

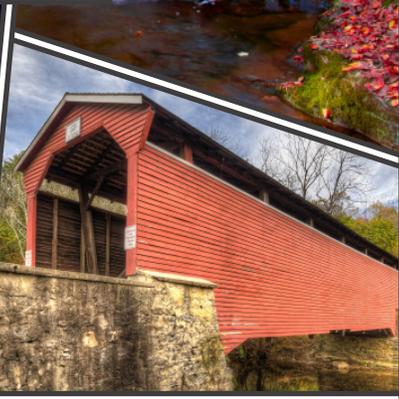
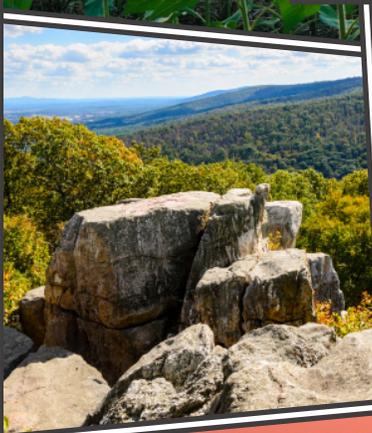


LEGISLATIVE  
HANDBOOK  
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VOLUME V

MARYLAND STATE  
PERSONNEL, PENSIONS,  
AND PROCUREMENT



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# **Maryland State Personnel, Pensions, and Procurement**

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**Legislative Handbook Series  
Volume V  
2022**

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# Foreword

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This volume has been prepared to assist the members of the Maryland General Assembly in understanding State personnel, pensions, and procurement law. It is not intended to be a definitive legal analysis or a procedures manual but rather a primer for members of the legislature. The information contained in this volume is based on the policies and procedures in effect at the 2022 session of the General Assembly.

This is one of nine volumes of the 2022 Legislative Handbook Series prepared prior to the start of the General Assembly term by the staff of the Office of Policy Analysis, Department of Legislative Services. The material for this volume was assembled and prepared by Tyler N. Babich, June Chung, Georgeanne A. Carter, and Jason A. Kramer and was reviewed by Phillip S. Anthony, Michael C. Rubenstein, and Victoria L. Gruber. The manuscript was prepared by Mya P. Dempsey, Hugh E. Norko, and Madeline H. Ross.

The Department of Legislative Services trusts that this volume will be of use to all persons interested in the Maryland State government. The department welcomes comments on ways future editions may be improved.

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Executive Director  
Department of Legislative Services  
Maryland General Assembly

Ryan Bishop  
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Annapolis, Maryland  
November 2022



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# Chapter 1. Profile of Maryland's State Workforce

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As of July 1, 2022, Maryland's public employee workforce consists of 80,858 budgeted regular full-time equivalent positions located in various branches, agencies, departments, and commissions in State government. In addition, approximately 10,299 full-time equivalent positions are in the other major category – contractual employment. The State will spend approximately \$10.2 billion on salaries, wages, and benefits during fiscal 2023, which is 17% of the total State operating budget.

The following exhibits provide a demographic and functional snapshot of the State Personnel Management System and Maryland Department of Transportation workforce:

- **Exhibit 1.1** compares the State's population with the number of budgeted State employees from fiscal 2017 to 2022.
- **Exhibit 1.2** compares the distribution of State employees by length of service in fiscal 2021.
- **Exhibit 1.3** shows the distribution of State employees by department/service area in fiscal 2023.
- **Exhibit 1.4** is a demographic profile of the State workforce for fiscal 2021.
- **Exhibit 1.5** lists average salaries of State employees from fiscal 2007 to 2021.

**Exhibit 1.1**  
**State Population – State Employment**  
**(Includes Higher Education Employees)**  
**Fiscal 2017-2022**

<u>Fiscal Year</u>	<u>Population</u> <sup>1</sup>	<u>% Change</u>	<u>Authorized State Positions</u> <sup>2</sup>	<u>% Change</u>	<u>Employees as % of State Population</u>
2017	6,016,447	0.17%	80,331	-0.63%	1.34%
2018	6,052,177	0.59%	80,119	-0.26%	1.32%
2019	6,042,718	-0.16%	80,414	0.37%	1.33%
2020	6,045,680	0.05%	80,903	0.61%	1.34%
2021	6,055,802	0.17%	80,899	0.00%	1.34%
2022	6,116,474	1.00%	80,858	-0.05%	1.32%

<sup>1</sup>Estimated population as of July 1 of the fiscal year.

<sup>2</sup>Full-time equivalent positions as of July 1 of the fiscal year. Includes vacant positions.

Source: U.S. Census Bureau; Maryland Department of Planning; Department of Budget and Management; Department of Legislative Services

**Exhibit 1.2**  
**State Employees by Length of Service<sup>1</sup>**  
**Fiscal 2021**

<u>Years of Service</u>	<u>Distribution of Employees</u>
Less Than 1 Year	5.07%
1 to 5 Years	28.15%
6 to 10 Years	19.22%
11 to 15 Years	15.67%
16 to 20 Years	10.94%
21 to 30 Years	13.94%
Over 30 Years	7.00%

<sup>1</sup>Includes employees covered by the State Personnel and Management System and the Maryland Department of Transportation.

Source: Department of Budget and Management

**Exhibit 1.3**  
**State Positions by Department/Service Area**  
**Authorized Full-time Equivalent Regular Positions**  
**Fiscal 2023<sup>1</sup>**

<u>Department/Service Area</u>	<u>FTE</u>	<u>Percent</u>
<b>Legislative Branch</b>	<b>801</b>	<b>0.99%</b>
<b>Judicial Branch</b>	<b>4,144</b>	<b>5.13%</b>
<b>Executive Branch</b>		
Judicial and Legal Review (Excluding Judiciary)	1,500	1.86%
Executive and Administrative Control	1,662	2.06%
Fiscal and Revenue Administration	2,125	2.63%
Budget, Personnel, and Information Technology	507	0.63%
Retirement Programs	187	0.23%
General Services	689	0.85%
Transportation	9,058	11.20%
Natural Resources	1,380	1.71%
Agriculture	409	0.51%
Health	6,337	7.84%
Human Services	5,971	7.38%
Labor	1,350	1.67%
Public Safety and Correctional Services	9,217	11.40%
Public Education (Excluding Higher Education)	1,849	2.29%
Housing and Community Development	333	0.41%
Commerce	188	0.23%
Environment	880	1.09%
Juvenile Services	2,164	2.68%
State Police	2,506	3.10%
<b><i>Executive Branch Subtotal</i></b>	<b><i>48,312</i></b>	<b><i>59.75%</i></b>
<b>Higher Education</b>	<b>27,601</b>	<b>34.14%</b>
<b>Grand Total</b>	<b>80,858</b>	<b>100.00%</b>

FTE: full-time equivalent

<sup>1</sup> As of July 1, 2022.

Note: Contractual employees not included. Numbers may not sum to total due to rounding.

Source: Department of Budget and Management

**Exhibit 1.4**  
**State Workforce Highlights**  
**Fiscal 2021**

	<u>SPMS</u>	<u>MDOT</u>
<b>State Government Employees by Bargaining Status<sup>1</sup></b>		
Included in a Collective Bargaining Unit	64.28%	56.77%
Excluded from Collective Bargaining Units	35.72%	43.23%
<b>Work Location of State Employees<sup>1</sup></b>		
Baltimore City	34.60%	28.20%
Anne Arundel County	8.50%	36.80%
Baltimore Metro Area	22.30%	8.80%
Western Maryland	14.10%	7.90%
Eastern Shore Area	11.60%	6.90%
Washington Metro Area	5.60%	8.80%
Southern Maryland Area	2.70%	2.70%
<b>Statewide Demographics</b>		<b>State Employee Workforce Demographics<sup>1</sup></b>
43% Male		61% Male
57% Female		39% Female
53% Minority		58% Minority
	<u>SPMS</u>	<u>MDOT</u>
<b>State Government Employees by Service Classification<sup>1</sup></b>		
Executive Service	0.7%	10.7%
Management Service	6.9%	n/a
Special Appointment	8.4%	0.7%
Professional Service	11.4%	n/a
Skilled Service	72.3%	n/a
Transportation Career Service	n/a	62.8%
Other	0.3%	25.8%

MDOT: Maryland Department of Transportation  
SPMS: State Personnel and Management System

<sup>1</sup>Excludes information from the University System of Maryland, the Maryland Transportation Authority, the union employees of the Maryland Transit Administration, and employees of the Legislative and Judicial branches.

Note: The average SPMS employee is 47 years old and has 13 years of service, while the average MDOT employee is 48 years old and has 12 years of service.<sup>1</sup>

Source: Department of Budget and Management; Maryland Department of Transportation; U.S. Census Bureau; Department of Legislative Services

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**Exhibit 1.5**  
**Average Salaries of State Employees**  
**Fiscal 2007-2021**

<u>Fiscal Year</u>	<u>Average Salary</u>
2007	\$46,410
2008	48,667
2009	49,939
2010	49,354
2011	49,359
2012	50,519
2013	50,763
2014	51,378
2015	56,111
2016	55,180
2017	55,180
2018	56,627
2019	58,701
2020	60,893
2021	63,590

Source: Statewide Equal Employment Opportunity Reports

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## **Chapter 2. Evolution of the State Merit System – Historical Perspective**

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Civil service reform was accomplished at the federal level in 1883, but Maryland did not follow suit until 37 years later. Chapter 41 of 1920 established the State merit system, making Maryland the ninth state to adopt civil service reform. Civil service or merit systems include the laws and rules developed to uphold principles of fairness, equality, and open competition in all areas of public-sector personnel management.

### **Historical Federal Influence**

Similar to the national level, the Maryland electorate eventually voiced its distaste for a continuance of the “spoils system” that linked public employment with political party affiliation. Proponents of reform argued that the patronage system deprived taxpayers of an impartial and responsive public workforce.

“Every four years the whole machinery of government is pulled to pieces. The business of the nation and the legislation of Congress is subordinated to the distribution of plunder among eager partisans.” The preceding quote by United States President Chester A. Arthur described the “spoils system” that characterized the personnel practices of federal and state governments for decades. Beginning with President Andrew Jackson’s election in 1828, the patronage system was common practice for obtaining public employment.

The assassination of President James Garfield in 1881 by a disappointed job seeker jump-started the reform process. In 1883, the Civil Service Reform Act, also known as the Pendleton Act, established the United States Civil Service Commission, which provided for the merit selection, retention, and promotion of federal employees. The Pendleton Act and other subsequent federal actions, along with state initiatives, started the movement toward comprehensive, modern personnel systems.

As a result of the Pendleton Act, within a few months, New York established a civil service commission to administer tests for individuals seeking state positions. Massachusetts followed with a similar system in 1884. Other states, however, did not start adopting merit systems until the early 1900s.

### **1939 Social Security Act Amendments**

In 1939, amendments to the federal Social Security Act again moved the states toward merit-based personnel systems by requiring states to place all federally funded state agency employees into merit systems. States that did not have merit coverage for most of their employees were now required to have this type of coverage for federally funded employees.

Since 1939, there have been additional changes to merit system standards in the Social Security Act. Covered agency requirements were consolidated in 1948 and revised again in 1963 to bar discrimination on the basis of race, national origin, and other personal factors unrelated to merit. In 1971, additional revisions permitted state diversity in the design and operation of personnel systems. The most important changes were:

- providing affirmative action to achieve equal employment opportunity;
- adding specific prohibitions of discrimination based on age, sex, or physical disability; and
- providing stronger opportunities to appeal alleged discrimination.

In 1979, after a two-year congressional review, additional changes were made to the Social Security Act, including:

- requiring adoption of uniform selection guidelines to participate in grant programs;
- broadening standards for competition and choice for the handicapped and participants in congressional or state-authorized employment/rehabilitation programs;
- specifying requirements for affirmative action programs; mandatory workforce analysis; goals and timetables; and race, sex, and ethnic data collection for applicants; and
- waiving local jurisdictions with fewer than 25 employees.

By 1982, the Social Security Act standards covered almost 20% of all state personnel.

### **Civil Service Reform Act of 1978**

Another potential federal influence on state and local personnel systems was the Civil Service Reform Act of 1978, which was based, in part, on personnel reforms already underway in state and local governments. The Act represented the most comprehensive reform of federal government service since the 1883 Pendleton Act.

The Act was largely based on the recommendations from a study conducted through President Jimmy Carter's Personnel Management Project. Major provisions included:

- protecting "whistleblowers" who disclose illegal or improper government activities;
- streamlining dismissal procedures for employees terminated for cause;
- replacing the Civil Service Commission with the Office of Personnel Management to manage the federal workforce; and

- designating a Merit Protection Board to ensure compliance with merit system principles and laws.

## Maryland's Efforts

A review of Maryland's civil service reform efforts from the pre-1900s through the early 1900s follows.

### Pre-1900s

The “spoils” or patronage system was an established part of Maryland government in the late 1800s. The patronage system allowed political bosses and elected officials to reward individuals who supported them.

During the latter half of the 1800s, State politics was controlled by two powerful public figures, Freeman Rasin and Arthur P. Gorman. The extent of their influence was widespread. As detailed in the 1971 book, *The Old Line State*, based on a mutual agreement, Freeman Rasin had control of Baltimore City and Senator Arthur Gorman had control over the rest of the State. These two individuals controlled the Maryland political landscape from approximately 1870 to the mid-1890s. Both Freeman Rasin and Senator Gorman were noted opponents of civil service reform because it threatened to undermine the heart of the patronage system from which both derived unmatched strength and influence. However, with their respective deaths in 1905 and 1906, coupled with the progressive era movement in Maryland, conditions were conducive for change.

### Early 1900s

The merit system bill adopted by the General Assembly in 1920 was not an isolated attempt at governmental reform; it was part of a larger reform movement that swept Maryland in the early 1900s (*i.e.*, executive budget system, child labor laws, work safety, and voting fraud, etc.).

Maryland's system of government in the early 1900s was a loose configuration of autonomous agencies. In 1914, Governor Emerson C. Harrington, realizing that a continuation of this arrangement was not in the State's best interests, appointed the Commission on Efficiency and Economy under the direction of Johns Hopkins University President Frank J. Goodnow. Its mandate was to examine the governmental operations and recommend changes to increase the efficacy of State government.

The Goodnow Commission was best known for its December 15, 1915 recommendation leading to the adoption of Maryland's current executive budget system. The commission's recommendations were also responsible for the elimination of several agencies deemed to be of insignificant importance and for the placement of many State institutions under central administrative control.

With the implementation of the Goodnow Commission's recommendations and Governor Albert C. Ritchie's subsequent Reorganization Commission's efforts, the wave of support for better government grew and began the dismantling of the spoils system. Finally, with legislation enacted in 1920, Maryland's long engagement with the spoils system ended and was replaced by a merit system.

## **Evolution of Maryland's Merit System Law**

The stated purpose for establishing the State's merit in Section 27 of Chapter 41 (later codified as Section 44 of Article 64A) was:

...to provide candidates for appointment to positions in the classified service after determining by practical tests of the fitness of such candidates for the positions which they seek, without regard to the political or religious opinions or affiliations of such candidates, or of any other standard except the business efficiency of the classified service, and to provide adequate means for the prompt removal from positions in the classified service of all persons therein who may be indolent, incompetent, inefficient, or otherwise unfit to remain therein, and to keep in a workable state the provisions for the promotion of employees as provided in this article to the end that the same shall be so administered as to attract the best class of candidates to the classified service.

The original merit system law included provisions relating to the administration of the system and the enforcement of its rules; the establishment of position classes; the conduct of competitive examinations; the preparation of eligible lists; the separation of employees as laid off or suspended; and the allowance of vacation, sick, personal, and accident leave.

After 1920, the merit system law was the subject of piecemeal revision. Over the years, sections were added to prohibit discrimination, require employee disclosure and confidentiality protection, provide for the hiring of contractual employees, specify a probation period after promotion, specify reinstatement qualifications, allow temporary employees to become permanent, provide incentive awards, allow time off for religious observance and seasonal leaves of absence, allow participation of retired employees in the State Employees' Health Insurance Program, and specify grievance procedures.

One major subsequent change in the merit system law was the establishment of several independent personnel systems. As explained in "Chapter 3. Personnel Policies and Practices in the Executive Branch" of this handbook, several State entities, including the Department of Transportation and the University System of Maryland, were granted the authority to establish their own policies and practices without regard to the Secretary of Personnel. "Chapter 6. Personnel Policies and Practices in the Legislative Branch" and "Chapter 7. Personnel Policies and Practices in the Judicial Branch" of this handbook explain the independent policies and practices of the Legislative and Judicial branches that generally follow the principles of the merit system law.

During 1993, as part of the Code Revision process, the merit system law was revised and reorganized. Effective October 1, 1993, Chapter 10 of 1993 recodified Article 64A into Division I of the State Personnel and Pensions Article. Although the revision was enacted as new language without substantive changes, one major change was made for clarification purposes. The name of the personnel system was changed from “Merit System” to “State Personnel Management System.” In the former law, the term “Merit System” generally referred only to classified service employees. The new name refers to the personnel system that encompasses all the employees under the authority of the former Department of Personnel, now incorporated into the Department of Budget and Management.

## **Modern Reform Efforts**

Although merit system principles continue to have broad-based acceptance, civil service laws and rules that were adopted decades ago became increasingly seen as inefficient and incompatible with today’s economic and social conditions. The situation led the federal government, as well as many state and local governments, to examine and modernize their personnel systems.

In Maryland, three significant review efforts stimulated modernization of the personnel system. During the four-year legislative term that began in 1987, the legislature reviewed the former Department of Personnel’s efforts to reform the State personnel system. As a result of the legislature’s work, several significant revisions were made to the State’s personnel system. The process for certifying candidates and managing eligible lists was more clearly defined and expanded. Further, a family leave policy was established, the use of sick leave was expanded, certain types of leave that were authorized by regulation were codified, and several floating holidays were created.

During the legislative term that began in 1991, Governor William Donald Schaefer created a Commission on Efficiency and Economy (the Butta Commission) for the purpose of recommending changes to reduce costs and promote efficiency in State government. In 1993, after reviewing the 70-year-old personnel system, the Butta Commission made several recommendations to significantly restructure and modernize the system.

The commission concluded that (1) recruiting and hiring efforts of classified service employees were lengthy, costly, and resulted in many applicants being processed and tested but few hired; (2) the salary plan did not link pay to performance, was not competitive, and was not long-term career oriented; (3) investment in career development and training was insufficient; and (4) adjudicating grievances, suspensions, and terminations was costly.

The commission recommended modernizing the personnel system, resulting in a new distribution of functions between what was the former Department of Personnel and other State agencies. To reduce duplication and delay, the department would provide statewide policies, monitor and audit systems, develop training programs, operate the centralized service functions,

and provide human resources support. Agencies would operate and administer key internal personnel functions and have authority over most personnel transactions.

On June 6, 1995, Governor Parris N. Glendening signed an executive order creating the Task Force to Reform the State Personnel Management System. The task force was charged with developing a personnel system that would streamline and simplify the State's personnel policies, decentralize personnel management functions, and provide for the consistent application of human resources management principles throughout the Executive Branch of State government, with the ultimate goal of improving the quality of State services.

## **1996 Reforms**

The State Personnel Management System Reform Act of 1996 (Chapter 347) incorporated many of the task force's recommendations. For the first time in over 60 years, the State Personnel Management System was significantly restructured. Chapter 347 established a decentralized personnel management system where the unit, or agency, has most of the responsibility for the management of its workforce. The Act did not affect agencies with independent personnel authority or the Judicial or Legislative branches of State government.

Also during the 1996 session, the Department of Personnel was abolished as an independent unit within the Executive Branch of State government; the Department of Budget and Management (formerly the Department of Budget and Fiscal Planning) was designated as its successor (Chapter 349). The positions of the Secretary of Personnel and the Deputy Secretary of Personnel were also abolished, and the Secretary of Budget and Management was designated as the successor of the Secretary of Personnel. The Secretary of Budget and Management in turn created the Office of Personnel and Employee Benefits to oversee the management of the State's workforce.

Chapter 347 also eliminated the classified and unclassified services. Instead, the Act provided for four basic classes of regular employees: skilled service; professional service; management service; and executive service. Within each of the classes of regular employees, a category of "special appointment employees" was also established. Reform also provided for two categories of temporary employment, contractual and emergency. The Department of Budget and Management has responsibility for overseeing the development of positions and job classifications and, in some cases, still develops positions and classifications for smaller agencies.

The Act also altered the leave and holidays available to State employees; changed the procedures for hiring and evaluating employees; modified the provisions relating to discipline, layoffs, and separations; and altered the procedures for filing grievances. "Chapter 3. Personnel Policies and Practices in the Executive Branch" of this handbook includes a comprehensive discussion of the current features of the State Personnel Management System.

## Collective Bargaining

Collective bargaining for State employees was initiated in 1996 through an executive order issued by Governor Glendening. Chapter 298 of 1999 codified the executive order, and Chapter 341 of 2001 gave collective bargaining rights to specified employees in Maryland institutions of higher education. Chapters 581 and 582 of 2012 further extended the State’s collective bargaining law to include employees of the Office of the Comptroller, the Maryland Transportation Authority (nonpolice officers), the State Retirement Agency, and the Maryland State Department of Education. In 2009 and 2013, the General Assembly authorized the State and certain higher education institutions, respectively, to bargain with respect to service fees for members of a bargaining unit who are not members of the exclusive representative; however, the U.S. Supreme Court, in its 2018 decision in *Janus v. American Federation of State, County, and Municipal Employees*, ruled that collection of such fees is unconstitutional. As a result, the State no longer collects service fees from nonunion members.

Chapters 16 and 27 of the 2021 special session authorized collective bargaining and established a collective bargaining process for public employees of all community colleges in the State, including full-time faculty, part-time faculty, and specified staff. Chapter 46 of 2022 clarified that employees of the Office of the Public Defender are in specified services within the State Personnel Management System and authorized collective bargaining for assistant public defenders. “Chapter 5. Collective Bargaining” of this handbook contains a comprehensive discussion of collective bargaining for State employees.



## Chapter 3. Personnel Policies and Practices in the Executive Branch

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This chapter reviews the personnel policies and practices in the Executive Branch established by statute and the Code of Maryland Regulations. While this chapter specifically addresses policies in the Executive Branch, many sections also apply under policies applicable to employees of the Legislative and Judicial branches of State government.

### Definitions

Before reviewing personnel policies and practices related to State employment, the meaning of certain terms should be clarified. The State Personnel and Pensions Article and Code of Maryland Regulations provide the following definitions:

- “Contractual employee” means an individual with whom the State has an employer-employee relationship to provide temporary services for pay under a written agreement but who is not employed in a budgeted position in the skilled, professional, management, or executive service or who is not an emergency employee.
- “Emergency employee” is a type of temporary employee whose employment cannot exceed six months.
- “Executive service” means a position in the Executive Branch that is the chief administrator of a principal unit or comparable position that is not the result of an election or required by the State constitution, or a deputy or assistant secretary of the principal unit or similar position that has similar stature.
- “Management service” means a position in the Executive Branch that involves direct responsibility for oversight and management of personnel and financial resources, requires discretion and independent judgment, and is not in the executive service.
- “Position” means an employment assignment of duties and responsibilities requiring the full-time employment of one individual or less than full-time employment of one or more individuals.
- “Professional service” means a position in the Executive Branch that requires advanced knowledge in a field of science or learning acquired through special courses and study, and that normally requires a professional license, an advanced degree, or both.
- “Skilled service” means all positions for which persons are selected on a competitive basis in the Executive Branch not in the professional, management, or executive service.

- “Special appointments” means certain positions in the skilled or professional service that are exempted from the selection and termination provisions of that service and may be filled with regard to political affiliation, opinion, or belief.
- “Temporary employee” means an employee who is either a contractual employee or an emergency employee.

## **Administration**

Maryland’s personnel policies are primarily influenced by the Legislative and Executive branches but in distinctly different manners. The General Assembly impacts personnel policies through enactment of legislation and action on the State budget. The Executive Branch develops personnel policies by proposing legislation for enactment by the General Assembly, by adopting regulations, and through executive orders. Regulations proposed by the Department of Budget and Management to administer changes to the State’s personnel laws are required to be published in the *Maryland Register* to provide for public review and comment and are subject to oversight by the Joint Administrative, Executive, and Legislative Review Committee. In addition, the Governor may issue executive orders to change personnel policies. Examples include policies regarding State employee substance abuse (E.01.01.1991.16), an increase in the standard work week for State employees from 35.5 to 40 hours per week (E.01.01.1991.19), the State employee furlough and temporary salary reduction program (E.01.01.2008.20, E.01.01.2009.11, and E.01.01.2010.11), standards of conduct for Executive Branch employees (E.01.01.2015.07), and paid leave for Executive Branch temporary employees (E.01.01.2017.09).

The administration of Maryland’s personnel system rests with the Department of Budget and Management, various independent salary setting authorities, and agencies with independent personnel systems. The University System of Maryland, for example, administers a separate personnel system for its faculty members and employees, as does the Maryland Department of Transportation for its employees.

## **Department of Budget and Management**

Legislation enacted in 1996 (Chapter 349) abolished the Department of Personnel as an independent unit within the Executive Branch of State government and designated the Department of Budget and Management (formerly the Department of Budget and Fiscal Planning) as its successor. The Secretary of Budget and Management was designated as the successor of the Secretary of Personnel. The former Department of Personnel was created as a principal department by Chapter 98 of 1970. It was the successor department to the State Commissioner of Personnel, previously established by Chapter 310 of 1953, which was the successor to the Commissioner of Employment and Registration, previously established by Chapter 41 of 1920.

The Department of Budget and Management is responsible for:

- developing and enforcing the rules that govern the administration of the State Personnel Management System;
- developing and maintaining the State's system for classifying positions in the State Personnel Management System;
- developing the State's salary and wage system and governing salary transactions and activities;
- analyzing jobs and creating appropriate testing instruments to provide a ranking system for placement of candidates on eligibility lists;
- providing training and technical assistance for staff and managers of operating agencies in public-sector labor relations and performance evaluations;
- providing confidential and professional assessment and referral services for State employees who are experiencing personal problems that affect their work performance;
- coordinating equal employment opportunity and affirmative action activities for all agencies within the Executive Branch; and
- administering the sick leave bank and donations of leave to other State employees, administering State benefits programs, coordinating the Unemployment Insurance Program, and administering the Social Security Program.

### **Independent Salary Setting Authorities**

Independent salary setting authorities are State agencies with the legal authority to establish the salaries of employees independent from the Department of Budget and Management's pay plan. This authority exists in all three branches of government but is mainly found in the areas of higher education and transportation, which constitute 34.1% (27,601 full-time equivalent positions) and 11.2% (9,058 full-time equivalent positions), respectively, of the total number of budgeted State positions for fiscal 2023. Some of the agencies with the authority to set salaries also have the authority to establish their own independent personnel systems.

Before 1986, there were more than 30 independent salary setting authorities employing approximately 32,000 State employees. Based on recommendations from the Task Force to Study Independent Salary Setting Authorities in 1985, Chapter 173 of 1986 repealed the authority for many agencies to independently set salaries. The goal was to provide a more uniform salary schedule across State agencies.

Since the enactment of Chapter 173, however, several agencies that demonstrated a need for flexibility have been given the authority to independently set salaries, including Baltimore City Community College in 1990, the Maryland Insurance Administration in 1993, the Maryland Public Broadcasting Commission in 1998, and the Public Service Commission and the Office of People's Counsel in 2000. Chapters 727 and 728 of 2018 granted the Board of Trustees for the State Retirement and Pension System position and salary setting authority with respect only to all staff in the Investment Division within the State Retirement Agency, subject to specified requirements.

The Judicial and Legislative branches (combined 6.1% of the total regular workforce or 4,945 full-time equivalent positions for fiscal 2023) have independent salary setting authority consistent with the constitutional doctrine of separation of powers. Agencies in the Executive Branch with independent salary setting authority tend to be either quasi-public agencies with self-generating funds (*e.g.*, the Maryland Automobile Insurance Fund) or agencies with some level of autonomy within the Executive Branch. The advantage of independent salary setting authority for an agency is threefold in that it (1) enables immediate response to salary problems; (2) allows freedom from regulatory oversight; and (3) does not require consideration of or comparison with other employees or jobs elsewhere in State service. **Appendix 1** lists all agencies with independent salary setting authority and independent personnel systems as established by the Annotated Code of Maryland and the Maryland Constitution.

