 1, 2009

Ms. Jennifer B. Chasse
Senior Policy Analyst
Department of Legislative Services
90 State Circle
Annapolis, MD 21401-1991

Dear Ms. Chasse:

On behalf of the Board of Examiners in Optometry ("the Board"), I want to acknowledge receipt of your exposure letter and the draft copy of the Preliminary Evaluation of the Maryland Board of Examiners in Optometry.

Under separate cover, I have provided you with factual corrections of the report. The Board and I would like to express our appreciation for the professionalism provided by Nicole Sandusky, from your office, in the performance of this assignment. We look forward to working with your department and addressing the issues that were raised and taking action on the recommendations that were made.

If your office requires additional information or needs clarification of the corrections, please contact me directly at (410) 764-5994. Thank you.

Very truly yours

Patricia G. Bennett, MSW
Administrator

Cc: Secretary John M. Colmers
Wendy Kronmiller
Karl S. Aro
Thomas Azman, O.D. Board President

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Preliminary Evaluation of the State Board of Examiners of Nursing Home Administrators

Recommendations: **Waive from Full Evaluation**

 Extend Termination Date by Four Years to July 1, 2017

 Require Follow-up Report by October 1, 2011

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Examiners of Nursing Home Administrators (BENHA) was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this board – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. BENHA last underwent a full evaluation as part of sunset review in 2001. Based on that evaluation, DLS recommended an extension of the board’s termination date to July 1, 2013. Chapter 184 of 2002 extended the termination date of the board as recommended and required the board to report on implementation of other recommendations of the evaluation by October 1, 2002, and on the board’s evaluation of the Administrator-in-Training (AIT) program by October 1, 2003.

In conducting this preliminary evaluation, DLS staff reviewed annual reports from fiscal 2007 and 2008; board meeting minutes from the last three years; recent complaint, licensing, and fiscal information; and various other information provided by BENHA and the Department of Health and Mental Hygiene (DHMH). DLS staff also reviewed prior sunset evaluations, required follow-up reports from Chapter 184, a report of the 2006 Workgroup on the

Licensure of Nursing Home Administrators, and a report of the 2008 Task Force on the Discipline of Health Care Professionals and Improved Patient Care.

Additionally, DLS staff interviewed the board chairman and executive director. Telephone interviews were conducted with several board members, staff from the Department of Aging, the Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities, the Office of Health Care Quality (OHCQ), and the two major long-term care trade associations – Health Facilities Association of Maryland and LifeSpan. The National Association of Long Term Care Administrator Boards (NAB) and the National Conference of State Legislatures were also contacted.

BENHA reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 3**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

Regulation of Nursing Home Administration Required by Federal Law, but Varies Among States

Federal law requires that both nursing homes and nursing home administrators in all states be regulated.¹ In Maryland, about 230 nursing homes are licensed and regulated by OHCQ in DHMH, while nursing home administrators, those individuals responsible for the daily management of nursing homes, are licensed and regulated by BENHA.

Although state programs for licensure of nursing home administrators are required under federal law, specific licensure requirements such as age, education, training, and other requirements vary by state. In Maryland, to become licensed as a nursing home administrator an individual must be age 21 or older, have a bachelor's degree or master's degree, complete a 100-hour course in health care administration (if the individual's educational background is not in health care administration), complete an approved 12-month AIT program, and be of good moral character. The AIT program may be reduced based on certain types of prior experience. Individuals must also pass both a national and State examination. According to NAB, Maryland's requirements in terms of age and education level are similar to those in other states; however, Maryland has a relatively lengthy required AIT training period.

As required under board regulations, all applicants for licensure must complete a 12-month AIT program, unless credit for prior experience is awarded. AIT programs must be approved by the board, including the facility at which the training will take place and the preceptor (*i.e.*, mentor) who will oversee the applicant. Each AIT program must include

¹The requirement is listed in § 1902 of Title 19 of the Social Security Act. Specific requirements for state programs are listed in § 1908 of Title 19 of the Social Security Act.

at least 40 hours of training per week in no more than two facilities, one of which must have at least 75 beds. No more than six months of the program may be spent at a family-owned facility.

The State Board of Examiners of Nursing Home Administrators

The board was created by the General Assembly in 1970 and is under the direction of the Office of the Secretary of Health and Mental Hygiene. Federal regulations require the board to:

- develop, impose, and enforce licensure standards;
- develop and apply appropriate techniques for applicants for licensure and investigation of credentials;
- issue, deny, suspend, or revoke licenses, as appropriate;
- investigate and take appropriation action with respect to any complaint; and
- conduct a continuing study and investigation of nursing homes and administrators to improving licensing standards and enforcement of those standards (42 USC 1396(g) and *Code of Federal Regulations*, § 431.700-715).

These requirements are reflected in State law and regulations.

All members of the board are appointed by the Governor. There is a four-year term limit, and no board member may serve more than two consecutive full terms. Federal regulations prohibit the board from comprising a majority of members from any one profession and require the board be composed of representatives of professions concerned with the treatment and care of the elderly or chronically ill (*Code of Federal Regulations*, § 431.706). BENHA typically meets once a month.

BENHA currently has eight committees: complaint investigation, credentials, education, examination, HIV-infected practitioners policy, legislative rules and regulations, monitoring for training programs, and nursing home administrator rehabilitation. For some committees, such as complaint investigation and monitoring for training programs, all board members are involved as needed. Other committees, such as credentials and education, have a set membership.

Statutory Changes Affecting the Board Since the 2001 Sunset Review

As shown in **Exhibit 1**, few statutory changes have occurred since the 2001 sunset evaluation. Only three statutory changes have occurred, other than those included as part of

Chapter 184 of 2002, which extended the board's termination date. Despite the small number of statutory changes, the potential impact on board operations of some of these changes is substantial.

Exhibit 1
Major Legislative Changes Since the 2001 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	184	<p>Extends the termination date of the board by 10 years to July 1, 2013.</p> <p>Requires that prosecutions for misdemeanor offenses under the Maryland Nursing Home Administrators Licensing Act take place within three years after commitment of the offense.</p> <p>Prohibits individuals from supervising, directing, inducing, or aiding an unlicensed individual to practice as a nursing home administrator.</p>
2005	247	<p>Requires appropriate nursing home authorities – if a licensee leaves or is removed from office – to notify the board of the designated nursing home administrator.</p> <p>Authorizes the board to create an inactive status for licensees.</p> <p>Authorizes the board to impose a civil fine of up to \$1,000 for a first violation and \$5,000 for subsequent offenses under certain conditions, with revenues payable to the general fund.</p> <p>Specifies that an order of the board may not be stayed pending judicial review.</p> <p>Authorizes the board to issue a cease and desist order for practicing without a license or supervising or aiding an unauthorized person to practice as a nursing home administrator.</p>
2006	583	<p>Requires a study of licensure requirements, composition of the board, quorum requirements of the board, and makes recommendations related to these areas.</p>
2008	84	<p>Increases the minimum age for a licensee from 18 to 21.</p>
2009	71	<p>Increases the number of board members from 11 to 13 and alters the composition of board membership.</p> <p>Requires the board executive director to have at least a bachelor's degree.</p> <p>Requires the board to appoint, and the Secretary of Health and Mental Hygiene to confirm, the board's executive director.</p>

Source: Laws of Maryland

2009 Session Law Substantially Altered Board Composition

In recent years, the board has been composed of five licensed nursing home administrators who are actively practicing, four consumer members, and two members from related health professions. Among other changes, Chapter 71 of 2009 substantially altered the composition of the board effective October 1, 2009. Chapter 71:

- increases board size from 11 to 13 members;
- increases from five to six the number of nursing home administrators on the board;
- requires one of the nursing home administrators on the board to have experience with the Eden Alternative Green House or a similar program;
- decreases the number of consumer members from four to two;
- requires one of the consumer members to have or have had a family member in a nursing home;
- adds one physician or nurse practitioner specializing in geriatrics;
- adds one geriatric social worker; and
- adds one *ex-officio* member from OHCQ.

The board chairman explained that the transition to the new board composition is expected to be staggered. Some changes were expected to be implemented in October 2009, with the remaining changes to occur following the expiration of the terms of two consumer members in April 2010. With staggered implementation and delays in the appointment of the additional board members, the impact of the changes will not be felt by the board immediately following the effective date of the legislation. However, it is not clear how the change in board composition, particularly the potential impact of the reduction in the number of consumer members, will impact the functioning of the board long term.

Impact of 2005 Establishment of Inactive Status Remains Unclear

Among other actions, Chapter 247 of 2005 authorized the board to develop an inactive status for licensees. Inactive status is available for two years but is renewable if the licensee completes a reactivation application, meets the renewal requirements, has not practiced while on inactive status, pays the necessary fees, has been on inactive status for less than five years, and is

otherwise eligible for licensure. If the licensee has been on inactive status for five years or longer, the licensee must reapply, pay all necessary fees, complete a refresher AIT program, and pass the State's standards exam.

To date, the number of applications for inactive status has remained relatively low. As of December 2009, the number of licensees on inactive status was 50. The introduction of inactive status does not appear to have substantially changed the number of licenses renewed. However, because this is a relatively recent change, the full impact of inactive status on the number of active licensees and the number of renewals may not yet be fully felt.

Number of New Licenses Issued Reflects National Trend

The board's primary purpose is to issue and renew licenses for nursing home administrators. Licenses are issued for a two-year period with approximately half of licensees renewing in even fiscal years and the remainder in odd fiscal years. With limited exceptions, all nursing homes in Maryland must have one licensed nursing home administrator who is the administrator of record. However, nursing homes may employ more than one licensed nursing home administrator. These individuals may function in roles such as director of nursing or assistant director.

As shown in **Exhibit 2**, the total number of licensed nursing home administrators exceeds the number of nursing homes in the State. Although the overall number of licensees is more than sufficient, the number of new licenses issued has decreased in recent years. The number of renewal licenses has remained relatively stable. In fiscal 2005, the number of new licenses issued was 42. In fiscal 2009, this figure declined to only 17. The board's executive director indicated that the decline in new licenses is largely related to a decrease in the number of individuals in the AIT program. During fiscal 2007, the number of AIT program participants ranged between 26 and 31, but in fiscal 2009 ranged only between 14 and 16. While approved by the board, AIT participants are not licensed.

The executive director also indicated that the decline in licensees reflects a national trend. A representative of NAB indicated that decreases in the number of new licensees have been occurring since 1998, evidenced by declines in the number of persons taking the national exam. The representative noted, however, that this has become more stable recently.

Exhibit 2
Nursing Home Administrators Licensing Activity
Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Nursing Homes in Maryland	242	236	236	233	234
Renewal Licenses	220	253	239	253	237
New Licenses	42	32	32	29	17
Inactive Applications*	0	22	13	29	23
Reinstated Licenses	0	0	2	0	7

*Inactive status licenses were authorized under Chapter 247 of 2005 and took effect on October 1, 2005.

Notes: Renewals and inactive status renewals are completed every other year. As a result, any one year of data does not reflect the total number of licensees. Reinstated licenses may include inactive status licensees who have reactivated or lapsed licenses that are reinstated.

Source: State Board of Examiners of Nursing Home Administrators; Office of Health Care Quality

The 2001 sunset evaluation recommended that the board evaluate the potential of a shortfall in nursing home administrators. The number of active licensees is reported at each board meeting, and the current number of active licenses appears sufficient to meet the need. In addition, the executive director explained that the board receives notification of all changes in administrators of record at nursing homes. While this is effective in ensuring all nursing homes employ a licensed nursing home administrator as required, the board should continue to closely monitor licensing trends, particularly the number of applications for inactive status, and the number of renewal and new licenses to ensure that the number of licensed nursing home administrators continues to remain at a level that will meet the needs of nursing homes in Maryland.

Few Complaints Received, but Resolution Sometimes Delayed

The second principal function of BENHA is to investigate complaints against nursing home administrators and take disciplinary action where warranted. BENHA has a formal complaint investigation procedure, which has recently been posted to its web site. This procedure explains the process and types of outcomes available (*e.g.*, referral to another entity, closure, investigation, letters of agreement, charges, and other formal action). Under this procedure, complaints are reviewed immediately to determine if there is a basis to proceed to an investigation and if the complaint is under the board's jurisdiction. If a complaint is found to have merit, it is forwarded to the board investigator. If a violation of law or regulation is

identified, informal or formal disciplinary action may be taken by the board. If formal action is taken, information on the action is reported in the board newsletter and posted on the board web site.

As shown in **Exhibit 3**, BENHA received few complaints between fiscal 2005 and 2009. The complaints received by the board during this time cover a variety of areas including issues related to patient care and nursing, licensee conduct, and AIT program activities. Of the complaints received by the board, many were ultimately referred to OHCQ or the Maryland Board of Nursing or dismissed. The complaints referred to OHCQ and the Maryland Board of Nursing generally related to issues of patient care or nursing-related complaints.

Exhibit 3
Action Taken by the Board on New Complaints Received
Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Number of Complaints Received	4	9	10	12	9
Disposition of Complaint					
Under Investigation	0	0	1	0	0
Referred to Another Entity*	2	3	3	9	3
Dismissed	1	2	4	2	6
Letter of Education	0	0	1	0	0
License Surrender	1	0	1	0	0
Consent Order	0	0	0	1	0
Suspension	0	1	0	0	0
Returned to Board by AAG Prosecutor	0	2	0	0	0
Referred to OAG	0	1	0	0	0

*Includes the Office of Health Care Quality and Board of Nursing

Notes: Complaints do not include deficiency survey reports received by the Office of Health Care Quality. Complaint disposition is the final disposition as of June 30, 2009 and does not necessarily represent an action taken during any given fiscal year. Dismissed complaints are those complaints that are investigated and dismissed, reviewed by the board and dismissed, and those handled administratively.

Source: State Board of Examiners of Nursing Home Administrators

While only a few complaints received are ultimately investigated, the board has experienced difficulties resolving some complaints due to delays in investigation. As of December 2009, one complaint received in fiscal 2007 related to embezzlement remained under investigation by appropriate local authorities. Board action is not expected to occur until after

local authorities have completed the investigation. In addition, the investigations for two complaints received in fiscal 2006 (one complaint of fraud and one complaint of abuse) were only recently completed and had action taken by the board. Delays of this length in complaint resolution are particularly concerning because nursing home administrators are typically able to continue to work in the profession while under investigation.

While delays may occur due to the availability of witnesses, the time needed to gather information, and following referral of the completed investigation, the primary cause of investigation delays for BENHA appears to stem from vacancies and turnover in the board's investigator position.

From 1993 to April 2007, BENHA had an agreement with the State Board of Physical Therapy Examiners for the use of investigative services. In calendar 2006, the board experienced some difficulties in obtaining use of the investigator due to other workload. Since the end of the agreement, the board has been able to obtain use of an investigator, either on a contractual basis or through a shared position with other health occupations boards. The current investigator began with the board in July 2008. At that time, there were three outstanding complaint investigations.

The executive director advises that the complaint from fiscal 2007 is under investigation pending completion of a criminal investigation. The results from the investigation of the two outstanding fiscal 2006 complaints were brought before the board at its September 2009 meeting. The board voted to dismiss one of the charges and to refer the second case to the Office of the Attorney General for prosecution.

Board Is General Funded

BENHA is funded by an appropriation from the general fund but also has the authority to raise revenue through fees. All fee revenue collected by the board is likewise credited to the general fund. As shown in **Exhibit 4**, the board did not generate enough revenue from fiscal 2005 through 2009 to cover the board's expenses. The percentage of the board's expenditures covered by fee revenue was less than 30% in all years and less than 25% in fiscal 2007 and 2008.

The board's revenues, while fluctuating, remained relatively stable between fiscal 2004 and 2009. The board's expenses, however, increased from fiscal 2004 through 2008. The board's expenses are driven by personnel costs, which increased in all recent years except fiscal 2009. In fiscal 2009, the board's deputy director position, which was vacant most of the fiscal year, was reduced to a part-time position in cost containment actions taken by the Board of Public Works in October 2008. This action is expected to keep personnel costs at a lower level going forward. Despite the decrease in expenditures, the board generated substantially less revenue in fiscal 2009 than needed to cover its expenditures.

Exhibit 4
Fiscal History of the
State Board of Examiners of Nursing Home Administrators
Fiscal 2005-2010

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Projected FY 2010</u>
Total Revenues	\$45,780	\$56,400	\$44,840	\$48,450	\$41,930	\$41,930
Total Expenditures	174,839	191,783	203,440	229,833	145,981	177,070
Personnel	151,163	161,859	173,216	195,696	100,315	135,803
Nonpersonnel	23,676	29,924	29,824	34,137	45,666	41,267
Revenue Surplus/(Gap)	(129,059)	(135,383)	(158,600)	(181,383)	(104,051)	(135,140)
% of Expenditures Covered by Revenues	26.2%	29.4%	22.0%	21.1%	28.7%	23.7%

Note: Numbers may not sum to total due to rounding. Fiscal 2010 revenue estimates are based on fiscal 2009 experience and assume that the current fee schedule continues. Fiscal 2010 actual revenues are likely to increase if proposed regulation changes are approved. Fiscal 2010 expenditures reflect the legislative appropriation and are subject to change.

Source: State Board of Examiners of Nursing Home Administrators; Department of Health and Mental Hygiene; Maryland State Budget Books

Board Proposing Changes to Fee Schedule

The board is considering revising its current fee schedule, which would enhance the contribution to the general fund. A comparison of the current fee schedule and the proposed fee schedule are shown in **Exhibit 5**.

The goal of the General Assembly is that health occupations boards be self-sufficient; indeed all other health occupations boards must be due to their special fund status. However, due to the number of licensees it is unlikely that BENHA can recoup sufficient revenues for the general fund to cover its expenditures while maintaining fees at a level that would not cause a barrier to new licensees. Because the board is federally mandated and the amount of general funds required for board operations in recent years has been small (ranging from \$104,051 to \$181,383), it may be acceptable that the board is not self-sufficient.

Exhibit 5
Schedule of Fees
State Board Examiners of Nursing Home Administrators

<u>Type of Fee</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
Initial Application	\$100	\$100
Original License	\$100	\$100
Biennial License Renewal	\$100	\$200
Reinstatement	\$100	\$200
Duplicate License	\$25	\$50
Inactive Status*	\$50	\$100
Biennial Inactive Renewal*	\$50	\$100
Reactivation Application* ¹	\$100	\$100
Reactivation* ²	\$100	\$100
Administrator-in-Training Program	\$50	\$0
Approval of Continuing Education Programs of Study	\$50	\$0
Fine for failure to notify board of changes in name, home address, or change in name or address of employer within 30 days	\$50	\$100
NAB Examination Administration ³	\$100	\$100
State Standards Examination	\$125	\$125

*Indicates a new fee since the previous sunset evaluation.

¹Paid at the time of application to reactivate.

²Paid following board approval for reactivation.

³A separate charge is paid to NAB for taking the exam. This fee is a processing fee paid to the board.

NAB: National Association of Boards of Examiners of Long Term Care Administrators, Inc.

Source: Code of Maryland Regulations, 10.33.01.08; State Board of Examiners of Nursing Home Administrators

Nevertheless, the fee changes under consideration can be expected to help reduce the board's impact on the general fund. DLS estimates that, if these changes had been in effect in fiscal 2009, the revenue generated by the board would have been nearly \$20,000 higher (\$61,730), though still well below the board's expenditures. At this level of revenue, the board would have covered approximately 32.1% of its expenditures in fiscal 2009. The actual increase in revenue and related increased coverage of expenditures is subject to change based on the types of fees collected and level of expenditures in any given year.

Board Slow to Implement Prior Recommendations

The 2001 sunset evaluation included 11 recommendations in addition to extension of the board's termination date. The General Assembly acted to implement some of these recommendations in Chapter 184 of 2002, Chapter 247 of 2005, and Chapter 71 of 2009. The board has taken action on most – though not all – of the recommendations of the 2001 evaluation. **Appendix I** summarizes action taken on those recommendations.

One example of a recommendation implemented by the board is the submission of a follow-up report on the AIT program submitted in 2003. To prepare this report, the board conducted a survey of licensed nursing home administrators who received their license after 1998 and had completed an AIT program in Maryland. The survey focused on the quality and length of the training, the educational requirements for licensure, and prior credit experience. Based on the results of the survey, the board concluded that the AIT program as it existed at that time was adequate to meet the needs of persons in the program. The report contained no recommendations for change but indicated areas such as quality of care in the training facilities could be examined through follow-up actions.

Conversely, two recommendations from the 2001 sunset evaluation have not been addressed by the board to date – the relationship of the board with the Department of Aging's Long Term Care Ombudsman Program and alteration of required continuing education units.

The 2001 sunset evaluation recommended adding *ex-officio* members to the board from OHCQ and the ombudsman program. A similar recommendation was made in the 1991 sunset evaluation. While Chapter 71 of 2009 added an *ex-officio* member from OHCQ to the board, it did not create an *ex-officio* member from the ombudsman program or the Department of Aging.

One of the responsibilities of the ombudsman program is to accept and resolve complaints related to residents of long-term care facilities. The former ombudsman indicates, however, that complaints received through that program regarding nursing home administrators are usually resolved through mechanisms other than the board (e.g., directly with the corporation). To the extent that the program receives complaints regarding nursing home administrators, a formal relationship between the organizations could be beneficial.

Although no longer doing so, the executive director reports that in the past the board provided notices for the board meetings to the Department of Aging. However, it does not appear that there has been attendance by representatives of the ombudsman program. Representatives of the Department of Aging and the board acknowledge that there could be potential benefits in a relationship between the organizations.

The 2001 sunset evaluation also recommended the board require continuing education units in areas of deficiency. No changes have since been made to formally require certain areas of continuing education units based on areas of deficiency.

