

**Maryland General Assembly  
Joint Committee on Management of Public Funds**

**2009 Membership Roster**

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December 23, 2009

The Honorable Thomas V. Mike Miller, Jr., Co-chairman  
The Honorable Michael E. Busch, Co-chairman  
Members of the Legislative Policy Committee

Ladies and Gentlemen:

The Joint Committee on the Management of Public Funds is pleased to present this report on the activities of the committee during the 2009 interim.

The committee met five times over the course of the 2009 interim. The committee was briefed on several topics, including the types and use of State debt, public-private partnerships, the activities of the Comptroller's and Treasurer's offices, State funding for higher education, and audits of local governments and local school systems. Outlined below are key issues discussed at each meeting. The committee also voted to sponsor legislation proposed by the Treasurer's Office.

#### **August 26, 2009 Meeting – State Treasurer's Office**

- **Successful Issuance of General Obligation (GO) bonds in August 2009:** The State Treasurer's Office (STO) reported that the August 2009 issuance of 2009 Second Series bonds was a success. The State maintained its AAA bond rating from all three rating agencies. The issuance included \$235 million in tax-exempt bonds sold through retail, \$200 million in tax-exempt bonds sold competitively, and \$50 million of taxable Build America Bonds (BAB). The combined True Interest Cost (TIC) of all three issuances was 3.06%, the lowest TIC in more than 20 years.
- **Strong Demand for Retail Sales:** \$235 million of Series A bonds were to be sold retail over a three-day period; however, strong demand closed the sale mid-way through the second day. A number of the maturities were oversubscribed and had to be closed earlier than that. By reconfiguring the investor sales, STO was able to meet all of the demand for maturities prior to closing. Eighty-four percent of the retail sales went to in-state buyers. The zip codes with the highest retail sales include 21401, 21204, 21701, 21093, and 21217.

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- **BAB Provide Savings:** BAB are authorized by the federal American Recovery and Reinvestment Act of 2009 (ARRA) and provide a 35% subsidy of interest from the U.S. Treasury to the State. This is Maryland's first issuance of these types of bonds. The federal authorization to issue these bonds expires at the end of 2010. The bonds sold at a slight discount, selling for \$49.6 million. The winning bidder was J.P. Morgan Securities with a TIC of 4.62%. Issuing BAB instead of tax-exempt bonds resulted in a \$4.25 million present value savings.
- **Lengthy Process to Issue GO bonds:** STO briefed the committee on the lengthy process required for each bond issuance, using the August GO bond sale as an example. STO went through each of the steps from the authorization of the debt during the legislative session to post-issuance compliance requirements that last through the life of the bonds.
- **Update on Implementation of Chapter 693 of 2009:** Chapter 693 of 2009 requires each local government to adopt a debt policy and submit it to STO. The measure also expands the requirements of the comprehensive annual financial reports that local governments must submit to include indebtedness from variable interest rate debt instruments, interest rate exchange agreements or swaps, and other derivatives, including futures and options. The legislation was sponsored by the committee on behalf of STO. STO reports that it has sent letters to all local governments to advise them of these new requirements, but the effective date of the legislation is not until October, so local governments are just starting to create and approve policies.
- **Future Briefings:** STO offered to provide the committee with additional briefings on the debt issued by other State agencies and on its findings after reviewing the local debt policies submitted by local governments over the next few months.
- **Conclusions and Recommendations:** The committee commends STO on all of its hard work, especially in light of the many new types of bonds and issuances (retail sales, BAB, Qualified School Construction bonds, Qualified Energy Conservation bonds) that STO must evaluate. The committee looks forward to briefings next interim from STO regarding debt issued by State agencies and an analysis of the debt policies developed by local governments.

### **September 22, 2009 Meeting – Public-private Partnerships (P3)**

Representatives from the Department of Legislative Services, Department of General Services, Maryland Department of Transportation (MDOT), Maryland Transportation Authority (MDTA), Maryland Port Administration, and the University System of Maryland (USM) gave presentations to the committee on the current use of P3 agreements and planned development using P3s.