A disadvantage of independent salary setting authority is that pay increases granted to small groups of employees under independent authority can result in salary disparities among groups of employees performing similar tasks or functions. Chapter 613 of 2014 altered the independent salary setting authority of the following entities:

- Correctional Training Commission;
- Police Training Commission;
- Department of Commerce;
- Maryland Water Quality Financing Administration;
- Maryland Health Care Commission;
- Maryland Health Services Cost Review Commission;
- State Board of Physicians;
- State Lottery and Gaming Control Agency;
- Maryland Insurance Administration;

- Maryland Health Insurance Plan;
- Maryland Health Benefit Exchange; and
- Divisions of Unemployment Insurance and Workforce Development within the Maryland Department of Labor.

The Act allowed the above entities to establish employee compensation for positions that are unique to those entities, require specific skills or experience, and do not require employees in those positions to perform functions that are comparable to those performed by employees of other State agencies. The Act also specified that the Secretary of Budget and Management, in consultation with the various agencies, determine for which positions the entity may set compensation.

Chapters 689 and 690 of 2018 required the Department of Budget and Management, in consultation with the Maryland Department of Transportation, to submit a report outlining a plan to (1) phase out the practice of hiring a newly appointed employee at a higher pay rate than an incumbent employee who is in the same unit and in the same classification and (2) adjust the pay rate of each incumbent employee in a unit who is in the same classification as, and has a pay rate lower than, a newly appointed employee so that the pay rates are equal.

### **Independent Personnel Systems**

Several agencies with independent salary setting authority have also been given the authority to establish their own personnel systems independent of the Department of Budget and Management and the State Personnel Management System (**Appendix 1**). The State's public higher education institutions and the Maryland Department of Transportation are among the largest entities with their own personnel systems.

### **University System of Maryland Personnel System**

Chapter 246 of 1988 reorganized Maryland's higher education structure. The Act created the University System of Maryland by combining the university's campuses with the campuses of the former institutions of higher education governed by the Board of Trustees of State Universities and Colleges.

Chapter 246 authorized the Board of Regents of the University System of Maryland to establish personnel policies and procedures independent of the Department of Personnel. Prior to the reorganization, the campuses of Bowie, Towson, Frostburg, Coppin, University of Baltimore, and Salisbury operated under a different personnel system closely aligned with the Department of Personnel. By 1990, the Board of Regents of the University System of Maryland had meshed the personnel systems of all its units and established personnel policies and procedures for all University System of Maryland employees independent of the Department of Budget and Management.

### **Other Higher Education Institutions Personnel Systems**

St. Mary's College (Chapter 209 of 1992), Morgan State University (Chapter 485 of 1994), and Baltimore City Community College (Chapter 220 of 1990) have their own personnel systems independent of the Department of Budget and Management. While these institutions participate in some State programs such as health benefits, retirement, and the Employee Assistance Program, most personnel policies and procedures are separate.

### **Maryland Department of Transportation Personnel System**

Chapter 168 of 1992 authorized the Maryland Department of Transportation to combine the personnel systems of the Maryland Port Administration, the Maryland Transportation Authority, the Maryland Transit Administration, and the rest of the department's units into a personnel system independent of the Department of Budget and Management. The result was the establishment of the Transportation Service Human Resources System to encompass all of the department's units.

## **Types of Positions**

There are two types of employment positions in State government: regular full-time equivalent positions; and contractual positions. Regular full-time equivalent positions in the State Personnel Management System are further divided into four categories: skilled service; professional service; management service; and executive service. Most regular full-time equivalent positions are in the skilled service category, which are selected on a competitive basis and enjoy full employee protections inherent in a merit system. Professional service positions require advanced knowledge in a field of science or learning acquired through special courses and study often requiring a professional license or advanced degree. Professional service positions also enjoy full employee protections. A position is in the management service if the position involves direct oversight over personnel and financial resources and is not in the executive service. Executive service positions are generally political appointments at the highest levels of State government.

Within the skilled and professional services classes of regular employees, there is a category of special appointment employees. Special appointments positions consist of the following:

- positions filled by individuals appointed by the Governor that are not provided for by the State constitution;
- positions filled by individuals appointed directly by the Board of Public Works;
- positions that perform significant policy roles or directly support members of the executive service;

- positions in the Government House;
- positions in the Governor’s Office; and
- any positions specified by law as special appointments.

If the Secretary of Budget and Management determines that the special appointment position relates to political interests or concerns, requires direct or indirect input into the policymaking process, or provides access to confidential information with a role in policymaking or providing direct advice or services, the positions may be filled with regard to political affiliation, belief, or opinion.

At-will employees serve at the pleasure of their appointing authority and may be terminated from employment for any reason, solely at the discretion of the appointing authority. There are several groups of at-will positions, which include positions in the executive and management services as well as positions across all services designated as special appointments. In addition, Maryland statutory law defines certain other positions that are considered at-will or special appointment. Chapter 690 of 2009 changed the at-will status of a number of positions and groups of positions previously classified as at-will in statute. These include the Department of Public Safety and Correctional Services chaplains, certain Department of Commerce employees, certain Maryland State Department of Education professional assistants, Child Support Enforcement Administration demonstration site employees, Maryland Historical Trust positions, and staff of certain health commissions. Changes to the at-will status of these positions were encumbered on October 1, 2009, and take effect when the position becomes vacant.

Approximately 8.4% of State employees in the State Personnel Management System were special appointment positions in fiscal 2021. Some special appointments are at-will positions for the purposes of termination from service while others have job security as specified in statute. The Maryland Department of Transportation does not utilize a special appointment service category.

## Creation of Positions

A summary of the process by which State positions are created and abolished through the budget process is contained in **Appendix 2**. This process may differ by statute for certain nonbudgeted independent agencies such as the Maryland Food Center Authority, the Maryland Automobile Insurance Fund, and the Maryland Transportation Authority. For more information on how positions are created and funded, see *Volume IV – Maryland’s Budget Process*.

## State Personnel Management System

The State Personnel and Pensions Article sets forth the positions that are included in the State Personnel Management System. Unless specified otherwise (*e.g.*, positions covered by

independent salary setting authority), all positions in the Executive Branch are included. The Maryland Code specifies which positions are included in the skilled service, professional service, management service, and executive service, and which positions are included in the services as special appointments. Contractual, emergency, and temporary employees are not included in any of these services.

In fiscal 2021, the State Personnel Management System and the Department of Transportation Personnel System covered just under 45,000 budgeted positions. In the State Personnel Management System, approximately 0.7% are in the executive service, 6.9% are in the management service, 11.4% are in the professional service, 72.3% are in the skilled service, and 8.4% are in special appointment status. The Department of Transportation Personnel System uses different service categories than the State Personnel Management System. In fiscal 2021, 11% of positions in the Department of Transportation Personnel System were classified as executive service and 64% as career service, with the rest of the positions primarily classified as permanent Maryland Transit Union employees and temporary or contractual personnel.

The following positions are excluded from the State Personnel Management System:

- any position to which an individual is elected by popular vote;
- any position to which an individual's election or appointment is provided for by the Constitution of Maryland;
- any position in a unit of the Executive Branch with an independent personnel system; and
- any position in the Legislative and Judicial branches.

Employment in the State Personnel Management System is governed by Title 7 of the State Personnel and Pensions Article. The recruitment and selection provisions apply primarily to skilled service and professional service employees. There is shared responsibility for recruitment and selection between Executive Branch agencies and the Department of Budget and Management for positions primarily in the skilled service, while agencies have responsibility for their specialized recruitment needs. Although the State has a decentralized, agency-level hiring process, the Department of Budget and Management maintains a list of eligible candidates for high volume positions. The department, if requested, will also provide recruitment assistance to agencies for specific positions. In addition, the Office of Personnel Services and Benefits within the department maintains a unit to aid small agencies with their ongoing recruitment and other personnel needs.

### **Reforms to the State Personnel Management System**

During the 2005 interim, the Legislative Policy Committee appointed a Special Committee on State Employees Rights and Protections to examine numerous matters regarding the State Personnel Management System, as well as terminations and separations of at-will employees.

Chapter 592 of 2007, the State Employees' Rights and Protections Act, implemented some of the recommendations made by the special committee. It:

- provided that special appointments may be filled with regard to political affiliation if the Secretary determines that the position relates to political interests or concerns and requires direct or indirect input into the policymaking process or provides access to confidential information;
- provided that special appointments require the designation and written notification to employees of at-will positions in the State Personnel Management System and the Maryland Department of Transportation that must be filled with or without regard to political affiliation, belief, or opinion;
- clarified that at-will employees cannot be terminated illegally or unconstitutionally;
- prohibited the termination of a management service employee or nonpolitical special appointment to create a position for an individual based on political affiliation, belief, or opinion; and
- required the Department of Legislative Services to further study at-will employment and provide suggestions for reform.

In 2008, the Department of Legislative Services issued a report on its findings. Chapter 690 of 2009 implemented many of the recommendations of the report. The Act repealed the automatic at-will status of a number of groups of employees throughout State government; allowed for flexibility in recruiting for certain skilled and professional service positions; repealed the Legislative Joint Committee on Fair Practices and established the Joint Committee on Fair Practices and State Personnel Oversight; required submission of a report each gubernatorial election year on the total number of individuals employed with regard to political affiliation, belief, or opinion in the State; and required the Secretary of Budget and Management to evaluate all skilled and professional services positions considered special appointments to determine whether these positions should continue to be considered special appointments.

## **Recruitment**

If a need is identified by an agency or a position is open, the agency must develop a "position selection plan." Such a plan must include (1) a description of the duties for which the position is responsible; (2) minimum qualifications of the position; (3) any limitations on selection for the position; and (4) the process for submitting and reviewing applications as well as applicable timeframes, if appropriate. Agencies may either select candidates from existing lists of eligible candidates or recruit for the position. If the agency decides to recruit for the position, recruitment must proceed based on the position selection plan. Job announcements for positions must include position descriptions, minimum qualifications, descriptions of the tests that will be used, deadlines and locations for submitting applications, and the duration of the list of eligible individuals derived

from the announcement. Job announcements should be made available to the public, within the agency, and to other State agencies at least two weeks before the application deadline. Department regulations allow applications to be rejected if received beyond the advertised closing date or if the minimum qualifications for the position are not met.

**Exhibit 3.1** indicates the number of applications received, applicants tested, and appointments made for fiscal 2013 through 2022 by the Department of Budget and Management. As mentioned above, the Department of Budget and Management's recruitment function is limited to positions in the skilled service and professional service. The department is not actively involved in recruiting management service, executive service, and special appointment employees. In order to ensure that an agency's recruitment, examination, and certification procedures are being properly performed, the Office of Personnel Services and Benefits performs periodic compliance audits of individual agencies.

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**Exhibit 3.1**  
**State Employment Applications, Testing, and Appointments**  
**Fiscal 2013-2022**

<u>Fiscal Year</u>	<u>Applications Received</u>	<u>Applicants Tested</u>	<u>Appointed</u>
2013	254,796	164,429	3,687
2014	325,719	204,773	4,883
2015	333,719	203,413	5,534
2016	322,246	206,417	7,160
2017	302,059	190,280	8,170
2018	263,816	179,793	8,196
2019	316,417	154,589	8,462
2020	278,983	139,615	5,795
2021	183,240	88,532	7,692
2022	223,711	109,105	7,494

Note: Exhibit includes applications for contractual positions.

Source: Department of Budget and Management

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### **Selection, Credits, and Examination for Candidates**

Once the closing date for a position announcement passes, agencies review the applications for completeness and to ensure that applicants meet the minimum qualifications. Agencies must notify applicants in writing if they are rejected because they did not meet the minimum qualifications. If a test is required, applicants must be notified at least 10 days before the testing

date. If fewer than 10 but more than 2 applicants meet the minimum qualifications for a position, the appointing authority may select from this group without further selection testing or readvertise the vacancy.

Agencies are required to develop appropriate selection processes to rate applicants. If a test is necessary, it must be administered free of charge to all qualified applicants. An applicant may be disqualified from taking a test for supplying false information on the application. If a test is taken, certain applicants may receive credits that can be applied to the applicants' test scores to establish placement on the list of eligible candidates. Before a credit can be applied, applicants should at least exceed the minimum passing score. Current State employees can receive a quarter point for each year of State service up to a maximum of 5 points for 20 years of service. State residents and individuals with a disability (as defined by the federal Americans with Disabilities Act) are entitled to 5 points toward their scores. There are also credits available for positions at qualified prison facilities and at the Baltimore City Juvenile Justice Center for residents living in or adjacent to counties with high unemployment rates. As a result of reforms made to the personnel system (Chapter 347 of 1996), the absolute hiring preference for veterans was eliminated. However, a credit of 10 points is given to eligible veterans, spouses of disabled veterans, and surviving spouses of deceased veterans. Two additional points are given to disabled veterans and former prisoners of war. Chapter 179 of 2017 authorized an appointing authority in the State Personnel Management System to select a qualified disabled veteran for a skilled or professional service position on a noncompetitive basis under specified circumstances. Appointing authorities in the Executive Branch that are not in the State Personnel Management System must develop a comparable selection process for disabled veterans.

After the application of the selection criteria, certain applicants will be identified as candidates for the position. A candidate who is a veteran must be identified as such on any lists. Rather than hiring a candidate with the highest combined score, agencies now "broad band" or place most candidates in the following categories: best qualified; better qualified; qualified; or unsatisfactory. In certain circumstances, candidates may be placed in the following additional categories: certified by the Division of Rehabilitative Services; eligible for reinstatement after layoff or separation; eligible for reinstatement; or eligible for transfer. Upon request, the agency must notify a candidate of the candidate's standing on the list. Agencies are required to file their lists of eligible candidates with the Department of Budget and Management for use by other agencies. The department is required to share its lists of eligible candidates with all requesting agencies.

Depending on the number of available candidates, agencies may appoint candidates from lower rated categories. Specifically, Section 7-209(a) of the State Personnel and Pensions Article provides that:

- If there are at least five candidates rated best qualified, the appointment must be from that rating category.

- If there are fewer than five candidates rated best qualified, the appointment must be from the candidates in the best qualified and better qualified categories.
- If there are fewer than five candidates rated best qualified and better qualified, the appointment must be from candidates in best qualified, better qualified, and qualified categories.

In making a selection, agencies may interview any of the candidates in the rating category from which the selection will be made. However, if interviews are conducted, at least three candidates must be interviewed.

## **Probation**

The last step of the hiring process is probation. While on probation, employees must demonstrate their ability to perform the duties of the job for which they were hired. All employees in the skilled service and the professional service must complete a six-month probation period after initial appointment, reinstatement, or competitive promotion. The probationary period may be extended at the discretion of the agency if the agency decides that additional time is necessary to allow the employee to demonstrate proficiency in his or her duties, the agency decides that more time is required due to an employee's approved absence, or if the employee requests it. Employees in salary grade seven or higher may have their probations extended up to six more months, while employees in salary grades one through six may have their probations extended up to three months. An employee reinstated into the same classification within one year after leaving State service, after already serving probation, does not have to serve another probationary period.

At the start of probation, a supervisor must give a new employee a written position description that describes the duties and functions of the position. At the end of the first 90 days of probation, the employee receives a written evaluation by the supervisor, and if probation is extended, the employee must receive an evaluation at the end of the initial probation and at the midpoint of the extended period. An employee on initial probation may be disciplined or terminated, with limited appeal rights. An employee on probation because of reinstatement or promotion may not be terminated because of performance; rather, the employee may be returned to the employee's former position, reassigned, or demoted. A more detailed explanation of appeals for disciplinary actions follows later in this chapter.

## **Employee Performance Appraisals**

Title 7, Subtitle 5 of the State Personnel and Pensions Article requires that all employees in the skilled service, the professional service, and the management service have their performance evaluated every six months. In November 2008, the Performance Appraisal Task Force was established as a result of collective bargaining negotiations between the State and the exclusive bargaining representatives of State employees. The task force was charged with reviewing the current employee performance appraisal procedures and suggesting changes to increase

effectiveness and to increase the completion rate of the performance appraisals by supervisors. Changes made through Chapter 142 of 2010 reflect the recommendations of the task force.

The evaluation process is designed to facilitate communication between employees and supervisors. The components of the appraisal process include an informal mid-year performance appraisal and an end-of-year performance appraisal with an overall performance rating. Previous requirements for a self-appraisal by the employee were eliminated by Chapter 142. Employees are evaluated based on behavioral elements associated with their service category and on performance standards associated with their position. In the appraisal, an employee may be rated as “outstanding,” “satisfactory,” or “unsatisfactory” (ratings were collapsed from five categories to three per Chapter 142). The final performance appraisal should include ways to enhance the employee’s performance, specific tasks to achieve during the next rating period, and recommendations for training or other methods to increase the employee’s skills.

In addition to the downward evaluation process, if a supervisor or manager is responsible for five or more employees, the supervisor’s or manager’s supervisor may require the completion of anonymous surveys by the supervisor’s employees. The survey results will be used in the evaluation of the supervisor. Supervisors are also required to attend training on how to effectively administer performance appraisals.

### **Performance-based Pay**

Personnel reform (Chapter 347) provided for the implementation of a pay-for-performance plan for skilled, professional, and management service employees. There was some interest in shifting away from the grade and step system toward a minimum/maximum salary system, which would provide more flexibility in determining individual salaries. However, the State continues to utilize a step and grade system for these groups of employees.

The Department of Budget and Management, within its current compensation structure, has developed three strategies to reward satisfactory service to the State, based on the results of employee performance appraisals. First, in order to advance from one step to the next within a grade, an employee must be rated as “meets standards” in the evaluation. Therefore, movement up a step is designed to reward satisfactory service. Chapter 199 of 2015 requires that regulations provide for automatic increases, from minimum to maximum steps in a pay grade, of the pay rates set by the Standard Pay Plan for an employee whose overall performance is rated “satisfactory” or above on the employee’s annual performance appraisal form.

Second, if an employee is rated as “needs improvement” or “unsatisfactory,” the employee is given either six months or three months, respectively, to improve. If there is not satisfactory improvement, the employee is terminated.

The third method by which the State rewards performance is through bonuses. Although not available to all employees, retention and other bonus strategies are being employed in agencies for which maintenance of a full or at least adequate workforce has become an issue, such as positions for registered nurses and correctional officers. In fiscal 2010 and 2011, due to the State’s

weak fiscal condition, language included in budget reconciliation and financing legislation prohibited the granting of bonuses to any State employee, except as necessary to retain faculty at certain higher education institutions or the performance bonus for the Chief Investment Officer of the State Retirement and Pension System.

After three years of furloughs, the fiscal 2012 budget included funding for a \$750 bonus for State employees. State employees received a \$500 bonus on April 1, 2019, based on fiscal 2018 general fund revenues exceeding forecasted levels by at least \$75 million. Most employees received a \$1,000 or \$1,500 bonus on January 1, 2022, in an effort to retain State employees in light of record-high vacancies. Bonuses are not considered regular compensation and are not reflected in the base salary of the employee. These more targeted bonus programs replaced a comprehensive program that was discontinued after fiscal 2002; in that program, if an employee was rated “outstanding” or “exceeds standards” the employee was given a bonus of \$1,000 or \$500, respectively. However, due to budget constraints and questions over the efficacy, the more comprehensive program was discontinued.

### **Transfer of Employees into State Service**

Title 7, Subtitle 6 of the State Personnel and Pensions Article governs the transfer of employees into the State Personnel Management System when the State acquires a private institution or public entity. The statute requires that these employees must be employed in positions similar to the positions held at the time of acquisition and may retain their seniority. Within one year after the acquisition, the Department of Budget and Management must classify each position. Employees in these positions are required to serve a standard probation period. Once the employees are classified, they may continue to hold their positions without further examination and have all the rights associated with that class of positions.

### **Compensation of Employees**

Title 8 of the State Personnel and Pensions Article governs the compensation of State employees subject to the authority of the Secretary of Budget and Management. There are two basic pay plans for the State, the standard pay plan and the executive pay plan, both of which are administered by the Secretary. The Maryland Department of Transportation has its own pay plans that utilize the State Personnel Management System salary schedules. In addition to the regular pay provisions, which will be described in this section, certain State employees in the State Personnel Management System are also entitled to “shift differential pay” and “hazardous duty pay.”

#### **Standard Pay Plan**

The standard pay plan does not apply to positions provided for by the State constitution; positions based, by law, on judicial pay; or positions set by a unit with independent salary setting authority. In developing rates of pay, the Secretary of Budget and Management must give

consideration to prevailing rates of pay for comparable services in private and public employment, experience, living costs, other benefits received by employees, and the State's financial condition and policies. All pay plans are subject to the limitations of the State budget.

Generally, the standard pay plan for graded State employees is revised each year to reflect adjustments passed by the General Assembly and becomes effective July 1, although general salary increases may not become effective until a later date. In fiscal 2023, the salary schedule has 22 grades and 22 steps within each grade and is the pay plan for the majority of employees. Chapter 216 of 2006 (the fiscal 2007 Budget Bill) eliminated grades 1 through 4 of the standard salary schedule in an effort to ensure that all full-time State employees earned at least \$20,000 per year. Several steps in grades 5 through 8 were also eliminated in fiscal 2021 when funding was provided in a supplemental budget to ensure all State employees earned a minimum wage of \$15 per hour.

Although the standard salary schedule covers most State employees, there are seven additional schedules used by the State system, which are technically considered under the "standard" salary schedule moniker. These additional schedules cover positions represented by the American Federation of State, County and Municipal Employees, park rangers (used for command and management positions), police officers, State and natural resources police, deputy fire marshals, State Police Aviation Command, and physicians.

### **Adjustments/Amendments to the Standard Pay Plan**

The most significant and costly element of pay plan adjustments is usually the general salary increase, which affects virtually all State employees. Only those employees whose pay rates are specifically set by statute or who are otherwise excluded from participation are not affected.

General salary increases have been provided by various methods. General salary increases have been provided in each of the past four fiscal years. An increment was provided in January 2022, and the fiscal 2023 legislative appropriation includes funding for an on-time increment for the first time since fiscal 2017. The fiscal 2023 legislative appropriation included funding for a 3% general salary increase that was effective July 1, 2022.

In addition to general pay increases, Section 8-105 of the State Personnel and Pensions Article provides for salary adjustment procedures through annual salary reviews. The Secretary of Budget and Management, with the approval of the Governor, may amend the pay plan to increase pay rates for specific classifications of positions in order to recruit or retain competent personnel or to ensure that pay rates adequately compensate the skills, knowledge, effort, responsibility, and working conditions of employees in the class. An amendment may not take effect unless sufficient funds are available in the budget to cover the resulting pay rates. Amendments to the pay plan must be reported to the General Assembly by the fifteenth day of the next regular session, and the General Assembly may reject the amendments. If an amendment is rejected, the appropriate salary reduction becomes effective in the next fiscal year.

## Special Pay Provisions

Shift differential pay is provided to certain employees who work qualifying shifts. Qualifying shifts start at or after 2:00 p.m. and at or before 1:00 a.m. Employees eligible for shift differential pay include registered nurses at State institutions, sworn police officers, fire marshals, and firefighters at the Maryland Department of Transportation. In addition, registered nurses at State institutions may also be paid differentials for weekend shifts, and a State-employed firefighter is entitled to shift differential pay for any shift that exceeds eight hours.

Employees of the State Fire Marshal's Office who are members of the bomb squad or work as an explosives technician are entitled to hazardous duty pay. Hazardous duty pay may not exceed \$150 per month.

The State provided enhanced pay to certain employees responding to the COVID-19 pandemic as part of their employment. From March 13, 2020, to March 22, 2020, employees who were required to report to work received Premium Pay, which was double their hourly rate. Level 1 Response Pay was an additional \$3.13 per hour for employees who were determined to be unable to adequately socially distance at work. Level 2 Response Pay, also known as quarantine pay, was an additional \$5.13 per hour paid to employees who are required to work in COVID-19 quarantine areas. This additional pay continued through February 8, 2022.

## Executive Pay Plan

The executive pay plan was created in 1989 (Chapter 831 of 1989) to provide a more rational framework for compensating management positions in State government. At that time, most managers received flat rate salaries that were adjusted on an individual basis from time to time. Before the 2000 session, the executive pay plan was structurally similar to the standard salary schedule. In order to compensate for what had become an inadequate standard pay plan, many managers who were not in the executive service were moved into the executive pay plan to provide for competitive compensation levels.

Significant changes in both the structure and coverage of the plan were made in 2000 when it was converted from an 11-grade, 7-step structure to an 8-grade structure with minimum and maximum rates. After this change, two-thirds of the management service employees who had been in the plan were moved back to the standard salary schedule, which was expanded four grades to accommodate these employees. The plan now consists of executive service positions that function above the assistant secretary (or its equivalent level). Chapter 335 of 2008 (the fiscal 2009 Budget Bill) created an additional salary range, for a total of nine salary ranges in the executive pay plan, as demonstrated in **Exhibit 3.2**.

The executive pay plan is increased by the same percentage or dollar increase awarded to comparably paid positions on the standard salary schedule. As with the standard and other salary schedules, there are a number of executive service employees paid flat rate salaries. These employees are technically considered to be in the executive pay plan. Salaries for these employees

are determined through the State budget. Increases for these and other executive pay plan positions are covered in Section 8-108 of the State Personnel and Pensions Article.

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**Exhibit 3.2**  
**Executive Pay Plan**  
**Fiscal 2023**  
**Effective July 1, 2022**

<u>Scale</u>	<u>Minimum</u>	<u>Midpoint</u>	<u>Maximum</u>
ES4	\$86,971	\$101,463	\$115,960
ES5	93,443	109,052	124,658
ES6	100,436	117,244	134,051
ES7	107,989	126,097	144,203
ES8	116,144	135,656	155,164
ES9	124,955	145,982	167,006
ES10	134,467	157,128	179,785
ES11	144,748	169,171	193,595
EX91	166,456	222,931	279,407

Source: Department of Budget and Management

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Administrative procedures pertaining to the executive pay plan include:

- Merit increases are limited by and awarded out of a merit pool. The pool does not increase or decrease if positions or employees are added to or removed from the executive pay plan during the fiscal year. Funds necessary to cover the merit increases come from existing agency funds.
- An agency head may award a merit increase to an employee in the plan at any time on or after July 1. It may be in the form of a one-time bonus or a salary increase. Base pay plus the merit increase may not exceed the maximum for the relevant grade.
- The total of all merit increases may not exceed the total of the pool within each agency. The cost of all increases is calculated on an annualized basis, regardless of the effective date of the increase for each employee.
- Employees coming into the plan during the fiscal year are eligible for a merit increase after six months of service during the fiscal year.

- Agencies placing new employees into a position in the plan are required to obtain approval from the Department of Budget and Management for the proposed initial pay rate if it is at midpoint or above.

### **Gubernatorial and Constitutional Officer Compensation**

The Constitution of Maryland provides that every four years, the Governor's Salary Commission must recommend salaries for the Governor and Lieutenant Governor that will apply to the next term of office. The General Assembly may endorse or reduce each commission's proposals but may not increase the proposed salaries. In 2022, the Governor's Salary Commission recommended increasing the salaries for the Governor and the Lieutenant Governor to \$184,000 and \$165,000 in fiscal 2023, respectively; further increases in subsequent years will result in salaries reaching \$195,000 and \$175,000, respectively, in fiscal 2026.

In addition to making salary recommendations for the Governor and Lieutenant Governor, the Governor's Salary Commission makes recommendations regarding the salaries of the Comptroller, Treasurer, Attorney General, and Secretary of State for the next four-year term of office. The 2022 Governor's Salary Commission recommended increases to the salaries for these Constitutional Officers for the 2023 through 2026 term of office as shown in **Exhibit 3.3**.