A second set of recommendations that BENHA has been slow to implement comes from the 2006 report of the Workgroup on the Licensure of Nursing Home Administrators. This report was required by Chapter 583 of 2006, which required BENHA in conjunction with the Health Facilities Association of Maryland, Mid-Atlantic LifeSpan, and any other nursing home provider designated by the board to:

- review current standards for licensure, including educational and experience requirements;
- review board composition and quorum requirements; and
- make recommendations for statutory or regulatory changes related to these areas.

The Act did not require the board to make any changes following this report. Of the nine recommendations contained in the workgroup report, the board has acted on only four, with three of the five recommendations to be addressed as part of pending regulatory revisions. **Appendix 2** summarizes the implementation of the recommendations of the workgroup report.

Examples of recommendations where no change in regulation has occurred are the recommendations to allow AITs to spend more than six months of their training at a family-owned facility and to increase the time period of temporary licensure from 90 days to six months. While not all recommendations have been acted on, the board appears to be moving in the direction of implementing these recommendations.

Planned Changes May Alter Functioning of Board

Disciplinary Process

The 2001 sunset evaluation report recommended that BENHA determine how to keep a record of deficiencies found in survey reports from OHCQ by nursing home administrator and how to implement a program to investigate patterns in these deficiencies. The 2002 follow-up report submitted by the board indicated that the board intended to complete these actions.

As of December 2009, these actions had not been implemented. However, the board advises that two related changes are expected to occur in the disciplinary process in the coming year which should address this recommendation. These changes involve the formation of a disciplinary committee and the creation of a database to track deficiency survey reports provided by OHCQ by nursing home administrator. The exact responsibilities of the disciplinary committee are not expected to be finalized until a later date; however, the board chairman indicated that expected responsibilities would be to review deficiency survey reports as well as to

track trends by nursing home administrator. The implementation date of these two changes is not yet known.

Implementation of this database may allow the board to address an outstanding recommendation from the 2001 sunset evaluation, which recommended the board require continuing education units in areas found to be deficient. The board was to utilize OHCQ reports as one of the means of determining the specific areas.

Online License Renewal

At its March 2009 meeting, the board decided to move toward an online renewal process. The board indicated at the time of the decision that licensees would still have the option of renewing with a paper form. While the board initially anticipated that an online renewal process could be available July 1, 2009, as a result of resource and other barriers, the online renewal process is not yet available.

Regulatory Review and Evaluation Process Underway

The Regulatory Review and Evaluation process requires that every eight years chapters of the Code of Maryland Regulations (COMAR) be reviewed and evaluated to ensure that all regulations are necessary, meet statutory authority, follow judicial opinions, are not obsolete, and do not need other amendments. As part of this process, the board has reviewed its regulations and submitted proposed regulations to the Joint Committee on Administrative, Executive and Legislative Review (AELR). The regulations were published in the *Maryland Register* in November 2009.

Some of the changes under consideration are minor, including those intended to update terminology, conform regulations to existing law, or streamline regulation; however, some may have more significant impacts. These proposed changes include:

- increasing license fees related to renewal licenses, duplicate licenses, inactive licenses, and reinstatement and reactivation, and eliminating fees for continuing education unit approval and AIT application (see Exhibit 5);
- eliminating board involvement in the continuing education unit approval process to be replaced with approval through NAB;
- altering the AIT program to clarify requirements, including the minimum size of facility (60 beds), specific areas in which AITs are expected to train, and program reporting requirements;

- making adjustments to the preceptor certification, including a requirement for recertification if an individual has not precepted an AIT within a three-year period and requiring that a preceptor have spent a minimum length of time (two of last three years) as a full-time nursing home administrator prior to being a preceptor;
- adding to the list of actions that can lead to a disciplinary action failure to act to promote the safety, health, and life of a resident; and
- requiring three nursing home administrator members of the board to be present at a disciplinary hearing.

Some of these proposed changes were recommended either in the 2001 sunset evaluation (*i.e.*, a fee change) or the 2006 report of the Workgroup on the Licensure of Nursing Home Administrators. In addition, the board indicates that it has accepted NAB approval of continuing education units since 1994. To streamline the approval process, the board has chosen to remove itself from the approval process entirely instead of having two approval processes.

The proposed changes have not yet been finalized; however, they have the potential to impact how the board functions in terms of committee structure, review of the AIT program, and determination of disciplinary action.

Recommendations

The regulation of nursing home administrators is federally mandated; thus, discontinuing the board would put federal funding of nursing homes in the State at risk. Licensing and regulation of nursing home administrators is also necessary to ensure the proper administration of these facilities.

Throughout this preliminary evaluation, DLS found that the board generally functions well to fulfill federally mandated requirements. While the board has experienced some difficulties in completing complaint investigations, the hiring of a shared investigator has enabled some outstanding complaints to move closer to resolution. Also, the board has begun to make changes to improve the training, licensure, and disciplinary processes through regulations, though changes are not yet final. Even so, the board continues to face additional challenges noted in the 2001 sunset evaluation such as not generating sufficient revenues to cover expenditures; however, this is likely to continue even if proposed fee changes are implemented. Furthermore, the board has been slow to implement several of the recommendations posed by past sunset evaluations and other reports.

The board is in the process of implementing substantial changes that will impact its operations. These changes include alterations to the composition of the board as a result of

Chapter 71 of 2009, pending regulatory changes, movement to an online renewal process, and changes the board intends to make regarding its disciplinary process. To enable the board to have adequate time to implement these changes and account for the substantial changes to the board composition, additional time prior to the next review is needed. **Therefore, the Department of Legislative Services recommends that LPC waive the State Board of Examiners of Nursing Home Administrators from full evaluation at this time; the board's termination date be extended by four years; and another preliminary evaluation be undertaken in five years to review the impact of changes in board composition, regulations, and the licensing and disciplinary processes.**

DLS also recommends that the board submit a follow-up report to the Senate Finance Committee and the House Health and Government Operations Committee by October 1, 2011, on:

- a plan to improve the timeliness and functioning of its disciplinary process, including the complaint investigation process;
- a jointly developed plan to improve communication between the board and the Department of Aging's Long Term Care Ombudsman Program;
- a review of trends in licensing, with a focus on new licenses issued, the stability of renewal of licenses, and licenses on inactive status;
- implementation of an online renewal process;
- implementation of the planned database to track deficiency survey reports;
- implementation of new and revised regulations proposed through the Regulatory Review and Evaluation Process in 2009, with a particular emphasis on those relating to the AIT program, the disciplinary process, and new causes for disciplinary action; and
- the additional revenue generated from alterations to the fee structure through the proposed regulatory changes.

Appendix 1: Status of the Implementation of 2001 Sunset Evaluation Recommendations

<u>Recommendation</u>	<u>Status of Implementation</u>
<p>1. The State Board of Examiners of Nursing Home Administrators (BENHA) should be continued, and its termination date should be extended by 10 years to July 1, 2013. The board should report to the Senate Finance and House Environmental Matters committees on or before October 1, 2002, on the implementation of the recommendations contained in the sunset evaluation.</p>	<p>Chapter 184 of 2002 extended the sunset.</p> <p>Follow-up report submitted.</p>
<p>2. Statute should be amended to establish two <i>ex-officio</i> seats on the board: one representative from the State ombudsman program in the Department of Aging and one representative from the Office of Health Care Quality (OHCQ).</p>	<p>Chapter 71 of 2009 added an <i>ex-officio</i> member from OHCQ.</p> <p>No <i>ex-officio</i> member has been added for the ombudsman program.</p>
<p>3. The board should evaluate the Administrator-in-Training (AIT) program and examine how it could make the AIT program more effective. The evaluation should address such issues as:</p> <ul style="list-style-type: none"> • the appropriate length of time for an AIT program; • giving more credit for related experience and/or appropriate education; and • how an AIT program can incorporate more quality of care training. <p>The board should report to the Senate Finance and House Environmental Matters committees on its evaluation of the AIT program and its recommendations on or before October 1, 2003.</p>	<p>Report submitted as required.</p>

Recommendation

Status of Implementation

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| 4. The board should continue to use its own standards examination to test for Maryland-specific knowledge and should not pursue use of the National Association of Long Term Care Administrator Boards version of the state standards exam. | Board continues to use State examination. |
| 5. The board should require specific continuing education units (CEUs) to improve knowledge in areas that are found to be deficient. The board should identify specific subject areas in which nursing home administrators may be undertrained, designate CEUs required to meet these needs, and issue regulations to implement the new requirements. The board may utilize many resources, such as reports from OHCQ nursing home inspections, to determine what course work is most needed. | No action taken. |
| 6. The board should develop a plan to improve communication with licensees. Improvements should include making better use of newsletters by including summaries of new legislation, outcomes of disciplinary actions, a summary of complaints filed with the board, and a summary of survey deficiencies reported to the board. | Newsletters incorporate information on final disciplinary action.
In July 2009, the board's web site was redesigned and now includes information on final disciplinary action, |
| 7. The board should evaluate the potential of a shortage of nursing home administrators by monitoring the number of practicing licensees. If the board detects a shortage, it should address the issue by implementing a program to attract and retain licensees. | Board receives information on all changes in nursing home administrators of record at nursing homes in Maryland.
The number of active licensees is reported at each board meeting.
Based on licensing information provided by BENHA, there does not appear to be a shortage of nursing home administrators at this time. |

Recommendation

Status of Implementation

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| 8. The board should not wait until OHCQ completes its investigation to initiate an investigation against a nursing home administrator. The board should develop protocols on when it is appropriate to initiate an investigation after receiving an OHCQ deficiency survey report, what actions are appropriate to address the administrator responsible for an OHCQ deficiency report, and how the board can keep a record of each licensee's survey deficiencies and implement a program for investigating a pattern of deficiencies. | Board is moving in this direction with planned disciplinary committee and database. |
| 9. The board should develop a plan to make it easier for consumers to file complaints. The plan should at least address: <ul style="list-style-type: none">• changing its voice mail message to notify callers that it will take complaints about nursing home administrators;• taking complaints via telephone; and• including on its web site a complaint form and instructions for filing a complaint with the board. | Complaint form on web site. |
| 10. The board should work with the Office of the Attorney General and the State's Attorney's Office to examine the complaint investigation and resolution process and determine how to conclude investigations in a more timely manner and ensure that prosecution is initiated when warranted. | Few complaints move to formal action and delays in current investigations appear to be due to other factors, but the board's executive director indicated that the board is working to address this issue. |
| 11. The statute of limitations should be expanded for prosecuting misdemeanor offenses under the Health Occupations Article, bringing the limitation period for nursing home administrators more in line with the statute limiting the prosecution of the unauthorized practice of medicine. In addition, the definition of unauthorized practice should be amended to include individuals who knowingly induce, aid, direct, or supervise an unlicensed nursing home administrator. | Chapter 184 of 2002 implemented this recommendation.

Chapter 247 of 2005 further clarified the law related to unauthorized practice. |

Recommendation

Status of Implementation

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| 12. The board should develop a plan to raise fees so that its contribution to the general fund is more significant. It is unlikely that the board's revenues could equal expenses because the number of licensees is too small, but the board could close the gap between revenue and expenses. The board should focus on increasing renewal fees and possibly reinstatement fees so as to not make initial application and licensure cost-prohibitive for prospective administrators. The board should implement regulations increasing fees as required. | The board is proposing changes as part of the Regulatory Review and Evaluation Process. |
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Notes: Table produced through interpretation of information from interviews, follow-up reports, and various other information provided by BENHA and BENHA staff.

Source: State Board of Examiners of Nursing Home Administrators; Department of Legislative Services; Laws of Maryland

Appendix 2: Status of the Implementation of Recommendations from the 2006 Workgroup on Licensure of Nursing Home Administrators

<u>Recommendation</u>	<u>Status of Implementation</u>
Administrator-in-Training (AIT) programs should not be exclusively full time.	No change has been made in regulation at this time, but the board voted to allow part-time programs in November 2009 and plans to draft regulations implementing this change.
AIT programs that include more than six months at a family-owned facility should not be prohibited.	No change in regulation. See board comments for explanation.
AIT programs should not be limited to facilities with 76 beds or more.	Proposed regulations would lower the minimum size of facilities to 60 beds.
AIT programs should provide credit for time that potential applicants have spent with a single employer, not just a single facility. Credit for experience should not be left strictly to the discretion of the board.	Explanation of prior experience credit is provided in COMAR and clarified through proposed regulations. However, credit is still at the discretion of the board.
Maryland should adopt the "Principles of Interstate Licensure Endorsement" advocated by the National Association of Boards of Nursing Home Examiners of Long Term Care Administrators.	No change in regulation. See board comments for explanation.
AIT preceptors who have not precepted a candidate within five years should be required to be either evaluated by the board to ensure the preceptor has actively practiced on a regular basis and has the core of knowledge consistent with current standards of practice, or has successfully completed a board-approved preceptor course.	Proposed regulations include requirements that a preceptor must have been employed full time as a nursing home administrator for two of the preceding three years before application and, if not, that the preceptor recertify by completing a board-approved training course.

Recommendation

Status of Implementation

The board should refer disciplinary matters to the Office of Administrative Hearings, so as to better ensure due process protections for individuals facing the revocation or suspension of their license.

No direct change in regulation as the board already has this authority, but proposed regulations include a requirement that at least three nursing home administrators be present at a disciplinary hearing.

Temporary licenses should be permitted for up to six months, not the 90 days currently allowed, so as to bring Maryland law in line with federal regulations.

No change to regulation. See board comments for explanation.

The minimum age for a nursing home administrator should be 21, not 18.

Chapter 84 of 2008 implemented this change.

Notes: Table produced through interpretation of information from interviews and various other information provided by BENHA and BENHA staff.

Source: State Board of Examiners of Nursing Home Administrators; Department of Legislative Services; Laws of Maryland

**Appendix 3. Written Comments of the
State Board of Examiners of Nursing Home Administrators**



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

State Board of Examiners of Nursing Home Administrators

Patricia A. Hannigan, Executive Director

November 23, 2009

Ms. Jennifer B. Chasse
Senior Policy Analyst
Department of Legislative Services
90 State Circle
Annapolis, MD 21401-1991

Dear Ms. Chasse:

Thank you for the draft copy of the preliminary evaluation for the Board of Examiners of Nursing Home Administrators. The Board appreciates the recommendations for waiver from full evaluation, extending the termination date to July 1, 2017, and the follow-up report due by October 1, 2011.

After careful review of the facts, the Board wishes to make two comments. In Appendix #2, in the Status of Implementation column, it is indicated that no changes were made in regulations concerning AIT programs being conducted in family-owned facilities, adopting the "Principles of Interstate Licensure Endorsement" advocated by the National Association of Long Term Care Administrator Boards, and extending temporary licenses up to six months.

No changes were made in regulations because after careful consideration during the Workgroup discussions Legislatively mandated in August 2006, and again during the regulatory review conducted by the Board in April 2009, the Board feels there should be limits as to how much time a trainee can spend in a family-owned or family-operated nursing facility. The Board also believes there is no benefit in adopting the "Principles of Interstate Licensure Endorsement." All principles are covered in the Board's regulations, and should this language be incorporated, and there are amendments to the "Principles," the regulations would become outdated. The Board also felt that there should be no changes to the 90 day limit for appointing a nonlicensed person to serve in the capacity of acting nursing home administrator (There is no "temporary license" in Maryland) under an unexpected cause, with an allowable 30 day extension. It was felt in 2006 and again in 2009 that four months is adequate time to recruit a new administrator. Due to the medically fragile population in nursing homes, it is felt that six months is too long of a period of time to have a facility managed by an unlicensed individual without the proper training. Unexpected cause is not addressed in regulations, but is in law under Title 9 of the Annotated Code of Maryland (§9-301).

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Ms. Jennifer B. Chasse
November 23, 2009
Page 2


Stating there is “no change in regulation” could lead one to believe that the Board did not act on these recommendations, when in fact the Board performed a careful review, held lengthy discussions, and ultimately deemed that amending the regulations would not benefit trainees, licensed nursing home administrators, or the residents of nursing homes. It is recommended that in lieu of “no change in regulation” use instead the phrase “Board is not in agreement with this recommendation.”

In the first recommendation under Appendix 2, the Status of Implementation indicates “No change has been made, but the board has indicated a willingness to consider proposals” for the recommendation that training programs should not be exclusively full time. The Board has voted unanimously to amend the regulations to allow for a part-time training program, and is starting the process for drafting amendments to its regulations.

The Board would like to extend it’s thanks and appreciation to your office and Tanya Zimmerman for all of her work during this review. It was a pleasure working with Ms. Zimmerman.

If you have any question, please do not hesitate to contact this office.

Sincerely yours,


Patricia A. Hannigan
Executive Director

cc. Secretary John M. Colmers
Mr. Karl S. Aro

Preliminary Evaluation of the State Board of Master Electricians

Recommendation: Full Evaluation

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Master Electricians was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this board – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. The State Board of Master Electricians last underwent a full evaluation as part of sunset review in 2001. The 2001 full evaluation determined that there was a continued need for government oversight of master electricians and that the board was well run and received few complaints from the public or the profession regarding its licensees. As a result, DLS recommended that the board’s termination date be extended by 10 years, that the board serve as a central repository of information on disciplinary actions taken against electricians at the State and local levels, and that master electricians report the number and location of all other licenses held. Chapter 163 of 2002 extended the termination date to July 1, 2013, and established the following reporting requirements:

- a county or municipal corporation that requires a local license must report a disciplinary action against a licensee to the State board within 30 days of commencing the action;
- upon receipt of notice of a disciplinary action against a licensee, the State board must provide notice of the disciplinary action to each local licensing jurisdiction; and
- by December 1 of each year, each local licensing jurisdiction must submit to the State board the number of complaints against master electricians who are licensed in the local jurisdiction.

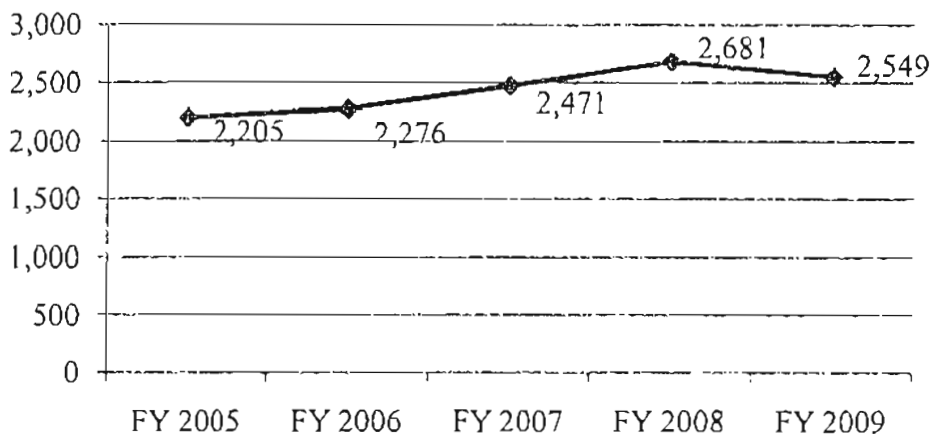
In conducting this preliminary evaluation, DLS staff interviewed board members and staff, licensees, and representatives of union and nonunion industry groups; reviewed State statutes and regulations pertaining to the State electrical industry; attended a board meeting; reviewed board meeting minutes; and visited the board’s office. In addition, DLS staff analyzed data relating to the board’s administration of licenses, complaints, and finances.

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

Electricians in Greater Demand

According to the U.S. Bureau of Labor Statistics, the national demand for electrical workers will rise to more than 734,000 by 2014, 78,000 more than were employed in 2007. Moreover, although the recession has likely slowed the retirements of many experienced electricians, future retirements among electricians are certain to be most significant among the most experienced workers. Meanwhile, the work electricians will be asked to perform is changing rapidly due to emerging technologies like solar/photovoltaics and wind energy. As the demand for renewable energy increases, so too will the demand for electricians who can competently facilitate its supply. As demonstrated by **Exhibit 1**, the number of registered electrician apprentices has increased recently. However, the rise in the number of apprentices may not keep pace with the increased demand if a large number of veteran electricians retire soon, as is expected.

Exhibit 1
Number of Registered Electrician Apprentices in Maryland
Fiscal 2005-2009



Note: The reported decrease from fiscal 2008 to 2009 resulted from apprenticeships that started in 2009 but were not registered until early fiscal 2010. As of October 23, 2009, 2,871 apprentice electricians were registered.
Source: Maryland Apprenticeship and Training Program

State and Counties Share Overlapping Authority

The policy of the State is to regulate individuals who provide electrical services or engage in the business of providing electrical services, to safeguard the life, health, property, and public welfare of the citizens of the State. However, in most cases, a State license does not grant the licensee the authority to provide electrical services; instead, it facilitates the process of obtaining a local license needed to conduct electrical work in a specific jurisdiction or in Virginia, with which the State has a reciprocity agreement. All but two counties in the State maintain a local electrical board to provide for the licensing and regulation of electricians. As required by statute, counties with local boards must establish licensing qualifications comparable to those required by State law. Jurisdictions that opt not to regulate electricians must require a State license for providing electrical services as a master electrician. The only counties that do not maintain electrical boards are Allegany and Garrett, where a State license entitles a master electrician to work. The law also requires municipalities to either enforce the provisions of the Maryland Master Electricians Act, establish local licensing qualification requirements that are comparable to or more stringent than the State's, or adopt the regulations of the municipality's county.

Reciprocity between jurisdictions within Maryland was not set forth in law until 1976. Prior to then, electricians wishing to work in multiple jurisdictions had to take an examination required by each jurisdiction. Because jurisdictions typically offered examinations only twice per year, electricians often missed opportunities to bid on contracts while waiting to complete the license application process. In 1976, the General Assembly required local jurisdictions to waive examination requirements for qualified applicants holding a license from another jurisdiction. Because of real or perceived disparities in the difficulty level of examinations, some jurisdictions were reluctant to issue reciprocal licenses. Electricians believed that, given these concerns, local boards failed to process applications for reciprocal licenses in a timely manner.