- **What is a P3?** Public-private partnership is a very general term that encompasses a wide variety of relationships between the public and private sectors. It can be defined to include the State contracting with the private sector to do work, although most agree that partnerships at this level cause little concern. The full spectrum of P3s includes contracting; concession agreements for existing State resources; a partnership for the private sector to design, build, finance, operate, and maintain a new resource; as well as many things in between. One of the key questions regarding P3s is where to draw the line between normal government activities (*e.g.* contracting) and those requiring additional legislative oversight (*e.g.* a long-term lease of an existing State asset).
- **P3 Projects in Maryland:** There are currently several P3 projects underway in Maryland. These include the redevelopment of State Center in Baltimore City and other transit-oriented development (TOD) projects, a public health laboratory, Seagirt Marine Terminal, and redevelopment of the I-95 travel plazas. In addition, USM has used P3s over a dozen times since 1998 for the development of student housing.
- **Legislative Oversight of P3s:** There currently is not a comprehensive statutory framework governing legislative oversight of P3 projects. For transportation P3 projects, there is a patchwork of statutes, regulations, and an Attorney General's opinion governing P3s. For nontransportation projects, such as the public health laboratory and State Center, there is only some project-specific budget bill language adopted in response to specific project proposals from the Governor. Other states have developed various forms of statutory authorization or legislative oversight of P3 projects.
- **Joint Legislative and Executive Workgroup on P3s:** Language included in the fiscal 2010 operating budget bill expresses the intent that a joint legislative and executive workgroup be established to study issues related to legislative oversight of P3s. Members of this workgroup have not yet been named. An executive committee on the State Center project has met and had legislative hearings regarding the financial structure of the project.

- **Higher Education P3s:** Higher education P3s began in 1998 as a way to maximize the use of debt capacity and includes 14 student residences at 7 campuses. Typically, student housing P3s are owned by the Maryland Economic Development Corporation (MEDCO), which also issues the debt on behalf of the private partner. USM maintains an arm's length from the transactions and does not provide backing to the debt, guarantee that the housing will be filled, or develop leases with students for the housing. The rating agencies view the debt as indirect debt, since the project is essential to the university and the university receives the project at the end of the financing term. Future student housing P3s may be difficult given current interest rates and increasing scrutiny from the rating agencies about whether the projects are considered as debt of the university.
- **Nontransportation P3s:** The Department of General Services is currently working with the Department of Health and Mental Hygiene on a P3 for construction of a new public health lab and with MDOT on the redevelopment of State Center. The public health laboratory project involves construction of a 198,000 square foot facility to replace the current outdated one. The estimated cost of the project is \$165 million, which will likely use MEDCO as a conduit financier for the private partner. The State Center project involves the reconstruction of several State office buildings and surface parking lots in downtown Baltimore into a mixed-use development including office and retail space, housing units, and additional parking. The \$1.5 billion project is expected to be financed primarily through private debt, with supplementary funding from private equity, federal funds, city financing, and State investment.
- **Transportation P3s:** MDOT is currently working on several P3 projects. The project farthest along is a long-term lease of the Seagirt Marine Terminal in exchange for annual payments to MDOT, a payment to MDTA to repay its investment in the facility, and construction of a 50-foot berth prior to the planned expansion of the Panama Canal in 2014. This deal is expected to be closed by the end of 2009. [In December 2009, MDOT received legislative concurrence and Board of Public Works approval for a 50-year long-term lease of Seagirt to Ports America Chesapeake in return for a \$140 million capital payment to MDTA, capital investment in construction of a 50-foot berth, and annual operating payments to MDOT.]

MDTA is working on its own P3 project for the redevelopment of two travel plazas along I-95. MDTA expects to issue a Request for Proposals for the project by the end of 2009. MDOT has also pursued a number of TOD projects with the goal of creating mixed-use development adjacent to transit stations in an effort to maximize the State's investment in transit by reducing car use and creating pedestrian- and bike-friendly communities. The projects typically involve MDOT building a parking garage on an existing surface lot,

thereby freeing up land which is conveyed to a private partner to construct a mixed-use development. Current TOD projects include MARC stations in Savage, Odenton, and Laurel and Metro stations at Owings Mills and Reisterstown Plaza.