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**Exhibit 3.3**  
**Annual Salaries of the Governor, Lieutenant Governor, and**  
**Constitutional Officers**  
**2023-2026 Term**

<u>Position</u>	<u>Salary</u>			
	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
Governor	\$184,000	\$188,000	\$192,000	\$195,000
Lieutenant Governor	165,000	170,000	173,000	175,000
Comptroller	165,000	170,000	173,000	175,000
Treasurer	165,000	170,000	173,000	175,000
Attorney General	165,000	170,000	173,000	175,000
Secretary of State	112,500	116,000	118,500	120,000

Source: Department of Legislative Services

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The Governor's Salary Commission may also make recommendations regarding the pension and health benefits available to former Governors and surviving spouses of a deceased Governor or former Governor. Chapter 477 of 2014 raised the retirement age and changed eligibility requirements for retirement health benefits for former Governors who begin serving on or after January 21, 2015. "Chapter 11. Plan Summaries" of this handbook describes the details of the pension benefits and post employment benefits for former Governors, Lieutenant Governors, and Constitutional Officers.

## Overtime Compensation

State employees who are not exempt from the federal Fair Labor Standards Act are eligible to receive cash payments or compensatory time for overtime work. Generally, overtime payments are calculated based on (1) straight time for time worked up to and including 40 hours per week and (2) time and one-half the regular hourly rate for time worked in excess of 40 hours per week. Employees of a hospital or domiciliary care facility for the aged, ill, or disabled earn overtime compensation based on a two-week work period. Law enforcement and civilian employees of the Maryland State Police who participate in a modified workday program earn overtime compensation based on the work period that is in excess of the established workday.

State employees who are exempt from the federal Fair Labor Standards Act (*i.e.*, executive, administrative, and professional employees) are not eligible to receive cash overtime payments. However, most agencies allow exempt employees to accrue compensatory leave for working overtime. Compensatory leave policies vary widely among agencies in the Executive Branch in terms of how compensatory leave can be earned and used. In all cases, however, employees fall into one of three broad classifications: (1) employees not exempt from the federal Fair Labor Standards Act; (2) employees exempt from the Act, including employees in the executive pay plan in grades ES4 and ES5; and (3) employees in the executive pay plan in grades ES6 through ES91.

The Department of Budget and Management has adopted compensatory time regulations consistent with the federal Fair Labor Standards Act. The regulations provide that (1) an employee may elect to receive compensatory time rather than cash payments prior to the performance of work; (2) compensatory time must equal 1.0 hour for each hour of overtime work for which the employee otherwise would receive the employee's regular hourly rate of pay, and 1.5 hours for each hour of overtime work for which the employee would otherwise receive one and one-half times the employee's regular hourly rate of pay; (3) an employee may carry no more than 240 hours of compensatory time (480.0 hours for employees who work in a public safety activity, emergency response activity, or seasonal activity) and must use it within one year of when it is accrued; and (4) monetary payments must be made for unused compensatory leave under certain circumstances.

Employees who are exempt from the federal Fair Labor Standards Acts guidelines may not receive payment for overtime work. These employees may be granted compensatory time. An employee who is included in the executive pay plan is not entitled to accrue any compensatory time other than for a legal State holiday on which the individual works at least five hours.

## **Employee Rights and Protections**

As discussed in “Chapter 2. Evolution of the State Merit System – Historical Perspective” of this handbook, the State personnel laws are based on merit system principles and are intended to treat State employees in a fair manner with respect to their employment. The purpose cited in statute for these protections is to maintain efficient and effective operations of State government.

### **Equal Opportunity Program**

State law prohibits discrimination and harassment in State employment with regard to age; ancestry; color; creed; marital status; mental or physical disability; national origin; race; religious affiliation, belief, or opinion; sex; or sexual orientation. For members of the skilled, professional, and management services, and special appointment positions not designated as political appointments, personnel actions must also be made without regard for political affiliations, beliefs, or opinions. Title 5, Subtitle 2 of the Personnel and Pensions Article establishes the State’s Equal Employment Opportunity Program, the purpose of which is to protect employees and applicants for State employment from illegal employment discrimination. The statute also provides a means for internal resolution of employment discrimination complaints. The Secretary of Budget and Management is responsible for development and implementation of the State’s Equal Employment Opportunity Program in a manner consistent with applicable federal and State laws.

Maryland’s Equal Employment Opportunity Program provides for the following:

- inclusion of all employees in the Executive Branch, including those in independent personnel systems, and applicants for the skilled service, the professional service, and the management service or applicants in comparable positions in independent personnel systems;
- reporting on the Equal Employment Opportunity Program to the Joint Committee on Fair Practices and State Personnel Oversight, which oversees the State’s Equal Employment Opportunity practices;
- appointment of a statewide equal employment opportunity coordinator for the purpose of administering and enforcing the program, and investigating and resolving complaints stemming from violations of Subtitle 2;
- appointment of a fair practices officer and an appropriate number of equal employment opportunity officers at each executive agency whose duties include all aspects of implementing and administering the State’s Equal Employment Opportunity Program;
- establishment of an Equal Employment Opportunity complaint procedure where the Secretary has the authority to take action upon a finding of discrimination;

- use of discipline, which may include dismissal, if a person violates anti-discrimination policies; and
- allowing State Personnel Management System employees in the skilled, professional, or management services the option of either pursuing an allegation of employment discrimination under (1) the statutory grievance procedures or (2) filing a complaint with the statewide Equal Employment Opportunity coordinator. (These actions do not preclude an employee from filing a complaint to the Maryland Human Relations Commission, the federal Equal Opportunity Commission, or the courts.)

The statute sets up a “fast track” internal procedure for resolving Equal Employment Opportunity complaints. After an employee or applicant knows or should know of an alleged violation, the person has 30 days to file a complaint with the agency head. Within 30 days of the complaint being filed, the agency’s equal employment opportunity officer then investigates, and the agency head must issue a written decision. If the complainant is not satisfied, the person has 10 days to appeal the decision to the Secretary of Budget and Management who refers the matter to the statewide Equal Employment Opportunity coordinator. The statewide coordinator has 30 days to review the complaint, conduct an investigation, and make a recommendation to the Secretary or a designee as to whether a violation occurred. The Secretary or designee must then make a decision and if a violation has occurred, the decision must also include recommendations for appropriate remedial action. Regardless of the decision, the decision of the Secretary or designee is final.

### **Whistleblower Law**

As with the State Equal Employment Opportunity Program, the Maryland Whistleblower Law applies to all employees in the Executive Branch, including those in independent personnel systems. The law essentially prevents a supervisor, manager, or agency head from taking, or refusing to take, personnel actions as a reprisal against an employee who discloses information that the employee believes shows an abuse of authority, gross mismanagement, or a gross waste of money; poses a danger to the public health or safety; or constitutes a violation of law.

Employees seeking relief from a violation may file a complaint or pursue the statutory grievance procedure. After a possible violation, an employee has six months to file a complaint with the Secretary of Budget and Management, which must investigate the allegation and issue a written decision within the next 60 days on whether a violation has occurred. The decision is required to also include appropriate remedial action if a violation has occurred. Finally, if the employee is not satisfied with the department’s decision, the employee has 10 days to appeal to the Office of Administrative Hearings for a final and binding decision.

## State Substance Abuse Policy

State law does not explicitly establish the State substance abuse policy; instead, it provides that the policy will be established by executive order. However, the law does provide that the consumption of alcohol in the workplace is a violation of the State substance abuse policy, and violators may be subject to disciplinary action. In addition, an agency may not consider probation before judgment for a substance abuse offense to be a conviction for purposes of the State substance abuse policy. However, appropriate disciplinary action may be imposed against an employee if the employee receives probation before judgment for a substance abuse offense and the appointing authority can demonstrate a relationship between that offense and the employee's job responsibilities.

In 1991, the Governor issued Executive Order 01.01.1999.16, "State of Maryland Substance Abuse Policy," which assured the State's compliance with the federal Drug-Free Workplace Act and established State policy on the issue of drugs and alcohol in the workplace. The Department of Budget and Management coordinates policies and practices regarding State employee drug use and testing and has adopted regulations under Code of Maryland Regulations 17.04.09 pertaining to testing of employees for use of illegal drugs. The State uses a two-tiered approach to drug and alcohol abuse, depending on whether or not the employee is in a "sensitive" classification.

A sensitive employee:

- convicted of any controlled dangerous substance offense will be terminated;
- who tests positive for a controlled dangerous substance as the result of a random drug test will be suspended for 15 work days and be required to successfully participate in a drug treatment program;
- who abuses a legally prescribed drug or an over-the-counter drug will, on the first offense, be suspended for five work days and be required to successfully participate in a drug treatment program;
- if convicted of an at-the-workplace alcohol driving offense or found under the influence of alcohol while at the workplace will be suspended for 15 days and be required to successfully participate in an alcohol treatment program; and
- if convicted of an off-the-workplace alcohol driving offense, will be referred to an employee assistance program for the first conviction and will be subject to any other appropriate disciplinary action; for the second conviction, will be suspended for at least five days and will be subject to first conviction actions; and for the third conviction, will be terminated.

Employees in positions not defined as sensitive are subject to disciplinary action if found working under the influence of alcohol, the inappropriate influence of prescription or over-the-counter drugs, or the influence of a controlled dangerous substance. Any employee charged with a drunk driving or a controlled substance offense is required to report a finding of guilty, acceptance of a plea bargain, or probation within five working days. In addition, the appointing authority will refer the use of a controlled dangerous substance or an alcohol offense at the workplace to the appropriate law enforcement agency.

The State uses a two-tiered approach to drug testing: (1) employees in sensitive classifications or sensitive positions are subject to random testing (as well as testing based on reasonable suspicion or an incident triggering factor); and (2) all other employees are subject to drug testing if the employer has “reasonable suspicion to believe that the employee has illegally used drugs.”<sup>1</sup>

The Department of Budget and Management defines a “sensitive classification” as any classification in which one of the following conditions exist:

- an employee has a significant degree of responsibility for the safety of others, and there is a potential that impaired performance of the employee could result in death of or injury to the employee or others;
- an employee is required to carry a firearm;
- an employee is directly involved in efforts to interdict the flow of narcotics; or
- an employee is directly involved with narcotics law enforcement.

A “sensitive position” means a position not in a sensitive classification for which an appointing authority has determined that any one of the conditions listed earlier exist. The Department of Budget and Management conducts random, unannounced urine testing of employees in these positions. Agencies must inform applicants for sensitive classifications and positions that testing for illegal use of drugs is required.

### **Grievance Procedures in State Personnel Management System**

Title 12 of the State Personnel and Pensions Article sets forth the grievance procedures for all State Personnel Management System employees, unless otherwise specified, in the Executive Branch. A grievance is defined in statute as “a dispute between an employee and the

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<sup>1</sup> In an opinion dated May 5, 1989, the Attorney General ruled that the former Department of Personnel had the authority to implement a drug testing program and could legally subject employees in sensitive classifications to random drug testing. However, the Attorney General also stated “... there is nothing in the Supreme Court’s decisions [*Skinner v. Railway Labor Executives’ Association, et al.* and *National Treasury Employees Union et al. v. von Raab*] to suggest that employees outside of these job categories [sensitive classifications] may be subject to drug testing without individualized suspicion...”

employee's employer about the interpretation of and application to the employee of (1) a personnel policy or regulation adopted by the secretary; (2) any other policy or regulation over which management has control; or (3) any term or condition of a memorandum of understanding between the State and the exclusive representative." The third category was added by Chapter 6 of 2020. The statute also specifies that grievances do not include disputes about:

- a pay grade or range for a class;
- the amount or the effective date of a statewide pay increase;
- the establishment of a class;
- the assignment of a class to a service category;
- the establishment of classification standards;
- a mid-year performance appraisal; or
- an oral reprimand or counseling.

Employees not covered by Title 12 include gubernatorial appointees, executive service employees, temporary employees, attorneys in the Attorney General's Office and the Public Defender's Office, employees subject to collective bargaining agreements that contain other grievance procedures, student employees, Maryland State Police officers, inmates or patients employed by the State, employees and faculty members subject to a contract or regulation governing tenure, Baltimore City Community College employees, and administrative law judges in the Office of Administrative Hearings. These employees must have a separate but similar grievance procedure. Failure to appeal a decision to the next step in the process described in the subsequent section means that the employee accepts the decision.

### **Grievance Procedure**

#### ***STEP 1 Initiation of Grievance Proceeding:***

- Before filing, the employee must talk to the employee's supervisor about the dispute. Grievances must be initiated by the employee, in writing, within 20 days of the alleged action (or employee's knowledge of alleged action) to the appointing authority.
- Within 10 days after receipt of a grievance, the appointing authority (or representative) must hold a conference with the employee (or representative) and render a written decision within 10 days after the conference.

***STEP 2 Appeal to the Administrative Head of Department or Unit:***

- If the employee is not satisfied with the decision, the employee must appeal within 10 days to the head of the employee's department or unit.
- Within 10 days of receipt of the written appeal, the department or unit head must hold a conference with the employee and render a decision within the next 10 days.

***STEP 3 Appeal to the Secretary of Budget and Management:***

- If the employee is not satisfied with the department or unit head's decision, the employee can submit the grievance within 10 days to the Secretary of Budget and Management.
- The Secretary has 30 days to try to mediate a resolution.
- If the Secretary cannot reach a resolution, the grievance is forwarded to the Office of Administrative Hearings, which, at the end of a hearing record, has 45 days to issue a final administrative decision.

If the employee is not satisfied with the decision rendered during STEP 3, the employee may appeal to the circuit court.

**Peer Review and Other Appeal Procedures**

The statute allows agencies to establish peer review panels as an alternate grievance procedure for employees. These panels will review grievances according to established procedures, and the panel's decision will be the final administrative decision. Employees may also appeal performance evaluations of "satisfactory" or better only to the appointing authority, and if necessary, to the agency head. The decision of the agency head is final.

**Remedies Available to Grievants**

Remedies available to grievants include restoring any rights, pay, status, or benefits that were lost because of the contested procedure and as applied by the appropriate decision maker in the grievance procedure. A decision maker may, if appropriate, order the appointing authority to grant back pay. If the grievance was over a reclassification, back pay may be awarded to the employee for a period up to one year prior to the initial filing of the grievance. Back pay orders are at the discretion of the Secretary and the Office of Administrative Hearings and must be carried out by the appointing authority.

**Sovereign Immunity and Satisfaction of Awards**

Title 14 of the State Personnel and Pensions Article provides that the defense of sovereign immunity is not available to the State, unless otherwise specifically provided by the laws of

Maryland, in any administrative, arbitration, or judicial proceeding involving an employee grievance or hearing that is held under (1) Division I of the article or regulation adopted under it; or (2) a personnel policy or regulation that governs classified employees of the University System of Maryland or Morgan State University. Furthermore, the Governor must provide in the annual State budget adequate funds for the satisfaction of any final monetary or benefit award judgment that has been rendered in favor of the person against the State in any administrative, arbitration, or judicial proceeding involving an employee grievance.

## **Disciplinary Actions, Layoffs, and Employment Terminations**

Title 11 of the State Personnel and Pensions Article sets forth the State's policy regarding disciplinary actions, layoffs, and employment terminations.

### **Disciplinary Actions**

Provisions relating to discipline apply to all State Personnel Management System employees and former employees, except temporary employees. In addition, the appointing authority has the burden of proof by a preponderance of the evidence in a disciplinary action, and the standard must be applied during appeals. Some of the allowed disciplinary actions are set forth below:

- a written reprimand;
- forfeiture of up to 15 work days of accrued annual leave;
- suspension without pay;
- denial of a pay increase;
- demotion; or
- termination with or without prejudice, with the approval of the agency head, depending on the severity of the offense.

Certain acts by an employee, such as intentionally injuring another person, theft of State property, and conviction of a felony, can result in automatic termination of employment. Otherwise, there are two categories of discipline: conduct-related discipline; and performance-related discipline. The former may result from employee misconduct stemming from either an action or inaction of the employee that violates a statute, regulation, policy, directive, or order. Examples of behavior resulting in conduct-related discipline include:

- being negligent in the performance of duties;

- engaging in intentional misconduct, without justification, that injures another person;
- stealing State property with a value under \$300; and
- using leave contrary to law or policy.

Performance-related discipline may result from inefficient or incompetent job performance or a lack of qualifications for the position.

Before taking a disciplinary action, the appointing authority has 30 days to investigate the alleged misconduct, meet with the employee, consider mitigating evidence, impose the discipline, and advise the employee of appeal rights. The appointing authority has only five days from the employee's last shift to complete this process if the employee is to be suspended without pay. An employee may appeal a disciplinary action. The following outlines the disciplinary appeals process:

- Employees in the skilled service and the professional service have 15 days to file an appeal to the head of the principal unit. If the employee is on initial probation, the employee bears the burden of proof on appeal and may only appeal on the grounds that the action was illegal or unconstitutional. The appeal should explain issues of fact and law that warrant rescinding the action. Upon receipt of the appeal, the agency has 15 days to address, point-by-point, the issues in the appeal.
- After receiving the decision of the agency head, the employee has 10 days to appeal to the Secretary of Budget and Management. If no settlement is reached after 30 days, the appeal is referred to the Office of Administrative Hearings.
- The Office of Administrative Hearings has 30 days to schedule a hearing and notify the parties of the hearing date and must dispose of the appeal according to the provisions of the Administrative Procedure Act. At the close of the hearing, the office has 45 days to issue a decision. The decision of the office is the final administrative decision.

As mentioned earlier, terminating an employee in the skilled service or professional service requires the approval of the agency head. Terminated employees become "former employees," and with the exception of special appointment employees, may appeal the decision. At each stage in the appeals process, the decision maker can uphold the disciplinary action, or rescind or modify the action and restore lost time, compensation, status, or benefits. As with the grievance procedure, if the agency has a peer review panel, the employee may bypass the above process and file a disciplinary appeal with the peer review panel. A decision by a peer review panel is the final administrative decision.

Employees in the management service, the executive service, or special appointments may appeal a disciplinary action to the agency head. Employees in these services have the burden of proof in an appeal and may only appeal on the grounds that the action was illegal or

unconstitutional. The decision of the agency head is the final administrative decision. **Exhibit 3.4** lists the number of cases heard and decided by administrative law judges and the number of cases resolved within the Employer/Employee Relations Division of the Department of Budget and Management in fiscal 2020 and 2021. These actions include dismissals, suspensions, reprimands, and grievances.

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**Exhibit 3.4**  
**Disciplinary Actions and Grievances**  
**Fiscal 2020-2021**

	<u>Cases Forwarded to the Office of Administrative Hearings</u>		<u>Cases Resolved by the Employee and Labor Relations Division</u>	
	<u>2020</u>	<u>2021</u>	<u>2020</u>	<u>2021</u>
Reprimand	108	163	255	296
Disciplinary Loss of Leave	8	20	20	29
Disciplinary Suspension	52	50	36	46
Denial of Increment	0	0	0	0
Involuntary Demotion	10	9	1	5
Termination on Probation	8	11	12	10
Termination	33	35	39	17
Grievances	93	285	90	117
<b>Total</b>	<b>312</b>	<b>573</b>	<b>453</b>	<b>520</b>

Source: Department of Budget and Management

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Neither the Maryland Department of Transportation nor Morgan State University is covered under this process. Chapter 317 of 2005 altered the disciplinary process that the Maryland Department of Transportation must follow when an employee is accused of misconduct to make it much more similar to the process outlined above. Morgan State University utilizes a process where disciplinary action cases go to the Office of Administrative Hearings first and then go to the Department of Budget and Management on appeal for “exception hearings.”

### **Layoffs**

Only an employee in the skilled service or professional service who is not a special appointment can be “laid off” from the employee’s position if that position is abolished or discontinued because of lack of work or a change in the organization. Employees must be notified

at least 60 days prior to the effective date of the layoff. Employees with the fewest seniority points in a class are laid off first. Seniority points are accumulated based on the number of months the employee worked for the State, unit, and in the current job series. Chapter 696 of 2008 provides additional seniority points to eligible veterans, veterans with a disability, and former prisoners of war. An employee targeted for layoff may displace another employee with fewer seniority points in the same job series or classification held by the employee at any time during the three years preceding the layoff.

### **Separations**

All regular State Personnel Management System employees may be separated or terminated from State service. Separation occurs if the appropriation for the employee's position in the State budget is omitted by the Governor, struck by the General Assembly, or reduced by the Governor through a submission to the Board of Public Works. Separations cannot be appealed, but the separated employee has the same reinstatement rights as a laid off employee.

### **Reinstatements**

Employees who are reinstated to State service will receive credit for the previous time employed to determine the employee's rate of annual leave earnings and seniority rights. Reinstated employees are also entitled to unused accumulated sick leave. The reinstatement period for former nontemporary employees is three years. In addition, a State employee who transfers to a position in another unit of State government, regardless of the personnel system, transfers without loss of leave or credit earned for State employment. An employee who returns to State service in a position with an independent personnel system is entitled to the reinstatement rights of that system.

As mentioned above, laid off and separated employees have identical reinstatement rights. Reinstatements for these former employees are done through seniority point order. In other words, the former employee with the most seniority points will be the first employee reinstated to a class or job series from which the employee was laid off or separated, or to any lower classification in the same job series within the principal department or other independent unit from which the layoff or separation occurred.

### **Contractual Employment in State Government**

State policies concerning the hiring of contractual employees are in Title 13 of the State Personnel and Pensions Article and Code of Maryland Regulations 17.04.03.13. The statute provides that no agency can execute or renew a contract for the employment of a contractual employee unless the Secretary of Budget and Management certifies that (1) the service cannot be rendered by assignment or hiring of a nontemporary employee; (2) the service is needed for a limited, infrequent, or unusual time, or needs to be established quickly; and (3) the rate of pay is equivalent to that of existing employees with similar duties. Certain contracts, however, are exempt from the certification

process, such as contracts for college faculty; for student, inmate, and patient labor; for direct emergency services; or by independent agencies. The Secretary may not continue certification of contractual services if the services encompass a permanent function, have no specific expiration date, and are regularly performed on a basis that is at least equal to 50% of a full-time permanent employee.

Except for those contracts exempt from certification, the Department of Budget and Management reviews each contractual employment request. During this review process, the department informs the contracting agency if the work should be assigned to a budgeted position or if a regular position should be requested through the budget process. Hiring contractual employees allows agencies to save money since contractual employees do not receive benefits (paid leave, holiday pay, health benefits, or pension benefits) that regular employees receive.

During the 1996 session, the General Assembly was concerned about whether long-term contractual employment was in the best interest of either the State or contractual employees. Therefore, the State Personnel Management System Reform Act of 1996 required the Department of Budget and Management to study the issue of long-term contractual employment. The department's study, completed in December 1997, presented recommendations for the cost neutral reduction in the number of long-term contractual employees.

The report suggested that cost neutral conversion of contractual positions could be accomplished with or without applying conversion ratios, and need not result in an expansion of the total workforce. The recommended policy and implementation framework allows for the appropriate utilization of budgeted positions for continuing functions, while providing flexibility at the agency level to define the extent of convertible positions as well as a workable timeframe for reducing long-term contractual employment levels.

The Department of Budget and Management implemented the majority of its recommendations through the budget process. In addition, during the 1998 session the General Assembly passed legislation (Chapter 510 of 1998) authorizing the Department of Budget and Management to convert contractual employees to regular positions after six months of satisfactory job performance if (1) there is a continuing need for the function to be performed; (2) the agency can document a competitive hiring process; (3) the budgeted position was not available at the time the contractual employee was hired; and (4) the employee meets the minimum qualifications for the budgeted position. **Exhibit 3.5** lists the number of contractual conversions from fiscal 2013 to 2021.

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**Exhibit 3.5**  
**Contractual Conversions in State Agencies**  
**Fiscal 2013-2021**

<u>Fiscal Year</u>	<u>Employees</u>
2013	502
2014	685
2015	515
2016	161
2017	440
2018	403
2019	460
2020	429
2021	266

Source: Department of Budget and Management

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The fiscal 2023 Budget Bill (Chapter 484 of 2022) provided for the creation of regular State positions if an equivalent 1.25 full-time equivalent contractual positions are abolished, with the approval of the Board of Public Works. Budget bills have included this same language for many years.

In an effort to fill vacant positions with individuals currently working in a similar capacity, Chapter 633 of 2014 mandated that contractual employees be considered when there is a vacancy in the same or similar classification in which the contractual employee is employed in most agencies in the Executive Branch of State government. Chapter 633 specifically required the State Personnel Management System, the Maryland Department of Transportation, the University System of Maryland, Morgan State University, Saint Mary's College of Maryland, and Baltimore City Community College to include such policies regarding contractual employees.



## Chapter 4. Leave Policies and Benefits

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Regular State employees receive benefits in addition to monetary compensation. These benefits can be placed into three categories: leave; fringe benefits; and employee programs.

### Leave

Unless indicated otherwise, the leave policies and other benefits described in this chapter generally apply to employees in the State Personnel Management System. Most policies and benefits do not apply to temporary employees, such as contractual or emergency employees. However, an executive order issued in May 2017 grants paid leave to temporary employees. Units of the Executive Branch with independent personnel systems and the Legislative and Judicial branches generally have adopted similar policies and benefits. Leave includes paid leave (*e.g.*, annual or sick leave) and unpaid leave (*e.g.*, leave of absence). Family leave may fall within either; therefore, it is described under a separate heading.

### Paid Leave

Title 9 of the State Personnel and Pensions Article governs most leave policies, including the rate of leave accrual, circumstances under which leave can be taken, and the disposition of accrued but unused leave. The Secretary of Budget and Management is responsible for administering leave policies for State Personnel Management System employees.

### Holidays

Regular State Personnel Management System employees are entitled to paid time off for observance of the holidays listed in **Exhibit 4.1** and/or any other day the President or the Governor designates for the general cessation of business. Employees who work in agencies with 24 hours a day/seven days a week service may have their holidays rescheduled to accommodate the agencies' service needs. Also, a unit that is authorized to establish its own holiday schedule may allow different variations of holidays observed. For example, the Maryland Department of Transportation's personnel system has one less holiday (the American Indian Heritage Day) than the State Personnel Management System.

Employees who work on a holiday are entitled to compensatory time on at least an hour-for-hour basis but must use the compensatory time within one year after having accrued the time. Employees who are eligible for overtime, and who work on prescheduled holidays, are also paid for the holiday hours scheduled at the normal hourly rate plus time and one-half payment for any hours actually worked. In addition, employees in the executive pay plan at ES6 or higher must work at least five hours on a holiday to earn one day of compensatory time.

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**Exhibit 4.1**  
**Paid Holidays – State Personnel Management System Employees**

New Year's Day	January 1
Martin Luther King, Jr.'s Day	January 15 unless another day is designated by the U.S. Congress
Presidents' Day	Third Monday in February
Memorial Day	May 30 unless another day is designated by the U.S. Congress
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	October 12 unless another day is designated by the U.S. Congress
Election Day	Days of general elections (not primary elections), normally the first Tuesday in November in even numbered years
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
American Indian Heritage Day	Fourth Friday in November
Christmas Day	December 25

Source: Department of Legislative Services

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**Annual Leave**

State Personnel Management System employees are entitled to annual leave with pay for any purpose. The employee's supervisor must approve such leave in advance. Employees may not use annual leave until six months of service are completed. Current law provides annual leave based upon an employee's years of State service as shown in **Exhibit 4.2**.

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**Exhibit 4.2**  
**Annual Leave – State Personnel Management System Employees**

<u>Years of Service</u>	<u>Annual Leave</u>
Less Than 5 Years of Service	10 workdays per year
5 to Less Than 10 Years of Service	15 workdays per year
10 to Less Than 20 Years of Service	20 workdays per year
20+ Years of Service	25 workdays per year

Source: Department of Legislative Services

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The law further provides that up to 75 days of unused annual leave may be carried over into any new calendar year. At the end of the year, any unused leave in excess of 75 days is forfeited, and, unless the employee objects, is placed into the State Employees Leave Bank. At any time an employee may donate annual leave to the leave bank or to another employee.

All employees, except those covered under collective bargaining agreements and those whose State employment is terminated for a cause involving moral turpitude, may elect to receive compensation of unused annual leave upon termination from State service. The compensation is determined by calculating one-tenth of the employee's current biweekly amount of compensation multiplied by the number of days of earned and unused annual leave accumulated at the end of the previous calendar year (maximum of 50 working days), plus the number of days of annual leave unused during the current calendar year.