The Maryland Uniform Electrical Licensing Examination Committee (MUELEC) facilitated the implementation of the reciprocity law. Committee members volunteered to develop a test bank of questions for all examinations offered by local jurisdictions, which helped ensure the same minimum qualification for license holders across jurisdictions, and eased jurisdictions' concerns about issuing reciprocal licenses. MUELEC members continue to revise the test bank of questions, which is based on the 2008 National Electrical Code, the most recent version of the code, which is updated every three years. Paradoxically, however, some local jurisdictions still enforce the 1999 version of that code. An independent but related committee, the Maryland Electrical Legislative Group, addresses other issues of concern to the industry, such as changes to the State's regulatory scheme.

The introduction of the State's master electrician's license in 1984 provided an additional vehicle for obtaining a reciprocal license. Master electricians, as the name implies, possess the broadest range of experience, knowledge, and skills within the profession to provide electrical services in all aspects of the electrical trade. Individuals without extensive experience in conducting electrical work may operate under more limited or restricted licenses granted by local jurisdictions. Restricted licenses typically permit an electrician to conduct work on specific

systems such as air conditioning, heating, and low-voltage signaling. Limited licenses generally specify that an electrician work on a particular type of property, such as single-family homes, or in a specified geographic area. In counties that do not offer licensure or these types of licenses, individuals conducting restricted or limited work are not regulated.

The State Board of Master Electricians Has Limited Authority

The State board consists of nine members appointed by the Governor with the advice and consent of the Senate, including six licensed master electricians and three consumers. Each member of the board must be a citizen of and reside in Maryland and may not reside in the same county as another member. Of the six master electrician members, one must be from the Eastern Shore; one must be from Baltimore City; one must be from Baltimore, Cecil, or Harford county; one must be from Anne Arundel, Calvert, Charles, or St. Mary's county; one must be from Montgomery or Prince George's county; and one must be from Western Maryland or Howard County.

With local jurisdictions having overlapping authority to license and regulate electricians, the State Board of Master Electricians has a small budget and employs only part-time staff. The board, located within the Division of Occupational and Professional Licensing, operates with direct assistance from four Department of Labor, Licensing, and Regulation (DLLR) staff persons, none of whom works exclusively for the board. One deputy commissioner provides policy direction and management for all boards and commissions within the division. He has oversight over operational support services such as personnel services, information technology, budget and procurement, and legislative affairs. Until recently, an executive director responsible for a total of four boards and commissions, oversaw and assisted with board operations. The executive director had access to division investigators to collect information about complaints. The executive director position, however, became vacant in February 2009 and still remains vacant; it is expected to be eliminated as part of cost containment measures. In the absence of an executive director, the assistant commissioner has directly overseen board operations while also providing oversight for certain other occupational and professional licensing boards. An Assistant Attorney General provides legal counsel for the State Board of Master Electricians as well as four other boards and commissions within the division. The board also has a half-time administrative secretary to support the board's day-to-day functions; the position is shared with the State Board of Stationary Engineers.

While the board does not typically investigate complaints on its own, the board is authorized to discipline a licensee if a local jurisdiction reprimands, suspends, or revokes a license of a State licensee.

State Board Issues Three Types of Licenses

Although the board licenses only master electricians, it offers three categories of the license: active, inactive, and qualified agent. An active license allows an electrician to obtain reciprocal licenses and provide electrical services in two counties that do not have electrical

boards. As of June 2009, there were 1,360 active licensees in Maryland, an increase from the 992 active licensees as of June 1, 2000.

The board also offers an inactive license. These electricians typically work under the supervision of an active licensed master electrician who assumes responsibility for all work performed by the inactive licensee. Inactive licensees may also wish to maintain their classification as a State master electrician but do not anticipate providing electrical services or using reciprocity privileges. An inactive license can also save costs because general liability insurance is not required. As of June 2009, 874 individuals held inactive State licenses. The department also maintains data on a subset of inactive licenses held by inspectors. Inspectors that work at local permit and inspection offices typically do not provide electrical services and, as such, do not need an active license. Most inspectors are qualified to conduct electrical work, and they may wish to maintain an inactive license. The board issues identification cards to inspectors that identify master electricians who serve as inspectors. Of the 874 inactive licenses, 39 belonged to inspectors.

A large number of electricians are able to work under qualified agent licenses through the process of assignment. Qualified agent licenses are the third and most common category of license, with 2,670 licensees as of June 2009. The qualified agents assign their license to a company that provides electrical services. Individuals working for the company may conduct electrical work, and the qualified agent assumes responsibility for the work. The law does not limit the number of electricians that may work under the authority of a qualified agent.

Combining all categories of licenses, the board had a total of 4,943 licenses issued as of June 2009. Another 2,958 licenses were expired. If individuals with expired licenses apply for reinstatement within two years of expiration, meet the renewal requirements, and pay the appropriate fee, they may obtain a current license without taking the examination. The number of licenses issued by local jurisdictions is unknown.

To obtain a State license, an applicant needs seven years of experience providing electrical services for all types of electrical equipment and apparatus under the supervision of a master electrician or a similarly qualified employee of a governmental unit. With the board's approval, the applicant may count up to three years of formal education and training toward the experience requirement. All applicants, except those seeking inactive status, must maintain general liability insurance of at least \$300,000 and must maintain property damage insurance of at least \$100,000. Individuals may satisfy local jurisdictions' requirements for surety bonds by submitting proof of the insurance needed to obtain a State license.

Applicants must also pass an examination at the State or local level. Except under certain circumstances, applicants holding local licenses are exempt from the State examination requirement. The State examination is administered by a private testing service and contains questions from the test bank developed by MUELEC. The examination is open book, and the questions are derived from the National Electrical Code, which is updated every three years. The board is responsible for reviewing examination responses under dispute by the applicant. As shown in **Exhibit 2**, pass rates for the State exam are low. From October 2001 to June 2009, 2,457 candidates took the test but only 1,000 (41%) passed. One industry observer attributed this

to a lack of broad-based vocational knowledge among test-takers. Another industry observer noted that the examination is offered only in English. The board notes that electricians who are more familiar with changes in the National Electrical Code fare better on the examination, which reflects periodic changes to the code.

Exhibit 2
State Master Electrician Examination Pass Rates
Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Tested	367	311	273	293	278
Passed	125	152	165	165	111
Failed	242	159	108	128	167
Pass Rate	34%	49%	60%	56%	40%

Source: Department of Labor, Licensing, and Regulation

Licensing fees are shown in **Exhibit 3**. The board issues staggered two-year licenses that may be renewed as long as applicants meet the renewal requirements, which vary among licenses but typically include paying a fee and submitting a renewal application. The board has considered adding continuing education requirements since at least the 2000 preliminary evaluation.

Exhibit 3
Schedule of Licensing Fees

	<u>Original</u>	<u>Renewal</u>
Master (Active)	\$20	\$25
Master (Inactive)*	20	50**
Qualified Agent	20	25
Change in Assignment of a Local License	50	N/A
	<u>Initial</u>	<u>Reexamination</u>
Master Electrician Examination Fee	\$65	\$65

*Inspectors with active licenses can change to inactive status upon payment of a \$50 inactive status fee. Inspectors may renew their inactive licenses free of charge.

**Master electricians must pay \$100 to reapply for inactive status and \$50 to reactivate from inactive status. Reinstatement fees for electricians who are not inactive are \$25 for 30-day late renewals, \$50 for 60-day late renewals, and \$100 for renewals that are more than 60 days late.

Source: Annotated Code of Maryland; Code of Maryland Regulations

Statutory and Other Changes Affecting the Board Since 2001 Sunset Review

Since the full evaluation in 2001, only one substantive statutory change has affected board operations. As described above, Chapter 163 of 2002 established several reporting requirements. In accordance with Chapter 163, the board receives information on individual disciplinary action dispositions from counties and municipalities and disseminates that information to the other local boards in a timely fashion. The board has not, however, prepared annual reports on complaints submitted to local jurisdictions. After the board made its initial data request to the local jurisdictions, reporting by local jurisdictions was sparse. Subsequently, the board did not request the information annually, and the local jurisdictions did not submit it. The Division of Occupational and Professional Licensing plans to send a letter to the subdivisions by the end of November 2009 reminding them of their obligation and requesting timely submittal of the data for fiscal 2009.

Complaint Resolution Is Rare at the State Level

Statute requires local jurisdictions to enforce licensing requirements. The State board, however, plays a limited role in complaint resolution and enforcement. DLLR staff handles most of the complaint activity that reaches the board. Most complaints concern the amounts charged by electricians and the timeliness with which electricians complete their work. If an issue merits review by the State board, staff requests a written complaint. For complaints that fall under the jurisdiction of a local board, DLLR staff makes an appropriate referral to the appropriate jurisdiction.

Upon receipt of a written complaint that warrants State action, the department notifies the electrician and requests a response within 10 days after the electrician receives notification. The department also sends a letter of acknowledgment to the complainant. The executive director reviews the information provided by the complainant and the electrician. The executive director may also ask a division investigator to collect additional information concerning the complaint. The executive director presents the complaint and the accompanying information to the board members and legal counsel at a board meeting. The members and counsel discuss possible courses of action and, if the matter warrants formal action, the board refers the case to the board's Assistant Attorney General for review. Upon approval by the Attorney General's Office, the board holds a formal hearing.

Because most complaints fall under the jurisdiction of local boards, the department receives a limited number of complaints and, consequently, rarely takes disciplinary action against licensees. Between 2004 and 2008, the board received 132 complaints. Only 8 complaints underwent review by the board; departmental staff referred the remaining 124 complaints to local jurisdictions. Of the 8 reviewed by the board, none resulted in any board action because there were no chargeable offenses.

A record of complaints referred to local jurisdictions appears in **Exhibit 4**.

Exhibit 4
Complaints Referred to Local Jurisdictions

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Complaints	23	23	22	30	26

Source: State Board of Master Electricians

As referred to above, statute requires the State board to serve as a central repository on disciplinary actions taken against electricians at the State and local levels. Local licensing jurisdictions must inform the State board about disciplinary actions within 30 days of taking action. If an electrician holds a State license, the State board reviews the matter. In the past five years, the State board has received only 11 such referrals. Upon receipt of notice of a disciplinary action against a licensee, the State board must provide notice of the disciplinary action to each local licensing jurisdiction. Finally, by December 1 of each year, each local licensing jurisdiction must submit to the State board the number of complaints against master electricians who are licensed in the local jurisdiction. As discussed above, this last requirement has not been enforced.

Revenues Now Cover the Cost of Regulation

The General Assembly has a policy that regulatory bodies should, to the extent feasible, be self-supporting; however, boards should not charge licensees significantly more than necessary to maintain operations and cover the costs associated with regulation. **Exhibit 5** shows revenue and expenditure trends over the past five years. With modest increases in revenues from licensing fees over the past few years, the board now covers the costs of its work after operating with a small funding gap in fiscal 2005 and 2006. The board's limited revenues reflect its limited authority.

Exhibit 5
Fiscal History of State Board of Master Electricians
Fiscal 2005-2010

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	(Est.) <u>FY2010</u>
Total Revenues	\$108,401	\$104,183	\$122,139	\$161,915	\$123,406	\$140,000
Total Costs	\$146,964	\$110,520	\$105,488	\$110,472	\$121,470	N/A
Direct Costs*	100,837	73,754	65,599	72,937	85,187	66,905
O&P Allocation	31,376	22,617	30,773	27,783	25,820	33,252
DLLR Indirect**	14,751	14,149	9,116	9,752	10,463	N/A
Surplus/(Gap)	(38,563)	(6,337)	16,651	51,443	1,936	N/A

O&P: Occupational and Professional Licensing

*DLLR began calculating legal costs for general fund boards in fiscal 2009. Those costs, which amounted to \$9,985, are included in the direct costs allocation for 2009.

**DLLR does not predict indirect costs because they are based on a federal cost allocation formula, which varies from year to year. The percentage has not yet been determined for 2010.

Source: Department of Labor, Licensing, and Regulation, Division of Occupational and Professional Licensing

Recommendation

There is a continued need for regulation of master electricians in the State to protect the public. However, given concerns about the adequacy of the State's regulatory powers, and the role of local jurisdictions in regulating electricians, the Department of Legislative Services recommends a full evaluation of the State Board of Master Electricians to address the following issues:

- **The efficacy of maintaining multiple licensing schemes at the State and local levels:** A full evaluation should look at the way electricians are regulated at the State and local levels to assess whether the overlapping schemes are efficient. This would include an assessment of State, county, and municipal licensing schemes. The evaluation should look at how these schemes are supporting or hindering the delivery of electrical services in the State, including the fiscal and operational implications of either strengthening the State's role or eliminating it.

- **Whether the board should license other types of electricians:** A full evaluation should assess whether the State should provide other types of licenses for individuals with less experience than master electricians.
- **Funding:** A full evaluation should look at whether the board should be special-funded. The board has supported establishing special fund authority so that it can set its own fees and engage in initiatives like requiring continuing education for license renewal that might require more funding to pursue. This review should be conducted in conjunction with the recommendation to review the appropriate role for the State board.
- **Enforcement:** A full evaluation of the board should investigate whether the board should have greater authority to investigate and discipline unlicensed, corrupt, or negligent electrical workers.
- **Continuing education:** A full evaluation should look at whether continuing education requirements should be imposed at the State level. An evaluation could also study ways to improve the relatively low examination pass rate.
- **Composition of the board:** A full evaluation should investigate whether the current geographical assignment of the board's membership adequately reflects the distribution of the State's current population.

Appendix 1. Written Comments of the State Board of Master Electricians

DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

Division of Occupational and Professional Licensing
Stanley J. Botts, Commissioner

DLLR Home Page • <http://www.dllr.state.md.us>
DLLR E-mail • op@dllr.state.md.us

December 1, 2009

Mr. Michael C. Rubenstein
Department of Legislative Services
90 State Circle
Annapolis, MD 21401

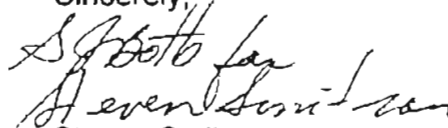
Dear Mr. Rubenstein:

On behalf of the Department of Labor, Licensing and Regulation and the Board of Master Electricians, I wish to thank you for your letter and the draft copy of the Preliminary Evaluation of the State Board of Master Electricians.

I have reviewed the report and found no factual errors. We agree with the issues raised in the report's recommendations; however, we do not believe that eliminating the Board is a viable option. The safe delivery of electrical services in Maryland absolutely depends upon a strong and effective State Board.

We appreciate your support and the work of Andrew Johnston in preparing this report. We look forward to working with the Legislative staff to address the issues that were raised in the report as well as future issues which may arise. If you have any questions, please contact me at 410-230-6169.

Sincerely,



Steven Smitson

Maryland State Board of Master Electricians

cc: Alexander M. Sanchez, Secretary
Stanley J. Botts, Commissioner
Harry Loleas, Deputy Commissioner
Angela Cornish, Chair, Board of Master Electricians



Preliminary Evaluation of the State Board of Podiatric Medical Examiners

Recommendations: Require a Follow-up Report by October 1, 2010

**Defer Decision on Whether to Waive from Full
Evaluation Until Submission of the Required Report**

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Podiatric Medical Examiners (BPME) last underwent a preliminary evaluation in 1999. Based on those findings, LPC waived BPME from further evaluation. Chapter 143 of 2000 extended the board’s termination date to July 1, 2012.

In conducting this preliminary evaluation, DLS staff reviewed minutes for both open and executive session board meetings, the Maryland Podiatry Act (Title 16 of the Health Occupations Article) and related regulations, prior full and preliminary sunset reviews for the board, the BPME complaint database for the past 10 years, and board licensing and financial information. In addition, DLS staff conducted interviews with the board’s executive director, the board president, and the executive director of the Maryland Podiatric Medical Association and attended open and executive session board meetings, as well as an informal disciplinary meeting.

BPME reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report. Since receiving a draft of the report, the board has already begun to implement several DLS recommendations.

The Practice of Podiatry in Maryland

Maryland, along with all other states, regulates the practice of podiatry. Podiatric medicine was first regulated in this State in 1916, but at that time, it was referred to as “chiroprody.” BPME is one of 18 health occupations boards currently housed within the Department of Health and Mental Hygiene (DHMH). The board operates under the Maryland Podiatry Act.

Doctors of podiatric medicine, commonly known as podiatrists, are licensed in the State to “diagnose or surgically, medically, or mechanically treat the human foot or ankle, the anatomical structures that attach to the human foot, or the soft tissue below the mid-calf.” The license does not authorize a podiatrist to surgically treat an acute ankle fracture or administer anesthesia, other than a local anesthetic. Podiatrists treat a variety of ailments, ranging from bunions to tendon strains. Podiatrists also perform surgery, fit corrective devices, prescribe drugs, and administer physical therapy. In addition, they may identify early manifestations of systemic disorders such as heart disease and diabetes for referral to a medical doctor.

The State Board of Podiatric Medical Examiners

The board is composed of seven members. Five members are licensed podiatrists, and two members are consumers. The Governor appoints the podiatrist members, with the advice of the Secretary of Health and Mental Hygiene, from a list of names submitted by the Maryland Podiatric Medical Association. Since 2003, podiatrist members have been required to have peer review experience. This qualification was added because the podiatric members engage in peer review as part of a complaint investigation.

The term of a member is four years, and the member may not serve more than two consecutive full terms. The Governor is required, to the extent possible, to fill any vacancy on the board within 60 days. All board members receive a per diem of \$100 for each board meeting, case hearing, and any other board-related meeting, as well as mileage reimbursement. The board generally meets every month except August. Compensation is not received by board members for any work done outside of board-related meetings, such as reviewing medical records in connection with a complaint investigation.

The board has 2.5 authorized positions to support its activities: an executive director, an administrative assistant, and a licensing coordinator. The executive director is a part-time position for the board, as the individual also works for the Maryland Commission on Kidney Disease. Until recently, the position of licensing coordinator remained vacant due to a hiring freeze; however, the board was successful in petitioning the Secretary of Health and Mental Hygiene to re-open the position, which was filled in November 2009.

Other personnel who support the board also work for other boards. The Assistant Attorney General devotes about 25% of his time to the board. The board's investigator, who

works with four other boards, spends approximately 10% of his time on podiatry issues. The board also shares a regulations coordinator and fiscal and information technology personnel.

Statutory Changes Affecting the Board Since the 1999 Sunset Evaluation

Several legislative changes have affected the practice of podiatry and the board since the last preliminary sunset review. The major legislative changes are noted in **Exhibit 1**. Among those changes were:

- allowing certain surgical procedures performed by licensed podiatrists to be performed in an ambulatory surgical center;
- expanding the definition of “practice podiatry” to include the diagnosis or treatment of the soft tissue below the mid-calf; and
- increasing the criminal fine and civil penalty for practicing, attempting to practice, or offering to practice podiatry in the State without complying with the requirements of Maryland Podiatry Act.

Exhibit 1
Major Legislative Changes Since the 1999 Preliminary Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	143	Extends the termination date of the board by 10 years to July 1, 2012.
2003	134	<p>Authorizes the board to issue a temporary license.</p> <p>Expands the base of individuals eligible for a limited license for training.</p> <p>Clarifies the nonrenewal status of a license and establishes a process for reinstatement of expired and inactive licenses.</p> <p>Requires a licensee to notify the board of a change of address within 30 days and allows the board to assess a fee for failure to provide such notice.</p> <p>Requires licensed podiatrist members of the board to have peer review experience.</p> <p>Increases the maximum criminal fine from \$200 to \$5,000 for individuals found guilty of practicing without a license and increases, from \$5,000 to \$50,000, the civil fine for this offense and the board's administrative penalty if a licensee engages in certain criminal or unethical acts.</p> <p>Authorizes the board to take action against a licensee if the licensee was disciplined by another specified licensing or disciplinary authority.</p>
2005	297	<p>Expands the definition of "practice podiatry" to include the diagnosis or treatment of the soft tissue below the mid-calf.</p> <p>Allows certain surgical procedures performed by licensed podiatrists to be performed in an ambulatory surgical center if the licensed podiatrist meets certain requirements.</p> <p>Clarifies that an ambulatory surgical center may establish qualifications or delineate privileges for the performance of surgical procedures by licensed podiatrists.</p>

Source: Laws of Maryland

Regulatory Changes Affecting the Board Since the 1999 Sunset Evaluation

There have also been several changes to the board's regulations since the last preliminary sunset evaluation. In 1999, the board adopted a regulation that requires a license applicant who claims a speech impairment to submit a written request to the board. The applicant must demonstrate the ability to effectively communicate with health care providers and patients. If the applicant is unable to do so, the board is prohibited from issuing or renewing the license. A new chapter was added to the board's regulations in 2000 that prohibited a podiatrist from engaging in sexual misconduct. These and other regulatory changes are outlined in **Exhibit 2**.

Exhibit 2 Major Regulatory Changes Since the 1999 Preliminary Sunset Review

<u>Year</u>	<u>COMAR Provision</u>	<u>Change</u>
1999	10.40.01.06	Authorizes the board to grant or renew a license to an individual with a properly claimed and documented speech impediment only if the applicant is able to effectively communicate with health care providers and patients.
2000	10.40.04.02	Prohibits podiatrists from engaging in sexual misconduct and authorizes the board to discipline a licensee and/or impose a penalty of up to \$50,000 for sexual misconduct.
	10.40.05.03 and .04	Specifies prehearing procedures relating to mandatory discovery and discovery on request.
2001	10.40.05.10	Requires the board to impose a fee for hearing costs on a licensee if the licensee is found to have violated certain provisions of the Maryland Podiatry Act.
2002	10.40.09.01 - .03	Authorizes the custodian of investigative information to disclose the information if there is a compelling public purpose.
2003	10.40.03.02	Adds additional fees and increases various existing fees.
2008	10.40.03.02	Increases nearly all board fees.