- **Conclusions and Recommendations:** The committee recognizes that P3s are an important tool in developing and maintaining State infrastructure, especially given growing budget pressures. However, given the long-term nature of these deals and the transition to the private sector providing services and infrastructure typically provided by government, the committee believes that P3s should be scrutinized carefully to ensure that they are the most favorable option for State consideration. Therefore, the committee encourages the immediate appointment of members to the joint legislative committee on P3s. In addition, given their oversight of public funds, the committee recommends that the chairpersons of the Joint Committee on the Management of Public Funds be included on that committee.

#### **October 7, 2009 Meeting – Update of Activities and the Legislative Priorities of the Office of the Comptroller and the State Treasurer’s Office**

##### **The Comptroller’s Office**

Comptroller Peter Franchot and his staff briefed the committee on various programs and initiatives and informed the committee of proposed legislation for the 2010 session.

- **Update on the Modernized Integrated Tax System (MITS):** This \$87 million project is the largest technology improvement in the history of the Comptroller’s Office. The Comptroller has promised that it will bring nearly \$200 million in additional revenues over the next four years and approximately \$100 million annually after that. Furthermore, the system was developed with a 27% minority business enterprise participation rate. Legislation sponsored by the committee during the 2009 session (SB 249 and HB 812) was a component of MITS and would have allowed the Comptroller’s Office to receive information electronically from various State agencies to aid in tax collection. The bills failed in committee. The Comptroller notes that although the bill would have aided in determining cases for possible audits, the legislation ran into privacy issues and he will not ask the committee to resubmit the legislation.

- **E-filing Use Soars:** During the 2009 session, the committee sponsored legislation (SB 96 and HB 810) that requires income tax return preparers who prepare more than a specified number of State income tax returns to file the returns electronically. Although both bills were passed by the General Assembly, only HB 810 was signed into law by the Governor (Chapter 422 of 2009) and SB 96 was vetoed as duplicative. Although the legislation does not take effect until tax year 2009, during tax year 2008, there were record numbers of returns filed electronically. Over 1.5 million tax returns for tax year 2007 were filed electronically, marking the first time ever that more electronic returns were filed than paper returns. In tax year 2008, electronic filing again increased by 8%. E-filing on the Comptroller's web site is free for individuals through the I-file program and for businesses through B-file.
- **Unclaimed Property:** The Comptroller's Office has returned more than \$160 million in unclaimed property to its rightful owners. Unclaimed property often includes forgotten bank accounts, insurance proceeds, and dividends. The Comptroller has used YouTube, a video sharing web site, on which Senator John Astle was featured encouraging people to check for unclaimed property. The Comptroller is also working with the Department of Human Resources to match up unclaimed property with people who are behind in child support and have identified 1,100 individuals and \$700,000 in unclaimed property and credited the money to delinquent child support accounts.
- **Legislative Initiatives from the Comptroller's Office:** The Comptroller's Office has legislation that it is pursuing for the 2010 session, but since it involves the licensing of all tobacco products exclusive of cigarettes, the bill falls outside the committee's jurisdiction. The Comptroller informed the committee of the legislation for informational purposes but intends to seek another sponsor.
- **Conclusions and Recommendations:** The committee commends the Office of the Comptroller on the initiatives to improve tax payment enforcement, further automate the tax payment process, reduce paper remittances, and return unclaimed property to its rightful owner. Although the committee is very interested in topics such as the corporate income tax, combined reporting, and the so-called "millionaire's tax," the committee recognizes that these topics fall under the jurisdiction of the standing committees and looks forward to working through those committees to review these high profile issues.



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## **State Treasurer's Office**

Treasurer Nancy Kopp and her staff briefed the committee on the upcoming bond sale, the continued issuance of retail bonds, and debt affordability limits. The Treasurer also presented legislative initiatives for the 2010 session to the committee.