In addition to the payment of annual leave upon termination, an appointing authority may request the agency head to compensate an employee for any unused annual leave – in excess of the maximum 75 days carryover – if the employee has been denied the opportunity to use such leave.

### **Personal Leave**

Six days of personal leave are credited to State employees at the beginning of each calendar year. However, if the calendar year is a leap year, State employees are entitled to seven days of personal leave at the beginning of the calendar year. Newly hired employees receive a prorated number of personal days depending on the employee's starting date. Personal leave can be used for any purpose after notice to the employee's immediate supervisor. A request to use personal leave to observe a religious holiday may not be denied unless the employee's unit provides a service continuously on a seven-day-a-week basis, there is a critical shortage of staff in the unit, and no reasonable accommodations to the employee's request can be made. Employees may not

accumulate personal leave. Any unused personal leave at the end of the calendar year is forfeited, and, unless the employee objects, is placed into the State Employees Leave Bank. At any time an employee may donate personal leave to the leave bank or to another employee.

The number of personal days credited to employees in agencies in the Executive Branch with independent personnel systems and other branches of government may vary. For example, the Maryland Department of Transportation provides its employees with seven personal days.

### **Sick Leave**

State Personnel Management System regular employees are entitled to sick leave with pay. State employees earn sick leave at the rate of 15 days a year, prorated based on when the employee begins State service. Sick leave can be used for an illness, disability, or medical appointment of the employee; an illness, disability, death, or medical appointment in the employee's immediate family; or the birth or adoption of an employee's child. Chapter 1 of 2018 requires an employer, including the State, to have a sick and safe leave policy. While the State generally already meets most requirements of this law, Chapter 1 requires the State to allow sick leave to be used for absences related to domestic violence and related crimes. If an employee is absent five or more consecutive days due to personal illness or an illness in the immediate family, the employee must present an original certificate of illness or disability signed by one of several licensed or certified medical providers listed in statute.

As mentioned above, sick leave may be used during the period immediately following the birth of an employee's child or the placement of a child with an employee for adoption. With the approval of the head of the employee's principal department, an employee who is responsible for the care and nurturing of the child may use, without certification of illness or disability, up to 30 days of accrued sick leave. With approval, if two employees are responsible for the care and nurturing of a child, each employee may use, without certification of illness or disability, up to 30 days of accrued sick leave to care for the child. The number of allowable sick days for these purposes varies for employees in Executive Branch agencies, agencies with independent personnel systems, and other branches of government. For example, the Maryland Department of Transportation's personnel system provides that 20 days of accrued sick leave may be used for adoption of a child or for care of an employee's newborn.

Employees are entitled to accumulate an unlimited number of unused sick leave days during their State service tenure and may carry all sick leave over into subsequent calendar years. Upon termination from State service for reasons other than retirement, an employee forfeits any accumulated sick leave. Forfeited sick leave, unless the employee objects, is placed into the leave bank. At any time an employee may donate sick leave to the leave bank or to another employee, provided that the employee's sick leave balance does not fall below 240 hours.

Employees who retire directly from employment with a full or early service retirement may convert unused sick leave to creditable service used to calculate retirement benefits. For this purpose, 22 days of sick leave equals one month of creditable service.

### **Advanced Sick Leave**

Regulations adopted by the Department of Budget and Management and the Maryland Department of Transportation allow for State Personnel Management System employees and Maryland Department of Transportation employees to be eligible for advanced sick leave. Advanced sick leave is leave with pay that must be repaid.

For employees in the State Personnel Management System, when the Secretary of Health and the Secretary of Budget and Management have determined that there is a strong likelihood of a statewide health emergency, the Secretary of Budget and Management may, in the best interests of the public and State employees, implement an advanced sick leave policy to minimize exposure to health threats and the spread of disease. Employees who have exhausted all other leave may receive advanced sick leave if the employee agrees to repay the advanced sick leave at a rate of 50% of earned sick leave when the employee returns to work. An employee who returns to work may apply additional accrued annual or personal leave to the amount owed, or elect to pay in cash at a 100% repayment rate. Employees who use advanced sick leave also agree that any outstanding leave amount due upon the employee's separation from State employment for any reason shall be considered a debt to the State.

For employees in the Maryland Department of Transportation's personnel system, an employee with a minimum of one year of continuous State service at the time of the request who has exhausted all accumulated annual, personal, sick, and compensatory leave available may request an allotment and use of up to 60 working days of advanced sick leave within a 24-month period for a serious health condition. Approval of a request for an allotment and use of advanced sick leave is at the discretion of the Secretary of Transportation or the Secretary's designee. An employee may not be allotted an amount of advanced sick leave that would bring the employee's total time out to one year or more. Before applying for advanced sick leave, an employee shall apply to the Employee-to-Employee Leave Donation Program and the State Employees' Leave Bank. The department's medical advisor may require the employee to submit to a medical examination. Requests for advanced sick leave may not be granted if the employee refuses to submit to a medical examination. Reimbursement to the department shall be made at the minimum rate of 50% of the rate of sick leave and annual leave earned. An employee may apply credited annual leave, personal leave, sick leave, compensatory leave, or cash to the amount owed. Employee acceptance of an allotment of advanced sick leave constitutes an agreement to repay the department for compensation received while using this leave, which remains binding even if the employee terminates employment with the department.

### **State Employees' Leave Bank and Employee-to-employee Donations**

The leave bank is made up of forfeited or donated annual, personal, and sick leave. Employees are members of the leave bank if they donate or forfeit leave. An employee may be granted leave from the bank after exhausting all forms of leave because of a serious and prolonged medical condition and providing a certificate of illness or disability. In addition, an employee may be granted leave from the bank to provide direct care to an immediate family member who has

suffered a catastrophic illness or injury. An employee may not receive more than a total of 2,080 hours of leave from the leave bank.

State employees may also donate annual, personal, and sick leave directly to another State employee who has exhausted all available leave because of a serious and prolonged medical condition. Leave may only be donated for a medical condition that exists at the time of the donation. The Secretary of Budget and Management administers the leave bank and leave donation program and determines an employee's eligibility to receive leave from these sources. State agencies with independent personnel systems and the Legislative and Judicial branches may also participate in these programs.

### **Work-related Accident Leave**

A regular employee is eligible for work-related accident leave with sick pay if the employee sustains an accidental personal injury in the actual performance of job duties that is compensable under the Maryland Workers' Compensation Law. Work-related accident leave is available from the first day of a physician-certified disability until the earlier of the day the employee is able to return to work, as certified by a physician, or six months from the day of the disability. An additional six months of leave may be granted for a certified continued disability by a physician selected or approved by the appointing authority if the Workers' Compensation Commission has not reached a decision on the claim.

Payment for work-related accident leave is based on two-thirds of an employee's regular pay and constitutes a separate benefit on account of accident disability. Employees continue seniority and leave accruals based on their regular pay and maintain all health care benefits; however, the employees may not receive temporary total disability benefits under the Maryland Workers' Compensation Act while receiving payments for this leave.

The allowance for work-related accident leave may vary for employees in agencies in the Executive Branch with independent personnel systems and other branches of government, but the policies are generally similar to the State Personnel Management System.

### **Compensatory Leave**

Compensatory leave is paid leave for time worked above the employee's normal work week or on holidays. Compensatory leave may be used for any purpose. Policies concerning how compensatory leave can be earned and used vary among executive agencies and branches of State government. Some employees have a choice between cash overtime payments and compensatory leave, while others are only eligible for compensatory leave. In most cases, compensatory leave is forfeited if it is not used within one year of the date on which it was earned. All employees except those covered under collective bargaining agreements are allowed to receive compensation for up to two days of unused compensatory leave earned during the calendar year in which the employee terminates State employment.

### **Parental Leave**

Chapter 752 of 2018 provides up to 60 days of paid parental leave to an employee in the Executive Branch of State government, who is the primary caregiver responsible for the care and nurturing of a child, to care for the child immediately following either the child's birth or the adoption of a child who is younger than age six. An employee entitled to parental leave may first use available accrued annual leave and personal leave. If that leave is less than 60 days, the State agency for which the employee works must provide the employee with additional paid leave to attain 60 days of parental leave. Before an employee uses parental leave, approval must be obtained from the appointing authority. The Legislative Branch of government has adopted similar provisions by policy for parental leave for employees of the Maryland General Assembly and the Department of Legislative Services.

### **Military Administrative Leave**

State employees on active military duty on or after July 1, 2003, are eligible for military administrative leave. Employees electing this benefit are entitled to leave equal to an amount sufficient to compensate them for the difference between the employees' active duty base salary paid by the federal government and the employees' State base salary.

### **Other Paid Leave**

Other types of leave may be authorized by statute, regulation, or the Governor, if the leave is consistent with statute. These types of leave include:

- Bereavement Leave;
- Disaster Service Leave;
- Organ Donation Leave;
- Military Leave;
- Jury Service Leave;
- Legal Action Leave;
- Administrative Leave;
- Examinations/Interviews for State Positions;
- Release Time for Union Activities;

- Positive Tuberculin Skin Test; and
- Religious Observances.

## **Unpaid Leave**

Several types of unpaid leave may be authorized for State employees, as described on the following page.

### **Leave of Absence**

The Secretary of Budget and Management may grant unpaid leaves of absences that do not exceed two years. A leave of absence without pay may be used by an employee who is a member of the U.S. Armed Forces and is called upon for active service, injured in the line of duty and has exhausted all paid leave, or temporarily incapacitated due to physical or mental illness. An employee is eligible, with approval from his or her appointing authority, for a leave of absence without pay for a period not to exceed 30 calendar days. For longer periods, a leave of absence request requires the additional approval of the Secretary of Budget and Management.

If an employee returns to State service within two years, the employee is eligible for reinstatement. However, the leave period for entry into the armed services is the initial tour of duty. The employee may be restored to the employee's former position if a vacancy exists. If no vacancy exists, the employee's name will be placed on the reinstatement list for the employee's former classification.

### **Emergency Release Time**

Established under a 1981 executive order, emergency release time is unpaid leave granted to protect employees against unsafe conditions during emergency situations such as blizzards, hurricanes, civil disorders, physical plant hazards, fire, or war. The secretaries of the Department of General Services, the Department of Budget and Management, and the Maryland Department of Transportation, in consultation, may grant emergency leave to affected employees. An employee required to work during an emergency is credited with compensatory leave.

## **Family Leave**

In addition to the guaranteed use of sick leave after the birth of a child, the federal Family and Medical Leave Act of 1993 imposes benefit requirements on public agencies (state, local, and federal), local public and private education agencies, and businesses that employ 50 or more employees. The federal law requires employers to allow employees to take up to 12 weeks of unpaid leave during any 12-month period for the birth, adoption, or foster-parent placement of a child; for a serious health condition of a child, spouse, or parent; or for an employee's own serious health condition. Under the Act, employees may elect to use, or employers may require employees

to use accrued paid leave for some or all of that time period. Employers are required to maintain the same health care coverage at the same rate as for employees on other types of leave. Upon return, employees are restored to their original or an equivalent position.

Certain public employees are not covered under the Act, including employees of the legislative body of a state or political subdivision who are not employed by the legislative library; elected officials of a state or a political subdivision, their personal staffs, employees appointed by an elected official to a policymaking level, and employees appointed in an advisory capacity to an elected official; and employees employed for less than one year. The Act does not supersede any provision of any state or local law that provides greater leave rights. The employees of the Department of Legislative Services are eligible by policy for the same leave as is available under the federal law.

### **Family and Medical Leave Insurance Program**

Chapter 48 of 2022 established the Family and Medical Leave Insurance Program and Fund to provide up to 12 weeks of benefit payments to covered individuals taking leave from employment due to specified personal and family circumstances. The fund consists of contributions from both employees and employers, and it pays for benefits, a public education program, and implementation and administrative costs. All employers who employ at least one employee must participate in the program; all employees contribute to the fund, but only employers (including the State and other public employers) with at least 15 employees are required to contribute to the fund. Weekly benefit payments are based on each employee's average weekly wage, subject to a cap.

Chapter 48 requires the Maryland Department of Labor to (1) conduct an actuarial study on the cost of maintaining the solvency of the fund and (2) study and make recommendations on the total rate of contribution and the appropriate cost-sharing formula between employers and employees. The Secretary of Labor must set the contribution rates by June 1, 2023; thus, contribution rates have not been established as of the publication of this volume.

### **Fringe Benefits**

Fringe benefits are direct employer subsidies on behalf of an employee. Traditional fringe benefits include contributions to an employee's health care or retirement plan. Together, fringe benefits and salary make up an employee's total compensation package. As an employer, the State provides five major benefits that involve a direct subsidy on behalf of employees: health insurance plans and other related benefits; Social Security; pension/retirement contributions; Workers' Compensation; and unemployment insurance. Other less traditional benefits involving various levels of subsidy include a State match to the deferred compensation program (which has not been provided since fiscal 2009), performance and retention bonuses, tuition waivers, and employee transit expenditures.

## **Health Insurance Plans and Other Related Benefits**

Title 2, Subtitle 5 of the State Personnel and Pensions Article authorizes the Secretary of Budget and Management to develop and administer a State Employee and Retiree Health and Welfare Benefits Program. All Executive, Judicial, and Legislative Branch agencies may participate in the program.

The benefits described on the following pages are available to regular full-time employees, part-time permanent employees who work more than 50% of the workweek, and certain retirees who have qualified for retiree health care. Contractual employees who work more than 30 hours per week, or an average of 130 hours per month, are eligible for an alternative State subsidy for medical and prescription drug coverage. Health benefits and some other benefits are available to part-time employees working less than 50% of the workweek, and contractual employees working less than 30 hours per week, or 130 hours per month, provided the employee pays all the costs of the plan.

### **Health Insurance Plans**

The State offers its employees the option of selecting a preferred provider organization, an exclusive provider organization, or an integrated health model medical plan. A preferred provider organization utilizes a national network and provides both in- and out-of-network benefits. An exclusive provider organization utilizes a national network and provides in-network benefits only. An integrated health model utilizes a regional network. All employees pay a percent of the premium or (for some contractual employees) the self-funded cost to enroll in one of the offered health plans. Integrated health model and exclusive provider organization plans generally offer lower premiums than the preferred provider organization plans.

The benefits offered are standardized within each type of plan. Some of the benefits that all medical plans provide include:

- physician care;
- hospitalization;
- surgery;
- maternity benefits/newborn care;
- diagnostic lab and x-ray;
- routine vision services;
- preventive services;

- behavioral health coverage;
- durable medical supplies; and
- ambulance and emergency room service.

All of the plans offered meet the minimal essential coverage requirements of the federal Affordable Care Act.

In fiscal 2013, the State implemented plan changes that increased costs primarily for preferred provider organization members as part of a broader effort to generate savings from health insurance. Increased costs for preferred provider organization plans were implemented to encourage participation in the less costly exclusive provider organization and integrated health model plans, which do not offer out-of-network coverage. Preferred provider organization members are subject to coinsurance, while exclusive provider organization and integrated health model plans are not. Additionally, preferred provider organization members must pay a deductible on out-of-network costs prior to receiving coinsurance coverage. The other State plans do not offer out-of-network coverage and therefore do not require a deductible.

Preferred provider organization members are subject to higher out-of-pocket maximums than exclusive provider organization and integrated health model members. For the 2022 plan year, preferred provider organization members are subject to an out-of-pocket maximum of \$2,000 for an individual and \$4,000 for a family for in-network costs, and \$3,250 for an individual and \$6,500 for a family for out-of-network costs. In comparison, exclusive provider organization and integrated health model members are subject to an out-of-pocket maximum of \$1,500 for an individual and \$3,000 for a family.

The exclusive provider organization and preferred provider organization plans are self-insured with the State assuming the risk for all costs. The State pays a fee to providers to administer plans. For exclusive provider organization plans, members must receive all medical services from a provider or specialist within the network. When receiving a service, a copayment is typically required for primary and specialist care office visits. Preferred provider organization plans allow an employee to choose any doctor for services. If the doctor is part of the State's network of participating physicians, a copayment is required, and in-network services are covered at 90% coinsurance until the deductible is exhausted. If the doctor is outside the network, the member pays the entire fee and submits a claim for reimbursement, which is applied to a required deductible. After the deductible is exceeded, the plan then pays 70% of the cost.

Unlike the other plans, the integrated health model is not self-insured. The State pays a premium for the plan, and the plan provider assumes the risk for all the costs above those covered by the premium. Employees must receive all medical services from a provider or specialist within the regional network. When receiving a service, a copayment may be required for primary and specialist care office visits.

The State offered point-of-service plans as an option for all State employees until fiscal 2015, when point-of-service plans were discontinued for all members except State Law Enforcement Officers Labor Alliance members. The point-of-service plan is similar to an exclusive provider organization in that the employee's choice of providers is somewhat limited. However, employees are given the option of choosing out-of-network services without a referral but must then pay a deductible. Like the preferred provider organization and exclusive provider organization plans, the point-of-service plan is self-insured with the State assuming the risk for all costs.

### **Wellness Program**

In an effort to address escalating medical and prescription drug costs, the State implemented a wellness program in January 2015. The original program was intended to be phased in over a six-year period, and to use both incentives and disincentives to encourage the completion of wellness activities. As of January 2016, all disincentives (*i.e.*, premium surcharges) for nonparticipation were eliminated. Under the current program, copays for primary care physician visits are waived if members complete a Health Risk Assessment and select a primary care physician. Members can also receive \$5 off specialist copays by completing age/gender specific preventative screenings. Members in all plans, except the integrated health model, are eligible to earn the State's wellness program incentives. The Secretary of Budget and Management is responsible for implementation of the wellness program, and is authorized to change program requirements for each health plan year.

### **Other Related Benefits**

***Dental Insurance Plans:*** The State offers dental insurance plans that are available to all employees who are eligible for health insurance benefits with the State. Two plans are available, a dental health maintenance organization and a dental preferred provider organization plan. The structure and funding of benefits is similar to health insurance exclusive provider organizations and point-of-service plans. Employees are required to pay 50% of the premium or the self-funded cost to enroll in one of the plans.

The available coverage from and requirements of the two types of plans vary. The dental health maintenance organization plan covers preventative and diagnostic dental care in full, while restorative and other major services are offered at a reduced cost. Orthodontic services are available for both adults and children. There are no deductibles and no annual maximum allowable amounts. Employees are required to select a primary dental office, which will arrange for dental care. The preferred provider organization option does not require the selection of a primary dental office, and orthodontic services are available for children only. Dental care under this plan may be provided by a dentist of the employees' choice; however, benefit coverage amounts are higher for in-network dentists.

***Mental Health/Substance Abuse Program:*** The State offers mental health/substance abuse coverage to State employees and their dependents who enroll in any kind of health coverage. Prior to fiscal 2015, members of preferred provider organization and point-of-service plans received mental health services from a separate provider, while exclusive provider organizations

provided their own mental health services. Since fiscal 2015, all State health plan options provide their own mental health services.

**Prescription Program:** The State offers a self-funded prescription drug program to State employees and their dependents who enroll in any kind of health coverage. Similar to the State health plans, employees must pay a portion of the cost of receiving prescription drug coverage. A separate copay is required for each individual prescription written for 1 to 45 days. Copays vary depending on whether the prescription is generic (\$10 copay), preferred brand name drug (\$25 copay), or nonpreferred brand name drug (\$40 copay). The plan also offers zero-dollar copays on certain drug classes to encourage members to choose generic drugs. Drugs are determined to be “preferred” through an evaluation by the prescription drug benefit manager’s panel of physicians and pharmacists. There is a mandatory generic requirement, which means that if a generic drug is available and a brand name drug is chosen instead, the employee has to pay the difference between the cost of filling the generic and the brand name prescription.

Active employees and retirees have the same copays for prescriptions. However, the out-of-pocket maximum for active employees is \$1,000 for an individual and \$1,500 for a family, while the maximum for retirees is \$1,500 for an individual and \$2,000 for a family.

In 2011, legislation was enacted that would have eliminated State prescription drug coverage for Medicare-eligible retirees in fiscal 2020 (July 1, 2019). Subsequent legislation moved the date up to January 1, 2019, to coincide with federal changes to the Medicare Part D program, and the State’s alignment of the health plan year with the calendar year. In September 2018, a lawsuit was filed against the planned transition. In October 2018, a restraining order and temporary injunction was granted, delaying the transition of Medicare-eligible retirees until the lawsuit is resolved. During the 2019 session, legislation (Chapter 767, or Senate Bill 946) was enacted to create prescription drug out-of-pocket reimbursement or catastrophic coverage programs for certain State retirees, dependents, or surviving dependents who are enrolled in a Medicare prescription drug benefit plan. Groups of retirees and employees have sued the State in an effort to prevent the termination of prescription drug coverage for Medicare-eligible retirees. Chapter 767 prevents the implementation of retiree drug plan changes from going into effect until the start of the plan year following a resolution to the lawsuit if the resolution occurs at least nine months prior to the start of the open enrollment period. As there has been no final resolution to the litigation as of the publication of this volume, Medicare-eligible retirees will not have any changes to their participation in the State’s prescription drug plan at least through the 2023 plan year.

**Flexible Spending Accounts:** Employees have the option of establishing a Flexible Spending Account to set aside pretax dollars to pay for eligible health-related expenses that are not covered by existing State health plans or to pay for eligible dependent day care expenses. Employees are then “reimbursed” from these accounts for eligible expenses they incur during the year for which the account is established. Internal Revenue Service rules require that employees must continue to contribute a preselected amount to the health care or dependent care account throughout the year. Any money left over in the account at the end of the year is forfeited.

**Other Benefit Plans:** While the State subsidizes health care, prescription drug, and dental plans, it also offers other plans that it does not subsidize. An employee who elects to participate in one of these plans pays the full premium. Additional benefits offered by the State include term life insurance and a personal accidental death and dismemberment plan to employees and their dependents who are eligible for health benefits. The State discontinued long-term care coverage as of December 31, 2016.

### Enrollment and Funding

**Exhibit 4.3** provides fiscal year enrollment data for employee and retiree health insurance plans. Enrollment has remained steady, and the slight decline in active employee participation can be attributed to the reduction in the number of State positions. For active employees, there was a significant increase in enrollment in the exclusive provider organization plans in fiscal 2015 following the discontinuation of point-of-service plans for most State employees. Migration of active employees into exclusive provider organization plans began in fiscal 2013 after the State introduced coinsurance payments for preferred provider organization and point-of-service plans. Since then, exclusive provider organization plan membership has been growing and exceeded preferred provider organization plan membership for the first time in fiscal 2015. Point-of-service plans were discontinued in fiscal 2015, except for State Law Enforcement Officer Labor Alliance members, and more members migrated into exclusive provider organization plans than preferred provider organization plans. Integrated health model plans were initiated in fiscal 2015, and membership has increased, though plan membership only accounts for 3.7% of total membership in fiscal 2017.

**Exhibit 4.3**  
**Employee Participation in Health and Life Insurance Plans**  
**Fiscal 2018-2021**

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Change</u> <u>2018-2021</u>
EPO	41,208	41,325	41,814	40,034	-2.85%
PPO	22,837	22,949	23,604	23,246	1.79%
IHM	2,634	2,778	2,965	2,883	9.45%
POS	217	216	222	209	-3.69%
<b>Total Health Plan</b>	<b>66,896</b>	<b>67,268</b>	<b>68,605</b>	<b>66,372</b>	<b>-0.78%</b>
Prescription	62,209	62,213	62,379	60,025	-3.51%
Dental	64,851	65,375	66,751	64,745	-0.16%
Term Life	79,537	91,217	95,735	94,987	19.42%
Accidental Death	42,081	42,140	42,040	40,507	-3.74%

**Retiree Participation in Health and Life Insurance Plans**  
**Fiscal 2018-2021**

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Change 2018-2021</u>
EPO	18,479	19,786	20,882	21,568	16.72%
PPO	28,772	29,832	29,397	28,912	0.49%
IHM	96	102	109	102	6.25%
POS	0	0	0	0	n/a
<b>Total Health Plan</b>	<b>47,347</b>	<b>49,720</b>	<b>50,388</b>	<b>50,582</b>	<b>6.83%</b>
Prescription	46,281	47,920	48,644	48,844	5.54%
Dental	39,478	42,166	43,464	44,247	12.08%
Term Life	24,798	26,093	27,198	27,666	11.57%

EPO: exclusive provider organization

IHM: integrated health model

POS: point-of-service

PPO: preferred provider organization

Note: Effective fiscal 2015, the State eliminated point-of-service plans (except for State Law Enforcement Officer Labor Alliance Members) and contracted with Kaiser Permanente to provide a fully insured integrated health model plan.

Source: Department of Budget and Management, Office of Personnel Services and Benefits Annual Reports

**Exhibit 4.4** shows the health insurance account activity for fiscal 2019 through 2021. From fiscal 2019 to 2021, total receipts increased by an annual average of 1.6%, while payments to providers and insurance companies increased by 3.9%. The net effect has been that the year-end balance has decreased as a surplus in funding was spent down.

Claims cost for prescription drugs increased from fiscal 2018 to 2021, averaging 6% annual growth over the time period, as shown in **Exhibit 4.5**. The growth in spending for prescription drugs has slowed, in part due to improved prescription drug revenues negotiated by CVS Caremark, the State's pharmacy benefits manager. Prescription drug costs accounted for 29% of total claims in fiscal 2021.

**Exhibit 4.4**  
**Summary of Health Insurance Reimbursable Fund**  
**Fiscal 2019-2021**  
**(\$ in Millions)**

	<u>Actual</u> <u>2019</u>	<u>Actual</u> <u>2020</u>	<u>Actual</u> <u>2021</u>	<u>Average</u> <u>Annual Change</u> <u>2019-2021</u>
<b>Balance, Beginning of Year</b>	<b>\$198.80</b>	<b>\$172.00</b>	<b>\$143.30</b>	<b>-13.96%</b>
State Agency Receipts	\$1,151.40	\$1,147.50	\$1,158.90	0.33%
Employee Receipts	188.1	189	191.6	0.93%
Retiree Receipts	93.6	94.5	101.5	4.22%
Other Receipts	118.1	135	149.1	13.12%
<b>Total Receipts</b>	<b>\$1,551.20</b>	<b>\$1,566.00</b>	<b>\$1,601.10</b>	<b>1.61%</b>
<b><i>Subtotal Receipts and Balance</i></b>	<b><i>\$1,750.00</i></b>	<b><i>\$1,738.00</i></b>	<b><i>\$1,744.40</i></b>	<b><i>-0.16%</i></b>
Payments	\$1,578.00	\$1,594.70	\$1,700.90	3.89%
<b>Ending Balance</b>	<b>\$172.00</b>	<b>\$143.30</b>	<b>\$43.50</b>	<b>-37.35%</b>
Change in Fund Balance	-\$26.80	-\$28.70	-\$99.80	

Source: Department of Budget and Management

**Exhibit 4.5**  
**Total Claims for Health, Prescription, and Dental Benefits**  
**Fiscal 2018-2021**  
**(\$ in Millions)**

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Average Annual Change</u> <u>Fiscal 2018-2021</u>
Medical	\$1,002.72	\$1,047.31	\$1,054.29	\$1,129.70	4.22%
Prescription Plan	570.77	576.58	646.23	673.7	6.01%
Dental Plans	50.61	53.88	49.49	55.4	3.15%

Source: Department of Budget and Management

### **Retiree Health Insurance**

In addition to the cost of current employee health benefits, another issue of ongoing concern to the General Assembly has been the cost of retiree health insurance. While not a contractual benefit like pension benefits, the unfunded liabilities associated with future retiree health benefits were required to be included in the State's financial statements under accounting rules adopted by the Governmental Accounting Standards Board in 2008. When State-eligible employees retire, they may continue to receive State health insurance benefits. In the 2011 session, the General Assembly created new eligibility criteria for individuals hired on or after July 1, 2011. Individuals who began State service on or before June 30, 2011, and members of the Judge's Retirement System, were held harmless and remained subject to the previous eligibility criteria. "Chapter 15. Retiree Health Insurance" of this handbook includes a discussion of the issues relating to retiree health insurance.