Source: Code of Maryland Regulations, *Maryland Register*

Board Is Meeting Its Mandated Duties

In addition to other specified duties, § 16-205 of the Health Occupations Article requires the board to:

- keep a complete record of all its transactions;
- investigate all alleged unauthorized practice of podiatry;
- investigate written and signed allegations for possible violations of statute and provide notice as required to the podiatrist under investigation, as well as other interested parties; and
- conduct unannounced inspections of podiatrists' offices to determine compliance with the Centers for Disease Control and Prevention's (CDC) guidelines on universal precautions.

The board maintains complete records of meetings, licensing activity, complaint investigations, and disciplinary activity. The board, however, only conducts unannounced inspections of podiatrists' offices if a complaint warrants an inspection. The last such inspection was done in 2008 on the basis of a complaint regarding a CDC violation. Due to the board's limited resources, the board has narrowly interpreted the statute. It is unclear what the statutory intent is behind the inspection requirement or how frequently the inspections should be made. **The board should seek an Attorney General's opinion regarding the inspection requirement and, if necessary, introduce departmental legislation to clarify the law.**

Licensing Activity

An individual is required to have a license from the board to practice podiatric medicine in the State. To be granted a license, the individual must:

- be of good moral character;
- be at least 18 years old;
- be a graduate of a school or college of podiatry that is accredited by the Council on Education of the American Podiatric Medical Association and approved by the board;
- pass the National Board of Podiatric Medical Examiners examination and an examination given by the board;

- complete a postgraduate podiatric residency program or have practiced podiatry for at least five years immediately prior to applying for a Maryland license; and
- demonstrate oral competency in the English language.

The board requires each full license applicant to pass Parts I, II, and III of the national board examination with a passing score as set by the national board. The applicant is also required to take a jurisprudence and ethics exam, which is prepared and administered by the board. The exam covers State law, regulations, and scope-of-practice issues and is completed by the candidate at home, under the honor system. The exam is then returned to the board for scoring. When an applicant applies for a license, the original license fee is due, in full, when the application is made.

Full licenses are renewed every two years. Half of the renewal fee, however, is charged to the licensee over a two-year period, with half payable the year prior to expiration of the license and the remainder due at the time the podiatrist applies for license renewal. If the first half of the fee is not paid by the time the podiatrist applies for license renewal, the podiatrist is required to pay that amount, plus late fees, as well as the second half of the fee before the renewed license is issued.

All licenses currently issued will expire on December 31, 2009. The licensee can complete and file the renewal form online. To renew the license, the podiatrist must complete a total of 50 hours of continuing education during each two-year license renewal cycle. The credits completed must be submitted on the renewal application form and must be for courses that have been approved by the board. The podiatrist must maintain a complete record of the credits completed along with documentation to support the record. The board randomly audits about 10% to 20% of renewal applications to ensure compliance with the continuing education requirement.

In addition to full licenses, the board issues limited and temporary licenses. A limited license is for individuals who are completing their postgraduate training in the State. The term of a limited license is one year and may be renewed. The requirements for licensure are altered for those seeking a limited license. A temporary license is for individuals who are licensed in another state and who are seeking to practice or teach podiatry in Maryland on a temporary basis. The temporary license is issued for a term of three months and may be renewed.

The Number of Initial Full Licenses Issued Per Year Is Declining

The licensing trends of the board from fiscal 2005 through 2010 are shown in **Exhibit 3**. Although the board has seen an increase in initial full licenses issued in certain years, the net effect has been an overall decline in the number of initial full licenses issued per year. The projection for fiscal 2010 is that the board will issue 10 initial full licenses. This is a decrease of four licenses from the previous fiscal year and a decrease of nine licenses when compared with fiscal 2005.

Exhibit 3
Licensing Activity
Fiscal 2005-2010

<u>License</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Projected FY 2010</u>
Initial Full	19	14	18	11	14	10
Initial Limited	18	22	20	21	34	34
Temporary	0	0	1	0	0	0
Renewals	407	412	443	443	395	425
Total	444	448	482	475	443	469

Note: The numbers for renewals reflect the number of podiatrists paying the portion of the biennial renewal fee due in that fiscal year.

Source: State Board of Podiatric Medical Examiners

Two main factors contribute to the decline in initial full licenses. First, Maryland is home to only one podiatric residency program, housed at the Baltimore VA Medical Center. In the past, there were as many as four residency programs in the State; however, the programs were not generating sufficient income, so the sponsoring hospitals terminated the programs. Second, podiatrists in the State are not licensed to perform surgery on acute ankle fractures. This type of surgery is taught in podiatry school and is part of a podiatrist's scope of practice in several other states. The number of licenses being renewed is also declining. The main cause for the decline is retirements. The decline in licensing numbers has also impacted the board's fiscal situation because there are not enough new podiatrists coming into the State to replace those that are retiring. **The board should examine projected licensing trends to more fully assess the impact of a reduction in new licensees and the anticipated retirement of many existing licensees on the availability of podiatric services in Maryland and on board revenues.**

Complaint Resolution Process Appears Adequate

The board may deny a license application or reprimand, suspend, revoke, or place on probation any licensee or holder of a limited license for a violation of any of the 27 provisions listed in the Maryland Podiatry Act. Board disciplinary action may range from tracking the number of malpractice complaints to initiating formal charges against a podiatrist. A monetary penalty of up to \$50,000 may also be levied by the board; fines are paid into the general fund. When assessing the severity of the penalties, the board considers willfulness, extent or potential extent of harm, investigative costs, the licensee's records, and whether the licensee received any financial gain from the violation.

Once a complaint is received by the board, the complaint information is sent to the podiatrist for a response, unless the board deems the podiatrist a risk to the public. One of the

podiatrist board members is assigned as a liaison. The liaison makes a recommendation to the board regarding whether further investigation, including issuance of subpoenas or interviews, is needed. If the board decides that further investigation is warranted, the board investigator handles any subpoenas and interviews the board has ordered. The investigator may also be used by the Office of the Attorney General if charges are filed.

Board Resolves Complaints in a Relatively Timely Fashion

The board appears to resolve complaints in a timely fashion. Exhibit 4 details the board's complaint resolution for the past 10 years. The number of complaints received in a year has ranged from 28 to 73, with an average of 47 complaints each year. The time period in which complaints are typically resolved has dropped from a high of five to six months in 2001 to typically less than three months in subsequent years. For fiscal 2009, most complaints were resolved within one to two months after the board received the complaint. One factor that can increase the time it takes to resolve a complaint is that the board may survey the medical records of a podiatrist for whom a complaint has been filed. All files that are surveyed are reviewed by at least one podiatrist member of the board. A complaint may be filed by the board itself as a result of the survey, whether or not the original complaint was found to have merit.

Exhibit 4 Resolution of Complaints Received Fiscal 2000-2009

	Fiscal Year									
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
New Complaints Received	73	33	69	33	61	44	28	51	39	40
<i>Complaints Resolved</i>										
Within 6 Months	64	22	64	32	60	44	24	48	35	34
Require More than 6 Months	9	11	5	1	1	0	4	3	3	2
Average Months for Resolution	3-4	5-6	1-2	1-2	1-2	1-2	2-3	2-3	2-3	1-2
<i>Complaints Unresolved as of July 2009</i>	0	0	0	0	0	0	0	0	1	4
<i>Disposition of Resolved Complaints</i>										
Closed Without Action	56	18	30	9	17	15	3	29	16	19
Track Malpractice Claims	4	6	20	7	17	17	11	14	11	5
Letter of Education/Informal Letter	4	1	4	9	10	6	5	3	8	9
Formal Charges/Consent Order	3	3	1	1	3	2	4	1	1	1
Consent Agreement	1	3	3	3	2	2	3	0	0	1
Cease and Desist Order	1	0	8	1	6	0	1	0	0	0
Other	4	2	3	3	6	2	1	4	2	1

Note: The data only includes original complaints and does not reflect cases that were opened as a result of an investigation into the original complaint. A consent order is a public action, while a consent agreement is a nonpublic action.

Source: Department of Legislative Services, State Board of Podiatric Medical Examiners

As of July 2009, five complaints are pending with the board. One complaint, received in fiscal 2008, has not been resolved because the board is seeking an injunction to stop the unlicensed practice of podiatry. Of the four outstanding complaints from fiscal 2009, the complaints were received during the month of June and are in the process of being investigated.

Most Complaints Dismissed or Closed; Informal Action Most Common When Issues Found

Public sanctions are used rarely but appropriately. The most common public sanction is probation. Probation is accompanied by a requirement that the licensee meet with a mentor at least once a month. The mentor is required to submit reports to the board on the progress of the licensee in addressing the reason, such as the licensee's use of billing codes, for the probation. Three podiatrists are currently on probation.

As can be seen in Exhibit 4, the vast majority of complaints are dismissed or closed without action. When board action is taken, cases are typically resolved through informal action, such as informal meetings and educational letters. These methods are confidential and are used to inform, educate, and/or rehabilitate podiatrists.

Some complaints the board receives are medical malpractice complaints from the Health Care Alternative Dispute Resolution Office in the Office of the Attorney General. In those cases, the board examines the complaint to determine the severity of the alleged malpractice. If the allegation is severe, such as loss of limb, the board takes immediate action. If the allegation is not severe or if there are no other issues, such as billing or coding errors, the board tracks the number of malpractice complaints until the podiatrist has received three complaints in five years. Once the podiatrist has received the third complaint, the board investigates and takes disciplinary action against the podiatrist if warranted.

Under current law, physician profiles on the State Board of Physicians' web site are required to include certain information regarding disciplinary actions and medical malpractice claims. Specifically, the medical malpractice information that is included is (1) the number of final medical malpractice court judgments against the licensee within the most recent 10-year period; and (2) the number of medical malpractice settlements, if numbering three or more, with a settlement amount of \$150,000 or greater within the most recent five-year period. **As a service to the public, the board should explore the possibility of providing similar information about malpractice claims against licensed podiatrists on its web site.**

Complaint Database Contains Minor Inconsistencies

The board keeps records of complaints through a computerized system. The complaint database has complaints dating from fiscal 1992 to the present and tracks information such as the complaint type, disposition, the date the complaint was received, and the disposition date. Each complaint the board receives is assigned a case number. Cases that are opened as a result of an investigation into an original complaint are also tracked. Historically, those cases were included in the board's complaint statistics as original complaints. This practice inflated the number of

original cases that were coming into the board. The board has, however, recently stopped including those types of cases in its complaint statistics with the introduction of StateStat, so that the State has a more accurate view of original complaints the board receives.

The disposition terminology used by the board in its complaint database is inconsistent. The term “closed” is used both to denote a case that has been dismissed without any disciplinary action taken by the board as well as when a podiatrist has completed the terms of any disciplinary agreement. Also, the term “consent agreement” is supposed to denote a nonpublic action by the board, while “consent order” notates a public action. However, the term “consent agreement” has been used even when the action of the board was public. The terms “information letter,” “informal letter,” “educational letter,” and “letter of education” are all used by the board interchangeably. **The board should standardize and specifically define the disposition terminology that is used in the complaint database.**

Another inconsistency involves the notation of cases that are opened as a result of an investigation into an original complaint. The board may, during an investigation of an original complaint, survey other patients’ medical records. As a result, the board may file a separate complaint based on what was discovered during the survey. The board has been inconsistent in the way it notes what complaints are original complaints and what complaints are a result of the survey. This has led to some complaints being counted as separate, original complaints when they were not. Also, the complainant is not always listed as the board; rather, the complainant is listed as the name of the patient whose file was surveyed even though the patient did not submit a complaint. **The board should more clearly identify what complaints are opened by the board as a result of an investigation into an original complaint and should list the complainant as the board.**

Board Fees Increased in 2003 and 2008

The board charges fees for a variety of services it provides to its licensees and to the public. The fees range from application fees to a fee for a duplicate license. **Exhibit 5** shows the current fees. These fees went into effect December 28, 2008, and have been charged by the board since that time. The board is required to be self-supporting because it is special funded. Because the board is a small board, it has had to increase its fees significantly to cover its costs. Unlike other boards with biennial license renewal cycles, BPME receives license renewal fee payments split over the two-year license period rather than in full at the time of renewal.

Exhibit 5 also shows changes in fees since the 1999 preliminary sunset evaluation. For the categories of fees that were in place in 1999, the largest increase was for the license fee for the reinstatement of an inactive or expired license – July issue, which increased \$650. The board also added seven new categories of fees in 2003.

Fee increases are determined by licensing trends, as well as board expenses. As discussed below, board expenses have been increasing. This, combined with a decline in licensees, led the board to again increase fees in 2008. The Maryland Podiatric Medical Association was consulted by the board and approved of the board’s actions. The increase in

fees resulted in the board having the highest fees of all the health occupations boards. For example, the biennial renewal fee for the Board of Physicians is \$436, while the Board of Podiatric Medical Examiners' fee is \$1,050. The board's fees are also much higher than those of neighboring states and the District of Columbia. In neighboring jurisdictions, the fees range from \$179 in the District of Columbia, \$225 in Delaware, \$300 in West Virginia, \$337 in Virginia, to \$395 in Pennsylvania as shown in **Exhibit 6**. However, as noted above, Maryland practitioners pay the fee in annual installments.

Exhibit 5
History of Fees for the State Board of Podiatric Medical Examiners

	<u>Fec in</u> <u>1999</u>	<u>Fee in</u> <u>2003</u>	<u>Fee</u> <u>Effective</u> <u>December</u> <u>2008</u>
License Fees			
Application	\$0	\$50	\$50
Eligibility verification for PM Lexis examination	0	50	50
Original license – January issue	750	850	1,050
Original license – July issue	575	650	850
Limited license	50	50	100
Inactive license (initial application)	150	150	150
Reciprocity license	400	425	425
License Renewal Fees			
Biennial license renewal (payable in \$525 annual payments)	\$750	\$850	\$1,050
Inactive license renewal (payable annually)	25	25	50
Late renewal	25	100	250
Reinstatement Fees			
Reinstatement of inactive license processing	\$0	\$200	\$300
Reinstatement of expired license processing	0	200	500
Reinstatement of inactive or expired license – January issue	750	850	1,050
Reinstatement of inactive or expired license – July issue	200	650	850
Other Fees			
Certification of license	\$10	\$25	\$30
Duplicate license	25	25	50
Registration of professional corporation	50	50	100
Dispensing prescription drug permit (payable every 5 years)	5	25	50
Penalty for failure to maintain correct address with board	0	100	300
Roster of licensees	0	100	500
Request for copy of public orders	0	25	50

Source: November 1999 Preliminary Evaluation of the State Board of Podiatric Medical Examiners, *Maryland Register*, and Code of Maryland Regulations 10.40.03.02

Exhibit 6
Comparison of Board Fees in Surrounding States

<u>State</u>	<u>Fee</u>
Delaware	\$225
District of Columbia	179
Maryland	1,050
Pennsylvania	395
Virginia	337
West Virginia	300

Note: The boards in other states may be part of larger boards (*i.e.*, Board of Physicians), may receive support services at no cost to the board, or may not be special funded.

Source: Department of Legislative Services

Board Expenditures Exceeded Revenues Until Fiscal 2010

The fiscal history of the board is shown in **Exhibit 7**. The board's expenditures consist of indirect and direct costs. Indirect costs consist of departmental costs such as information technology and human resources expenses and the Attorney General cost allocation. Direct costs are all other budget items. From fiscal 2005 through 2009, the average yearly increase in indirect costs was 9%. This is compared to an average increase in direct costs of approximately 14%. The board had high fund balances in fiscal 2006 and 2007. As a result, the board appropriately spent down that surplus. However, beginning in fiscal 2008, the board's fund balance decreased significantly. The board took appropriate action by revising its fees.

The revenues of the board consist solely of the fees the board collects, which are deposited into a special fund. Historically, most revenues are collected from the renewal fees, with the second highest amount coming from the verification of license fee. From fiscal 2005 to 2009, the revenues collected by the board increased an average of 7%. When compared to the increase in the board's expenditures during the same time period, the increase in revenues did not match the growth in expenditures. However, because of the increase in the amount of fees the board is charging, it is estimated that the revenues of the board will grow by 35% from fiscal 2009 to 2010, compared to a growth of 16% in the board's expenditures. The board's revenues are fairly stable even during the even-numbered years (those years when licenses are not up for renewal) because the board collects the renewal fee in two equal annual payments.

Exhibit 7
Fiscal History of the State Board of Podiatric Medical Examiners
Fiscal 2006-2010

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Projected FY 2010</u>
Beginning Fund Balance	\$101,666	\$119,727	\$86,921	\$40,703	\$59,917
Revenues Collected	228,397	213,700	224,238	259,442	365,000
Total Funds Available	\$330,063	\$333,427	\$311,159	\$300,145	\$424,917
Total Expenditures	\$210,336	\$246,506	\$270,456	\$240,228	\$358,513
Direct Costs	164,677	198,180	212,083	187,987	303,685
Indirect Costs	45,659	48,326	58,373	52,241	54,828
Ending Fund Balance	\$119,727	\$86,921	\$40,703	\$59,917	\$66,404*
Balance as % of Expenditures	57%	35%	15%	25%	19%*
Target Fund Balance (30% of Expenditures)	\$63,101	\$73,952	\$81,137	\$72,068	\$107,554

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

*The board anticipates receipt of an additional \$50,000 toward its fiscal 2010 ending fund balance to correct an accounting omission. This would bring the board's fiscal 2010 balance to \$116,404 or 32% of expenditures.

Source: Department of Health and Mental Hygiene

Board Fund Balance Has Declined Since Fiscal 2007

Growth in the board's expenditures has outpaced growth in revenues since fiscal 2007, resulting in a declining fund balance. The board appropriately spent down some of its fund balance because the balance was significantly more in fiscal 2006 and 2007 than the target fund balance. As can be seen in **Exhibit 8**, the board ended fiscal 2008 with a fund balance of \$40,703, which was down from a balance of \$119,727 in fiscal 2006. The board's fund balance in fiscal 2009 increased to \$59,917. Several factors led to the increase. First, the board began collecting higher fees in January 2009. Second, there was a hiring freeze on the position of licensing coordinator. The person holding the position left the board in January 2009. Last, certain allocations in the budget are made to either ensure that the board can access certain

services, such as court reporters, or to meet statutory requirements. Historically, the board does not expend as much on those services as is budgeted for them. For example, in fiscal 2009, the board budgeted \$9,000 for court reports but only spent \$146. In other years, the board did not spend any of the budgeted amounts. Similarly, the board budgets the amount for per diems assuming that every board member will be at every meeting and that the board will hold a meeting every month. This is not usually what occurs, so the board does not spend the budgeted amount.

Exhibit 8
State Board of Podiatric Medical Examiners
Financial Status in Fiscal 2009 and 2010

Fund Balance

Balance from Fiscal 2008	\$40,703
Revenue in Fiscal 2009	259,442
Total Available Revenue	<u>\$300,145</u>
Actual Expenditures	<u>240,228</u>
Fund Balance in Fiscal 2009	\$59,917

Targeted Fund Balance*

Projected Fiscal 2010 Expenditures	\$358,513
Target Balance @ 30% of Budget	107,554
Projected Fiscal 2010 Ending Fund Balance	66,404
Excess Fund Balance	(\$41,150)

*The board anticipates receipt of an additional \$50,000 toward its fiscal 2010 ending fund balance to correct an accounting omission. This would bring the board's fiscal 2010 balance to \$116,404, a slight excess of \$8,850 above the 30% target.

Source: Department of Health and Mental Hygiene

The board's projected fund balance for fiscal 2010 is \$66,404, which is 19% of projected expenditures. As a percentage of expenditures, this is a decrease from fiscal 2009. However, the board anticipates receiving an additional \$50,000 toward its fiscal 2010 ending fund balance to correct an accounting omission. This would bring the board's fiscal 2010 balance to \$116,404, just slightly above the 30% target. The actual expenditures of the board in fiscal 2010 should be lower than what was budgeted. The board's expenditures for salaries will increase over fiscal 2009 because DHMH reopened the position of licensing coordinator in July 2009. The board has plans to share that position with the Maryland Commission on Kidney Disease so that the board

would only be paying 80% of the position cost. The board requires the majority of the licensing coordinator's time because the board must issue licenses and answer questions of credentialing hospitals in a timely manner. Other measures are being considered by the board to increase revenues without increasing existing fees. The board is looking into the possibility of certifying practice expanders (registered nurses who may perform delegated tasks and podiatric assistants) and pedorthists (a person who specializes in the design, manufacture, modification, and fitting of shoes and orthotics to treat foot problems). The board is also planning to offer educational seminars to its licensees on coding and recordkeeping, as a revenue-generating endeavor. **The board should continue to create a plan, including the possibility of certifying practice expanders, to ensure that the board remains fiscally solvent without relying solely on fee additions and/or increases. The board should project how long the board will be able to remain solvent without higher fee revenues. If the board is unable to maintain fiscal solvency given licensing trends, it may need to pursue other options for long-term viability such as merging with another board.**

Recommendations

The State has an interest in licensing podiatrists to protect the public from harm. The board was very helpful during the evaluation process. The staff of the board responded quickly to requests for information. DLS finds that the board is sufficiently meeting its mandated duties, including efficiently issuing licenses and taking disciplinary actions against licensees where warranted. Since receiving a draft of this report, the board has already begun to take action on several DLS recommendations. DLS is concerned, however, about the decline in the number of new licensees and the anticipated retirement of many existing licensees. Given these licensing trends, it is unclear whether the board can continue to maintain fiscal solvency without continuing to increase licensure fees, which are already the highest of any health occupations board in Maryland and significantly higher than those charged in neighboring states. **Therefore, DLS recommends that the State Board of Podiatric Medical Examiners:**

- create a plan, including the possibility of certifying practice expanders, to ensure that the board remains financially solvent without relying on further fee increases and determine how long the board can remain solvent without higher fee revenues, including possible alternatives for long-term viability; and
- identify potential means to encourage podiatrists to practice in the State so that the board can remain solvent and podiatric services will continue to be available to the public.