- **Capital Debt Affordability Committee (CDAC) Recommends \$990 Million Debt Limit:** CDAC recommends a debt limit of \$990 million for fiscal 2011. Although this was the level anticipated during the 2009 session, there was some discussion of increasing the limit by \$100 million. Instead, CDAC set the \$990 million limit and intends to meet again in December to revisit the limit based on the latest revenue estimates, the latest debt service projections, a possible extension of special bonds authorized by ARRA, and estimates of operating budget relief provided by the capital budget.
- **Upcoming Bond Sale and Refunding Opportunities:** Although the State typically issues GO bonds only twice a year, due to a favorable interest rate environment, the State is planning a third issuance for 2009. The additional issuance will not make the bonds issued in fiscal 2009 exceed the authorized amount, but it will simply move forward issuances that would have been made in March 2010. The low interest rate environment also provides an excellent opportunity to refund some past bond issuances and secure debt service savings. [On October 21, 2009, the State sold \$141.8 million in tax-exempt GO bonds with a TIC of 2.85% and \$58.2 million in BAB with a TIC of 3.06% after adjusting for the 35% federal subsidy. Due to changing market conditions, the refunding was delayed until December 7-9, when \$602.8 million in refunding bonds were issued, yielding a net present value savings of \$24.9 million. Also in December, \$50.32 million in Qualified School Construction bonds (QSCB) and \$5.6 million in Qualified Zone Academy bonds (QZAB) were also issued.]
- **Approaching State Debt Limit Requires the Legislature to Prioritize Capital Spending:** A number of types of bonds fall within State debt affordability guidelines, including GO bonds, Consolidated Transportation bonds (CTB), Bay bonds, and Grant Anticipation Revenue Vehicle bonds. Current projections of State debt show that beginning in 2017, debt service will nearly exceed the 8% of personal income that current affordability guidelines require it to be under. In 2018, debt service will exceed the 8% benchmark. As debt capacity declines, authorizing debt will become a zero-sum challenge: for each CTB bond issued, less authorization will be available for GO bonds. Similarly, for each GO bond amount authorized, less authorization will be available for

the State's capital program. As State debt approaches affordability limits, the legislature will need to be cognizant of this fact and to prioritize capital spending.

- **Mini-bond Program Does Not Make Financial Sense:** The committee expressed its interest in making Maryland bonds available to Maryland residents as much as possible and considers the retail sale of bonds by the State to its residents to be a significant step in the right direction. However, the committee believes the \$5,000 price for the bonds is cost-prohibitive to many residents. The committee directed STO to explore the possibility of issuing bonds in amounts smaller than \$5,000. STO reported that results from the mini-bond program offered in 1990 and 1991 showed that these smaller bonds did not make financial sense. The program sold bonds in denominations of \$500 with maturities of 5 or 10 years. The bonds were nontransferable and nonnegotiable but were eligible for early redemption for a fee of \$25 per bond. Statistics show that nearly half of people who purchased bonds in the lowest denomination (\$500) redeemed their bonds early. STO discussed the possibility of smaller bond denominations with its underwriters and financial advisors. The general consensus was that, although the State could offer smaller bond denominations, \$5,000 is the preferred amount because it is the standard denomination used in the bond market and therefore is more liquid. Buying a Maryland bond requires a brokerage account and the annual fees on the brokerage account would exceed interest income for bonds purchased in smaller denominations.
- **Legislative Initiatives from the Treasurer's Office:** STO has six pieces of proposed legislation for consideration of sponsorship by the committee. One of these pieces was later withdrawn. Legislation that the committee has agreed to sponsor is summarized as the last item in this report.
- **Conclusions and Recommendations:** The committee commends STO on staying current with new types of bonds, such as those authorized by ARRA, and new issuance types, such as retail sales. The committee also commends STO on its ability to quickly respond to changing market conditions and adjusting its bond issuances accordingly. For example, in 2009, STO moved from its typical twice a year bond issuances to four bond issuances in order to take advantage of the low interest rate environment and produce cost savings for the State. The committee will review the STO's proposed legislation for possible sponsorship in the 2010 legislative session.

### **November 3, 2009 Meeting – Higher Education Funding**

Representatives from the University System of Maryland; Maryland Higher Education Commission; and University of Maryland, College Park met with the committee to discuss various issues impacting higher education. These issues included affordability of higher education, historically black institutions, student housing, and the negative fund balances of intercollegiate athletic funds.