### **Social Security**

Since 1956, State employees (with the exception of members of the State Police Retirement System) have been participants in the Social Security system with the State paying the employer's share of the cost. Social Security costs are determined by multiplying individual salaries up to the Social Security Wage Base by 6.2% for the employee and the employer. Both the State and the employees are also subject to a 1.45% Medicare cost, which is not subject to a wage base.

### **Pension/Retirement Contributions**

See "Chapter 11. Plan Summaries" of this handbook for an explanation of the pension and retirement benefits provided to State employees.

### **Workers' Compensation**

The purpose of the Workers' Compensation Program is to assure that workers who sustain "accidental injuries out of and in the course of employment" are entitled to prompt payments for medical services and compensation without resorting to lawsuits. Questions of fault on the part of the employee or employer are excluded under the State Workers' Compensation Law.

Under the Workers' Compensation Law, an employee has the burden of proving that the injury was job-related and disabling. The injury is presumed not to be caused by the willful intention of the employee, and the burden to prove otherwise rests with the employer.

The compensation benefits that an employee may qualify for are (1) temporary total disability; (2) temporary partial disability; (3) permanent total disability; (4) permanent partial disability; (5) medical and hospitalization benefits; (6) wage reimbursement; (7) vocational rehabilitation; and (8) death and funeral benefits. The State's Workers' Compensation Program is self-insured and administered through the Injured Workers' Insurance Fund.

## **Unemployment Insurance**

Title 8 of the Labor and Employment Article provides unemployment insurance coverage for employees in both the public and private sector. Unemployment insurance rates are determined based on the solvency levels of the Unemployment Insurance Trust Fund. For fiscal 2022 and 2023, State agencies were required to budget \$0.28 for every \$100 of payroll for unemployment insurance costs, which is consistent with the assessments that all employers will be paying to ensure the solvency of the Unemployment Insurance Trust Fund.

## **Employee Programs**

Employee programs are designed and often paid for by the State for the benefit of the employees. Examples include the Employee Assistance Program, the Deferred Compensation Program, and the Employee Transit Benefit. These programs are voluntary and can benefit both the employer and employee by improving productivity and job satisfaction.

The Department of Budget and Management administers various other programs and miscellaneous benefits that are intended to assist employees for the mutual benefit of employer and employee.

### **Employee Assistance Program**

The Employee Assistance Program provides confidential and professional assessment and referral services to State employees who are experiencing personal problems which may or may not be affecting their work performance. Such problems may include substance abuse, emotional problems, stress, family/marital problems, and legal problems. Employees in non-sensitive positions who test positive for illegal drug use will be referred to the program as part of the State's efforts to rehabilitate such employees.

### **Deferred Compensation Plan**

The State allows employees to participate in a deferred compensation plan whereby an employee can defer a portion of current income (along with the payment of taxes on that income) until a later date, normally when the employee is retired. See "Chapter 14. Maryland Teachers' and State Employees' Supplemental Retirement Plans" of this handbook on the Maryland Supplemental Retirement Plans for more information.

### **Employee Transit Benefit**

The Maryland Transit Administration provides free services for State employees. Beginning in fiscal 2003, free ridership has been available to all employees except those employees of the Legislative and Judicial branches, higher education agencies, and local election boards.

## **Employee Training and Awards Programs**

Title 10 of the State Personnel and Pensions Article established several programs to facilitate human resource management and development.

### **Employee Training Programs**

The Department of Budget and Management is responsible for managing and developing training programs for State Personnel Management System employees and coordinating in- and out-service training programs for State agencies. The purpose of training is to develop the capabilities of State employees; train employees to efficiently perform their duties; attract qualified persons to State employment; and help managers and supervisors become knowledgeable and proficient in the application of laws, rules, and guidelines.

### **Incentive Awards Programs**

All principal units in the Executive Branch, including units with independent personnel systems, may participate in the Innovative Idea Program and the Incentive Performance Awards Program. Only executive service employees are not entitled to these awards.

***Innovative Idea Program:*** An employee, through an invention or innovative suggestion that increases revenues, saves money, improves service quality, or is of some other significant benefit, may receive a financial reward from the employee's agency. All ideas are subject to department review, and awards may range from \$300 to \$1,000. In addition to the departmental award, the employee's recognized innovative idea may receive an additional award – not to exceed \$20,000 or paid administrative leave not to exceed 20 workdays – from the Governor's awards panel. From 2011 through July 2022, no employees received Innovative Idea Awards.

***Incentive Performance Awards Program:*** This program grants an award for extraordinary performance in the public interest in connection with an employee's job performance. For extraordinary service, an employee may receive cash of not more than \$300; a gift of not more than \$300 in value; paid administrative leave of not more than three days; or any combination of cash, gift, and leave of not more than \$300 in value. An incentive performance award for outstanding service in connection with State employment over a sustained period or a special State project may be awarded for exceptional performance that exceeds the knowledge, skill, or ability required by the employee's position or exceptionally meritorious acts or services in the public interest. An award for outstanding service may not exceed \$3,000. In fiscal 2021, Executive Branch agencies gave employees 584 incentive awards valued at a total of \$478,129 (including paid administrative leave).

## **Teleworking Program**

To address the increased need for teleworking during the COVID-19 pandemic, Chapter 696 of 2021 established a statewide telework policy by altering existing telework requirements for Executive Branch agencies and applying the policies to the Legislative and Judicial branches. The Act required designated officials in all three branches of government and public institutions of higher education to establish a telework program and adopt related policies and guidelines.

Officials in the Executive Branch must coordinate with the Department of Information Technology when developing the guidelines. The Act also established the Office of Telework Assistance and the Business Telework Assistance Grant Program in the Department of Commerce and required each governing body of a county or municipality or the governing body's designee to establish a countywide or municipality-wide telework program and adopt related policies and guidelines.

The Secretary of the Department of Budget and Management maintains a list of all telework-eligible classifications based on input from agency leaders. Classifications may be eligible for full-time telework or hybrid telework. Classifications not approved may not participate in either full-time or hybrid telework.

## **Day Care Services**

The State operates day care centers in the State office facilities in Crownsville and the Department of Natural Resources' facility in Annapolis. The facilities are open to the children of State and non-state employees, although State employees are charged a lower rate. The facilities can accommodate infants, toddlers, and preschool children.

## **Miscellaneous Benefits**

In addition to the programs listed earlier, survivors of employees in the Executive Branch, including units with independent personnel systems, are entitled to death benefits when an employee is killed in the line of duty. Other miscellaneous benefits provided by State agencies include periodic and ongoing programs such as smoking cessation, stress management, and public employee recognition week.

## Chapter 5. Collective Bargaining

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### History of Collective Bargaining in Maryland

During the 1996 session, several bills were introduced that would have granted collective bargaining rights to State employees, including one proposed by Governor Parris N. Glendening. The bills did not pass; however, in May 1996, Governor Glendening issued an executive order implementing collective bargaining for certain State employees.

In 1999, Governor Glendening proposed comprehensive collective bargaining legislation. Chapter 298 of 1999 established statutory collective bargaining rights for employees in the principal departments of the Executive Branch and created an administrative process for collective bargaining. As introduced, the legislation would have gone beyond the procedures for collective bargaining established under the executive order by extending collective bargaining rights to nonfaculty employees of public institutions of higher education, creating procedures for resolving impasses, and requiring State employees to pay a fee to their unit's exclusive bargaining representative. As enacted, however, Chapter 298 simply codified much of the bargaining process set up by the Governor's executive order.

Two years later, in an effort again initiated by Governor Glendening, Chapter 341 of 2001 expanded collective bargaining for State employees to include certain employees of the University System of Maryland and its constituent institutions, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College. Faculty, administrators, supervisors, managers, contractual and temporary personnel, and certain other employees were not granted collective bargaining rights.

From enactment in 1999 through 2005, there were no changes to the laws governing collective bargaining for most State employees. Chapter 62 of 2006 revised various sections of the collective bargaining law. The most significant changes included allowing the voluntary adjustment of disputes arising from the implementation of a collective bargaining agreement, making the State Labor Relations Board an independent unit of State government, codifying unfair labor practices, allowing exclusive bargaining representatives to access specific employee information, and allowing nonbinding fact-finding in the event of an impasse during collective bargaining negotiations. Chapter 634 of 2007 allowed the exclusive representatives of bargaining units of State higher education institutions to access certain employee information.

The U.S. Supreme Court, in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), found that while an exclusive representative could collect a fee from nonunion members, the fee revenues could not be used to support ideological causes not germane to the organization's duties as the collective bargaining representative. Chapter 187 of 2009 authorized exclusive representatives to negotiate collection of such fees, and some current collective bargaining agreements include payment of fees by nonunion members in accordance with *Abood v. Detroit Board of Education*. The U.S. Supreme Court agreed in September 2017 to hear a case, *Janus v. American Federation of State, County, and Municipal Employees*, No. 16-1466, which challenged

the constitutionality of the court's decision in *Abood v. Detroit Board of Education* under the First Amendment. The U.S. Supreme Court ruled in favor of Janus, thereby potentially ending the collection of fees from nonunion members.

In anticipation of the Supreme Court decision, Chapters 24 and 27 of 2018 granted each exclusive representative the right to communicate with the employees it represents. The Acts required the Department of Budget and Management, the University System of Maryland system institutions, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College to provide employee information, including contact information, in a searchable and analyzable electronic format to an exclusive representative within 30 days of a new employee's hire. On written request of an employee, an exclusive representative must withhold further communication with an employee unless otherwise required by law or the written request is revoked by the employee. Additionally, matters relating to the time and manner of access to a new employee program may be negotiated. The State and public higher education institutions must also permit an exclusive representative to attend and participate in a new employee program that includes one or more employees who are in a bargaining unit represented by the exclusive representative and must provide the exclusive representative at least 10 days' notice of the program.

Chapters 23 and 26 of 2018 prohibited a memorandum of understanding that is agreed to and ratified for State employee collective bargaining units from expiring until a new memorandum of understanding is agreed to and ratified.

Chapter 46 of 2022 clarified that employees of the Office of the Public Defender are in specified services within the State Personnel Management System and authorized collective bargaining for assistant public defenders.

## **Collective Bargaining in State Government**

Approximately 27,755 State employees, excluding higher education employees and Maryland Transit Administration personnel, were covered by collective bargaining as of January 2022. While most Executive Branch employees have collective bargaining rights, management service employees, special appointees, the Governor's personal staff, and elected officials do not. Generally, employees of all Executive Branch agencies, the Maryland State Department of Education, and the Maryland Transit Administration have collective bargaining rights (about 2,500 employees of the Maryland Transit Administration were already covered by collective bargaining prior to 1996). Chapters 581 and 582 of 2012 further extended the State's collective bargaining law to apply to employees of the Office of the Comptroller, the Maryland Transportation Authority (non-police officers), the State Retirement Agency, and the Maryland State Department of Education. Chapter 182 of 2017 expanded collective bargaining rights to firefighters for the Martin State Airport at or below the rank of captain who are employed by the Military Department. Except for higher education employees, who are discussed later in this chapter, and the Maryland Transit Administration, covered employees are divided into

11 bargaining units. The State Labor Relations Board conducts the elections in which employees choose their exclusive bargaining representative. **Exhibit 5.1** contains a list of the bargaining units and their exclusive representatives.

The Maryland Transportation Authority Police Force, as part of a nonbudgeted agency, is not considered to be a unit of the Maryland Department of Transportation, and thus is not subject to the general State collective bargaining law. Chapter 704 of 2010 included in the general State collective bargaining law Maryland Transportation Authority police officers at the rank of first sergeant and below. In addition, the Act also required that the police officers have a separate bargaining unit. These positions are included under Unit J, as shown in Exhibit 5.1.

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**Exhibit 5.1**  
**Bargaining Units and Representatives**  
**As of January 2022**

<u>Unit</u>	<u>Title</u>	<u>Exclusive Representative</u>	<u>Employees</u>
A	Labor and Trades	AFSCME (American Federation of State, County, and Municipal Employees)	1,568
B	Administrative, Technical, and Clerical	AFSCME	4,359
C	Regulatory, Inspection, and Licensure	AFSCME	684
D	Health and Human Service Nonprofessionals	AFSCME	1,504
E	Health Care Professionals	American Federation of Teachers – Healthcare Maryland	1,800
F	Social and Human Service Professionals	AFSCME	3,234
G	Engineering, Scientific, and Administrative Professionals	Maryland Professional Employees Council	4,965
H	Public Safety and Security	AFSCME/Teamsters	7,371

<u>Unit</u>	<u>Title</u>	<u>Exclusive Representative</u>	<u>Employees</u>
H	Baltimore/Washington International Airport Firefighters	International Airport Professional Firefighters Local 1742 I.A.F.F., AFL-CIO, CLC	73
I	Sworn Police Officers	State Law Enforcement Officers Labor Alliance	1,793
J	Maryland Transportation Authority Sworn Officers	MD Transportation Authority Police Lodge #34	404
<b>Total</b>			<b>27,755</b>

Source: Department of Budget and Management; Maryland Department of Transportation

State employees may be represented by other employee organizations for purposes other than collective bargaining. Examples of existing employee organizations that have not been designated exclusive bargaining representatives for nonhigher education Executive Branch bargaining units are the Maryland Classified Employees Association, the Maryland Troopers Association, and the Maryland Correctional Administrators Association.

The Department of Budget and Management represents the State in negotiations with each unit's bargaining representative. These negotiations may include any matters relating to wages, hours, and terms and conditions of employment. The Governor is not required to negotiate any matter that is inconsistent with State law; however, the Governor can negotiate items that require a statutory change or an appropriation as long as the parties understand that the item cannot become effective until the General Assembly takes action. The General Assembly, however, is not bound by the agreement. The collective bargaining statute does not provide for binding arbitration; instead, the State and bargaining representatives must meet and confer about negotiable terms. However, if no agreement is reached for the next fiscal year by October 25, a fact finder may be appointed.

After negotiations have concluded, a memorandum of understanding is prepared that delineates all agreements that the bargaining parties have reached. Upon approval by the Governor and a majority of the employees in the bargaining unit, the terms of the memorandum are agreed. A memorandum of understanding may be effective for a period of one to three years. However, a memorandum of understanding that is agreed to and ratified is prohibited from expiring until a new memorandum of understanding is agreed to and ratified.

The statute also prohibits certain activities. Employees may not strike, nor may the State engage in a lockout. If a strike or a lockout occurs or appears imminent, the State or employee organization may petition the circuit court for relief.

Negotiations between the Governor and the bargaining units have resulted in a number of benefits for employees that required General Assembly approval. For example, the General Assembly passed legislation authorizing a sick leave incentive program, increasing death benefits for the survivors of employees killed in the line of duty, and requiring overtime payments to certain employees required to work on prescheduled holidays. All these changes were collectively bargained.

## Service Fees

While an exclusive representative bargains for all members of a particular bargaining unit, only a portion of these individuals pays union membership dues to the representing organization. A service fee is paid by an employee to his or her bargaining unit's exclusive representative to offset costs attributable to the collective bargaining process. Generally, this fee is less than the fee charged for union dues. Prior to 2009, the State's collective bargaining laws expressly prohibited negotiating for service fees, also known as agency shop fees and fair share fees. Chapter 187, more commonly known as the "Fair Share Act," authorized the State to collectively bargain with the exclusive representative of a bargaining unit for service fees from State employees who are not members of that exclusive representative.

An employee who has religious objections to paying the service fee may instead pay an amount not to exceed the service fee to a charitable organization. The Act did not apply to the State's public four-year higher education institutions or Baltimore City Community College. Chapter 428 of 2013 did, however, implement authorization for the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College to negotiate service fees from nonmembers. Under the terms of the U.S. Supreme Court's *Janus* decision, discussed earlier, service fees are no longer collected.

## Collective Bargaining for Child Care Providers

The child care subsidy program, administered by the Maryland State Department of Education, provides financial assistance with child care costs to eligible families through each local department of social services. In 2007, Governor Martin J. O'Malley signed an executive order authorizing collective bargaining for registration and registration-exempt family child care providers who participate in the child care subsidy program. An October 15, 2009 memorandum of understanding between the Governor, the Maryland State Department of Education, and the Service Employees International Union recognized that organization as the exclusive collective bargaining representative for all registered and registration-exempt family child care providers participating in the child care subsidy program. The memorandum of understanding also specified that if legislation expanding the rights of providers to engage in collective bargaining is signed by the Governor, the exclusive representative may reopen negotiations related to these expanded rights.

Chapter 496 of 2010 codified collective bargaining rights for child care providers. The Act also established a private fund to protect child care providers against extreme hardship or loss of livelihood resulting from late State payments.

### **Collective Bargaining for Home Care Providers**

Independent home care providers receive compensation for providing home care services to eligible adults. In 2007, the Governor issued an executive order specifying that the State must recognize a provider organization designated by a majority of independent home care providers who participate in the Medicaid Waiver for Older Adults Program, the Medicaid Personal Care Program, the Living at Home Waiver Program, or the In-Home Aide Service Program for purposes of collective bargaining. Chapter 171 of 2011 codified collective bargaining rights for independent home care providers.

### **Collective Bargaining for Teachers**

State public school teachers have collective bargaining rights throughout the State; the State Board of Education, however, had served as the ultimate arbiter of all disputes between local boards of education and the local employee organizations representing school system personnel. Local employee organizations viewed this bargaining process as unfair. As a result, Chapters 324 and 325 of 2010 established a Public School Labor Relations Board to administer and enforce the labor relations laws for local boards of education and their employees. The law authorized the Public School Labor Relations Board to arbitrate impasses that cannot be resolved through mediation and made any arbitration agreement reached binding on the parties. Under the Acts, the State Board of Education no longer has the power to decide public school labor relations disputes, and the authority of the State Superintendent of Schools to declare labor impasses was repealed. The law also established a new mediation process for resolving disputes and a new process for the Public School Labor Relations Board to decide the negotiability of topics, and it repealed the authority of the local boards of education to make final determinations of matters that have been the subject of negotiation.

Prior decisions of the State Board of Education are not binding on the Public School Labor Relations Board but may be considered precedent. For a more detailed discussion of collective bargaining for teachers, please see *Volume IX – Education in Maryland*.

### **Collective Bargaining in Higher Education**

Certain State employees at public higher education institutions have been granted certain collective bargaining rights. Similar to the system established for State employees, the affected higher education parties may bargain over wages, hours, and other terms and conditions of employment. The employer's representative and the employees' exclusive representative have the

authority to “meet and confer” and execute a memorandum of understanding incorporating all matters of agreement reached. As with regular State employees, there is a provision for nonbinding fact-finding. To the extent that the matters of agreement require legislative approval, these matters must be recommended to the General Assembly, which is not bound by the agreement.

Prior to the establishment of collective bargaining for State higher education employees, there was a statutory requirement that these employees receive the same compensation and benefits package as State employees. This requirement no longer exists, and each group of State employees must negotiate their own compensation and benefits independently. An independent Higher Education Labor Relations Board oversees collective bargaining for eligible staff at State four-year institutions of higher education. Chapters 16 and 27 of the 2021 special session authorized collective bargaining and established a collective bargaining process for some employees of all community colleges in the State, including full-time faculty, part-time faculty, and specified staff. The ability to negotiate for non-economic terms and then wages is staggered over several years for different colleges.

For a more detailed discussion of collective bargaining for higher education employees, please see *Volume IX – Education in Maryland*.



## **Chapter 6. Personnel Policies and Practices in the Legislative Branch**

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This chapter reviews the compensation and personnel policies of the Legislative Branch of State government. As a separate branch of State government, the legislature has the authority to establish its own personnel policies and procedures. It also has independent salary setting authority and control over the number of regular and contractual workers employed by the General Assembly and the Department of Legislative Services. All employees in the Legislative Branch are treated similarly to special appointments in the State Personnel Management System in that they do not have the civil service protections that cover most Executive Branch employees. Although the employees are not governed by the State Personnel Management System, many of the personnel policies adopted by the Legislative Branch are similar to those in the Executive Branch.

### **Compensation**

#### **Members of the General Assembly**

A constitutional amendment, approved by the voters in 1970, created the nine-member General Assembly Compensation Commission. The commission includes five persons appointed by the Governor, two appointed by the President of the Senate, and two appointed by the Speaker of the House of Delegates. Members of the General Assembly and State and local government officers and employees are not eligible for appointment to the commission.

The constitution requires that the commission submit salary, expense allowance, and pension recommendations to the General Assembly by formal resolution within 15 days after the beginning of the last session in a four-year term. Rates of compensation and pensions are to be uniform for all members of the legislature, except that the officers of the Senate and House of Delegates may receive higher compensation. Any item in the commission resolution may only be reduced or rejected by the General Assembly through a joint resolution. Unless modified by the General Assembly, commission recommendations become effective for the next four-year term.

Pension benefits and requirements for the Legislative Pension Plan were changed in light of significant State employee pension changes in 2011. Membership in the Legislative Pension Plan became mandatory for all legislators beginning in 2015 and member contribution rates were raised from 5% to 7%, to be consistent with changes made to the contribution rates for members of the Employees' and Teachers' Pension Systems. For legislators with no creditable service prior to January 14, 2015, the normal and early retirement ages were increased to 62 and 55 years of age, respectively. Also, for legislators with no creditable service prior to January 14, 2015, the subsidy for participation in a State health program as a retiree was reduced to one-twentieth of the full State subsidy for each year of service, in comparison to a subsidy of one-sixteenth for retired

members with creditable service prior to January 14, 2015. “Chapter 11. Plan Summaries” of this handbook describes the details of the Legislative Pension Plan and post employment benefits for retired legislators.

The commission met prior to the 2022 legislative session and voted unanimously to increase legislative salaries in each of the four years of the 2023-2026 term, following no salary increases in the prior term. **Exhibit 6.1** shows the salaries for legislators and the Presiding Officers under the 2018 and 2022 resolutions.

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**Exhibit 6.1**  
**General Assembly Member Salaries**  
**Fiscal 2019-2026**

<u>Fiscal Year</u>	<u>Members</u>	<u>% Change</u>	<u>President/ Speaker</u>	<u>% Change</u>
<b>2018 Resolution</b>				
2019-2022	\$50,330	0.00%	\$65,371	0.00%
<b>2022 Resolution</b>				
2023	\$52,343	4.00%	\$67,986	4.00%
2024	54,437	4.00%	70,705	4.00%
2025	55,526	2.00%	72,119	2.00%
2026	56,636	2.00%	73,562	2.00%

Source: Department of Legislative Services

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The 2018 resolution implemented other changes related to out-of-state lodging reimbursement, death benefits, and creditable service for the Legislative Pension Plan. The resolution authorized the Presiding Officers to allow a higher reimbursement rate for out-of-state lodging for conferences with higher rates than the federal General Services Administration rate. The 2022 resolution made only one technical change regarding in-district travel to expense reimbursements.

The 2018 resolution made several modifications to the provision of death benefits. The resolution altered the age at which a designated beneficiary (other than a surviving spouse) can receive a retirement allowance or death benefit from 60 to 62 (or from 50 to 55 for early retirement) for members who have no creditable service before January 14, 2015. The resolution also increased the age that a child of a member who dies while serving in the General Assembly may receive a death benefit from 18 to 26, adding that the provision of this benefit could be paid to disabled children regardless of age. These changes reflected similar changes made to the employee

plans in the State Retirement and Pension System. The resolution also removed an arcane reference that requires a legislator to die contemporaneously with the legislator's spouse in order for a child to receive a death benefit, and it authorized the naming of a nonprofit organization as a beneficiary to receive a lump-sum death benefit. The 2022 commission recommended no changes to death benefits or other benefits.

In regard to the Legislative Pension Plan, the 2018 resolution made several changes to creditable service. Beginning with the 2019-2023 term, the resolution removed the ability of legislators to purchase service credit in order to vest in the Legislative Pension Plan and clarified for members who had previously purchased service credit when those members may begin to receive retirement benefits. The resolution also provided up to three years of service credit in the Legislative Pension Plan for military service. Outside of these changes, the commission recommended all other aspects of the 2014 resolution currently governing legislative compensation to be retained. The 2022 resolution recommended only technical and clarifying changes for the legislative pension plan. For further information regarding the compensation for members of the General Assembly, see *Volume I – Maryland Legislator's Handbook*.

## **Staff**

Regular full- and part-time employees of the General Assembly and its staff agency, the Department of Legislative Services, are governed by a separate pay plan and are not subject to the pay plan governing Executive Branch employees. Their employment is at the will of their employer. Because the Legislative Branch has independent salary setting authority, the President of the Senate and Speaker of the House of Delegates must approve the job classifications and salary schedules of legislative staff. Employees in the Department of Legislative Services are in a classification plan that places employees in three career fields: skilled support; professional; and management personnel. Within each field are several position classifications that may contain more than one level (*e.g.*, Policy Analyst I, Senior Analyst II). The Department of Legislative Services uses a pay-for-performance system with fairly broad pay scales in each level.

## **Personnel Policies and Procedures**

Legislative employees are not governed by the personnel procedures set forth in the State Personnel and Pensions Article, although the policies of the Legislative Branch are generally equivalent. The General Assembly and the Department of Legislative Services have their own policies for recruiting, hiring, promoting, disciplining, laying off and terminating employees, and resolving employee grievances. Furthermore, the Legislative Branch has developed independent policies governing employee performance and conduct. The legislature has adopted policies on anti-harassment and substance abuse. Leave policies and benefits are virtually identical for Legislative and Executive Branch employees. Legislative Branch employees accrue annual and sick leave on the same basis as other State employees and are entitled to the same health and retirement benefits.

One area in which the two branches do differ is in the accrual of compensatory leave for Fair Labor Standards Act exempt employees. While most exempt employees in the Executive Branch earn compensatory leave on an hour-per-hour basis for any work beyond normal work hours, exempt employees in the Legislative Branch may only accrue compensatory leave for work performed on weekends and State holidays.

As a nonpartisan staff agency, employees of the Department of Legislative Services are barred from participating in any campaign in support of or in opposition to a candidate for any public office at any level of government. They also may not contribute financially to the political campaign of any person running for election or reelection to the General Assembly or any State office.

## Chapter 7. Personnel Policies and Practices in the Judicial Branch

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This chapter reviews the compensation and other personnel policies of the Judicial Branch of State government. Like the legislature, the Judiciary has the authority to develop and administer its own personnel policies and regulations. However, many of these policies are similar (if not identical) to those in the Executive Branch, especially with regard to leave and benefits.

### Judicial Compensation

The Judicial Compensation Commission, established in 1980, is required to review judicial salaries and pensions and make recommendations to the Governor and the General Assembly once every four years. The General Assembly may amend a joint resolution from the commission to decrease, but not increase, any of the commission's salary recommendations. The General Assembly may not reduce a judge's salary below its current level. Failure to adopt or amend the joint resolution within 50 calendar days of its introduction results in adoption of the salaries recommended by the commission. If the General Assembly rejects any or all of the commission's recommendations, the affected judges' salaries remain unchanged, unless modified by other provisions of law.

General State employee salary increases apply to judges only in years in which judges' salaries are not increased in accordance with a resolution from the commission's recommendations.

The following officials have salaries that are tied to judicial salaries:

- the State Prosecutor and the Public Defender – not less than that of a circuit court judge;
- members of the Workers' Compensation Commission – at least equal to a District Court judge, with the chair's salary being at least \$1,500 higher than the members' salaries; and
- State's Attorneys' of various counties – a percentage of a circuit or District Court judge's salary, as discussed in further detail under local expenditures.

The commission met two times in 2017 and made recommendations to increase the salaries of Maryland judges by \$35,000 over the next four years. The recommendations of the commission were submitted during the 2018 legislative session as Senate Joint Resolution 5 and House Joint Resolution 3 and proposed annual salary increases for all judges to be phased in in the following manner: (1) \$10,000 beginning July 1, 2018; (2) \$10,000 beginning July 1, 2019; (3) \$7,500 beginning July 1, 2020; and (4) \$7,500 beginning July 1, 2021. The General Assembly,

however, amended House Joint Resolution 3 (which became Joint Resolution 3) to reduce the salary enhancements to \$20,000 over four years, to be phased in at \$5,000 each year.