Furthermore, to address other operational issues identified during this preliminary evaluation, the board should:

- seek an Attorney General's opinion regarding the inspection requirement and introduce departmental legislation to clarify the statute, if needed; and

- complete the tasks identified in this preliminary evaluation, specifically regarding the potential to make malpractice claim information available to the public and standardization of terminology and the identification of complaints in the board's complaint database.

DLS recommends that the board submit a follow-up report addressing these issues to LPC, the Senate Education, Health, and Environmental Affairs Committee; the House Health and Government Operations Committee; and DLS by October 1, 2010. This report should include final fiscal 2010 revenues and expenditures, projected licensing trends, and projected revenues and expenditures for fiscal 2011.

Based on this report, DLS should recommend to LPC in 2010 whether to waive the board from full evaluation and for what period of time to extend the board's termination date. If the report is not submitted, DLS should automatically conduct a full evaluation of the board during the 2011 interim.

**Appendix 1. Written Comments of the
State Board of Podiatric Medical Examiners**



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

Board of Podiatric Medical Examiners

December 1, 2009

Ms. Jennifer B. Chasse, Senior Policy Analyst
Department of Legislative Services
Legislative Services Building
90 State Circle
Annapolis, MD 21401-1991

Dear Ms. Chasse:

The Maryland Board of Podiatric Medical Examiners (Board) has received and reviewed the draft copy of the preliminary evaluation of the Board that was prepared by the Department of Legislative Services (DLS). The Board and its staff appreciate the time and effort that Ms. Jodie Chilson spent in review of the Board's activities. Ms. Chilson's professionalism merits notice. Minor factual corrections have been discussed and forwarded to Ms. Chilson.

The overall positive report by the Department of Legislative Services indicates that the Board has met its mandate in ensuring that the public is safe from harm. It is the Board's intention to alleviate DLS's fiscal concerns through the proposal of a two tier plan which will ensure the Board's long term solvency to the satisfaction of DLS. The plan will be addressed in the body of this letter.

Recommendations and comments by DLS:

The Board concurs with DLS's recommendation to seek an opinion from the Attorney General regarding the intent of the law as it refers to inspecting podiatric offices. The Board has already addressed this issue with the Attorney General seeking an opinion.

The Board has immediately addressed the comment in the DLS report regarding the correct citation to be placed on the Board's web site regarding the Code of Maryland Regulations 10.13.01, Dispensing Prescription Drugs by a Licensee. The website was corrected on November 18, 2009.

Regarding the Board's licensing activity, the total licenses issued vary by a very small percentage each fiscal year, thus the Board contends that the base of licensed podiatrists in Maryland is quite steady with small variations from year to year.

4201 Patterson Avenue · Baltimore, Maryland 21215-2299 · 410-764-4752
Fax 410-358-1183 · TTD 800-542-4964 · Maryland Relay Service 1-800-735-2258
Web Site: www.dhmh.state.md.us/bphte

As identified in Exhibit 3, the total number of licensees has increased from FY 2009 to FY 2010. The Board is projecting a higher number of initial full licenses to be issued in FY 2011 and through the next fiscal years, due to improved economic conditions and the development of new Podiatric Residency Programs. Having been denied funding for residency training, the state lost most of its post graduate training programs. The Board in conjunction with the Maryland Podiatric Medical Association is working on developing and reestablishing podiatric residency programs. Licensing trends and historical data indicate that active programs in the State will retain more licensees upon completion of their training. Parallel to an increase in the numbers of new licensees, the revenue to the Board will increase as well.

Assessing the anticipated retirement of actively practicing licensees will be done during FY 2010, with some current indicators to be employed at the conclusion of this renewal period ending on December 31, 2009.

The Board is confident and wants to assure DLS that the citizens of Maryland will always have access to ample podiatric care through the present licensee base and the very active Podiatric Residency Program at the Veterans Affairs Maryland Health Care System.

The Board has proposed regulations- COMAR 10.40.02 requiring Cardiopulmonary Resuscitation Certification, which are now with DHMH Secretary Colmers awaiting his signature. The website was corrected to reflect that CPR certification is encouraged, but voluntary, until such time as the regulations become final. The web site correction was done on November 18, 2009.

The Board appreciates the analyst's positive comments about the Board's complaint resolution process and the timeliness with which this process occurs when cases are disposed.

The Board concurs with DLS's comment to explore the feasibility of posting on the web site malpractice cases. Presently, the Board's statute does not address the publishing of malpractice cases on the web site. Many cases are just claims, are not adjudicated and are settled without merit. Malpractice cases are not filed with the Board, but with the Maryland Health Care Alternative Dispute Resolution Office. The Board is seeking Board Counsel's advice regarding this recommendation, since with the exception of the Board of Physicians, all the other Health Care Occupation Boards do not have this requirement in their statutes. Presently, in order to protect Maryland citizens' welfare and safety, the Board files all the Board issued Public Disciplinary Orders with the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank, the Federation of Podiatric Medical Boards, and publishes all such Public Orders in the Board's Newsletter "*Toe the Line*".

The Board concurs with DLS's recommendation to standardize and define the nomenclature used for the disposition of complaints/cases, and has already with Board Counsel advice accomplished such. Additionally, since 2002, the Board has clearly identified when they opened a complaint. The alpha-numeric identifiers have been consistently utilized when identifying charts reviewed in connection with practice audits. Although the name of the audited patient chart may be included in the space labeled with the gross heading, "Complainant", audited charts are clearly identified as such.

Exhibit 7-"Fiscal History of the Board of Podiatric Medical Examiners" identifies that at the end of FY 2010 the Board will have a projected Fund Balance of \$66,404. The Board submits to DLS, that the projected Fund balance WILL BE INCREASED by \$50,000.00, as the Department of Budget Management corrects their prior omission and credits the Board for a sum paid by the Commission on Kidney Disease for shared staff expenses.

The Board will be credited with this amount at the end of the Fiscal year. For logistical reasons, the Board's legislated budget includes three full time positions housed in the Board of Podiatry budget. The Board employs only two and a half positions, the other half position is reimbursed to the Board as shared staff by the Commission on Kidney Disease.

Additionally, it is of **utmost importance** to note that the Board is allowed to retain a MAXIMUM of 30% of the budget in the carry over Fund Balance. Managing the budget so that a fund balance **below** the permissible 30% is maintained is prudent and fiducially responsible. Historically, larger fund balances have always been subject to DHMH or General Assembly cuts. The Board contends that the budget is managed prudently with extreme fiscal responsibility. The Board continues to generate adequate revenue to meet expenditures while maintaining a Fund Balance with an adequate margin of safety. Inherent in the Budget there is always allocation to meet some extraordinary demand such as lengthy prosecutions. If such allocation is not used in a fiscal year, the expenditures are thus reduced accordingly.

Exhibit 8 identifies under "Targeted Fund Balance" a negative Excess Fund Balance of \$47,637. That number is erroneous because it was predicated on the incorrect fact that the Board is required to attain a 30% Fund Balance; rather, the intent is that the Board shall not have a fund balance OVER 30%.

Although the Board respectfully submits that the projected revenues and expenditures for the next few years will run almost parallel, with a 10%-19% safety margin identified as a carryover Fund Balance, thus assuring solvency, the Board concurs with DLS's recommendation to develop a plan that will consistently and predictably enhance the Board's revenue, thus adding an additional layer of safety to maintain the Board's solvency.

Proposed Plan to enhance a sustainable revenue source

In the first tier of the proposed plan, the Board is considering a "Registry of Podiatric Medical Assistants (PMA)". This Registry would require the development of a scope of practice delegated by the supervising podiatrist, with educational requirements as eligibility for candidacy to become a registered PMA. A work group will be convened by the Board to develop the plan and the Registry's criteria. The Board will invite industry stake holders, including MPMA members, to join the work group. The Board estimates that minimally 500 PMA's would register with the Board, as registration would be a requirement for employment with expanded functions. When implemented, the Board projects a \$50,000.00 increase in ANNUAL revenue collections.

The second tier of the plan would be considered subsequently, and that would include the certification or licensure of pedorthists, prosthetists and orthotists under the Board. Presently, in

Maryland, these practitioners are neither regulated nor licensed. Regulating these practitioners would also provide additional and sustainable revenue to the Board.

The Board is confident that present and future revenue collections (**Table 1**) at the higher fees schedule that became effective on December 28, 2008, will ensure the Board's continued fiscal solvency without increasing licensing fees, thus meeting DLS's recommendations.

Table 1

FY 2009 Actual Expenses	FY 2009 Carry Over Fund Balance into FY 2010	Actual FY 2010 – July 1, 2009 through December 1, 2009 5 months Collections
\$240,228.00	\$59,917.00	\$240,123.50

To cement and assure the continued long term and permanent solvency of the Board projected out for the next 12-15 years, the Board includes the proposed two tier plan as identified in this response letter.

Having met its mandate, the Board respectfully requests that DLS recommend a waiver of full review at this time, with the mandated report to be provided by the Board by October 1, 2010. This report will fully address the outcome of the budgetary revenue adjustments and enhancements implemented by the Board.

Preliminary Evaluation of the State Board for Professional Land Surveyors

Recommendations: **Waive from Full Evaluation**

 Extend Termination Date by 11 Years to July 1, 2024

 Require Follow-up Report by October 1, 2011

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 agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies 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 agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board for Professional Land Surveyors was not scheduled for a preliminary evaluation under statute until 2010; however, DLS accelerated the review process for this board – along with several others – to more evenly distribute the number of evaluations conducted over the next few interims. The board last underwent a full evaluation as part of sunset review in 1991. The board underwent a preliminary evaluation in 2000, which concluded that the board was successfully fulfilling its statutory responsibilities and recommended that it be waived from full evaluation. Chapter 73 of 2001 extended the board’s termination date to July 1, 2013.

In conducting this preliminary evaluation, DLS staff reviewed applicable State law and regulations; recent legislative and regulatory actions; prior full and preliminary sunset reviews; annual reports submitted by the Department of Labor, Licensing, and Regulation (DLLR) related to the State Occupational and Professional Licensing Design Boards’ Fund; and information provided related to board expenditures, revenues, licensing, examinations, complaints, and disciplinary actions. In addition, DLS staff communicated by phone and e-mail with the chairman of the board, board administrative staff, the Deputy Commissioner of Labor, Licensing, and Regulation, and the Executive Director of the Maryland Society of Surveyors. The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 2**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

The Practice of Land Surveying

The practice of land surveying generally refers to the practice of establishing official land, air space, and water boundaries. It includes measuring and locating lines, elevations, or other features in the air, on land, underground, and on the beds of bodies of water for the purpose of providing data relevant to the shape, contour, location, elevation, or dimension of land. In practice, professional land surveyors are responsible for platting, locating, or setting the monumentation for boundaries of real property, easements, or rights-of-way. They write descriptions of land for deeds, leases, and other legal documents. They are a key part in the development of site plans for construction, including the design of road and street grades, sediment and erosion control measures, and stormwater management systems.

Surveying land dates back to ancient times, when it was used primarily to divide land for the purpose of taxation. Back then, and over the years, surveyors used chains, compasses, transits, and plumb bobs. Today, surveys are required for most major construction projects, including highways, buildings, and bridges. With major advancements in technology, today's professional land surveyors primarily use computerized measuring devices or systems, including global positioning systems and geographic information systems to perform their work.

All 50 states, as well as the District of Columbia and U.S. territories, license professional land surveyors. Most state licensing boards require individuals to pass a written examination given by the National Council of Examiners for Engineering and Surveying (NCEES) and a written examination prepared by the state licensing board. In addition, most applicants must meet varying standards of formal education and work experience in the field. Most individuals prepare for a career as a professional land surveyor by combining postsecondary school courses in surveying with extensive on-the-job training. However, about 25 universities now offer four-year programs leading to a Bachelor of Science degree in surveying. Additionally, junior and community colleges, technical institutes, and vocational schools frequently offer one-, two-, and three-year programs in surveying.

The land surveying industry has close ties to the engineering and construction industry. Major federal government employers of professional land surveyors include the U.S. Geological Survey, Army Corps of Engineers, and Federal Emergency Management Agency. Surveyors in state and local government can work for highway departments, urban planning and redevelopment agencies, and public utilities. Private-sector employment opportunities include construction, engineering, and architecture firms, and mining, oil, and gas extraction companies.

The State Board for Professional Land Surveyors

Regulation of land surveying is necessary to enhance the safety of the general public by protecting consumers from potential financial risks that may be caused by unqualified and incompetent practitioners. Surveys play an integral role in the construction of major infrastructure projects. Inaccuracies in land surveying can create safety hazards for the general public and, in some cases, environmental harm. For example, careful storm drain and road grade

design is particularly important within the Chesapeake Bay watershed, where stormwater runoff is a significant contributor of nutrient pollution in the bay and its tributaries.

Further, accurate boundaries are essential for the proper conveyance of real estate and the determination of individual property ownership. Misplaced property boundaries can cause significant financial and property loss. In some instances, these losses are apparent immediately, but in other instances, the harm may not be detected for several years. This can impact both current and future property owners, including neighboring property owners.

Maryland has regulated the practice of land surveying since 1939. Initially, the licensure of professional land surveyors and professional engineers was effectuated through a joint board. In 1977, an independent board for the registration of professional land surveyors was established under Article 56 § 330(b). In 1989, it was recodified in § 15-101(b) of the Business Occupations and Professions Article, where it remains today.

Board Is One of Five “Design Boards” within DLLR

The board is currently one of five “design boards” within DLLR. The board’s primary purpose is to license and regulate the practice of land surveying in the State, and its major functions are examining, licensing, and disciplining members of the profession. As shown in **Exhibit 1**, the board currently licenses and permits approximately 1,012 individuals, partnerships, and corporations in Maryland.

Exhibit 1 Number of Licenses and Permits Held – By Type Fiscal 2009

<u>License/Permit Type</u>	<u>Number of Licenses/Permits</u>
Professional Land Surveyor (License)	445
Property Line Surveyor (License)	283
Professional Land Surveyor – Retired Status (License)	29
Property Line Surveyor – Retired Status (License)	14
Partnership (Permit)	5
Corporation (Permit)	195
Limited Liability Partnership (Permit)	2
Limited Liability Corporation (Permit)	39
Total	1,012

Source: State Board for Professional Land Surveyors

The board consists of six members appointed by the Governor with the advice of the Secretary of Labor, Licensing, and Regulation and the Senate. Of the six members, three must be professional land surveyors, one must be a licensed property line surveyor, and two must be consumers. The Governor may appoint each of the professional members from a list of at least three names submitted to the Secretary by the Maryland Society of Surveyors. Each consumer member may not be a licensee or otherwise subject to regulation by the board, may not be required to meet the qualifications for the professional members of the board, and may not, within the year before appointment, have had a financial interest in or have received compensation from a person regulated by the board. In addition, while serving as a member of the board, a consumer member may not have a financial interest in or receive compensation from a person regulated by the board, or grade any examination given by or for the board.

Board members serve five-year terms that begin on July 1. The terms of board members are staggered and, at the end of a term, a member continues to serve until a successor is appointed and qualifies. Further, a board member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies. The Governor may remove a board member for incompetence, misconduct, neglect of duties, or other good cause.

Board Members Do Not Receive Formal Training Prior to Service

Previous evaluations of the board recommended that board members should receive some level of formalized training to properly prepare them to carry out their duties. Board members need a working familiarity with the governing statutes and regulations for the board, as well as a working knowledge in the technical areas of the profession. DLLR has developed a board member training manual that is used as a basis for a training session conducted by the Deputy Commissioner and Principal Counsel of DLLR. However, DLLR is focusing its training efforts on those boards with significant turnover and a high percentage of new members. As a result, in October, DLLR provided board member training for the State Commission of Real Estate Appraisers and Home Inspectors. However, to date, DLLR has not offered board member training for members of the State Board for Professional Land Surveyors. **DLLR should provide training for members of the State Board for Professional Land Surveyors.**

Board Works Well with Professional Association

The board maintains a close working relationship with the Maryland Society of Surveyors, the primary professional society for land surveying in the State. Society members regularly attend board meetings and communicate effectively with the board. **The board should continue to maintain and foster its relationship with the Maryland Society of Surveyors, for the benefit of licensees and the profession of land surveying in the State.**

Joint Chairs Committee Facilitates Communication Among Design Boards

The chairman of the board is required to meet annually with the other four design board chairmen to discuss issues of mutual importance and publish a joint newsletter. The other four design boards include the State Board of Architects, State Board of Certified Interior Designers, State Board of Examiners of Landscape Architects, and State Board for Professional Engineers. In practice, the Joint Chairs Committee meets several times a year and has proven to be a useful and efficient way for the design boards to communicate amongst themselves and with DLLR. **The Joint Chairs Committee should continue to serve as a forum for the design boards to share ideas, work cooperatively, and support the combined interests of the design industry as a whole in the State.**

Major Legislative Changes Affecting the Board Since the 2000 Sunset Review

Since the last sunset review, several statutory changes have affected the board. As shown in **Exhibit 2**, the major legislative changes relate to penalties, scope of practice, professional competency requirements, licensing, and the setting and collection of licensing fees.

Exhibit 2
Major Legislative Changes Since the 2000 Preliminary Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2001	73	Extends the termination date of the board by 10 years to July 1, 2013.
	187	Increases maximum penalties for applicants, licensees, and nonlicensees for violations of licensing laws from \$1,000 to \$5,000 per violation.
	193	Clarifies the scope of practice for professional land surveyors and licensed property line surveyors.
2001	601	Specifies that a professional land surveyor or property line surveyor who is licensed for the first time does not have to meet continuing professional competency requirements until the second renewal period of the surveyor's license. Makes the continuing professional competency requirements for surveyors permanent by repealing a two-year termination provision.
2003	227	Requires the chairs of the five design boards to meet annually to discuss issues of mutual importance and post a joint newsletter on the DLLR web site. Establishes a State Occupational and Professional Licensing Design Boards' Fund, a special fund for the collection of license and permit fees from the five design boards. Repeals license and permit fees set in statute and instead requires the Secretary of Labor, Licensing, and Regulation to calculate the direct and indirect costs attributable to each of the design boards and to establish fees based on those calculations. Caps any fee increase by a design board at no more than 12.5% annually.
2003	384	Repeals the authority of the board to issue temporary and limited licenses. Repeals the two-year statutory waiting period for reexamination after two exam failures and instead authorizes reexamination upon submittal of updated work experience. Repeals the right of an applicant to a conference with a board member after three exam failures. Creates a retired land or property line surveyor status for specified licensees and authorizes the board to reactivate the license of a retired status license under certain circumstances.
2005	129	Lowers the standard for specified disciplinary actions against a land surveyor or property line surveyor applicant or licensee by removing the requirement that an individual "knowingly" committed a violation. Broadens the scope of violations by making a violation of any regulation the basis for a disciplinary action.
2008	273	Extends the termination date to June 30, 2013, for the special fund that serves all five design boards and related provisions, including the board's fee-setting authority.

Note: The five design boards include the State Board for Professional Land Surveyors, State Board of Architects, State Board of Certified Interior Designers, State Board of Examiners of Landscape Architects, and State Board for Professional Engineers.

Source: Laws of Maryland

Licensing of Professional Land Surveyors

Board Issues Two Types of New Licenses and Permits to Businesses

The board currently issues two types of new licenses – a land surveyor license and a retired status license. It also issues permits to land surveying businesses. The licenses and permits are valid for two years. The number of total licenses and permits held has remained relatively constant over the years, as shown in **Exhibit 3**.

Exhibit 3
Number of Licenses and Permits Held
Fiscal 2000 and 2009

	<u>FY 2000</u>	<u>FY 2009</u>	<u>Percent Change</u>
Individual Licenses	836	771	-7.8%
Corporate Permits	176	234	33.1%
Partnership Permits	6	7	16.7%
Total	1,018	1,012	-1.0%

Note: These figures include one limited license land surveyor. The board stopped issuing limited land surveyor licenses in 2003.

Source: State Board for Professional Land Surveyors

The land surveyor license is issued to individuals for the practice of land surveying. The retired status license is issued to licensed professional land surveyors or property line surveyors who:

- have been licensed as a professional land surveyor or property line surveyor, or have been authorized to practice land surveying or property line surveying under certain circumstances for at least 25 years, of which five years were in Maryland;
- are not subject to a pending disciplinary action relating to land or property line surveying; and
- submit an application and license fee to the board.

The holder of a retired status license may not practice land or property line surveying in the State; however, the licensee may use the title “Retired Professional Land Surveyor” or “Retired

Property Line Surveyor.” The board may reactivate the status of a retired licensee if the licensee meets several conditions, including meeting all continuing competency requirements and paying a fee set by the board.

A corporation, partnership, or limited liability company (LLC) must hold a permit issued by the board before it may operate a business through which an individual may practice land surveying or property line surveying. If the corporation, partnership, or LLC submits an application and application fee to the board, the board may issue a permit that authorizes the corporation, partnership, or LLC to operate a business through which land surveying and property line surveying is practiced and represent to the public that the permit holder provides the services of a professional land surveyor or professional property line surveyor.

Prior to July 1, 1990, the board issued a property line surveyor license. A property line surveyor provides the same land surveying service to the public as a land surveyor, with the exception of storm drain and road grade design. Property line surveyors who were licensed prior to June 30, 1990, are allowed to renew their licenses. The number of licensed property line surveyors has decreased since the board ceased issuing new licenses in 1990.

Board No Longer Issues Limited and Temporary Licenses

Prior to 2003, the board issued limited and temporary licenses. These licenses authorized land surveyors who were licensed to practice in another state to work on specific jobs in Maryland for a short period of time (usually one year or less). The authority to issue these licenses was repealed by Chapter 384 of 2003 because the board was issuing fewer than 10 limited and temporary licenses annually.