- **Achievement Gap Remains and is Costly to Close:** There exists a gap in academic achievement that divides first generation, low-income, and under-represented minority students from their peers. The gap is reflected in college participation, retention, and graduation rates. Closing the gap is important to Maryland's workforce competitiveness. Reaching the State's goal of 55% of its population having a higher education degree is not possible without closing the achievement gap. However, closing that achievement gap can be costly, and identifying the necessary funding remains an issue.
- **Historically Black Institutions (HBIs) are an Important Part of the University System:** The State's HBIs (Bowie State University, Coppin State University, Morgan State University, and the University of Maryland Eastern Shore) have a critical role to play in helping to close the achievement gap. Maryland has identified one of its goals as ensuring that the HBIs are comparable and competitive with the State's other higher education institutions. Since HBIs enroll a disproportionate share of low-income students who are not academically prepared to successfully complete college, additional funding is needed.
- **New Model for Higher Education Funding Needed:** The Commission to Develop the Maryland Model for Funding Higher Education issued its final report in 2008. It concluded that a new model for higher education funding is needed. The model should be based on a set of 10 peers, referred to as Maryland's competitor states, and State funding for four-year public institutions should be set at the seventy-fifth percentile of peers, and funding for HBIs should be at the eightieth percentile. Again, funding remains an issue for this initiative.
- **Lack of Student Housing at Some Institutions:** In Maryland as well as nationwide, there is an increasing number of students who want to live in dormitories during their entire college career. This has caused a housing crunch and administrators, who recognize the importance of keeping freshmen and sophomores on campus, must sometimes require seniors to live off-campus. Although some relief was expected from P3 projects for student housing, the recent economic downturn and ensuing credit crunch has prevented many of these deals from securing necessary financing.

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- **Negative Fund Balances in Intercollegiate Athletics Programs:** Three USM institutions are currently running a negative fund balance in their intercollegiate athletics programs. These three schools are Bowie State University (\$2.8 million), Coppin State University (\$4.6 million), and the University of Maryland Baltimore County (\$1.2 million). The athletic programs are not funded by the State, but typically receive funding from booster clubs, ticket sales, student fees, merchandising sales, and television contracts. Following direction from the Board of Regents, each of the institutions has implemented a plan to eliminate the negative fund balance; however, the committee understands that, as these negative fund balances took many years to accumulate, they will also take many years to pay off.
- **Conclusions and Recommendations:** The committee recognizes that education is essential not only for individual success, but also for the success of our State. Having a competent, well-educated, and well-trained workforce is vital in helping Maryland to compete for jobs. Yet, this success cannot be attained without closing the achievement gap and making significant investments in higher education. Identifying funding for this worthy goal is made even more difficult by our current economic situation, but the importance of postsecondary access and success must overcome these funding obstacles. The committee commends USM and the Maryland Higher Education Commission on their efforts to enhance access to postsecondary education and for students to achieve success in their pursuit of that education. The committee also encourages both the higher education institutions and the State's private partners to develop additional student housing at the State's public universities. Students that wish to live on campus should have that opportunity available to them. Finally, the committee encourages Bowie State University, Coppin State University, and the University of Maryland Baltimore County to continue to work to eliminate negative fund balances in athletic programs.

#### **December 9, 2009 Meeting – Office of Legislative Audits (OLA)**

**Review of Local Government Audit Reports:** OLA presented information on the desk reviews of local government audits for fiscal 2008. Out of 194 local government reports, 69 contained some type of deficiency that required corrective action. The most significant and frequent problem areas included failing to file an audit report, failing to comply with generally accepted auditing and accounting principles, failing to adequately provide all required financial statements and disclosures, failing to insure or collateralize cash deposits as required by State law, having unreserved general fund deficit balances (Cambridge, Cumberland, Fairmount Heights, Myersville, Princess Anne, and Ridgely), unfavorable financial trends and ratios (District Heights and Riverdale Park), underfunded pension plans (Baltimore City), and the

issuance of a qualified opinion (Queenstown). A qualified opinion is issued when the auditor states that “except for” the effects of the matter to which the qualification relates, the financial statements are presented fairly, in all material respects, in conformity with generally accepted accounting principles.