The commission met prior to the 2022 session and made recommendations to increase judicial salaries by \$10,000 annually for each judgeship through the following four-year term. The recommendations were introduced in the 2022 session as Senate Joint Resolution 4 and House Joint Resolution 3. Because the General Assembly did not adopt or amend either resolution, the resolutions were enacted 50 days after introduction as Joint Senate Resolution 3 and Joint House Resolution 2, establishing the salaries shown in **Exhibit 7.1** for fiscal 2023 through 2026.

The commission also discussed additional compensation for administrative judges for county circuit courts or the District Court but decided it did not have enough information to make a recommendation for the 2022 session. Members voted unanimously that the commission be authorized to meet again prior to 2025 – the next time it is scheduled to convene – in order to further consider the issue.

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**Exhibit 7.1**  
**Senate Joint Resolution 3 and House Joint Resolution 2 of 2022**  
**Judicial Salaries**  
**Fiscal 2023-2026**

<b><u>Position</u></b>	<b><u>Prior Salary</u></b>	<b><u>2023</u></b>	<b><u>2024</u></b>	<b><u>2025</u></b>	<b><u>2026</u></b>
<b>Court of Appeals</b>					
Chief Judge	\$215,433	\$225,433	\$235,433	\$245,433	\$255,433
Judge	196,433	206,433	216,433	226,433	236,433
<b>Court of Special Appeals</b>					
Chief Judge	\$186,633	\$196,633	\$206,633	\$216,633	\$226,633
Judge	183,633	193,633	203,633	213,633	223,633
<b>Circuit Court</b>	\$174,433	\$184,433	\$194,433	\$204,433	\$214,433
<b>District Court</b>					
Chief Judge	\$183,633	\$193,633	\$203,633	\$213,633	\$223,633
Judge	161,333	171,333	181,333	191,333	201,333

Source: Department of Legislative Services

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## **Judges' Retirement System**

The commission made recommendations in its 2011 report on appropriate retirement benefits and member contribution levels, which took into account the sustainability of pension systems, based on instructions included in Chapter 397 of 2011. The commission voted to include in its report a recommendation that the contribution rate for judges appointed after July 1, 2012, increase from 6% to 8%. Chapter 485 of 2012 increased the member contribution rate from 6% to 8% of earnable compensation for all members of the Judges' Retirement System and further added a five-year vesting requirement for individuals who become Judges' Retirement System members on or after July 1, 2012. Chapters 248 and 249 of 2018 clarified the five-year vesting requirement for judges appointed after age 65. As judges are not eligible to remain in their position after reaching age 70, a judge appointed after turning 65 is not able to meet the five-year vesting requirement. Chapter 248 and 249 specified that a judge may receive a benefit with less than five years of service if the judge's years of service are equal to the mandatory retirement age minus the age at which the judge was appointed. Neither the 2018 nor the 2022 commission recommended any changes to the Judges' Retirement System. "Chapter 11. Plan Summaries" of this handbook describes the details of the Judges' Retirement System and post employment benefits for retired judges.

## **District and Circuit Court Judgeships**

**Exhibits 7.2** and **7.3** show the number of judgeships in the District Courts and circuit courts, respectively, in fiscal 2023. The Chief Judge of the Court of Appeals annually certifies to the General Assembly the need for additional judges in the State. The Judiciary uses best practices developed by the National Center for State Courts to calculate judicial need, which takes into account the amount of judicial work generated on average per case filing within each distinct case type. Although the fiscal 2020 certification indicated a projected need of 14 additional judges throughout the State, the Judiciary requested 7 judges for the locations deemed to be in most critical need of additional judicial resources. Chapter 749 of 2019 increased the number of resident judges of the circuit court by adding one additional judgeship in Washington County. Chapter 749 also created one additional District Court judgeship in District 4 (which must be appointed from St. Mary's County), one additional District Court judgeship in District 7 (Anne Arundel County), and two additional District Court judgeships in District 5 (Prince George's County) and District 8 (Baltimore County). General fund expenditures are expected to increase by at least \$2.9 million annually by fiscal 2023. Due in part to the impacts of the COVID-19 pandemic, the Judiciary did not request any additional judges in fiscal 2021 through 2023.

**Exhibit 7.2**  
**District Court Judgeships**  
**Fiscal 2023**

	<u><b>Judgeships</b></u>
<b>Chief Judge</b>	1.0
<b>District 1</b>	
Baltimore City	28.0
<b>District 2</b>	
Dorchester	1.0
Somerset	1.0
Wicomico	2.0
Worcester	2.0
<b>District 3</b>	
Caroline	1.0
Cecil	2.0
Kent	1.0
Queen Anne's	1.0
Talbot	1.0
<b>District 4</b>	
Calvert	2.0
Charles	3.0
St. Mary's	2.0
<b>District 5-10</b>	
Prince George's	19.0
Montgomery	13.0
Anne Arundel	10.0
Baltimore	15.0
Harford	4.0
Carroll	2.0
Howard	5.0
<b>District 11-12</b>	
Frederick	3.0
Washington	2.0
Allegany	2.0
Garrett	1.0
<b>State</b>	<b>124.0</b>

Source: Department of Legislative Services

**Exhibit 7.3**  
**Circuit Court Judgeships**  
**Fiscal 2023**

	<u><b>Judgeships</b></u>
<b>First Circuit</b>	
Dorchester	1
Somerset	1
Wicomico	4
Worcester	3
<b>Second Circuit</b>	
Caroline	1
Cecil	4
Kent	1
Queen Anne's	1
Talbot	1
<b>Third Circuit</b>	
Baltimore	20
Harford	6
<b>Fourth Circuit</b>	
Allegany	2
Garrett	1
Washington	6
<b>Fifth Circuit</b>	
Anne Arundel	13
Carroll	4
Howard	5
<b>Sixth Circuit</b>	
Frederick	6
Montgomery	24
<b>Seventh Circuit</b>	
Calvert	3
Charles	5
Prince George's	24
St. Mary's	3
<b>Eight Circuit</b>	
Baltimore City	35
<b>State</b>	<b>173</b>

## **Clerks of the Court**

There are 24 circuit court clerk offices in Maryland, each administered by a locally elected Clerk of the Circuit Court. Each clerk's office is responsible for managing court cases, recording land records, and issuing licenses as well as related financial and administrative functions. Clerks of the court are subject to and governed in accordance with the rules of the Court of Appeals. In addition, the appointment and removal of personnel in the clerks' offices are subject to rules adopted by the Court of Appeals. The Chief Judge has authority over compensation for positions in the clerks' offices (other than the elected clerk). Chapters 188 and 189 of 2022 increased the maximum annual salary that the Board of Public Works may set for the clerk of each circuit court from \$124,500 to \$146,500, effective at the beginning of the subsequent term of office. The actual salary paid to an individual clerk, up to the maximum, is determined by the Board of Public Works and is based on the relative volume of business and receipts in the clerk's office.

## **Registers of Wills**

Similar to the salaries of clerks of the circuit court, while the maximum permissible salary for a register of wills is set by statute, the Board of Public Works determines the salary for each register based on specified factors. Chapter 427 of 2022 increased the maximum annual salary that the board may set for a register of wills from \$124,500 to \$146,500, effective at the beginning of the subsequent term of office.

## **District Court Employees**

Clerical, administrative, and constabular employees of the District Court were originally included in the State Personnel Management System because the Judiciary did not have a personnel system. When the Judiciary developed its own personnel system, these employees remained with the State system, although they were subject to the Judiciary's hiring, termination, and grievance provisions. During the 1998 session, however, the General Assembly passed legislation that removed these employees from the State system and placed them fully under the Judicial Branch. In addition, the District Court commissioners' salaries are set by the Chief Judge of the Court of Appeals.

## **Personnel Policies and Procedures**

As noted earlier, the Judiciary is not governed by the State Personnel Management Systems' procedures; it has its own policies for recruitment, hiring, grievances, and terminations. In most cases where it has independent salary setting authority, it likewise has the power to establish job classifications and salary scales. Such action, of course, must receive budgetary approval by the General Assembly. Currently, judicial employees are entitled to the same or comparable leave provisions and health and retirement benefits as State employees in the Executive and Legislative branches.

## Chapter 8. Introduction to the State Retirement and Pension System

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The State Retirement and Pension System of Maryland provides retirement allowances and other benefits to State employees, teachers, police officers, judges, legislators, and employees of participating governmental units. As of June 30, 2021, the system had 194,311 active members, 169,368 retirees and beneficiaries, and 48,051 vested former members, for a total of 411,730 participants. Since June 30, 2017, the number of active members grew by less than 1.0% and the number of vested former members dropped by almost 12.0%. However, the system has experienced an almost 8.3% increase in the number of retirees and beneficiaries with 169,368 in 2021 compared to 156,366 in 2017. In comparison, for the prior five-year period from June 30, 2012 to June 30, 2017, the number of retirees and beneficiaries in the system increased by more than 22% while the number of active members remained virtually unchanged; the number of vested former members grew only slightly.

### Board of Trustees

The responsibility for the administration and operation of the system is vested in the 15-member Board of Trustees for the State Retirement and Pension System. Under current law, 3 of the 15 board members are *ex officio* members: the State Comptroller; the State Treasurer; and the Secretary of Budget and Management. Seven members are appointed by the Governor to four-year terms, including one representative of participating local governmental units, one representative of the interests of county governments, and five representatives of the general public who must be private citizens knowledgeable in the administration and operation of pension systems. Lastly, the law requires that five trustees be elected by the active members and retirees of specific retirement or pension systems as follows:

- The active members and retirees of the Employees' Pension System, the Employees' Retirement System, the Correctional Officers' Retirement System, the Law Enforcement Officers' Pension Plan, the Local Fire and Police System, the Judges' Retirement System, and the Legislative Pension Plan elect:
  - one trustee who is an *active member* of one of those systems; and
  - one trustee who is a *retiree* of one of those systems.
- The active members and retirees of the Teachers' Pension System and the Teachers' Retirement System elect:
  - one trustee who is an *active member* of one of those systems; and

- one trustee who is a *retiree* of one of those systems.
- The active members and retirees of the State Police Retirement System elect one trustee who is *either an active member or a retiree* of the State Police Retirement System.

In 2013, the total membership of the board increased from 14 to 15 members as a result of legislation, which established a new position representing county governments. The trustee representing the interests of county governments must have at least 10 years of experience in fiscal management and oversight of county government budgets, and the Governor may appoint the trustee from a list submitted by the Maryland Association of Counties. The new position representing county governments was created in recognition of the new obligation for local school boards to pay a portion of teachers' pension costs beginning in fiscal 2013.

### **Investment Program**

Prior to the start of fiscal 2008, the board had total and final responsibility for establishing and directing the system's investment program. However, legislation was enacted in 2007 that gave the chief investment officer for the State Retirement and Pension System the sole authority to hire and fire external managers to manage the system's assets, a responsibility that previously rested with the board. With the exception of this modification in responsibility, the board maintains all remaining administrative and fiduciary responsibility for the proper operation of the various plans and their subsystems, including establishing the asset allocation for the investment program. The board is responsible for seeing that the assets of the systems are held exclusively for the purpose of providing benefits for the participants in the systems. As fiduciaries, the members of the board must exercise the care, skill, prudence, and diligence of a "prudent person" in seeing that the assets of the system are utilized in accordance with the law for the exclusive purpose of providing benefits for the participants.

Legislation was enacted in 2018 that granted the board independent salary setting authority to determine and create positions necessary to carry out the professional investment functions of the Investment Division in the State Retirement Agency and to set compensation for the positions, including incentive compensation. The legislation specified that compensation and operating expenses of the division are to be paid from the accumulation fund of each system instead of by participating employers and that those expenses for the division are not subject to appropriation by the Governor and General Assembly. Incentive compensation for the chief investment officer for the State Retirement and Pension System and other division staff must be based on objective criteria as set forth by an Objective Criteria Committee established in the bill. The committee must meet at least once every five years beginning in December 2018. Incentive compensation is subject to a cap, which is 33% of base salary. Other restrictions include requiring the payment of incentives over multiple years and prohibiting payment of incentives after separation from employment, except in the case of retirement directly from the division.

The board is statutorily required to appoint an investment committee to advise the board on (1) matters pertaining to the investment program; (2) compliance of investment programs with

board policy; (3) preparation of an investment policy manual; and (4) bonding requirements of employees of the Maryland State Retirement Agency. The statute requires the investment committee to be composed of at least six members. Three of the investment committee members must be representatives of (1) the Employees' Pension System or the Employees' Retirement System; (2) the Teachers' Pension System or the Teachers' Retirement System; and (3) the State Police Retirement System. Additionally, the board must appoint three members of the public who are not members or retirees of the system and who have experience in management and control of large investments and have at least 10 years of combined experience in specific capacities such as a portfolio manager or a chartered financial analyst. With the exception of the three public members, the members of the investment committee must be appointed from the board's own membership.

The board also appoints an actuary. Currently, actuarial services are provided by contract with Gabriel, Roeder, Smith and Company, a national actuarial firm. Additionally, general investment counsel is provided under contract by Meketa Investment Group.

### **Standing Committees**

The board currently has four standing committees. However, only the investment committee is required by law, as mentioned above. The other three standing committees have been established by board policy and are composed entirely of board members. Currently, the board's five standing committees are:

- the **Administrative Committee** – reviews various issues that the full board deems to require detailed study and makes recommendations to the full board;
- the **Audit Committee** – assists the board in fulfilling its oversight responsibilities regarding financial reporting, risk management, internal control, and internal and external audit functions;
- the **Corporate Governance and Securities Litigation Committee** – addresses corporate governance matters, such as divestment and proxy monitoring, and advises the board on securities litigation matters; and
- the **Investment Committee** – advises the board on investments; see above for more details.

### **Objective Criteria Committee**

The board must establish an Objective Criteria Committee at least once every five years. The committee formulates objective, performance-based criteria that serves as the basis for incentive compensation for Investment Division employees. This reoccurring committee is required under law, following the enactment of Chapters 727 and 728 of 2018.

## **Medical Boards**

By law, the board must appoint one or more medical boards, each consisting of three members and not more than three alternates. There are currently two medical boards that meet on alternate weeks. The medical boards investigate the applications of members seeking disability retirement and submit written reports, with conclusions and recommendations, to the board of trustees.

## **Maryland State Retirement Agency**

The Maryland State Retirement Agency, which operates under the supervision of the board of trustees, is responsible for carrying out all administrative duties and business of the system. In fiscal 2022, the agency operated with a budget of \$44.3 million and 215 regular positions.

The agency is composed of the Office of the Executive Director and seven other divisions or offices: (1) Administration Division; (2) Finance Division; (3) Internal Audit Division; (4) Information Systems Division; (5) Business Operations Office; (6) External Affairs Division; and (7) Investment Division. Legal services for the system are provided by assistant Attorneys General assigned from the State Attorney General's Office; however, the agency is responsible for paying the salaries of the assistant Attorneys General.

### **Office of the Executive Director**

The Office of the Executive Director is responsible for the administration and oversight of the system including administrative and investment policy, legislation and legal liaison, and financial affairs. The board of trustees appoints the executive director who serves at the pleasure of the board. The executive director is in charge of the agency and is responsible for compiling a comprehensive annual budget for submission to the board. In addition, the director has powers and duties as delegated by the board of trustees. By custom, the executive director also serves as secretary of the board.

### **Administration Division**

The Administration Division is responsible for the payment of benefits, administration of employee contributions, and individual and group membership counseling. The retirement administrator is responsible for the operations of the division.

### **Finance Division**

The Finance Division is responsible for accounting and financial reporting, budget administration, and procurement. Under the leadership of the chief financial officer, the division prepares a *Comprehensive Annual Financial Report* of the Maryland State Retirement and Pension

System and develops the annual budget for the agency. The budget is submitted to the board of trustees, which in turn submits the budget to the Governor. After review through the executive budget process, the budget request is submitted to the General Assembly for review and appropriation; the budget for the Investment Division is not subject to legislative approval. All State and local employers that participate in the State Retirement and Pension System (including the State) are charged a per-member administrative fee to fund the agency's operating expenses (except for the Investment Division, which is paid for from the system's Accumulation Fund). Prior to fiscal 2013, the agency's budget was funded solely with special funds from the accumulation funds of the several systems (*i.e.*, the pension trust fund).

### **Internal Audit Division**

The Internal Audit Division ensures agency compliance with State laws, rules, and regulations, as well as ensuring employer compliance with agency reporting policies. The chief internal auditor is the director of the division.

### **Information Systems Division**

The Information Systems Division is responsible for the design and implementation of new automated management information systems and for maintenance and enhancements to existing systems, including data security and hardware and software troubleshooting. The division oversees the contract for the programmers outside of the agency who work on the development, operation, and maintenance of the Maryland Pension Administration System. The director of the division is the chief information systems officer.

### **Business Operations Office**

The Business Operations Office is responsible for the design and implementation of the Maryland Pension Administration System, which automates all functions of the system used to administer retirement and pension benefits for State employees. The office works directly with the programmers who are contracted to work on the Maryland Pension Administration System. The project business sponsor oversees the activities of this office.

### **External Affairs Division**

The External Affairs Division is responsible for communications with the media, members of the General Assembly, system members and retirees, member associations, and the general public. The division provides information about goals and policies of the board, functions and procedures of the agency, and the rights and benefits of the system.

## **Investment Division**

The Investment Division is responsible for the management, control, and investment of the system's Retirement Accumulation and Annuity Savings funds. The division maintains the equity and bond index funds, the self-liquidating bonds, and the reinvestment reserve. In addition, the division is responsible for the board's cash management program, the tracking of all investments, and providing staff support to the investment committee. The board of trustees is responsible for appointing a chief investment officer who, in addition to having the sole responsibility to hire and fire external asset managers, is also charged with supervising and monitoring the external asset managers and making recommendations to the investment committee regarding investment policy and strategy.

Chapters 727 and 728 provided the board with the authority to determine and create positions necessary to carry out the professional investment functions of the Investment Division and to set their compensation, subject to provisions included in the legislation. Specifically, Chapters 727 and 728 require the board to adopt objective, performance-based criteria for setting the qualifications and compensation of the chief investment officer and Investment Division staff, including incentive compensation. Chapter 356 of 2022 established certain exceptions to the provisions of Chapters 727 and 728, such as authorizing unpaid incentive compensation to be paid to a separating employee if the employee is retiring directly from the division.

## **Joint Committee on Pensions**

Since 1975, the General Assembly has exercised oversight of the State Retirement and Pension System through annual ad hoc interim joint committees. Joint Resolution 27 of 1975 established a Pension Study Commission composed of four senators, four delegates, four members of the Executive Branch, and three employee organization representatives. This commission reported its findings in 1978, and its recommended legislation was enacted in 1979. Beginning in 1980, the President of the Senate and the Speaker of the House of Delegates each appoint members to an interim Joint Committee on Pensions. Traditionally, the members of the joint committee are members of the two standing committees that handle pension legislation during the legislative session.

Currently, these standing committees are the Senate Budget and Taxation Committee and the House Appropriations Committee. Within each standing committee, there is a subcommittee on pensions and a subcommittee chair. The two subcommittee chairs have historically served as the co-chairs of the Joint Committee on Pensions. Most major pension bills are introduced through this joint committee, including legislation requested by the State Retirement and Pension System's board of trustees.

## **Chapter 9. Historical Background**

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### **Origin of the System and Plan History**

#### **Origin of the State Retirement and Pension System**

The genesis of the State Retirement and Pension System is found in the Baltimore City Employees' Retirement System, which was established by the city in 1924. This pension system was based on concepts promulgated by Mr. George B. Buck of New York.

Mr. Buck's concepts were that people could receive an income in retirement if they contributed a portion of their earnings during their careers. This amount would be matched by the employer. Mr. Buck, trained in the life insurance actuarial discipline, had refined his concepts to the point whereby a contribution of 4% to 6% of pay by the employee would provide an annuity of 1/140 for each year of active service, and a similar contribution by the employer would provide a similar pension. Therefore, upon retirement, the employee would receive a retirement allowance of 1/70 (1/140 + 1/140) for each year of service. Thus, an employee who worked 35 years could retire at half pay (35/70), if interest earnings met assumptions.

#### **Plan History**

The following section provides a general history of the retirement and pension plans within the State Retirement and Pension System. For a more detailed discussion of the provisions of each plan, see "Chapter 11. Plan Summaries" of this handbook.

#### **Teachers' Retirement System**

In addition to city employees, the Baltimore City Employees' Retirement System included city public school teachers, probably due to its unique education department arrangement. In 1927, legislation was enacted (Chapter 344) establishing the Maryland State Teachers' Retirement System, which expanded the same benefit to county school teachers throughout the State.

#### **Employees' Retirement System**

In 1941, the State Employees' Retirement System was established (Chapter 377), which mirrored, in most instances, the Teachers' Retirement System. At the time of establishment, it was exclusively for State employees. However, in 1945 (Chapter 969), "municipal corporations" (defined as a county, incorporated municipality, special taxing district, or other political subdivision) were allowed to participate in the system if they paid all their respective costs. Thus, local government employees also were allowed to be members of this system.

Elections were held in 1956 to determine if Maryland public employees wanted to participate in the federal Social Security program. The members of the employees' and teachers'

systems elected to participate in Social Security, while the members of the State Police system did not. Thus, all regular State employees and all teachers in the State became members of the Social Security system with the State paying the employers' cost for both groups.

### **State Police Retirement System**

The State Police Retirement System was established in 1949 (Chapter 349). At its inception, the system allowed retirement at an earlier age with less service than the Employees' Retirement System (25 years of service instead of 30 years) and provided a somewhat higher benefit level. As mentioned above, in 1956, when elections were held to determine if Maryland public employees wanted to participate in the federal Social Security program, the members of the State Police Retirement System elected not to participate.

### **Legislative Pension Plan**

In 1966, legislation was enacted that provided for retirement allowances to be paid to legislators under certain conditions (Chapter 281). This Legislative Pension Plan was established as a subsystem within the Employees' Retirement System. In 1970, legislation was passed (Chapter 576) and ratified by the voters as a constitutional amendment establishing a General Assembly Compensation Commission. In 1971, this commission redesigned the Legislative Pension Plan. Since that time, the plan has been amended in various ways by the commission at its quadrennial meetings. The legislative plan continues to be administered as a subsystem of the Employees' Retirement System.

### **Governor's Retirement Plan**

In 1971, legislation was enacted that established the Governor's Retirement Plan, which provides special retirement benefits for former governors and their surviving spouses (Chapter 239). Like the Legislative Pension Plan, the Governor's Retirement Plan was established as a subsystem of the Employees' Retirement System.

### **Judges' Retirement System**

In 1974, a hodgepodge of State and local retirement provisions for judges was replaced with the State Judicial Pension Plan (Chapter 483). The plan was later renamed as the Judges' Retirement System.

### **Correctional Officers' Retirement System**

Legislation enacted in 1974 and 1982 created the Correctional Officers' Retirement System. The Correctional Officers' Retirement System is a subsystem of the Employees' Retirement System.

### **Optional Retirement Program**

In 1975, the Optional Retirement Program for professional employees of public higher education institutions was established (Chapter 556). Whereas all the other State systems are defined benefit plans, this plan is a defined contribution plan. The original carrier of the plan was the Teachers Insurance Annuity Association and College Retirement Equities Fund, and authorizing legislation required that the original carrier be maintained; this provision was later repealed by Chapters 275 and 276 of 2017. In 1993, authorization was provided for the addition of up to four more vendors for the Optional Retirement Program (Chapter 428). As of June 30, 2022, Teachers Insurance Annuity Association and College Retirement Equities Fund and Fidelity Investments are the current vendors for the Optional Retirement Plan.

### **Employees' Pension System and Teachers' Pension System**

In 1979, legislation was enacted that established the Employees' Pension System and the Teachers' Pension System (Chapters 23 and 24, respectively). All employees or teachers hired on or after January 1, 1980, were required to become members of these systems. In effect, the older retirement systems' membership was closed. Prior to January 1, 2015, members of the older Employees' Retirement System and the Teachers' Retirement System had the option of transferring to the newer systems. Until 1998, members of these systems made contributions only on that portion of their salary above the Social Security Wage Base, and the benefits paid upon retirement were integrated with Social Security benefits.

### **Law Enforcement Officers' Pension System**

The Natural Resources Law Enforcement Officers' Pension Plan was created in 1989 (Chapter 479). Participation was mandatory for Natural Resources law enforcement officers hired on or after July 1, 1990, and optional for those officers hired prior to that date. In 1996, this plan was renamed the Law Enforcement Officers' Pension System as other groups of law enforcement officers were authorized to become members. The plan has since been amended to include law enforcement officers from numerous groups throughout the State. As of June 30, 2022, membership in the Law Enforcement Officers' Pension System is composed of the:

- Department of Natural Resources police and rangers;
- Field Enforcement Bureau or Field Enforcement Division officers (Alcohol and Tobacco Commission);
- Alcohol and Tobacco Commission Executive Director
- Maryland Transportation Authority police officers;
- Baltimore City sheriffs who do not elect to join the Employees' Pension System;

- Deputy sheriffs employed by the Baltimore City Sheriff's Department;
- University of Maryland police officers;
- Morgan State University police officers;
- State Fire Marshal and deputy State fire marshals;
- Maryland Aviation Administration Fire Rescue Service officers (Baltimore/Washington International Thurgood Marshall Airport);
- Department of General Services police officers;
- Maryland Department of Health police officers;
- Motor Vehicle Administration police officers;
- Department of Labor, Licensing, and Regulation police officers;
- Martin State Airport firefighters or law enforcement officers;
- State Department of Education Division of Rehabilitation Services police officers;
- Firefighters or paramedics employed by the Salisbury Fire Department;
- Department of State Police aviators operating aircrafts for the State Emergency Medical System;
- Maryland Transit Administration police officers;
- Law enforcement officers and firefighters of an electing governmental unit (participation is optional for law enforcement officers hired prior to their unit's participation date);
- Department of Public Safety and Correctional Services Internal Investigative Unit police officers;
- Baltimore City Community College police; and
- Department of Public Safety and Correctional Services peace or police officers in the Warrant Apprehension Unit of the Division of Parole and Probation.

Additionally, enabling legislation was enacted in 1998 (Chapter 494) to permit a county or municipal corporation to participate in the Law Enforcement Officers' Pension System if the local law enforcement officers elect to participate, and the county or municipal corporation elects to pay the costs of participation.

### **Local Fire and Police System**

The Local Fire and Police System was also created in 1989 (Chapter 580). This system permitted its members to retire with unreduced benefits after 25 years of service or at age 62. If a local government elected to participate, participation was mandatory for those municipal law enforcement officers hired after the election and optional for those hired prior to the election. However, in 2004, Chapter 537 closed the Local Fire and Police System to new membership. As of June 30, 2008, no participating employers remained in the Local Fire and Police Pension System. As an alternative, local firefighters may elect to participate in the Law Enforcement Officers' Pension System if the county or municipal corporation elects to pay the costs of participation.

### **Administrative History**

The Teachers' Retirement System was established in 1927 under an independent and autonomous five-member board of trustees. When the Employees' Retirement System was established in 1941, it too was set up under a five-member board of trustees that was expanded to seven members in 1947. In 1949, the State Police Retirement System was established under a five-member independent and autonomous board of trustees, which was expanded to seven members in 1970.

When the Legislative Pension Plan, the Governor's Retirement Plan, and the Correctional Officers' Retirement System were subsequently established, they were placed under one of the three existing boards. When the Judges' Retirement System and the Employees' Pension System were established, they were placed under the Board of Trustees for the Employees' Retirement System. When the Teachers' Pension System was established, it was placed under the Board of Trustees for the Teachers' Retirement System.

Until 1974, each of the boards had its own staff handling all aspects of its own plan. However, all the boards shared an individual as their secretary, who also served as the staff director. Then in 1970, Chapter 98 created the Department of Personnel and placed the three boards of trustees under the Secretary of Personnel. In 1974, the three staffs were combined in a functional arrangement as one staff under the secretary, who was also an assistant secretary of personnel.