Applicants for Licensure May Qualify Via Four Options

Applicants for licensure must first qualify by meeting specified educational, examination, and work experience requirements. Applicants must also pass written examinations. **Exhibit 4** describes the four ways that an individual may qualify for a license. The board offers reciprocity for specified out-of-state licensees and mandates continuing professional competency requirements for licensees.

Exhibit 4 Four Ways to Qualify for Licensure

Applicants for licensure are required to complete the requirements of the chosen option in the order listed.

Approved Curriculum

- Graduate from a college or university with at least a four-year curriculum in land surveying
- Pass fundamentals of land surveying written examination
- Have two years satisfactory experience in land surveying
- Pass principles and practice of land surveying written examination

Regional Accrediting Association Curriculum

- Graduate upon completion of at least a four-year curriculum from a college or university
- Pass fundamentals of land surveying written examination
- Have four years satisfactory experience in land surveying
- Pass principles and practice of land surveying written examination

Nonacademic – Work Experience

- Graduate from high school or equivalent
- Have 12 years satisfactory experience in land surveying*
- Pass principles and practice of land surveying written examination

Nonacademic – Work Experience and Testing

- Graduate from high school or equivalent
- Have four years satisfactory experience in land surveying*
- Pass fundamentals of land surveying written examination
- Have an additional four years satisfactory experience in land surveying
- Pass principles and practice of land surveying written examination

*For each 30 semester hours of completed land surveying courses, the board may allow a one-year credit toward the experience requirement for a maximum of three years. Further, §§ 15-301 and 15-303 of the Business Occupations and Professions Article authorize a person to gain the experience required for licensure if they practice land surveying: (1) while performing official duties as an officer or employee of the federal government; or (2) as an employee or other subordinate of a licensee under specified conditions.

Source: Laws of Maryland

Applicants Must Pass National and Local Examinations

Applicants for licensure must pass both national and State written examinations. The current schedule of examination fees is provided in **Appendix 2**. NCEES, a national nonprofit organization composed of engineering and surveying boards develops and scores two separate, written examinations – the fundamentals of land surveying and the principles and practice of surveying – which are administered by the board. The board develops, scores, and administers two separate written examinations, one regarding Maryland law and ethical issues and one regarding storm drain and road grade design. Examinations are held twice a year – in April and October. An applicant who fails an examination may retake it six months later on the next examination date. However, an applicant who fails the exam three times is required to submit proof to the board of additional work experience prior to retaking the exam.

Reciprocity Is Available for Out-of-state Licensees

The board is authorized to waive the examination requirements for applicants who pay an application fee and provide adequate evidence that, at the time the applicant was licensed by the other state, the applicant met requirements that were equivalent to those required by the laws of this State.

Continuing Professional Competency Units Required for License Renewal

Chapter 601 of 2001 established permanent continuing professional competency (CPC) requirements prior to license renewal. Except for those applicants who are applying for renewal for the first time, a licensee is required to complete a minimum of 24 CPC units in each individual two-year licensing term as a condition of license renewal. A CPC equates to one hour of instruction, presentation, or other activity. Regulations specify the numbers of CPCs needed in certain program areas and also specify the content of the program areas. An applicant can convert specified college credit to CPCs, as well as published papers or books on land surveying. The board has a CPC Standards Committee to approve providers of CPC units.

A licensee may request, in writing, an extension of time in which to complete the CPC requirements as long as the request is made at least four months before license expiration. The board may only grant an extension and continue a license if it determines that the failure to fulfill the requirements is clearly a result of illness, a procedural or technical difficulty, circumstances beyond the control of the licensee, or other reasons that the board finds appropriate, and that the licensee appropriately attempted to meet the requirements.

Board Effectively Handles Enforcement

The board effectively handles its enforcement and disciplinary functions. As shown in **Exhibit 5**, the board has handled an average of 12 complaints annually since 2005. The majority

of these complaints are for alleged violations of the minimum standards of practice and were closed after a finding of no violation or a lack of basis for disciplinary action. Other complaints were resolved informally by the board by sending letters of reprimand, or, in some cases, by executing consent orders. The board has a computerized complaint activity log that tracks complaints as they are received, investigated, or closed. As of November 2009, there were three pending complaints – one from fiscal 2008 and two from fiscal 2009.

Exhibit 5
Board Activity
Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>	<u>Average</u>
Applications processed	418	691	624	679	623	3,035	607
Exams administered	125	144	147	136	166	718	144
Licenses/permits issued	433	509	451	554	495	2,442	488
Licenses/permits denied, revoked, or suspended	4	11	6	18	12	51	10
Hearings held	0	1	1	0	0	2	0
Complaints handled	12	10	13	15	8	58	12
Board meetings held	12	12	12	11	11	58	12

Source: Department of Labor, Licensing, and Regulation

The board has a standing Complaint Committee to handle complaints. It consists of one consumer member, one professional land surveyor member, and counsel from the Office of the Attorney General in DLLR. The Complaint Committee provides a mechanism by which board members can review the complaints without prejudice to the parties. The committee reviews all complaints submitted to the board and makes recommendations to the whole board as to whether a complaint against a licensee should be dismissed, investigated, or charged. Complaint Committee members may be recused from participating in a formal hearing at the request of the respondent.

The complaint committee may refer a complaint to an investigator in DLLR for further investigation. Until recently, the investigator position for the design boards was vacant for an 18-month period because DLLR had a difficult time with recruitment and retention for the position. However, an investigator was hired in July 2009. The investigator handles design board complaints on a priority basis, as well as complaints for other boards as his schedule permits. In addition, if the Complaint Committee believes that a licensee or an applicant may have violated State law or regulations, the Complaint Committee will refer the complaint to the Assistant Attorney General for review for possible administrative charges.

Investigations may result in the board bringing charges against a licensee based on violations of State licensing law or regulations. The board may also bring charges against unlicensed individuals for practicing professional land surveying or property line surveying without a license. If charges are brought, hearings can take place before the full board, or the board may delegate its authority to hear a particular case to the Office of Administrative Hearings. The penalties that the board may impose include reprimand, suspension, license revocation, and fines.

The board also effectively uses a number of informal consent arrangements with licensees, including participation in additional continuing competency activities, working under close supervision of another licensed surveyor, and submitting progress reports to the board. The board has found that these approaches result in a higher rate of compliance and serve as a useful educational tool. **The board should continue its proactive approach to enforcement using both formal and informal avenues.**

Available Resources Adequately Cover Board Operations

A pilot program established by Chapter 227 of 2003 created a State Occupational and Professional Licensing Design Boards' Fund to ensure that costs for the five design boards, in the aggregate, were covered by their revenues, in the aggregate. The fund and fee-setting authority were set to terminate on June 30, 2008; however, Chapter 273 of 2008 extended the termination date for the special fund to June 30, 2013. Prior to the enactment of Chapter 227, the fees for the board were set in statute, the revenues were credited to the general fund, and the Governor included a general fund allowance for the board within the budget of DLLR.

Since 2003, the Secretary of Labor, Licensing, and Regulation has been charged with annually calculating the direct and indirect costs attributable to each of the design boards and providing this information to the boards. With consent of the boards, the Secretary is authorized to average the direct and indirect costs among the boards in order to establish fees that more equitably distribute the costs associated with the operation of each board across all five boards. With these calculations in mind, the board is charged with setting reasonable fees for its services by regulation. The fees charged are required to be set so as to produce funds to approximate the cost of maintaining the boards and may not be increased more than 12.5% over the previous year's fees.

In 2007, the design boards determined that the fund balance merited a fee reduction, and the across-the-board license fee of \$78 was reduced to the current fee of \$68, as shown in **Exhibit 6**. These fees are also available on the board's web site.

**Exhibit 6
Schedule of License and Permit Fees**

<u>Type of License/Fee</u>	<u>Fee</u>
Nonrefundable Application Fee – New License	\$35
Nonrefundable Application Fee – License by Reciprocity	50
License Fee (and license renewal fee)	68
Permit Fee – Business Entity (and license renewal fee)	100
Reinstatement Fee (for expired licenses)	100
Retired Status License Fee	25
Reactivation from Retired Status*	100
Verification Fee	20
Replacement Certificate Fee	35

*The \$100 fee is for each lapsed licensing period, not to exceed \$300.

Source: COMAR 09.13.05.03 and .04

Board Expenditures Consistently Exceed Revenues

As shown in **Exhibit 7**, the board’s expenditures continue to exceed its revenues. However, because the board’s revenues are combined with the revenues of the other design boards, it does not actually operate with a deficit. This was the legislative intent of Chapter 227, which created the special fund. The design boards’ special fund ended fiscal 2009 with a surplus of \$679,991.

The board’s direct costs include salaries and health insurance for staff, office supplies, and legal fees from the Office of the Attorney General within DLLR. The board’s indirect costs are incurred at the departmental level, and include costs for activities and services related to budget, personnel, general services, and the Office of the Secretary. Indirect costs are allocated to each board by the Secretary’s office using a federal cost allocation formula. In addition, the Secretary’s office generates the occupational and professional (O&P) cost allocation for each board in DLLR, which reflects the costs incurred at the level of the Division of Occupational and Professional Licensing within DLLR, including central licensing, the telephone center, the

commissioner's office, and information technology costs. The O&P cost allocation is determined by a formula that, among other things, considers the number of licensees and the number of employees who support each board.

Exhibit 7
Fiscal History of the State Board of Professional Land Surveyors
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Revenues	\$49,359	\$42,517	\$47,394	\$42,748	\$49,609	\$51,281
Total Costs	166,553	122,617	203,332	197,855	135,082	121,056
Direct Costs	159,682	90,005	108,264	176,207	115,775	103,773
Indirect Costs	0	12,700	20,798	12,191	7,145	6,904
O&P Cost Allocation	6,871	19,912	74,270	9,457	12,162	10,379
Surplus/(Deficit)	(117,194)	(80,100)	(155,938)	(155,107)	(85,473)	(69,775)

Source: Department of Labor, Licensing, and Regulation

An executive director oversees all five design boards. Likewise, an assistant executive director, an investigator, and three contractual employees – an office secretary, an examination coordinator, and an outreach coordinator – are shared among the design boards. The secretary of the board also serves as the Secretary to the State Board of Examiners of Landscape Architects. This level of staffing is adequate but could be increased. Because the board must go through DLLR for its expenditures, hiring additional staff and procuring office equipment has been difficult at times. **The board should improve communications and continue to work cooperatively with DLLR regarding its needs, including ways for the board to maintain or improve adequate levels of staffing and to procure necessary office equipment, while remaining sensitive to recent State budgetary challenges. DLLR should continue to keep the board updated with information relating to the finances of the Occupational and Professional Licensing Design Boards' Fund.**

Recommendations

The regulation of the professional land surveying industry continues to benefit the citizens of Maryland. The board should continue to foster its relationship with the Maryland Society of Surveyors, for the benefit of licensees and the profession of land surveying in the State. The Joint Chairs Committee should continue to serve as a forum for the design boards to share ideas, work cooperatively, and support the combined interests of the design industry as a

whole in the State. The board should continue its proactive approach to enforcement through the use of the complaint committee. Finally, the board should strive to improve communications and continue to work cooperatively with DLLR regarding its needs, including ways for the board to maintain or improve adequate levels of staffing and to procure necessary office equipment, while remaining sensitive to recent State budgetary challenges. DLLR should continue to keep the board updated with information relating to the finances of the Occupational and Professional Licensing Design Boards' Fund.

The State Board for Professional Land Surveyors is fulfilling its statutory duties to the best of its abilities. **Therefore, the Department of Legislative Services recommends that the Legislative Policy Committee waive the State Board for Professional Land Surveyors from full evaluation and that legislation be enacted to extend the board's termination date by 11 years to July 1, 2024.** Thus, another preliminary evaluation would be conducted in 2021.

However, this evaluation has identified one outstanding issue which should be considered by the board and DLLR. For years, the board has expressed interest in the implementation of general board member training to provide a strong foundation of knowledge related to the duties and functions required of board members. Furthermore, DLS recommended the implementation of board member training in previous sunset evaluations conducted for the board in 1991 and 2000. To date, however, members of the board have not been offered any board member training opportunities. **DLS recommends that the board and DLLR, submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2011, on its plans to implement board member training.**

Appendix 1. Schedule of Examination Fees

<u>Section of Examination</u>	<u>Fee</u>
Nonrefundable Testing Service Fee	\$60
Fundamentals of Land Surveying	100
Surveyor – Principles and Practice	165
Surveyor – Maryland Law and Ethics Issues	35
Surveyor – Maryland Storm Drain and Road Grade	35

Source: COMAR 09.13.05.03

**Appendix 2. Written Comments of the
State Board for Professional Land Surveyors**

DLLR
STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

MARTIN O'MALLEY, Governor
ANTHONY G. BROWN, Lt. Governor
ALEXANDER M. SANCHEZ, Secretary

DLLR Home Page • <http://www.dllr.state.md.us>
DLLR E-mail • adllr@dllr.state.md.us

December 1, 2009

Ms. Jennifer B. Chasse
Senior Policy Analyst
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401-1991

Dear Ms. Chasse:

The Department of Labor, Licensing and Regulation (DLLR) has received the draft report of the Preliminary Evaluation of the State Board for Professional Land Surveyors (the "Board"). We appreciate the time and attention that was spent reviewing the Board's operations.

We are pleased that the Report found that the Board is fulfilling its statutory duties to the best of its abilities and recommended that the Legislative Policy Committee waive the Board's full evaluation. Furthermore, we are pleased that legislation will be enacted to extend the Board's termination date by 11 years to July 1, 2024.

After review of the Report, we have found the following factual errors/discrepancies:

On *Page 7*, after Exhibit 3, the words "or property line surveyor" at the end of the first full sentence should be deleted as the Board no longer issues licenses to property line surveyors.

On *Page 8* and throughout the remainder of the Report, the Report accurately indicates that corporations and partnerships must hold a permit in order to offer land surveying services. However, the Report fails to include limited liability companies in that category.

On *Page 10*, first paragraph, the Report incorrectly notes that "the board develops, scores, and administers a two-part written examination" when in fact, the Board develops two separate state specific examinations; one exam focuses on Maryland Law and Ethical Issues while the other exam focuses on Storm Drain and Road Grade Design.

On *Page 11* the last paragraph inaccurately indicates that "a contractual investigator was hired in July." The Report should instead indicate that the position of the investigator is a permanent position.

On *Page 11*, in the last paragraph the description of the complaint process is slightly confusing. We wish to clarify the description of the process by noting that the Board cannot directly send a complaint to the Attorney General's Office without going through the Complaint Committee and, if appropriate, an investigation.

On *Page 12*, the first two paragraphs should be deleted and replaced as follows for clarification purposes:

"Investigations may result in the Board's bringing charges against a licensee based on violations of the licensing statute and/or regulations. The Board may also bring charges against unlicensed individuals for practicing professional land surveying or property line surveying without a license. If charges are brought, hearings can take place before the full Board or the Board may delegate its authority to hear a particular case to the Office of Administrative Hearings. The penalties that the Board may impose include reprimand, suspension, license revocation, and fines.

The Board also has effectively used and continues to use a number of informal consent arrangements with licensees that resulted in licensees' participating in additional continuing competency activities, working under close supervision of another licensed surveyor, submitting progress reports to the Board, and the like. The Board found that such approach often results in a higher rate of compliance and serves as a useful educational tool. **The Board should continue its proactive approach to enforcement using both formal and informal avenues.** "

On *Page 13*, under Exhibit 6, the Report incorrectly refers to the replacement certificate fee as a replacement license fee.

On *Page 14*, the Report correctly notes the staffing of the professional design boards staff with one exception: the secretary of the Board also serves as the secretary to the State Board of Examiners of Landscape Architects.

We also note that the Report has identified one outstanding issue to be considered by the Board and DLLR with regard to the training of Board members. This issue has also been identified in the 1991 and 2000 sunset evaluations. As recommended, DLLR and the Board will submit a follow-up report to the Legislative Policy Committee by October 1, 2011 addressing this issue and identifying plans to implement board member training.

We would like to express our appreciation for the candor and professionalism provided by your office in conducting this review. We look forward to working with the legislative staff addressing issues that were raised in the Report as well as any other future issues that may arise. If your office should require additional information or a clarification as to the corrections, please do not hesitate to contact me at (410) 230-6262.

Sincerely,

Jay Hutchins
Executive Director
Professional Licensing Boards

Cc: Secretary Alex Sanchez
Commissioner Stanley Botts
Deputy Commissioner Harry Loleas
Dr. Charles E. Maloy, Ed.D, Chairman
Milena Y. Trust, Assistant Attorney General

Part II
State Treasurer's Office
Report of the Treasurer

Department of Legislative Services
Annapolis, Maryland

December 2009



**TREASURER'S REPORT TO
LEGISLATIVE POLICY COMMITTEE**

December 15, 2009

Nancy K. Kopp

State Treasurer

Section 5-104 of the State Government Article of the Annotated Code of Maryland provides that, “*The Treasurer shall address the Legislative Policy Committee of the General Assembly on a semi-annual basis and as necessary on issues of legislative importance, including the activities of the Board of Public Works, bond sales, and investment and procurement initiatives.*” This Report is in fulfillment of that law and covers the period since the report of May 26, 2009. I invite and welcome further discussion with the Committee at your convenience.

The State Treasurer’s activities and responsibilities are of particular concern to the Legislature. One of five statewide Constitutional officers, and the only one elected by the General Assembly, the State Treasurer’s duties are multifaceted and extend throughout State government and higher education. The Treasurer’s duties include service on the Board of Public Works and Board of Revenue Estimates and Chairmanship of the Capital Debt Affordability Committee. The Treasurer presently also serves as Chair of the Board of Trustees of the College Savings Plans of Maryland and the Board of Trustees of the State Retirement and Pension System. She is a member of the Boards of Trustees of the Teachers’ and Employees’ Supplemental Retirement Plans, Maryland Health and Higher Education Facilities Authority, Maryland Small Business Development Financial Authority and the Maryland Agricultural Land Preservation Board. Several of these Boards work under the general oversight of legislative oversight committees which are in periodic receipt of reports and communications from the Office, as are the two legislative budget committees.

As the State continues to face the most challenging fiscal times in decades, the Office has continued to do its part to help keep the budget in balance. While the Treasurer’s Office was comprised of 64 staff members at the beginning of FY 2009, that number has been reduced to 61 as of December, 2009. In addition to the abolishment of three positions, the Office has seen operating budget reductions of approximately \$800,000 and fund balance transfers of approximately \$17 million since the beginning of FY 2009. While these reductions have been difficult, we continue to be both a partner and reliable resource to State agencies and local governments. We continue to assist State agencies in many ways including providing innovative banking services such as remote deposit, negotiating reduced insurance premiums which enhancing coverage and advising on procurements.

We continue to plan and conduct our bonds sales efficiently and effectively, while striving to maintain Maryland’s coveted AAA bond rating. We monitor the market routinely to take advantage of savings as they become available in refunding our General Obligation (GO) bonds or to issue new types of debt such as Build America Bonds and Qualified School Construction Bonds. Lastly, we continue to invest State funds carefully and conservatively to assure appropriate liquidity and minimize risk to the Maryland taxpayers.

While we continue to do more with less, the Office is working hard and achieving real results. The items set forth below detail a number of these achievements and we are

always available to provide greater information or answer questions regarding these and other issues.

BOARD OF PUBLIC WORKS

During the past six months, three rounds of budget cuts totaling more than \$1 billion have dominated the Board of Public Works (BPW). These cuts were necessary to balance the fiscal year 2010 budget. As the reductions have increased in frequency, their impact on services and programs has deepened, generating intense public interest.

While dealing with significant budget reductions at three different meetings in July, August and November, the Board has continued its oversight of State procurement, ensuring that the process of awarding contracts is open, fair and competitive. Between May 26, 2009 and November 18, 2009, the Board of Public Works acted on 1,113 agenda items valued at \$3,757,771,976.99.

Among the numerous contracts, wetlands licenses, land acquisitions and sales that have come before the Board in the past six months, the following exemplify the scope of actions overseen by the Board of Public Works, the only constitutionally mandated body of its type in the nation:

- \$485 million bond sale in August, including the sale of \$235 million sold mostly to Marylanders as part of a direct retail bond sale.
- A 20-year license for operation of a solar energy “farm” at the University of Maryland Eastern Shore.
- The approval of \$266.7 million in public school construction.
- The Renovation of Pocomoke and St. Martin resident halls at Salisbury University.
- Approval of a new Administrative Services Organization Contract for the State’s Mental Health Administration.
- Approval of a new health benefits contract for Maryland Transit Administration employees.
- Approval of \$10 million in improvements to Oriole Park at Camden Yards and M&T Stadium.
- The acquisition of 1,000-plus acres in Dorchester County.
- The demolition of Union Dam in Patapsco State Park.

The Treasurer's Office continues to communicate frequently with legislators about the Board agenda and items of specific interest to their districts. Feedback from legislators is important to the Treasurer, who represents the legislature on the Board of Public Works. The Treasurer's Office also receives comments and advice from the Department of Legislative Services to ensure that BPW agenda items are consistent with legislative policy.

INVESTMENT DIVISION

Continued unpredictable volatility has continued to severely impact the financial markets during the last six months since our last Report. The Office's conservative investment policy and practices have protected the State's portfolio. Since December 16, 2008, the Federal Reserve Open Market Committee has targeted the Federal Funds Rate to a range of 0 - .25%. The Federal Government programs implemented to prevent a complete financial meltdown have been successful. The par value of the General Fund investment portfolio for October 31, 2009 was \$6,071,575,936. While this is almost \$1.5 billion less than the par value of \$7,531,091,634 for October 31, 2008, it is approximately \$440 million more than the previous quarter end of \$5,630,516,296 at September 30, 2009.