- **Review of Local School System Audits:** Chapter 148 of 2004 required OLA to audit all 24 local school systems by June 2010. OLA identified 11 functional areas to be included in each audit. To date, 18 audits reports have been issued, 4 audits are near completion, 1 audit is in progress, and 1 will start in 2010. Of the 11 functional areas reviewed, 4 areas seem to have the most recurring or significant issues across all audits: procurement/accounts payable, human resources/payroll, transportation services, and information technology. The audits have been an important tool for the local school systems as they learn from their own audits as well as the audits of other school systems.
- **Conclusions and Recommendations:** The committee commends OLA for its thorough review of local government audit reports and for its audits of local school systems. The committee recommends that OLA promptly notify legislators of all unfavorable financial trends or audit report deficiencies affecting local governments within their jurisdictions. The committee also recommends that the Maryland State Department of Education’s Bus Committee continue its efforts to look at all elements of bus contractor payments to ensure that bus contractor compensation packages are fair in terms of risk-sharing, private sector profits, and school system costs.

### **Committee Sponsored Legislation**

The committee received proposed legislation and was briefed on these proposals by the Treasurer’s Office. Since draft legislation was not yet available at the time of this report, the committee adopted the proposed legislation in concept and asked committee staff and the Department of Legislative Services to work with STO to ensure that the draft legislation addresses all of the committee’s concerns. The committee voted to support the following proposals:

- **Allow STO to Purchase Bonds of any State Agency or Local Government:** This proposal would allow STO to invest State money in bonds, notes, and other obligations of the State, any State agency, or local governments provided that the obligations carry the highest letter and numerical rating. The measure would remove the restriction that only bond sale proceeds may be used for such investments giving the Treasurer greater flexibility to assist other State agencies and local bond issuers by investing in their bonds.

Moreover, State and local bonds typically have a higher rate of return than federal treasury bonds and, given the State's revenue and budgetary structure, the purchase of bonds of State agencies and local governments is largely risk-free. This proposal was first introduced by the committee in the 2009 legislative session as Senate Bill 610. The bill received a hearing from the Senate Budget and Taxation Committee but no further action was taken on the bill.

- **Alter the Due Date of the CDAC Report:** This proposal would change the due date of CDAC's annual report from September 10 to October 1 and change the due date of the Governor's annual determination of advisable new State debt from October 15 to November 1. This change is proposed because it moves the date of the CDAC report until after the Bureau of Revenue Estimates September report so that the CDAC report can take the revised revenue estimates into account.
- **Alter the Types of Deposits Allowed in the Minority Business Enterprise (MBE) Linked Deposit Program:** This proposal would substitute the term "interest bearing deposits" for "certificates of deposit" in the statute related to the MBE Linked Deposit Program. The change is proposed because, although certificates of deposit are well-recognized financial instruments, they have fixed terms of deposit (often three months, six months, or one to five years) that are incompatible with the monthly changes in deposit amounts associated with the MBE Linked Deposit Program. Substituting these terms will allow STO greater flexibility in administering this program.
- **Allow the Issuance of GO Bonds to Finance Energy Performance Contracts (EPC):** This proposal would allow STO to issue GO bonds to fund EPCs, in addition to the capital leases traditionally used. STO stated that the measure is necessary because it is discontinuing the traditional Master Lease model it has historically used and will begin procuring EPC financing in smaller amounts and more often. The use of GO bonds for financing EPCs will not affect State debt affordability, since the capital leases traditionally used for financing already count against State debt. The maturity of the GO bonds must coincide with the life of the equipment purchased, and all funds from energy savings financed by GO bonds are to be credited to the Annuity Bond Fund.
- **Allow STO to Consolidate Issuances of ARRA Bonds from Local Jurisdictions:** This proposal would allow STO to issue bonds authorized by ARRA on behalf of local jurisdictions. Portions of the QSCBs, Qualified Energy Conservation bonds, and Recovery Zone Economic Development bonds authorized by ARRA are allocated to local jurisdictions based on population and other factors. Although some larger jurisdictions may have a large enough allocation of bonds and the financial and

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administrative infrastructure necessary to issue these bonds, others may not. By consolidating allocations into one issuance, this proposal intends to minimize issuance costs and provide access to tax credit markets.

- **Alter the Due Date of Financial Reports Submitted by Political Subdivisions:** This proposal would alter the due date of variable rate debt reports submitted by political subdivisions to STO and DLS to conform to existing due dates for the submission of annual financial reports. The measure is intended to make due dates uniform across reports and allow certain counties additional time to submit their reports.

Respectfully submitted,

Senator Verna L. Jones  
Presiding Chair

Delegate Henry B. Heller  
House Chair

VLJ:HBH/JDH/mpc