In 1982, legislation was enacted that substantially revised the organization of the boards of trustees (Chapter 506). It removed all the boards from the Department of Personnel and merged them into a single independent board. The previous 19 positions on the three boards held by 13 different persons were combined into one 13-member Board of Trustees for the State Retirement and Pension System. Pursuant to legislation passed in 1983 (Chapter 552), two private

citizens, who may not be members or beneficiaries of the systems, were added to the board. The abolishment of the Department of Personnel in 1996 (and the position of Secretary of Personnel) reduced the board to 14 members.

After a series of financial scandals and controversies plagued the board in 2001 and 2002, the General Assembly responded by restructuring the board in 2003 (Chapter 403) to include more members with investment expertise and to provide external investment advisors to the board. Chapter 403 made several changes to the composition and governance of the board, including:

- removing the Secretary of State Police and the State Superintendent of Schools as *ex officio* members and one of the two State Police trustees and filling these vacancies with three members of the public appointed by the Governor to serve as investment experts;
- requiring appointed or elected trustees to attend at least 80% of the board's monthly meetings or face removal from the board; and
- providing that the board is not responsible for considering benefit enhancements or reviewing the benefit structures for any of the several systems, except for the purpose of making technical corrections.

In 2013, the total membership of the board increased from 14 to 15 members as a result of legislation that established a new position representing county governments (Chapters 534 and 535). The trustee representing the interests of county governments must have at least 10 years of experience in fiscal management and oversight of county government budgets, and the Governor may appoint the trustee from a list submitted by the Maryland Association of Counties. The new position representing county governments was created in large part due to the requirement that local school boards pay a portion of the employer pension contribution on behalf of their employees beginning in fiscal 2013.

## History of Pension Enhancements

In 1999, the years of service that a member of the State Police Retirement System must attain in order to be eligible for a normal service retirement allowance was reduced from 25 to 22 years (Chapters 122 and 123). Additionally, Chapters 122 and 123 increased the benefit formula for all active State Police Retirement System members, slightly increased employee contributions, and created a Deferred Retirement Option Program.

In 2000, Chapter 395 increased the benefit formula for all active Law Enforcement Officers' Pension System members, increased employee contributions, and created a Deferred Retirement Option Program.

In 1998, legislation was enacted (Chapter 530) that modified and increased the benefit formula for all active Employees' Pension System and Teachers' Pension System members except

employees of participating local governments and members who transfer from the old retirement systems after April 1, 1998 (Chapter 530). In addition to increasing the benefit formula, the 1998 legislation required member contributions of 2% of earnable compensation and eliminated the 5% contribution on compensation above the Social Security Wage Base.

The 1998 legislation also established a defined contribution program for State members of the Employees' Pension System except members who transfer from the Employees' Retirement System to the Employees' Pension System after April 1, 1998. The defined contribution program is optional for all eligible employees and became effective July 1, 1999. Under the program, the State matched deferred compensation contributions up to a maximum of \$600 annually. However, due to fiscal challenges, the statutory mandated \$600 employer match was reduced or eliminated entirely in several fiscal years and as part of the broader effort to reduce the structural deficit. Chapter 484 of 2010 permanently eliminated the statutory mandated \$600 employer match beginning in fiscal 2011.

Follow-up legislation was enacted in 1999 (Chapter 176) that provided local government units participating in the Maryland State Retirement and Pension System on July 1, 1999, with the opportunity to offer the 1998 pension enhancement to their members of the Employees' Pension System. While this opportunity for the participating local governmental units to offer this enhancement to their employees was optional, once the election was made, it was irrevocable. Participating local governmental units that joined the Maryland State Retirement and Pension System after July 1, 1999, but before July 1, 2006, did so under the 1998 enhanced benefit structure.

In Chapter 110 of 2006, the General Assembly again enhanced pension benefits for all members of the Teachers' Pension System and the Employees' Pension System. Certain members of the Employees' Retirement System and Teachers' Retirement System also benefit from the enhanced benefits (Selection C members), although other Teachers' Retirement System and Employees' Retirement System members are not affected. The legislation also allowed the participating local governmental units that participate in the Employees' Pension System the option of electing to participate in the enhanced benefits by June 30, 2007. Participating local governmental units that joined the Maryland State Retirement and Pension System on or after July 1, 2006, but before July 1, 2011, did so under the 2006 enhanced benefit structure. Participating local governmental units that joined the Maryland State Retirement and Pension System on or after July 1, 2011, are subject to a reformed pension benefit structure.

The 2006 pension enhancement increased the statutory benefit multiplier used to calculate a retiree's annual payment from 1.4% to 1.8% and applied the higher multiplier retroactively to service credit earned by current members of the Teachers' Pension System and the Employees' Pension System since July 1, 1998. In addition, the enhancement increased member contributions from 2.0% to 5.0% of the member's annual compensation. However, this increase was phased in over a three-year period for all teachers, State employees, and employees of participating local governments that opted for the enhanced benefit (3.0% on July 1, 2006; 4.0% on July 1, 2007; and 5.0% from July 1, 2008, through June 30, 2011).

In 2018, Chapter 784 raised the cap on retirement allowances that may be paid to specified members of the Law Enforcement Officers' Pension System from 60% of the member's average final compensation to 65%. This enables members of the Law Enforcement Officers' Pension System to earn benefits for an additional 2.5 years of active service.

## **History of Pension Reforms**

### **1979 Pension Reform**

Prior to 1980, the State maintained four principal retirement plans: (1) the Employees' Retirement System; (2) the Teachers' Retirement System; (3) the State Police Retirement System; and (4) the Judicial Pension Plan. Only a portion of each of these systems was actuarially advance funded, except for the Judicial Pension Plan, which was entirely financed on a pay-as-you-go basis.

In response to concerns about the retirement systems' deteriorating financial status, the General Assembly established the Joint Committee on Pensions in 1975 to review and evaluate the financial and actuarial condition of the various plans. The committee's most significant finding was that unless major changes were made to the funding and benefit structures of the plans, the State would face a future of ever increasing pension costs both in terms of total dollars and as a percentage of payroll. The long-range forecast indicated that under the system's then existing benefit structure and funding policy, the annual costs would be in excess of \$2.5 billion in fiscal 2026.

In 1979, after four years of work, legislation was enacted providing for full actuarial advance funding of the four existing retirement plans and for the establishment of two new, fully funded plans: the Employees' Pension System and the Teachers' Pension System. The Employees' Retirement System and the Teachers' Retirement System, the two largest systems, were closed to new members as of January 1, 1980, and all employees and teachers hired on or after that date were required to join one of the new pension systems as a condition of employment.

### **1984 Pension Reform**

Despite the enactment of these major changes, a variety of factors led to the continued deterioration of the financial and actuarial condition of the systems in general, and the older retirement systems in particular. The State's contribution rate as a percentage of payroll steadily increased in the early 1980s, as did the percentage of the State's general fund budget that was appropriated for retirement purposes.

Consequently, in 1984, the General Assembly passed legislation (proposed by the Joint Committee on Pensions) that modified the benefit and contribution structure of the Employees' Retirement System and the Teachers' Retirement System by providing that members of these systems would receive benefits for service prior to July 1, 1984, calculated under the old retirement systems, and benefits for service after that date under the new pension systems, unless members

elected either (1) to receive benefits under the old retirement systems but subject to a limitation of 5% (compounded) on the annual post retirement cost-of-living adjustment (COLA); or (2) to receive benefits under the old retirement systems without limitation on the COLA but with a 2% increase in their contribution (generally from 5% to 7% of salary).

At the same time, legislation was enacted that (1) changed the actuarial cost method for funding the systems; (2) combined the Employees' Retirement System and the Employees' Pension System only for purposes of establishing a single annual employer contribution rate for all State employees; (3) combined the Teachers' Retirement System and the Teachers' Pension System only for purposes of establishing a single annual employer contribution rate for all teachers; and (4) made certain other changes relating to the technical methods and procedures used for determining the ongoing costs of the systems. These changes were effected to afford greater stability and predictability in the State's annual contribution rates to the various plans. In addition, the legislation codified the State practice of providing health insurance for retired State employees.

With the implementation of these changes, the financial and actuarial condition of the system steadily improved. The State's overall contribution rate for the system decreased from 17.6% of payroll in fiscal 1985 to 7.97% in fiscal 2005. The market value of the system's assets increased from \$2.3 billion in fiscal 1980 to over \$32.1 billion at the end of fiscal 2005. Moreover, for the first time in the history of the system, at the end of fiscal 2000 (approximately 20 years ahead of statutory schedule), the system was fully funded on an actuarial basis with an overall funding ratio of assets to liabilities of 101%.

## **2011 Pension Reform**

However, the State's overall contribution rate for the system steadily increased from 7.97% in fiscal 2005 to 12.62% in fiscal 2010. Additionally, the funding status for the system had steadily decreased since its peak at the end of fiscal 2000. By the end of fiscal 2010, the funding status of the system had decreased to 64.0%, a decrease of 37.0 percentage points from fiscal 2000. The most dramatic one-year decrease was from the end of fiscal 2008 to the end of fiscal 2009, when the funding status decreased from 78.62% to 65.02%. This decline was largely attributable to the effects of the turmoil in the financial markets that began in fall 2008 and carried through spring 2009. A more detailed discussion of the effects of the 2008 to 2009 financial crises on the State Retirement and Pension System is discussed in "Chapter 12. Actuarial Aspects" of this handbook, which covers the pension plan's actuarial aspects and "Chapter 13. Overview of System Investments" of this handbook, which covers the system's investment performance.

In light of the significant increase in State contribution rates and the significant decline in the funding status of the system, language was included in the Budget Reconciliation and Financing Act of 2010 (Chapter 484) establishing the Public Employees' and Retirees' Benefit Sustainability Commission. The commission was charged with studying and making recommendations with respect to all aspects of State-funded benefits and pensions provided to State and public education employees and retirees in the State. The commission identified several concerns that threatened the system's long-term sustainability and affordability, including the growing gap between the system's assets and liabilities, the overwhelming effects of recessions

and financial market collapses in calendar 2001 through 2002 and 2008 through 2009, and the increased cost of pensions and other fringe benefits for State employees and teachers that were projected to continue to grow faster than general fund revenues. Based on these concerns, the commission concluded that the current pension benefit structure was not sustainable and recommended that the State adopt dual goals of achieving actuarial funding levels of 80% within 10 years and 100% within 30 years.

Drawing substantially from the work and recommendations of the Public Employees' and Retirees' Benefit Sustainability Commission, the General Assembly passed comprehensive pension and retiree health benefits reform in the Budget Reconciliation and Financing Act of 2011 (Chapter 397). The 2011 pension reform provisions restructured pension benefits for almost all State employees and public school teachers in the State and altered the system's funding model. The pension reform provisions were designed to address two distinct issues with regard to the State's public employee pensions: (1) the long-term sustainability of the State's defined benefit pension plans; and (2) the affordability of the State's contributions to those plans.

### **Changes to the Benefit Structure**

Chapter 397 of 2011 affected pension benefits for almost all State employees and public school teachers in the State; however, the reforms did not affect individuals who had retired by July 1, 2011, when Chapter 397 took effect. Chapter 397 made numerous changes to the system's benefit structure, which are described below. As indicated, some changes affect only those members hired on or after July 1, 2011, but others affect all members of specified plans, regardless of when they were hired.

**COLA:** All retirement benefits are adjusted automatically to account for annual inflation, but the size of the adjustments vary by plan. Prior to the enactment of Chapter 397, retirees of the Employees' Pension System and Teachers' Pension System, the State's two largest plans, as well as the Law Enforcement Officers' Pension System, received automatic annual COLAs linked to inflation, subject to a 3% cap. The State Police Retirement System and the Correctional Officers' Retirement System also received COLAs linked to inflation, but they were not subject to a cap. The annual inflation rate used is the Consumer Price Index (all urban consumers, U.S. city average, all items not seasonally adjusted, 1967 = 100) for the calendar year ending December 31 as published by the U.S. Department of Labor, Bureau of Labor Statistics.

The reform provisions in Chapter 397 did not affect COLAs for individuals retired as of July 1, 2011, but did affect COLAs that active members in the Employees' Pension System, the Teachers' Pension System, the Law Enforcement Officers' Pension System, the State Police Retirement System, and the Correctional Officers' Retirement System will receive when they retire. For service credit earned on or after July 1, 2011, the COLA is linked to the performance of the pension system's investment portfolio. If the portfolio earns its actuarial target rate (which is 7.45% for fiscal 2019), the COLA is subject to a 2.5% cap on the annual inflation rate. If the portfolio does not earn the target rate, the COLA is subject to a 1.0% cap on the annual inflation rate. For service credit earned on or before June 30, 2011, the COLA provisions in effect during that time still apply for each plan.

The COLA provisions did not apply to retirees of the Employee' Retirement System or the Teachers' Retirement System. They also did not apply to active members or retirees of the Judges' Retirement System or the Legislative Pension Plan because their benefit increases are linked to the salaries of current judges and legislators, respectively, and are not limited to inflation rates.

**Member Contributions:** Beginning July 1, 2011, member contributions for all active members of the Employees' Pension System and the Teachers' Pension System increased from 5% to 7% of earnable compensation. Member contributions for active members of the Law Enforcement Officers' Pension System increased from 4% to 6% in fiscal 2012 and from 6% to 7% beginning in fiscal 2013.

Although member contribution rates for other plans remained unchanged in Chapter 397, Chapter 485 of 2012 raised the contribution rate for the Judges' Retirement System members from 6% to 8%, and the 2014 Resolution of the General Assembly Compensation Commission raised the Legislative Pension Plan member contribution rate from 5% to 7%; the 2018 Resolution maintained the 7% contribution rate for the Legislative Pension Plan.

**Vesting and Average Final Compensation:** With the exception of the Judges' Retirement System and the Legislative Pension Plan, for all members of system plans hired on or after July 1, 2011, Chapter 397 increased the vesting period from 5 to 10 years. The calculation of average final compensation used to calculate retirement allowances for members of the Employees' Pension System, the Teachers' Pension System, and the Law Enforcement Officers' Pension System hired on or after July 1, 2011, will be based on the five consecutive years that provide the highest average compensation, rather than three years. For members of the State Police Retirement System and the Correctional Officers' Retirement System hired after the same date, the average final compensation used to calculate retirement allowances will be based only on the five years that provide the highest average compensation; the five years do not need to be consecutive.

Although vesting requirements for judges remained unchanged in Chapter 397, Chapter 485 instituted a five-year vesting period for the Judges' Retirement System members hired after June 30, 2012. Judges' Retirement System members hired before that date continue to vest immediately.

**Benefit Multiplier and Retirement Eligibility:** Under the reform provisions of Chapter 397, members of the Employees' Pension System and the Teachers' Pension System hired on or after July 1, 2011, receive a retirement allowance equal to 1.5% of average final compensation for each year of creditable service (compared with 1.8% for members hired before reform). Members of the Employees' Pension System and the Teachers' Pension System hired on or after July 1, 2011, qualify for a normal service retirement benefit either upon reaching age 65 with at least 10 years of service or when the sum of their age and years of service reaches 90 (compared with age 62 with 5 years of service or 30 years of service regardless of age for members hired before reform). These members also qualify for an early retirement benefit at age 60 with at

least 15 years of service (compared with age 55 with 15 years of service for members hired before reform).

Members of the State Police Retirement System hired on or after July 1, 2011, qualify for a normal service retirement upon reaching age 50 or with 25 years of service regardless of age (up from 22 years of service for members hired before reform).

Although retirement eligibility requirements for members of the General Assembly and the Governor remained unchanged in Chapter 397, subsequent legislation increased retirement eligibility requirements. The 2014 Resolution of the General Assembly Compensation Commission increased the retirement age for the Legislative Pension Plan members who join on or after January 14, 2015, from 60 to 62, and also increased the early retirement age from 50 to 55. Chapter 477 of 2014 raised the retirement age for Governors who begin serving on or after January 21, 2015, from 55 to 62.

***Deferred Retirement Option Program:*** Under Chapter 397, members of the Law Enforcement Officers' Pension System and the State Police Retirement System continue to be eligible for the Deferred Retirement Option Program, but members who enter the program on or after July 1, 2011, receive a lower interest rate on their program accounts. The program allows members of these plans to officially "retire" but to continue working for up to five years while earning a full salary. During their time in the program, their retirement benefits are deposited in an interest-earning account that is payable in a lump sum when they leave the program. The pension reform provisions reduced the interest earned on program accounts from 6% interest compounded monthly to 4% interest compounded annually.

### **Changes to Retiree Health Care**

In addition to comprehensive reform of the State's pension system, Chapter 397 implemented reforms to the State Health and Welfare Benefits Program. The Public Employees' and Retirees' Benefit Sustainability Commission recognized the need to address the State's unfunded liability of \$15.9 billion for Other Post Employment Benefits (2010 valuation). The commission recommended exploring options to reduce State expenditures for health benefits through a combination of plan design and employee cost sharing. The commission also recommended increasing the minimum amount of service credit needed to be eligible for a retiree to participate in the State health program. Additionally, the commission recommended ending prescription drug coverage for Medicare-eligible retirees beginning in fiscal 2020.

***Prescription Drug Coverage:*** Prior to 2011, retirees and active employees were enrolled under the same prescription drug plan. Because retiree health benefits are not contractual benefits like pensions, they were altered every year as the benefits changed for State employees. Based on the recommendations of the 2010 Public Employees' and Retirees' Benefit Sustainability Commission, Chapter 397 authorized the establishment of separate health insurance benefit options for retirees that differ from those for active State employees. Chapter 397 required the prescription drug benefit for retirees that are not Medicare-eligible to have the same copayments, coinsurance, and deductible that apply to the prescription drug benefit for active State employees.

However, the share of the premium cost to retirees was increased to 25%, instead of 20%, while out-of-pocket limits were set at \$1,500 for a retiree and \$2,000 for a retiree and the retiree's family. Additionally, Chapter 397 discontinued prescription drug coverage for Medicare-eligible retirees in fiscal 2020 based on the commission's recommendation that coverage would be available under Medicare Part D without a coverage gap that existed prior to that date. Chapter 10 of 2018 accelerated the discontinuation of prescription drug coverage for Medicare-eligible retirees to January 1, 2019, consistent with an earlier closing of the coverage gap. Chapter 767 of 2019 provided new options to receive prescription drug coverage for some retirees and beneficiaries. At the time of this publication, the discontinuation of prescription drug benefits is the subject of litigation, and State prescription drug coverage for all retirees has been continued pending resolution of the litigation.

***Eligibility for Retiree Health Care:*** In addition to establishing a separate prescription drug plan for retirees, Chapter 397 altered the eligibility requirements for retiree health and prescription drug coverage for individuals who begin State service on or after July 1, 2011. Those individuals become eligible for retiree health care coverage if the individual:

- ends State service with at least 25 years of creditable service;
- ends State service with at least 10 years of creditable service within 5 years before the age at which a vested retirement allowance normally would begin;
- retires directly from State service with a State retirement allowance and has 10 years of creditable service; or
- retires directly from State service with a State disability retirement allowance.

The State subsidy for retirees hired on or after July 1, 2011, is 1/25 for each year of the retiree's creditable service up to 25 years.

The existing eligibility requirements are maintained for individuals that began State service on or before June 30, 2011, and for retirees of the Judges' Retirement System. These individuals still achieve eligibility for retiree health care coverage if the individual:

- ends State service with at least 10 years of creditable service and within 5 years before the age at which a vested retirement allowance normally would begin;
- ends State service with at least 16 years of creditable service;
- retires directly from State service with a State retirement allowance and has at least 5 years of creditable service; or
- retires directly from State service with a State disability retirement allowance.

The State subsidy for retirees that began State service on or before June 30, 2011, remains at 1/16 for each year of the retiree's creditable service up to 16 years.

### **Changes to the Funding Model**

The pension reform provisions of Chapter 397 established a goal of reaching 80% actuarial funding within 10 years, which aligned with the goal set by the Public Employees' and Retirees' Benefit Sustainability Commission. The 80% level would be achieved in part by reinvesting a portion of the savings generated by the pension benefit restructuring into the pension system in the form of supplemental State contributions above the actuarially determined contribution required by statute. In fiscal 2012 and 2013, the supplemental contribution equaled all but \$120 million of the savings generated by the benefit restructuring, with the \$120 million dedicated to budget relief each year. Beginning in fiscal 2014, the supplemental contribution was to be set at \$300 million, with any savings over that amount dedicated to budget relief. However, subsequent action by the General Assembly altered the amount of the supplemental contribution (this is discussed in the section relating to additional changes to system funding).

## **Additional Changes to System Funding**

### **System Funding Method and Supplemental Contributions**

Chapter 489 of 2015 made substantial modifications to the State's pension funding formula. Chapter 489 repealed the corridor funding method beginning in fiscal 2017 and maintained the ongoing supplemental contribution but reduced it to \$75 million annually until the pension fund reaches the 85% funded level on an actuarial basis.

The corridor funding method was enacted during the 2002 legislative session and resulted in the State paying less than the full amount recommended by the system's actuaries each year for more than 10 years. The corridor funding method froze employer contribution rates for the Teachers' Combined Systems and the Employees' Combined Systems at the fiscal 2002 levels as long as each system's funding level was between 90% and 110%. When a system's funding level fell out of that "corridor," the contribution rate increased by 20% of the difference between the previous year's rate and the "full actuarial rate" necessary to fully fund future payments. The Employees' Combined Systems fell out of the corridor in fiscal 2005, and Teachers' Combined Systems followed in fiscal 2006. Chapters 475 and 476 of 2013 phased out the corridor funding method over 10 years, but Chapter 489 accelerated the phase-out and restored full actuarial funding beginning in fiscal 2017.

Based in large part on recommendations by the 2010 Public Employees' and Retirees' Benefit Sustainability Commission, pension reform provisions of Chapter 397 established a goal that the State Retirement and Pension System would achieve an actuarial funding level of 80% within 10 years, in part by reinvesting savings generated by the pension reforms into the pension trust fund in the form of a supplemental contribution in excess of the statutorily determined

contribution. The original intent of the supplemental contribution, initially set at \$300 million, was to narrow the gap between the amount contributed under the corridor funding method and the much higher amount that would have been contributed under full actuarial funding. The commission's final report recommended that as economic conditions improve and pension liabilities are reduced, an alternative funding model should be adopted that eliminated both the corridor funding method and the supplemental contribution. Chapter 489 made progress in achieving that goal by repealing the corridor funding method earlier than recommended and reducing the supplemental payment to \$75 million until the system achieves 85% funding (as of June 2021, the system's funding ratio was 76.2%).

As a way to partially make up for the reduction in the supplemental payment, Chapter 489 also required that one-half of the unappropriated general fund balance in excess of \$10 million be paid to the pension fund, up to a maximum of \$50 million annually, from fiscal 2017 through 2020. However, Chapter 557 of 2017 maintained the requirement indefinitely beyond fiscal 2020, except that instead of the full payment going to the State Retirement and Pension System trust fund, Chapter 557 required that, beginning in fiscal 2021, the payment is equally divided between the State Retirement and Pension System trust fund and the Postretirement Health Benefits Trust Fund. The amounts contributed to each of the two funds may not exceed \$25 million in a given fiscal year. Although the general fund balance exceeded \$10 million in each year since the enactment of Chapter 489, the Budget Reconciliation and Financing Acts of 2017 and 2018 suspended the excess payments to the State Retirement and Pension System trust in fiscal 2018 and 2019, respectively. The Budget Reconciliation and Financing Act of 2020 suspended the excess payments to the State Retirement and Pension System trust fund and the Postretirement Health Benefits Trust Fund in fiscal 2021. Chapter 391 of 2022 limited the maximum amount of unappropriated general fund balance paid to the State Retirement and Pension System to \$15 million for fiscal 2024.

### **Amortization**

Chapters 475 and 476 altered the amortization policy for the State systems, setting a 25-year closed amortization period for all liabilities accrued as of June 30, 2013, and requiring any additional liabilities to be amortized over the time remaining until June 30, 2038. In fall 2021, the Board of Trustees for the State Retirement and Pension System recommended changing the system's amortization process. According to the board, a closed amortization policy has increased risk of contribution volatility as the years remaining in the amortization window decrease, leaving fewer years to recover from incurred actuarial liabilities. The board's recommendations were scheduled for review by the Joint Committee on Pensions during the 2022 legislative interim.

### **Administrative Fee**

Chapter 397 also required local school boards and community colleges to pay their prorated share of the administrative costs of the State Retirement Agency based on the number of their employees who are members of the Teachers' Retirement System or the Teachers' Pension System. Prior to fiscal 2013, the agency's budget was funded solely with special funds from the

investment earnings of the system's portfolio. However, beginning in fiscal 2013, all State and local employers that participate in the State Retirement and Pension System are charged an administrative fee to fund agency expenses for administering the pension system for the employees of those State and local employers.

## **Teacher Pension Cost Sharing**

Since the inception of the Teachers' Retirement System in the 1920s, and continuing with the establishment of the Teachers' Pension System in 1980, the State paid the full employer contribution on behalf of members of these systems who are employed by local jurisdictions and whose salaries are paid by State or local funds, including teachers, principals, community college faculty, librarians, and other education-related personnel specified in statute. In fiscal 2012, the total State contribution on behalf of members employed by local jurisdictions was \$881.4 million; of that, \$833.0 million was for employees of local school boards, and the remainder was for community college and public library personnel.

Prior to 2012, Maryland was 1 of 11 states that paid the full employer pension contribution for teachers and other related staff employed by local jurisdictions. The remaining 39 states either shared the cost with local employers or required local employers to pay the full cost. In 2011, the Public Employees' and Retirees' Benefit Sustainability Commission recommended a phase-in of a requirement for local employers to pay 50% of the combined pension and Social Security contributions for their employees.

Chapter 1 of the 2012 first special session phased in a requirement that local school boards pay the employer "normal cost" for active members of the Teachers' Retirement System and the Teachers' Pension System. The employer normal cost represents the employer share of the payment that is necessary to fund the benefits that members accrue in a given year. It is one of two components of the total employer contribution for pension benefits; the other being the amount necessary to pay down liabilities accrued in prior years. During the phase-in, Chapter 1 specified the exact dollar amount to be paid by each local school board based on the projected normal cost and the local share of that cost. In fiscal 2017, when the phase-in was completed, local school boards paid 100% of the actual normal cost, which totaled \$279.8 million or 5.37% of payroll for members of the Teachers' Retirement System and the Teachers' Pension System. In fiscal 2022, as active members in the Teachers' Pension System retired and were replaced by new employees in the Reformed Contributory Pension Benefit tier, the employer normal cost decreased to 4.17% of pay, for an aggregate local employer contribution of \$296.5 million. The board's reduction of the assumed rate of investment return from 7.4% to 6.8% created upward pressure on employer normal costs, raising the fiscal 2023 normal cost for Teachers' Pension System members to 5.12% of pay, and a corresponding increase in contributions to \$373 million. As the change to the assumed rate of investment return was a one-time adjustment, and active employees enrolled in the pre-reform Alternate Contributory Pension Selection benefit tier will continue to be replaced with members enrolled in the Reformed Contributory Pension Benefit tier, the employer normal rate for local school board employees should resume a downward trend if the investment return assumption remains stable.

## Chapter 10. System Membership

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Membership in the State Retirement and Pension System is required of all persons compensated by the State, all local employees of governmental units that participate in the employees' systems, and all local employees holding a position eligible to be in the teachers' systems. Only officials in the Governor's Office, certain elected State officials, and higher education employees may choose not to participate in the State Retirement and Pension System. Prior to the 2015 through 2018 legislative term, members of the General Assembly had the option not to participate in the Legislative Pension Plan; however, beginning with the 2015 through 2018 legislative term, membership in the Legislative Pension Plan has been mandatory for all members of the General Assembly.

The State Retirement and Pension System serves three classes of members. Active members are employees who are compensated for work being performed and for whom the State and governmental units are making contributions based on their earnings. Vested deferred members are former employees who have left the system with enough years of eligibility service to be vested and to whom the State or a governmental unit has an obligation to provide retirement benefits when the members reach the eligible retirement age. Finally, there are inactive status members. For reporting purposes, these members do not currently have enough eligibility service to be vested and are not on active payroll status. However, based on future service with a participating employer, the State or a governmental unit could be obligated to provide retirement benefits. In addition to active, vested, and inactive members, all the systems have beneficiaries. By law, beneficiaries are persons in receipt of a pension, an annuity, a retirement allowance, or other benefit. A beneficiary may be a retired member of one of the systems or a survivor of the retired member for whom a provision was made by the member.