On October 31, 2009, the portfolio was earning an average of 1.633%, compared to 3.841% for the same date in 2008. This much lower return reflects the impact of the Federal Open Market Committee maintaining Fed Funds Target rate at .25% or less, and the change in strategy to keep more funds liquid due to unpredictable volatile cash flows.

The General Fund interest earnings received year-to-date for FY 2010 was \$71,668,881 as compared with \$97,836,574 received for the same time period in FY 2009. The \$26 million decline in interest received is directly attributable to the fact that FY 2010 had an average \$1.5 billion less daily to invest – a reflection of reduced State revenue – in addition to the much lower interest rate environment.

The Maryland Local Government Investment Pool (MLGIP), a fund which is used as a cash flow depository by local governments and agencies, as well as limited State deposits, is managed externally under the oversight of the Investment Division. Once again the MLGIP was awarded an AAAM rating by Standard and Poor's, an outstanding recognition of prudent management.

The securities lending program continues to be successful. The program has earned \$60,048 so far in FY 2010. This compares with \$181,050 for the same period in FY 2009. Much of this reduction is due to the Federal Reserve and Federal Treasury programs to aid liquidity in the financial markets which drastically reduced borrowers' need for the securities in the State's portfolio.

The Office continues to increase Minority Business (MBE) participation in the investment of State funds. Fifteen MBE broker/dealers are on the Office's approved list for FY 2010 and they have handled investments in excess of \$200 million as of October 31, 2009. This compares to the same period in FY 2009, when the Office had fourteen approved broker/dealers who handled over \$318 million in investments. The absolute numbers do not

tell the entire story. Due to the change in investment strategy required by the economic times, the Office has only transacted a little over one billion in trades this fiscal year as compared to over two billion at this time last year. Therefore, the percentage of MBE trades was 15.21% as of October 2008 but 17.10% as of October 2009.

The Office continues to invest according to the officially adopted State Treasurer's Investment Policy, which sets out investment goals, priorities and constraints. The overriding goal is to assure sufficient liquidity to maintain uninterrupted funding of State government and legislated payments. As revenues shrink and become less predictable, the strategy has been adjusted to ensure liquidity. The STO continues to review and compare our cash management and investment policies and practices with those of peer AAA-rated states to ensure best practices.

BANKING SERVICES DIVISION

The Banking Services Division remains committed to providing State agencies and external customers efficient, accurate and timely banking services. The Division continually explores new financial products and enhanced data delivery methods to ensure the capacity to contain costs while accommodating for increasingly diverse and complex banking transactions.

The Division's timely, accurate, and completely documented reconciliation of the State's cash, results in the Treasurer's Office's ability to promptly identify and solve agency banking issues. Current highlights of the results of the Division's efforts include:

- Total cash receipts and disbursements reached almost \$116 billion for FY 2009.
- The State's bank accounts are reconciled daily to the State's general ledger within two days of receiving all necessary bank data.
- And; most importantly, there continue to be no un-reconciled differences.

We are continually developing a more automated environment that will enhance the current tracking, processing and reconciling of all bank related transactions for the State's cash accounts. One of the Division's primary concerns must be to enhance the ability to recover in the event of a disaster and to change banks if required by market conditions or the procurement process.

Banking Services has begun the development of a new master bank account database to replace the current Banking Account Information System maintained by the General Accounting Division. The new system will allow for a more efficient set-up and approval process for agency bank accounts. This system will also enhance and further automate the management and control of the State's bank accounts, including the collateralization of State funds.

We continue to be actively involved in enhancing the revenue collection process in many agencies, including working with the Maryland Department of Disabilities to enable them to draw funds from a federal Medicaid Infrastructure Grant. We worked closely with the University of Maryland Baltimore in their conversion of almost 80% of tuition refunds from checks to electronic payments. We also assisted the Maryland Transit Administration with their launch of credit card acceptance on the Metro and Lightrail systems and have also been working together with the Comptroller's Office to convert recurring vendor check payments to electronic payments.

Department of Labor Licensing and Regulation's accounting office has recently begun the use of our depository bank's remote deposit product, which will result in significant cost savings through the elimination of their armored courier service. We are enthusiastic to be actively working with agencies to develop and strengthen their internal processes and to promote efficient and cost effective banking services.

INSURANCE DIVISION

The Insurance Division is responsible for administering the State's Insurance Program, which is comprised of both commercial and self-insurance. Commercial insurance policies are procured to cover catastrophic property and liability losses, and other obligations derived from State contracts, statutes and regulations. Among the exposures covered by commercial policies are State maintained toll bridges and tunnels, rail operations, assorted professional liability exposures and student athlete accidents. The State also self-insures a significant portion of its exposures and maintains the State Insurance Trust Fund to pay claims and the costs associated with handling those claims. Self-insurance coverage includes State-owned real and personal property, vehicles, and liability claims covered under the Maryland Tort Claims Act.

The Insurance Division is comprised of three units: Loss Prevention, Underwriting and Claims. The Division's goal is to provide statewide risk management through loss control (Loss Prevention), loss protection (Underwriting) and loss restoration (Claims).

Loss Prevention

The aim of loss prevention is to help State agencies develop specific action plans and safety practices to mitigate or eliminate their most frequent or severe sources of preventable losses.

Annually, the Loss Prevention Manager conducts a comprehensive review of numerous State agencies' loss histories to identify problem areas and to help those with high severity claims and/or high frequency of claims take corrective measures to significantly reduce the losses to State-owned buildings and contents. Upon identifying agencies with above average claims frequency and severity, the Manager meets with State agency risk managers to discuss the analysis performed and possible improvements.

This year, the Loss Prevention Manager met with the University of Maryland College Park to discuss their five-year trends and the action plans implemented by the University to curtail frequency and severity of losses. Initiatives for loss prevention were developed to further reduce the incidence of losses and ways to improve the tracking of incidents. Brief discussions were also held with Bowie State University about ways to improve claim reporting and incident tracking. The Manager also discussed loss history and trends with the risk manager for the Maryland Port Administration.

The Loss Prevention Manager plans to meet with Maryland State Police and the State Highway Administration this fiscal year to discuss their agencies' loss experience and action plans to reduce the frequency and severity of losses.

Implementation of a more robust portfolio of loss control services offered by our commercial insurance broker partners is underway to maximize the use of loss control services available for State agencies. Through our outreach activities, Coppin State University received an Aerial Infrared Testing of its roofing system. In that case, an aerial inspection of their roofing systems was performed to accurately pinpoint where moisture was penetrating their structures. The purpose of this testing was to indicate roofing failures before there are visible signs, structural damage or business interruption. With the results of this analysis, the University can significantly extend the life of its roofing structures while reducing maintenance expenditures and potential property-related claims.

Recently loss control services were offered to the Maryland State Police Aviation Command (MSPAC) to develop standard operating procedures and guidelines to manage helicopter dispatch. The loss control services were offered to assist the Aviation Command Unit to address some of the safety recommendations made by the National Transportation Safety Board as a result of the tragic crash on September 27, 2008, involving Trooper 2. Previously, MSPAC obtained services to have a gap analysis and assessment conducted on its safety management program.

In FY 09, State agencies **invested \$155,485** to implement preventive maintenance recommendations noted in Boiler and Machinery Survey Reports, **which reduced the potential loss exposure from \$2,566,400 to \$60,200**. Since FY 10, State agencies have **invested \$126,080 to reduce the potential loss exposures from \$1,019,000 to \$35,000**.

Underwriting

The Insurance Division procures broker services for the purchase of commercial insurance to protect the State Insurance Trust Fund from catastrophic loss, to meet statutory or regulatory requirements and for compliance with agency contractual agreements. Underwriting highlights for the past six months include the following:

- Members of the Underwriting Unit conducted three meetings with State agencies in October and November 2009. The first October meeting was with the Aviation Department at University of Maryland Eastern Shore

- The Maryland Transit Administration (MTA) rail car coverage was renewed in FY 2010, with a **34% rate reduction and savings of \$214,253**. The expiring coverage excluded terrorism and flood in Zone A. This **renewal added coverage for domestic and foreign terrorism** and also included flood in Zone A with a \$10,000,000 sub limit. There were significant premiums savings with these coverage improvements.
- The Maryland Aviation Administration's (MAA) airport liability policy was **renewed in FY 2010, with the premium remaining basically flat**. The aviation market was seeking rate increases on most coverages this year, so holding the line on the renewal premium is a reflection of the carrier's positive opinion of MAA's loss prevention efforts.
- The FY 2010 Boiler and Machinery policy was **renewed with no increase in rate**. The insurance carrier continued to include 15 days of infrared testing.
- The FY 2010 renewal premium for the MTA policy covering physical damage on the bus fleet reflected a **rate decrease of 10%** even with increased values of 10.7%.
- The athletic participant's FY 2010 basic coverage for ten schools was down in overall cost by about 8% this year. Eight of the ten schools covered by the policy had a premium decrease, and two had a premium increase due to claim experience. The **8% reduction resulted in approximately \$33,680 in savings**.
- The Allied Health coverage purchased to provide professional liability for student interns in FY 2010 was **\$4,945 less than the expiring policy**. This is good pricing in light of the \$552,880 in losses over the past six years.

Claims

The Insurance Division's Claims unit investigates and resolves liability claims arising from services provided by the State under the Maryland Tort Claims Act, Md. State Gov't Code Ann. §§12-101 *et seq.* The unit also handles claims for damage to State-owned property arising from sudden and accidental perils such as collision and comprehensive loss to autos and a number of other perils such as fire, hail, lightning, wind, etc. which causes damage to State structures, equipment, and contents. The unit handles an annual average of approximately 4,000 claims.

Production goals achieved

Our year-to-date results for FY 2010 show that the Claims unit has received 1449 claims and has resolved 1455 claims including carry-over from previous fiscal years. This result exceeded the unit's production goal of a 1:1 closing ratio.

Medicare legislation impacts the unit

Congress has passed legislation which requires all insurers, including self-insurers, to report to the Centers for Medicare and Medicaid Services (CMS) all bodily injury settlements and judgments paid to Medicare beneficiaries. The reporting process is aimed at ensuring that Medicare is always the secondary payer for benefits.

The Treasurer's Office has been designated as the Responsible Reporting Entity (RRE) for settlements and judgments paid out of the State Insurance Trust Fund. If CMS determines that the RRE failed to report a Medicare beneficiary, it may impose a \$1,000 penalty for each day the beneficiary goes unreported. Therefore, it is critical that the Treasurer's Office accurately report settlements and judgments paid to Medicare beneficiaries. To that end, CMS has developed a letter using "safe-harbor" language to assist insurers in gathering data from claimants and to provide immunity from penalty should a claimant provide inaccurate information about his or her Medicare status or prove to be uncooperative.

The Insurance Division in conjunction with the Office of the Attorney General is coordinating its efforts to establish protocols for identifying and reporting Medicare beneficiaries. The testing period for reporting claims to CMS begins January 1, 2010.

Tort Litigation

The Litigation Manager is responsible for developing and implementing a comprehensive litigation plan for all tort claims in litigation. The Litigation Manager works closely with the Office of the Attorney General to proactively resolve these matters by investigating and evaluating cases, providing settlement authority or when necessary, by briefing the Insurance Review Committee on high dollar value settlements, and by attending settlement conferences and other court mandated activities. The Litigation Manager also works closely with the claims adjusters to provide feedback on

investigations conducted by the adjuster. The Litigation Manager may also brief an adjuster on the status of certain litigation claims of interest.

On average, the Litigation Unit receives 108 suits each year. Since FY 2006, the State Treasurer received 430 notices of suit. Of the cases closed, 28 % were settled; 60% were dismissed; judgments and defense verdicts accounted for 6% each.

Fiscal Year Case Served	Case Disposition					Total Served
	Settled	Dismissed	Judgment	Defense Verdict	Open	
FY06	25	63	9	10	9	116
FY07	21	67	7	4	7	106
FY08	31	48	3	5	28	115
FY09	13	15	0	1	64	93
Total Served as of 6.30.09	90	193	19	20	108	430

INFORMATION TECHNOLOGY DIVISION

The Information Technology Division (IT) provides a platform of integrated systems to support the State Treasurer’s Office’s (STO) operations.

Over the past six months, the IT Division worked with other Divisions of the Office to support many changes and upgrades. Working with our Banking Services Division, we designed a new daily report that captures checks paid by the bank prior to their issue date, which helped to streamline the Banking Division’s check reconciliation process. We also worked with the Insurance Division to design a new weekly Claim Inventory Report. The report tracks the number of claims opened and closed by adjuster each week. The additional information helps management allocate assignments and track the overall progress of the Insurance Division. We have also worked with the Administration Division to have R*STARS screens include the original check numbers when displaying the detail of checks reissued from the Undeliverable and Unpresented funds. We are deploying programming that streamlines the Administration Division’s data entry and also supports additional fields for the R*STARS interface. The Division successfully supported Debt Management’s 2009 Second Series bond sale. The sale included a retail component for the second time. The IT Division, together with Debt Management, implemented an updated Bond Sale website.

The Division introduced new programming to support Service Reduction Days’ affect on our IBM i5 production schedule. The program ensures that the first STO production day for the month is calculated correctly in all scenarios. We also reconfigured two IT printers to support the printing of Expedited Checks on single sheet

check stock. The printers will also be available for limited use during a Disaster Recovery situation. The new programming for single sheet checks printing is completed. Sample checks are in the process of being forwarded to our disbursement bank for quality assurance testing. The new single sheet expedite checks will save over 4,000 pages of check stock per year and eliminate the labor associated with voiding and shredding leader stock.

The IT Division conducted extensive testing with our disbursement bank's upgrade of their VPN service. The IT Division uses this service to transmit Direct Deposit, Vendor ACH, Paid Check and ARP files to and from the bank. The upgrade was a success and should offer the IT Division additional transmission services in the future. We also enhanced our security reporting on the IBM i5 system to now track any data entry via the data file utility program. This option is already secured to only permit specific users. The new reporting does a better job of tracking those users for follow-up by the Security Officer.

The IT Division introduced a new report to show if our ACH files exceed the predetermined amounts that are set by our disbursement bank. For a limited number of times per year the ACH files for Vendor, Payroll and Retirement exceed the bank's limit. The report alerts the IT Division of these situations so that we may notify the bank and get the limit raised for that day. This ensures that proper settlement does occur. We also upgraded our Spam Filtering software and introduced new Spam fighting techniques.

We have also worked with the General Accounting Division to stop printing advices for the majority of their ACH vendor payments. The advices were being printed onto our check stock paper. This change will save the State Treasurer's Office from printing 300,000 advices per year.

PROCUREMENT

In May 2009, an award was made to provide investment and administrative services for the Maryland Local Government Investment Pool (MLGIP) participants. The MLGIP is under the administrative control of the Maryland State Treasurer, and is supervised by the Director of Investments. The MLGIP consists of funds deposited by local governments and agencies that are placed in the custody of the State, as well as any funds of the State that are placed in the MLGIP by the Treasurer, for investment and reinvestment.

On July 1, 2009 the State Treasurer's Office made an award on behalf of the Department of Human Resources, Child Support Enforcement Administration, to provide general banking services to process and disburse monies collected on behalf of individuals who receive child support. The services include accounts for the deposit and disbursement of child support funds, and investment services for account balances. The disbursement services include the use of an electronic payment card product.

The Office made an award to three underwriting firms to provide assistance to the Office and its financing team in negotiating the sale and issuance of tax credit bonds, consisting of Qualified School Construction Bonds, Qualified Zone Academy Bonds, and Qualified Energy Conservation Bonds in September 2009.

DEBT MANAGEMENT DIVISION

Financing Activities - Ratings

Since 1961, Maryland has had a continuous rating of AAA from Moody's Investors Service. Similarly, Standard & Poor's has continuously rated Maryland AAA since 1973 and Fitch since 1993. Only seven states currently have AAA ratings from all three rating agencies.

The State Treasurer's Office (STO) maintains frequent contact with the rating agencies and schedules conference calls with each of them prior to every bond sale, as we did on October 6, 2009, prior to the sale of the 2009 Third Series General Obligation (GO) Bonds. Participating in the most recent conference call were the Treasurer, Comptroller, Secretary of Budget and Management, Director of the Bureau of Revenue Estimates and the Director of Policy Analysis for the General Assembly and staff.

The Rating Agencies are generally uniform in their assessment of Maryland's credit. They cite Maryland's history of prudent, moderate debt and budget management, its protected Rainy Day Fund and other reserves, its Capital Debt Affordability and Spending Affordability processes, its 15-year GO bond terms and other strong evidence of prudent stewardship. However, they also note the serious financial challenges posed or exacerbated by the on-going world-wide economic crisis, including State revenue shortfalls, outstanding liabilities such as the public pension and retiree health benefit obligations, and increased demand for public services. They are particularly concerned about how states (including Maryland) will manage without federal stimulus funds and about Maryland's significant structural budget deficit.

In its most recent report on Maryland General Obligation Bonds dated October 14, 2009, Standard & Poor's stated, "*The stable outlook reflects Standard & Poor's view of Maryland's economic strength and historically strong financial and debt management policies. We believe the state has pro-actively responded to recent structural budget imbalance. Standard & Poor's would expect continued focus on achieving structural budget balance. Maryland has made a steady commitment to funding reserves, which we believe enhances its flexibility in the current economic environment.*"

The next conference call with the rating agencies is expected in February 2010, prior to the sale of the 2010 First Series General Obligation Bonds.

Financings - General Obligation Bonds

There have been two General Obligation Bond sales since our last report – \$485 million in 2009 Second Series (August) and \$200 million in 2009 Third Series A and B (October). Interest rates on both sales were particularly noteworthy since each sale had an overall rate that was lower than rates in the last 20 years. To illustrate, there is an attached chart of True Interest Cost (TIC) for each sale since 1988. Specifically, the overall TIC for the 2009 First Series in March 2009 was 3.52% and 3.06% and 2.93% for the Second Series and Third Series respectively. To achieve these remarkable rates, the State benefited from a strong municipal market rally, demand for highly rated Maryland bonds, an expansion to the taxable market with the issuance of Build America Bonds (BABs), the diminished tax-exempt supply of new bonds because of the issuance of taxable Build America Bonds, the deep federal subsidy to the State of 35% of the interest on BABs, and the establishment of the retail market for Maryland bonds.

The 2009 Second Series in August 2009 also continued the State's use of the negotiated sale method to target retail customers. Of the total \$485 million, the sale gave first priority to Maryland citizens for the purchase of \$235 million of the State's bonds in a retail only order period on July 31 and August 3. To generate interest in the retail sale, the State Treasurer's Office used its specifically created website, www.buymarylandbonds.com, and print advertising in the Baltimore Sun and Washington Post. There were frequent press releases that generated press coverage and the Treasurer also did a radio interview for brokers to educate them about Maryland bonds.

A competitive sale followed on August 5 for \$200 million of tax-exempt bonds and \$50 million of Build America Bonds. This was the State's first issue of Build America Bonds, a program authorized in American Recovery and Reinvestment Act (ARRA) in February 2009 which expires on December 31, 2010. These bonds generated \$4.25 million in interest savings compared to a traditional tax-exempt bond in the 2024 maturity. Overall, the tax-exempt bonds generated premium of approximately \$30.2 million which was deposited to the Annuity Bond Fund. The Build America Bonds sold at a slight discount of approximately \$.4 million. Efforts are being made to extend federal authorization for new BABs beyond the 2010 cut-off.

In late summer and early fall of 2009, the municipal market continued to rally and interest rates were dropping further. To take advantage of these circumstances, the STO decided in late August to issue new money bonds and to refund bonds issued at higher rates. In a refunding, bond proceeds are invested in US Treasuries until the optional redemption date. Unfortunately, because municipal interest rates climbed from their low and Treasury rates declined, the refunding did not meet the criteria established in the debt policy. As a result, the refunding sale was cancelled on October 20 which was the day prior to the competitive sale. The STO continues to monitor the market and, if there is improvement and the refunding criteria set in debt policy are met, a refunding could occur. Sensitivity analysis indicates that we could achieve a large refunding with a drop in interest rates of .25%.

While the October refunding was deferred, the State did proceed with a \$200 million issue (2009 Third Series) to fund capital projects and benefited, as described above, from low interest rates. Of the total \$200 million, there were \$58.2 million of Build America Bonds that generated \$2.6 million in interest savings in the 2022, 2023 and 2024 maturities compared to traditional tax-exempt bonds. Series A (tax-exempt bonds) generated \$21.2 million in premium that was deposited to the Annuity Bond Fund. The Build America Bonds sold at a slight discount of \$.3 million.

At this time, the STO is working on two additional financings in 2009, in addition to a potential refunding issue. Qualified School Construction Bonds (QSCBs) are a new financing opportunity for the State as a result of ARRA. These are federal tax credit bonds which, compared to traditional tax-exempt bonds, should provide significant interest savings due to federal subsidy of up to 100% of the interest cost. The State's allocation is approximately \$50 million in each of the next two years. In addition to the State's allocation, allocations have been made to Baltimore City, Prince George's County and Baltimore County Public Schools.

The State's 2009 QSCB issue is expected to be sold to an underwriter who has guaranteed to purchase the bonds at par. This is an extremely aggressive price because, since September, QSCB bonds have sold with either a supplemental coupon (i.e., at more than 0% interest) or at a discount. In fact, to achieve 0% interest, Baltimore County's general obligation \$19.4 million QSCB was issued at a price of 89.68% in early November. If the State's 2009 issue sold at a similar discount, the State would issue \$50.3 million in bonds but receive only \$45.1 in proceeds, albeit with no interest expense.

The other financing in progress is \$5.5 million of Qualified Zone Academy Bonds (QZAB). These bonds are also tax credit bonds and the State has issued them since 2001. These bonds will probably price with either a supplemental coupon or a discount. Closing for both 2009 QZAB and 2009 QSCB is expected before year end.

The next tax-exempt General Obligation Bond sale will be scheduled for February or March 2010. The financing plan is expected to offer first priority to Maryland citizens in a retail sale and the remainder of the tax-exempt bonds in a competitive sale. The STO will also recommend the issuance of BABs in as many maturities as financially feasible.

Leasing

The capital lease-financing program allows State agencies to acquire equipment and pay for those items over a three, five, or ten year time frame. Between May 26, 2009 and November 30, 2009, \$10,983,819 in capital equipment was leased by State agencies through the State Treasurer's Office.

The Treasurer's Office also finances Energy Performance leases in cooperation with the Department of General Services, providing funding for energy conservation at State facilities. The program finances significant up-front investments in conservation

projects and the lease is paid for using the savings in operating costs. Energy leases in the amount of \$7,759,134 were financed between May 26, 2009 and November 30, 2010.

Status of the Annuity Bond Fund

Debt service on General Obligation Bonds is paid from the Annuity Bond Fund (ABF) and the primary source of revenue for this fund is real property tax receipts. However, the projected amounts of future property tax receipts are not sufficient to pay debt service on the State's General Obligation Bonds without the use of general funds or bond premium. In fiscal year 2011, it is projected that there are sufficient property tax receipts, surplus transfers from 2010 and bond premium to cover debt service without any general fund subsidies. However, if the real property tax rate continues at the current level of 11.2¢ per \$100 of assessed valuation and future debt is issued at the rates projected in the 2009 Capital Debt Affordability Committee (CDAC) Report, subsidies of general funds will be necessary to support the debt service on General Obligation Bonds beginning as early as 2012 unless bond premium is able to close the gap.

CDAC Affordability Criteria

To develop its 2011 recommendations for authorizations of general obligation and higher education debt, the CDAC met on May 26, July 14, August 5 and September 3, 2009. At the July 14 meeting, the Committee reviewed the size, condition and projected issuances of tax-supported debt including General Obligation Bonds, Consolidated Transportation Bonds, Grant Anticipation Revenue Vehicle (GARVEE) Bonds, Maryland Stadium Authority Bonds and Bay Restoration Fund Revenue Bonds (Bay Restoration Bonds). The Committee conducted a similar annual review of the debt of higher education institutions at the August 5 meeting. Also at the August meeting, the Committee reviewed the State of Maryland Capital Program and school construction needs during the next five fiscal years.

The Committee also included two special topics on its 2009 agenda. On May 26, they reviewed the bonds authorized by the American Recovery and Reinvestment Act of 2009. The discussion focused on the characteristics of the bonds, allocations, the financial benefits, projected issuance and the potential effect on affordability ratios. On July 14, in response to the Joint Chairmen's 2009 Report, CDAC reviewed the proposed financing alternatives for a new public health lab that were presented by the Department of Health and Mental Hygiene (DHMH). Section VII of the 2009 CDAC Report describes the DHMH financing alternatives and the implications to the affordability ratios.

At the September 3 meeting, the Committee unanimously recommended a \$990 million limit for new general obligation authorizations by the 2010 General Assembly to support the 2011 capital program. Future projections assume increases of 3% annually in 2012 through 2019.

However, due to extraordinary and rapidly changing fiscal conditions, the Committee also agreed to reconvene on December 18, 2009 to reexamine the recommended authorization level. Among the issues and circumstances which the Committee will review and consider at that time and which might impact this recommendation are the following:

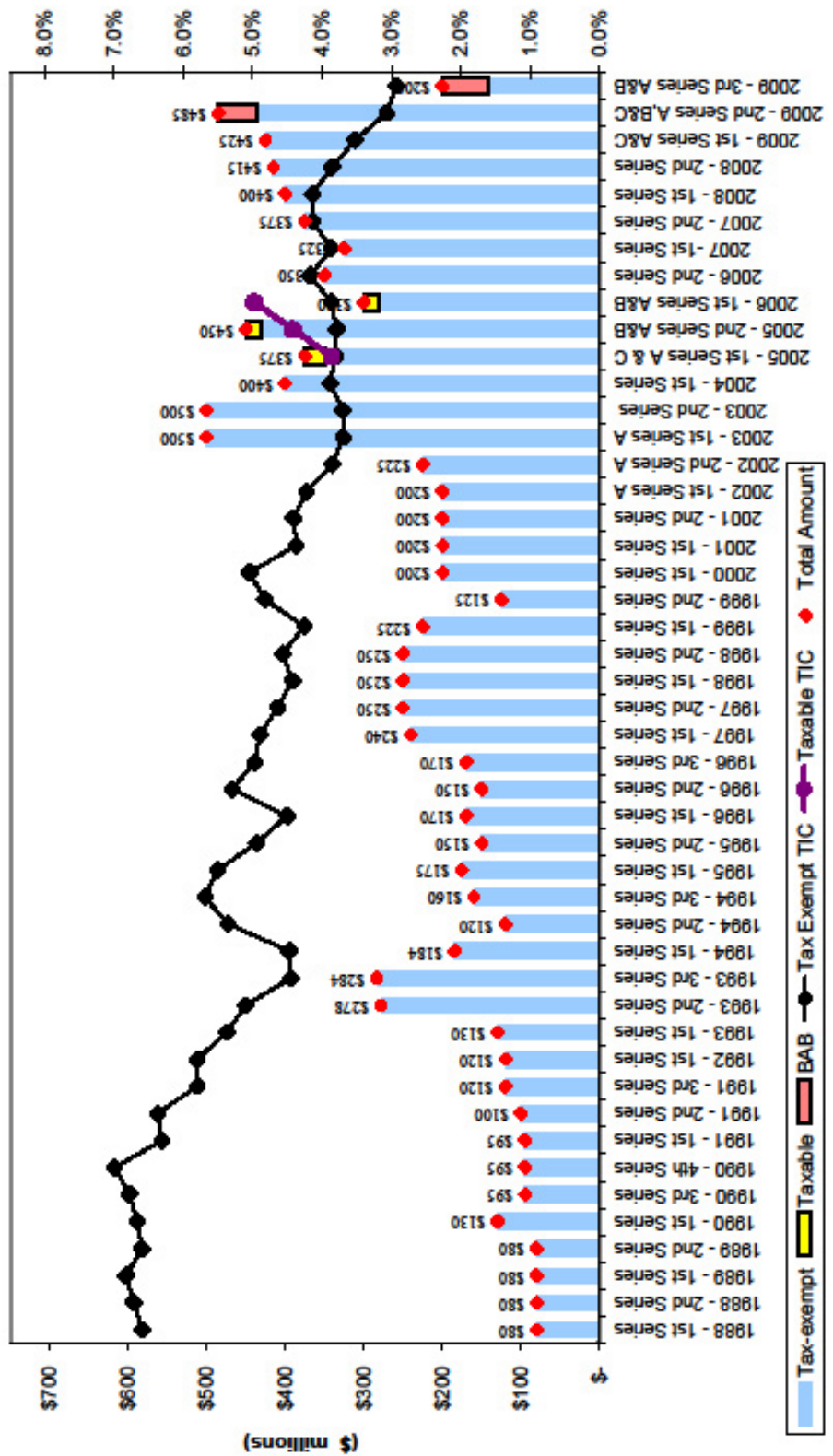
1. The Board of Revenue Estimate's December revenue estimates.
2. Developing options to provide operating budget relief by transferring appropriate expenditures to the capital budget.
3. Debt service projections subsequent to the projected refunding and new money bond issuance this fall.
4. Possible extension of federal authorizations incorporated in the ARRA, such as school construction bonds and Build America Bonds.
5. Any other appropriate issues.

The affordability analysis presented at the September 3 meeting indicates that the Committee's projection of General Obligation Bond authorizations is currently affordable. The personal income criterion peaks at 3.49% in 2012 and is at 2.96% in 2019. The debt service criterion increases annually to 8.02% in 2018 but declines to 7.82% in 2019. Attached are graphs of these ratios.

The risks of exceeding the affordability criteria in future years (debt outstanding should not exceed 4.0% and debt service should not exceed 8.0%) are probably greater than at any other time in the last 20 years. The Committee reviewed its interest rate, revenue, personal income, issuance and authorization assumptions and subjected its recommendation to sensitivity analysis. The personal income and revenue estimates reflect the most recent projections by the Bureau of Revenue Estimates in August 2009. The Committee believes that all of these variables have been estimated conservatively but the volatile financial conditions in the last year have resulted in frequent revisions to estimates. Furthermore, as noted in the charts for the affordability analysis of debt service to revenues, there is little remaining capacity for further adjustments to revenues. As noted above, in response to the rapidly changing fiscal conditions, the Committee will reconvene in December 2009 to reexamine the recommended authorization.

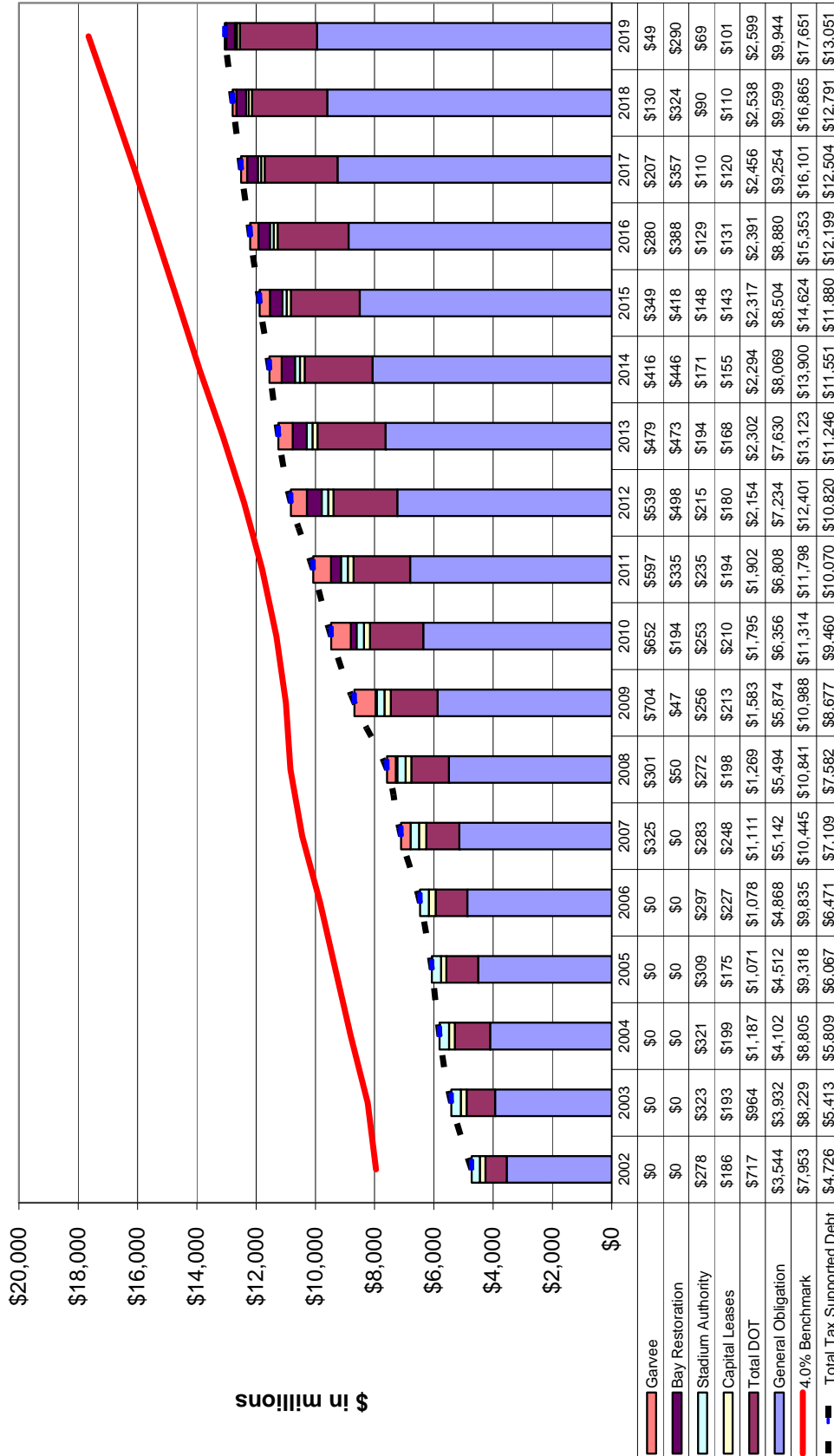
Based on its review of the condition of State debt in light of the debt affordability guidelines, the Committee unanimously recommended a limit of \$27 million for new academic facilities bonds for the University System of Maryland for fiscal year 2011.

Issuance Amounts and TICS of General Obligation Bonds 1988-2009



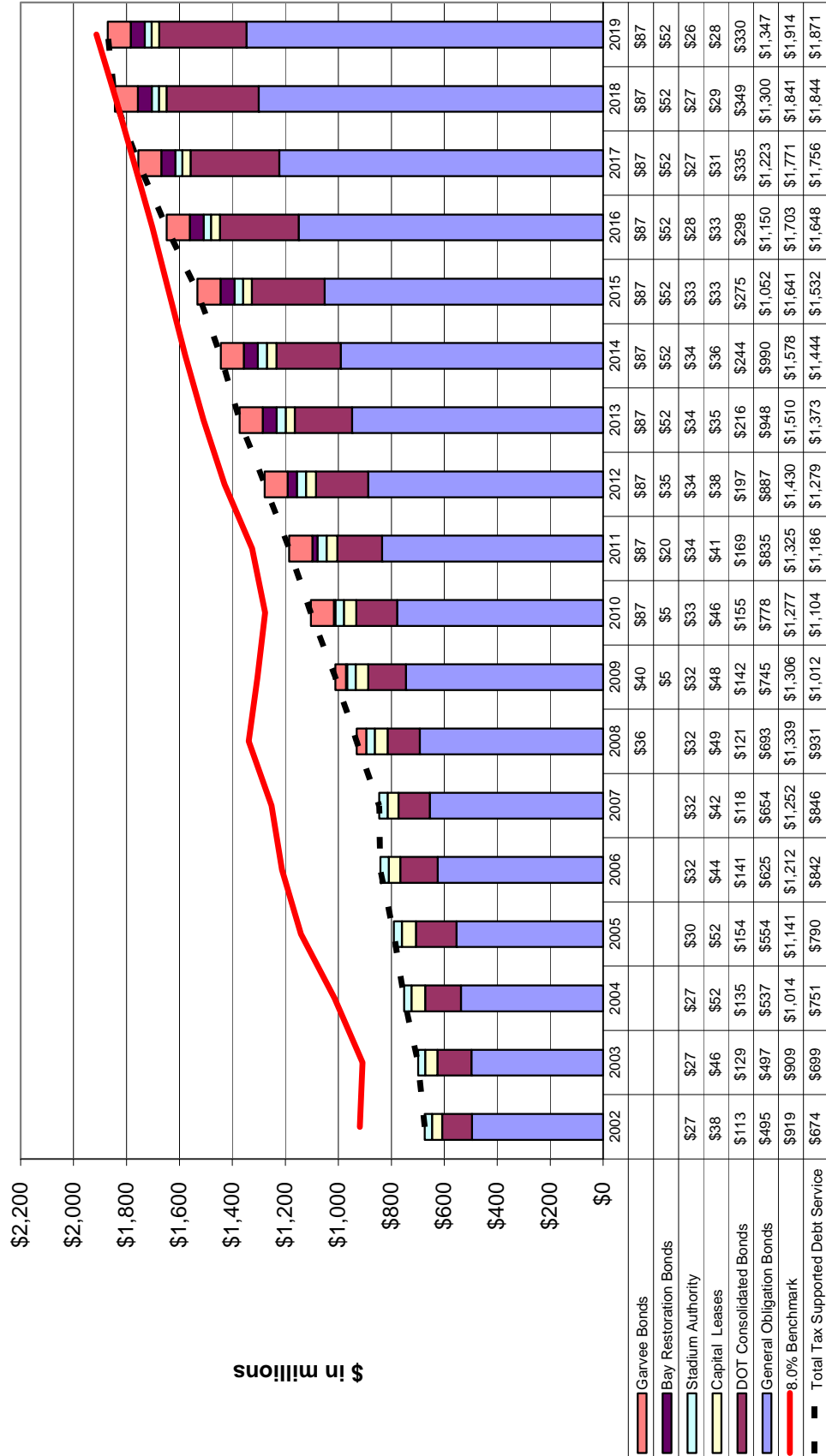
TIC - True Interest Cost

Tax Supported Debt Outstanding to Personal Income August 2009



Source: Table 1 as of August 2009

Tax Supported Debt Service to Revenues August 2009



Source: Table 2A as of August 2009

As noted in the opening section of this Report, present revenue and market conditions continue to impact the operations and achievements of the State Treasurer's Office in many ways. The Treasurer appreciates the opportunity to provide this report to the Legislative Policy Committee on a regular schedule. If the Committee or its members would care to pursue further these or other STO developments, or any other aspects of the Treasurer's activities, please call the Treasurer at (410) 260-7160 or Chief Deputy Treasurer Bernadette T. Benik at (410) 260-7390.

Part IV
Proposed Changes to *Guidelines for*
Compensation Expenses for Legislators

Department of Legislative Services
Annapolis, Maryland
December 2009

Rationale:

The *Guidelines for Compensation and Expenses for Legislators* is published annually, at the beginning of each regular session, and contains information about the per diem limits and rate of reimbursement for mileage in effect at the time of its printing. However, the per diem limit for meals and rate per mile reimbursement for travel fluctuate, often within the same year. As such, the current year's publication may not reflect any changes.

It is the policy of Finance and Administrative Services to notify members and staff immediately when any change in these rates occurs. Amending the language in the *Guidelines* establishes that the travel and meal reimbursement rates are the current rates established by the Board of Public Works. Directing members to contact Finance and Administrative Services for the most current reimbursement rates will ensure that this document remains current throughout the year and that members will have the most accurate and current information with respect to meal and travel reimbursement.

NON-SUBSTANTIVE CHANGES

SUBTITLE 2. IN-STATE TRAVEL REIMBURSEMENT

2-202. MEALS

- (a) Requests for payment of the per diem meal allowance must be submitted on the MGA expense voucher. (The voucher may be obtained from Finance and Administrative Services.) Receipts are required only to assist members in avoiding adverse tax consequences as outlined in Section 2-205.

- (b) Rates.

The per diem meal allowance may not exceed the total amount for meal expenses per day as provided in the Standard Travel Regulations of the State of Maryland, as amended from time to time by the Board of Public Works. **UPON NOTIFICATION BY THE DEPARTMENT OF BUDGET AND MANAGEMENT, FINANCE AND ADMINISTRATIVE SERVICES WILL NOTIFY MEMBERS OF CHANGES AND THEIR EFFECTIVE DATE.**

- (c) Limitations.

- (1) [Currently]**ALTHOUGH** under the State Travel Regulations a member is allowed **TO REQUEST** up to the **MAXIMUM ESTABLISHED** per diem limit [of \$41. However], a member may choose the option of requesting a lesser amount of the per diem allowance for meals or may choose the option to request no per diem allowance for meals.

2-203. LODGING

- (e) Rate of reimbursement.

The maximum rate of reimbursement for lodging may not exceed the maximum per diem amount specified for lodging in Annapolis prescribed by the Internal Revenue Service. [The current maximum per diem amount is \$126.] Finance and Administrative Services will advise members as to **THE CURRENT RATE OF REIMBURSEMENT FOR LODGING AND ANY** changes in the federal per diem allowance FOR LODGING made by the Internal Revenue Service and the effective date of the change.

2-204. MILEAGE

- (a) Reimbursement.

A member shall be reimbursed for expenses actually incurred in traveling between the member's home and Annapolis or the meeting location described in Section 2-201.

- (b) The rate of mileage reimbursement shall conform to the equivalent rates in the Standard State Travel Regulations. [The current rate of reimbursement is 55 cents per mile if the travel is by automobile.] **FINANCE AND ADMINISTRATIVE SERVICES WILL NOTIFY MEMBERS AS TO CHANGES IN THE RATE OF MILEAGE REIMBURSEMENT MADE IN THE STANDARD STATE TRAVEL REGULATIONS BY THE DEPARTMENT OF BUDGET AND MANAGEMENT AND THE EFFECTIVE DATE OF ANY CHANGE.** The rate of reimbursement may not exceed [55 cents] **THE CURRENT RATE** per mile **ESTABLISHED FOR TRAVEL BY AUTOMOBILE**, if the travel is by other means.

- [(c) Finance and Administrative Services will advise members as to changes in the rate of mileage reimbursement made in the Standard State Travel Regulations by the Board of Public Works and the effective date of the change.]

2-205. TAX CONSEQUENCES

- (a) Members should be aware that expense reimbursement related to official business in Annapolis during the legislative session and the interim may or may not be taxable as income by the Internal Revenue Service. The determination of taxability is based on the distance a member lives from the State House, whether the member remains overnight in the State capital, and whether the member provides receipts for meals.
- (1) Members who live more than 50 miles from the State House qualify under provisions of Section 162(H) of the Internal Revenue Code, which provides that reimbursement for meals, lodging, and travel (mileage) is not treated as income since these expense guidelines meet federal standards as to the maximum amount of reimbursement. Members who qualify under these provisions must make a formal election to that effect when filing their income tax return.
 - (2) Members who live 50 miles or less from the State House and who stay overnight in the State capital on official business may be reimbursed for meals, lodging, and travel (mileage) and not have this reimbursement treated as income.
 - (3) Members who live 50 miles or less from the State House and who do not stay overnight in the State capital may be reimbursed for meals and travel (mileage) and not have this reimbursement treated as income provided that they are on official business and claim reimbursement for the actual cost of meals (**[\$41 per day limit]UP TO THE PER DIEM LIMIT**) by submitting receipts for these meals.