**Exhibit 10.1** details the membership of the State Retirement and Pension System as of June 30, 2021, including active and vested members and beneficiaries. **Exhibit 10.2** provides a 10-year history of active membership, and **Exhibit 10.3** provides a 10-year history of beneficiaries.

**Exhibit 10.1**  
**Membership as of June 30, 2021**

<u>System/Subsystem</u>	<u>Active</u> <u>Members</u>	<u>Vested</u> <u>Former</u> <u>Members</u>	<u>Subtotal:</u> <u>Active and</u> <u>Former Vested</u> <u>Members</u>	<u>Beneficiaries</u>	<u>Total</u>
<b>Employees' Retirement</b>					
State*	7,941	770	8,711	16,516	25,227
CORS – Municipal	134	7	141	51	192
Governmental Units	27	12	39	2,316	2,355
<b>Subtotal</b>	<b>8,102</b>	<b>789</b>	<b>8,891</b>	<b>18,883</b>	<b>27,774</b>
<b>Employees' Pension</b>					
State	47,606	17,019	64,625	46,797	111,422
Governmental Units	24,280	6,124	30,404	16,908	47,312
<b>Subtotal</b>	<b>71,886</b>	<b>23,143</b>	<b>95,029</b>	<b>63,705</b>	<b>158,734</b>
Teachers' Retirement	199	101	300	22,790	23,090
Teachers' Pension	109,759	23,632	133,391	58,725	192,116
State Police Retirement	1,353	86	1,439	2,559	3,998
Law Enforcement Officers' Pension	2,697	293	2,990	2,264	5,254
Judges' Retirement	315	7	322	442	764
<b>Total</b>	<b>194,311</b>	<b>48,051</b>	<b>242,362</b>	<b>169,368</b>	<b>411,730</b>

CORS: Correctional Officers' Retirement System

\*Includes members of the General Assembly and correctional officers.

Source: Maryland State Retirement and Pension System Actuarial Valuation Report, June 30, 2021; *Comprehensive Annual Financial Report*, Maryland State Retirement and Pension System, June 30, 2021

**Exhibit 10.2**  
**Active and Former**  
**Vested Membership Data by System**  
**Fiscal 2012-2021**

<b><u>June 30</u></b>	<b><u>Total</u></b> <b><u>All Systems</u></b>	<b><u>Teachers'</u></b> <b><u>Retirement</u></b>	<b><u>Teachers'</u></b> <b><u>Pension</u></b>	<b><u>Employees'</u></b> <b><u>Retirement*</u></b>	<b><u>Employees'</u></b> <b><u>Pension</u></b>	<b><u>Judges'</u></b> <b><u>Retirement</u></b>	<b><u>State Police</u></b> <b><u>Retirement</u></b>	<b><u>Law Enforcement</u></b> <b><u>Officers</u></b>
2021	242,362	300	133,391	8,891	95,029	322	1,439	2,990
2020	244,753	380	133,243	8,923	97,343	332	1,478	3,054
2019	243,704	487	131,769	8,987	97,691	323	1,453	2,994
2018	244,732	617	131,417	8,580	99,425	325	1,446	2,992
2017	246,370	805	130,990	8,509	101,415	321	1,461	2,869
2016	246,062	1,051	129,794	8,843	101,760	305	1,486	2,823
2015	246,369	1,372	128,695	9,461	102,270	315	1,475	2,781
2014	245,655	1,718	126,972	9,665	102,791	309	1,433	2,767
2013	244,362	2,154	125,429	9,956	102,463	298	1,404	2,658
2012	244,224	2,663	124,064	10,101	103,038	304	1,417	2,637

\*Includes members of the Maryland General Assembly and State and municipal correctional officers.

Source: *Comprehensive Annual Financial Report*, Maryland State Retirement and Pension System, June 30, 2021

**Exhibit 10.3**  
**Retiree and Beneficiary Data by System**  
**Fiscal 2012-2021**

<b><u>June 30</u></b>	<b><u>Total All Systems</u></b>	<b><u>Teachers' Retirement</u></b>	<b><u>Teachers' Pension</u></b>	<b><u>Employees' Retirement*</u></b>	<b><u>Employees' Pension</u></b>	<b><u>Judges' Retirement</u></b>	<b><u>State Police Retirement</u></b>	<b><u>Law Enforcement Officers</u></b>
2021	169,368	22,790	58,725	18,883	63,705	442	2,559	2,264
2020	167,644	23,858	56,581	19,511	62,583	441	2,517	2,153
2019	164,892	24,822	54,329	19,995	60,757	431	2,505	2,053
2018	160,374	25,764	51,437	20,374	57,947	421	2,477	1,954
2017	156,366	26,762	48,747	20,766	55,206	417	2,572	1,896
2016	152,566	27,552	46,030	21,201	53,039	407	2,536	1,801
2015	147,850	28,131	43,045	21,598	50,460	397	2,508	1,711
2014	142,887	28,762	40,167	22,036	47,446	395	2,468	1,613
2013	137,925	29,247	37,143	22,386	44,825	378	2,428	1,518
2012	132,493	29,705	33,994	22,806	41,840	365	2,387	1,396

\*Includes members of the Maryland General Assembly and State and municipal correctional officers.

Source: *Comprehensive Annual Financial Report*, Maryland State Retirement and Pension System, June 30, 2021

## Participating Governmental Units

Governmental units were first allowed to participate in the State system in 1945. A governmental unit is defined as a county, an incorporated town or municipality, a special taxing district, or another political subdivision of the State. This definition includes public library associations, fire departments, any public board or commission created by the General Assembly, and certain other multiple jurisdictional bodies.

To be eligible to participate in the State employees' systems, the governmental unit's legislative or other policymaking body must approve the participation, and at least 60% of its eligible employees must elect to participate. All eligible employees of that governmental unit must participate in the State employees' systems. Individuals employed prior to the effective date of participation are generally entitled to service credit in a State plan for employment with the participating employer prior to the effective date of participation. A local governing body may only approve participation if the member contributions in the local plan are the same as what they would be in the State system. If the member contributions in the prior plan differ from the member contributions in the State system, the local government unit may submit a request to the board of trustees to determine whether legislation is required to allow the participation of the local unit in a State system. The participating governmental unit is responsible for making all required plan contributions.

If a governmental unit withdraws from the State employees' systems, participating employees may elect to remain in the State system or transfer into a new system established by the governmental unit. Special funding and cost provisions are applied to governmental units that withdraw from the State's systems.

As of June 30, 2021, more than 130 units of local government participate in the State employees' systems as governmental units. A list of participating governmental units and withdrawn participating governmental units is printed annually in the State Retirement and Pension System's *Comprehensive Annual Financial Report*.

Beginning July 1, 1989, governmental units were entitled to elect to participate in the Local Fire and Police System. If a governmental unit elected to participate, membership was mandatory for those law enforcement officers hired after such an election and optional for those officers hired prior to the election. However, in 2004, Chapter 534 provided that the Local Fire and Police Pension System was closed to new membership. As of June 30, 2008, no participating employers remained in the Local Fire and Police Pension System.

Beginning October 1, 1998, governmental units representing law enforcement officers may also elect to enroll eligible employees in the Law Enforcement Officers' Pension System if at least 60% of the unit's officers choose to participate and the legislative body of the governmental unit approves participation. A local governing body may only approve participation if the member contributions in the local plan are the same as what they would be in the Law Enforcement Officers' Pension System (7% of earnable compensation). If a governmental unit participates in the Law Enforcement Officers' Pension System, membership is mandatory for those municipal

law enforcement officers or firefighters employed on the effective date of the election. Officers or firefighters employed prior to the election are eligible to have their accrued service credited in the Law Enforcement Officers' Pension System. If the member contributions in the prior plan differ from the member contributions in the Law Enforcement Officers' Pension System, the local government unit may submit a request to the board of trustees to determine whether legislation is required to allow the participation of the local unit in the Law Enforcement Officers' Pension System. As of June 30, 2021, 26 governmental units have chosen to participate in the Law Enforcement Officers' Pension System.

Beginning July 1, 2006, governmental units representing correctional officers may elect to enroll eligible employees in the Correctional Officers' Retirement System if at least 60% of the unit's officers choose to participate and the legislative body of the governmental unit approves participation. A local governing body may only approve participation if the member contributions in the local plan are the same as what they would be in the Correctional Officers' Retirement System (5% of earnable compensation). If a governmental unit participates in the Correctional Officers' Retirement System, membership is mandatory for those municipal correctional officers employed on the effective date of the election. An individual employed prior to the election is eligible to have their accrued service credited in the Correctional Officers' Retirement System. If the member contributions in the prior plan differ from the member contributions in the Correctional Officers' Retirement System (5% of earnable compensation), the local government unit may submit a request to the board of trustees to determine whether legislation is required to allow the participation of the local unit in the Correctional Officers' Retirement System. As of June 30, 2021, two governmental units have chosen to participate in the Correctional Officers' Retirement System.

## Chapter 11. Plan Summaries

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The State Retirement and Pension System of Maryland provides retirement allowances and other benefits to State employees, teachers, police officers, judges, legislators, and employees of participating governmental units through various retirement or pension plans. As of June 30, 2022, the State Retirement and Pension System maintained nine principal retirement or pension plans: (1) the Teachers' Retirement System; (2) the Employees' Retirement System; (3) the Teachers' Pension System; (4) the Employees' Pension System; (5) the State Police Retirement System; (6) the Correctional Officers' Retirement System; (7) the Law Enforcement Officers' Pension System; (8) the Judges' Retirement System; and the (9) Legislative Pension Plan. In addition, the system administers an Optional Retirement Program and a pension plan for governors and other constitutional officers.

The first part of this chapter includes a separate discussion of the nine principal plans administered by the system with a summary of the following components:

- membership and composite information;
- member contributions;
- retirement eligibility and allowances; and
- vesting.

Many of the nine principal plans administered by the system have very similar components; therefore, the second part of this chapter discusses the following similar components among the principal plans and notes any differences between the plans:

- payment options;
- death benefits;
- disability retirement allowances;
- cost-of-living adjustments (COLA); and
- post retirement health insurance.

The third part of this chapter discusses the additional plans administered by the system: the Optional Retirement Program; and a pension plan for governors and other constitutional officers.

**Appendix 3** provides a comparison of the major components of seven of the principal plans administered by the system and the Governor’s Retirement Plan. The Teachers’ Retirement Plan and the Employees’ Retirement Plan are not shown in Appendix 3 because these plans closed to new membership in 1980.

## **Principal Plans Administered by the System**

The State Retirement and Pension System provides retirement allowances and other benefits to various types of employees through several different types of retirement or pension plans. The State Retirement and Pension System is often referred to as “the system” for brevity. However, the individual plans administered by the system may also be called systems, such as the Teachers’ Retirement System.

The first part of this chapter will discuss the nine principal plans or systems administered by the State Retirement and Pension System with a summary of the following components: (1) membership and composite information; (2) member contributions; (3) retirement eligibility and allowances; and (4) vesting. Each of the principal plans is a defined benefit plan because each plan provides a determinable benefit based on salary and service.

### **Teachers’ Retirement System and Employees’ Retirement System**

The Teachers’ Retirement System was established on August 1, 1927, to provide benefits for State and local teachers and certain employees of the boards of education, public libraries, and community colleges. **Exhibit 11.1** summarizes membership in the Teachers’ Retirement System, as of June 30, 2021.

The Employees’ Retirement System was established on October 1, 1941, and provides benefits for State employees, participating local employees, and certain elected and appointed officials. **Exhibit 11.2** illustrates membership in the Employees’ Retirement System, as of June 30, 2021.

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**Exhibit 11.1**  
**Membership in the Teachers' Retirement System**  
**As of June 30, 2021**

<b>Membership</b>	
Active Members	199
Deferred Vested Members	101
Retirees and Beneficiaries	22,790
<b>Composite</b>	
Average Age – Active Members	70.4 Years
Average Years of Service – Active Members	44.8 Years
Average Annual Salary – Active Members	\$109,510
Average Age – Retirees and Beneficiaries	79.3 Years
Average Annual Benefit – Retirees and Beneficiaries	\$42,636

Source: Maryland State Retirement Agency

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**Exhibit 11.2**  
**Membership in the Employees' Retirement System**  
**As of June 30, 2021\***

<b>Membership</b>	
Active Members	7,968
Deferred Vested Members	782
Retirees and Beneficiaries	18,832
<b>Composite</b>	
Average Age – Active Members	45.7 Years
Average Years of Service – Active Members	13.0 Years
Average Annual Salary – Active Members	\$54,756
Average Age – Retirees and Beneficiaries	73.5 Years
Average Annual Benefit – Retirees and Beneficiaries	\$26,304

\*Includes members of the Maryland General Assembly, members of the Governor's Retirement Plan, and State and municipal correctional officers.

Source: Maryland State Retirement Agency

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Although the Teachers' Retirement System and the Employees' Retirement System are two separate systems that provide benefits for different types of employees, the components of the

systems are identical, including the member contributions and retirement eligibility and allowances that are discussed in this section and the other components that are discussed in the second part of this chapter. For brevity, this section will refer to the Teachers' Retirement System and the Employees' Retirement System as the Teachers' and Employees' Retirement Systems.

Until January 1, 1980, membership in the Teachers' and Employees' Retirement Systems was a condition of employment for eligible employees. However, on January 1, 1980, both the Teachers' Retirement System and the Employees' Retirement System were closed to new membership when the State established the Teachers' Pension System and the Employees' Pension System. Prior to January 1, 2005, Teachers' Retirement System members were eligible to transfer to the Teachers' Pension System, and Employees' Retirement System members were eligible to transfer to the Employees' Pension System. If a member chose to transfer, the member received a return of all accumulated contributions, which includes interest. Members who chose to transfer after April 1, 1998, are not eligible to receive the benefit enhancements enacted in 1998 and 2006.

Due to a deterioration in the financial and actuarial condition of the Teachers' and Employees' Retirement Systems, legislation was enacted in 1984 to modify the benefit and contribution structure of the systems. As a result of the 1984 legislation, members who wanted to remain in the system were required to make one of three choices: (1) Selection A – pay additional employee contributions for an unlimited COLA; (2) Selection B – receive a limited COLA; or (3) Selection C – receive a benefit based on a combined formula from both the retirement system and the new pension system. At retirement, a Selection C benefit is calculated as a retirement system benefit for service credits accrued prior to the election of Selection C and as a pension system benefit for service credits accrued after the election. For more details, see the Cost-of-living Adjustments section of this chapter.

### **Member Contributions**

Members of the Teachers' and Employees' Retirement Systems who elected Selection A contribute 7% of earnable compensation in return for unlimited annual COLAs after retirement. Selection B members contribute 5% of earnable compensation in return for COLAs that are limited to 5% compounded annually after retirement.

Beginning July 1, 2006, member contributions for Selection C members increased from 2% to 5% of the member's annual earnable compensation, to be phased in over a three-year period (3% on July 1, 2006; 4% on July 1, 2007; and 5% on July 1, 2008, and thereafter). In return for this contribution, Selection C members receive a two-part COLA based on the amount of service credits accrued prior to the election of Selection C and the amount of service credits accrued after the election. For the service credits accrued prior to the member choosing Selection C, the COLA is unlimited unless the member chose Selection B prior to Selection C, in which case the COLA is limited to 5% compounded annually. For service credits accrued after the member chose Selection C, the COLA is limited to 3% compounded annually.

Additionally, member contributions for Selection C members increased to 7% of the member's annual earnable compensation beginning on July 1, 2011, as part of the comprehensive

pension reform legislation that was enacted in 2011. For more information on the 2011 pension reforms, see “Chapter 9. Historical Background” of this handbook.

If all required contributions are not made prior to retirement, the member’s retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

### **Retirement Eligibility and Allowances**

**Full Service Retirement:** Members of the Teachers’ and Employees’ Retirement Systems are eligible for a full service retirement allowance upon attaining age 60 or after 30 years of eligibility service regardless of age. The benefit formula for full service retirement for Selection A and B members is calculated as one fifty-fifth (1.818%) of the highest three years’ average final salary multiplied by the number of years of accumulated creditable service. The highest three years’ average final salary may be earned in nonconsecutive years.

$(1.818\% \times \text{Average Final Salary}) \times \text{Years of Creditable Service}$
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Selection C members receive a retirement allowance that utilizes the benefit formulas from both the retirement system and the pension system. At retirement, this two-part benefit is calculated as a retirement system benefit for service credits accrued prior to the election of Selection C and as a pension system benefit for service credits accrued after the election.

**Early Retirement:** Members of the Teachers’ and Employees’ Retirement Systems are eligible for early retirement after accumulating at least 25 years of eligibility service prior to age 60. For Selection A and B members, the early retirement allowance is equal to the full service retirement allowance reduced by 0.5% for each month by which the member’s retirement date precedes the normal retirement date. The maximum reduction for early retirement is 30.0%.

Selection C members receive an early retirement benefit that utilizes the early retirement benefit formulas from both the retirement system and the pension system. At retirement, this two-part benefit is calculated as a retirement system early retirement benefit for service credits accrued prior to the election of Selection C and as a pension system early retirement benefit for service credits accrued after the election. However, the maximum reduction under the pension system part of the calculation is 42%.

### **Vesting**

Members of the Teachers’ and Employees’ Retirement Systems are vested in the system after five years of service. They may begin to draw a deferred vested retirement allowance at age 60 if they leave State employment before retirement. However, members who withdraw their contributions after leaving service are no longer entitled to a vested benefit. The vested benefit is equal to the normal retirement allowance computed on the basis of the member’s accumulated creditable service and average final salary at the point of separation. If a vested member dies prior to age 60 and before withdrawing his or her accumulated contributions, the accumulated

contributions, which includes interest, are paid to the designated beneficiary. Members who separate from service prior to accumulating five years of creditable service receive refunds of their accumulated contributions, which includes interest.

### **Teachers' Pension System and Employees' Pension System**

The Teachers' Pension System was established on January 1, 1980, with participation a condition of employment for all State and local teachers and certain employees of the boards of education, public libraries, and community colleges hired after December 31, 1979 (unless those employees elected to participate in an optional retirement program). All Teachers' Pension System members, except for those who transfer from the Teachers' Retirement System after April 1, 1998, or those who are hired on or after July 1, 2011, receive the enhanced benefits enacted in 1998 and 2006. Teachers' Pension System members who are hired on or after July 1, 2011, are subject to a reformed pension benefit structure.

The Employees' Pension System was established on January 1, 1980, with participation a condition of employment for all State employees (other than those eligible for participation in another system) hired after December 31, 1979. As of July 1, 1998, Employees' Pension System members who were State employees, except for those who transfer from the Employees' Retirement System after April 1, 1998, became eligible for the enhanced Employees' Pension System enacted in 1998. As of July 1, 1999, Employees' Pension System members who were employees of governmental units also received the enhanced Employees' Pension System benefit retroactive to July 1, 1998, provided the participating governmental unit elected participation in the Employees' Pension System enhancement. State Employees' Pension System employees who transferred from the Employees' Retirement System after April 1, 1998, and employees of participating governmental units that did not elect the enhancement, receive the pre-1998 Employees' Pension System benefit formula.

As of July 1, 2006, Employees' Pension System members who were State employees, except for those who transferred from the Employees' Retirement System after April 1, 1998, or those who were hired on or after July 1, 2011, were again eligible for an enhanced pension benefit. In addition, local governmental units who were participating in the Employees' Pension System on June 20, 2006, had the option of electing to participate in the enhanced benefits if such an election was made by June 30, 2007. Participating local governmental units that joined the Maryland State Retirement and Pension System on or after July 1, 2006, but before July 1, 2011, did so under the 2006 enhanced benefit structure. Employees' Pension System members who were hired on or after July 1, 2011, and participating local governmental units that joined the Maryland State Retirement and Pension System on or after July 1, 2011, were subject to a reformed pension benefit structure.

Membership in the Teachers' Pension System is summarized in **Exhibit 11.3**, and membership in the Employees' Pension System is summarized in **Exhibit 11.4**.

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**Exhibit 11.3**  
**Membership in the Teachers' Pension System**  
**As of June 30, 2021**

<b>Membership</b>	
Active Members	109,759
Deferred Vested Members	23,632
Retirees and Beneficiaries	58,725
<b>Composite</b>	
Average Age – Active Members	45.1 Years
Average Years of Service – Active Members	12.1 Years
Average Annual Salary – Active Members	\$69,854
Average Age – Retirees and Beneficiaries	71.9 Years
Average Annual Benefit – Retirees and Beneficiaries	\$24,876

Source: Maryland State Retirement Agency

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**Exhibit 11.4**  
**Membership in the Employees' Pension System**  
**As of June 30, 2021**

<b>Membership</b>	
Active Members*	71,886
Deferred Vested Members	23,143
Beneficiaries	63,705
<b>Composite</b>	
Average Age – Active Members	48.8 Years
Average Years of Service – Active Members	11.6 Years
Average Annual Salary – Active Members	\$59,060
Average Age – Retirees and Beneficiaries	71.3 Years
Average Annual Benefit – Retirees and Beneficiaries	\$16,860

\*Includes both State and local participating government employees.

Source: Maryland State Retirement Agency

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## Member Contributions

The 2006 pension enhancement legislation provided for an increase in member contributions from 2% to 5% of the member's annual compensation to be phased in over a three-year period (3% on July 1, 2006; 4% on July 1, 2007; and 5% on July 1, 2008, and thereafter). Members who transferred from the Teachers' Retirement System or the Employees' Retirement System after April 1, 1998, and thus are not eligible for the enhanced benefit, are required to contribute 5% of earnable compensation in excess of the Social Security Wage Base.

In an effort to address issues regarding the long-term sustainability and affordability of the State's pension plans, comprehensive pension reform legislation was enacted in 2011, which affected pension benefits for almost all State employees and public school teachers in the State, including members of the Teachers' and Employees' Pension Systems. One component of the reforms was an increase in Teachers' and Employees' Pension Systems member contributions from 5% to 7% of the member's annual compensation beginning on July 1, 2011. For more information on the 2011 pension reforms, see "Chapter 9. Historical Background" of this handbook.

Teachers' and Employees' Pension Systems members who separate from service prior to vesting receive refunds of their accumulated contributions, which includes interest.

If all required contributions are not made prior to retirement, the member's retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

## Retirement Eligibility and Allowances

The comprehensive pension reform that was enacted in 2011 increased eligibility requirements to receive a retirement allowance from the Teachers' and Employees' Pension Systems for members who were hired on or after July 1, 2011. Eligibility requirements for members of the Teachers' and Employees' Pension Systems who were hired on or before June 30, 2011, were not changed. An explanation of the eligibility requirements for a full service retirement allowance and an early retirement allowance differentiated by whether the member is subject to the 2011 pension reform provisions follows.

***Full Service Retirement – Members Hired on or Before June 30, 2011:*** Members of the Teachers' and Employees' Pension Systems who were hired on or before June 30, 2011, are eligible for a full service retirement allowance upon accumulating 30 years of eligible service, regardless of age. Absent 30 years of eligibility service, members must meet one of the following conditions to be eligible for a full service retirement allowance:

- age 62 with five years of eligibility service;
- age 63 with four years of eligibility service;

- age 64 with three years of eligibility service; or
- age 65 or older and two years of eligibility service.

As a result of the enactment of Chapter 110 of 2006, the full service retirement allowance for Teachers' and Employees' Pension Systems members hired on or before June 30, 2011, is equal to 1.8% of average final salary for service earned after July 1, 1998, plus the greater of 1.2% of average final salary for each year of service earned prior to July 1, 1998, or the pension system retirement allowance for creditable service prior to July 1, 1998. The average final salary is based on a member's highest *three consecutive* years of compensation.

$(1.8\% \times \text{Average Final Salary} \times \text{Years of Creditable Service After July 1, 1998}) + \text{the Greater of } (1.2\% \times \text{Average Final Salary} \times \text{Years of Creditable Service Prior to July 1, 1998, or the Pension System Retirement Allowance for Creditable Service Prior to July 1, 1998})$

However, for members who transferred from the Teachers' Retirement System or the Employees' Retirement System to the Teachers' Pension System or the Employees' Pension System (as applicable) after April 1, 1998, and thus are not eligible for the enhanced benefit, the full service retirement allowance is 0.8% of the highest 3 consecutive years' average final salary up to the Social Security Integration Level, plus 1.5% of average final salary in excess of the Social Security Integration Level, multiplied by the number of years of accumulated creditable service. For the purpose of computing pension allowances, the Social Security Integration Level is the average of the Social Security Wage Base for the 35 years immediately prior to the year of retirement.

$(0.8\% \times \text{Average Final Salary Up to the Social Security Integration Level} + 1.5\% \times \text{Average Final Salary in Excess of the Social Security Integration Level}) \times \text{Years of Creditable Service}$

***Full Service Retirement – Members Hired on or After July 1, 2011:*** Members of the Teachers' and Employees' Pension Systems who are hired on or after July 1, 2011, must meet one of the following conditions to be eligible for a full service retirement allowance:

- age 65 with 10 years of eligibility service; or
- the sum of the member's age and years of service equals 90 or more (Rule of 90).

The full service retirement allowance is equal to 1.5% of average final salary for each year of service. The average final salary is based on a member's highest *five consecutive* years of compensation.

$1.5\% \times \text{Average Final Salary} \times \text{Years of Creditable Service}$

***Early Retirement – Members Hired on or Before June 30, 2011:*** Members of the Teachers' and Employees' Pension Systems who were hired on or before June 30, 2011, are

eligible for early retirement if they are at least 55 years of age with at least 15 years of eligibility service. The early retirement allowance is equal to the full service retirement allowance reduced by 0.5% for each month by which the retirement date precedes the date on which the member reaches age 62. The maximum reduction for early retirement is 42.0%.

**Early Retirement – Members Hired on or After July 1, 2011:** Members of the Teachers’ and Employees’ Pension Systems who were hired on or after July 1, 2011, are eligible for early retirement if they are at least 60 years of age with at least 15 years of eligibility service. The early retirement allowance is equal to the full service retirement allowance reduced by 0.5% for each month by which the retirement date precedes the date on which the member reaches age 65. The maximum reduction for early retirement is 30.0%.

### **Vesting**

**Members Hired on or Before June 30, 2011:** Members of the Teachers’ and Employees’ Pension Systems who were hired on or before June 30, 2011, are vested in the system after five years of service. They may begin to draw a deferred vested retirement allowance at age 62 if they leave State service before retirement. The vested benefit is equal to the normal retirement allowance computed on the basis of the member’s accumulated creditable service and average final salary at the point of separation.

A member may be eligible for a reduced deferred allowance upon attaining age 55 if the member has at least 15 years of eligibility service. If a vested member retires before age 62, the vested allowance is reduced by 0.5% for each month by which the member’s retirement date precedes the date on which the member turns 62.

Members who elect to withdraw their accumulated contributions remain eligible to receive the employer-provided share of the vested benefit. If vested members do not withdraw their contributions and die before age 62, their accumulated contributions, which includes interest, are paid to the designated beneficiaries.

Members who separate from service prior to accumulating five years of creditable service receive refunds of their accumulated contributions, which includes interest.

**Members Hired on or After July 1, 2011:** Members of the Teachers’ and Employees’ Pension Systems who were hired on or after July 1, 2011, are vested in the system after 10 years of service. They may begin to draw a deferred vested retirement allowance at age 65 if they leave State service before retirement, provided that at least 10 years of service was accumulated prior to separation. The vested benefit is equal to the normal retirement allowance computed on the basis of the member’s accumulated creditable service and average final salary at the point of separation.

A member may be eligible for a reduced deferred allowance upon attaining age 60 if the member has at least 15 years of eligibility service. If a vested member retires before age 65, the vested allowance is reduced by 0.5% for each month by which the member’s retirement date precedes the date on which the member turns 65.

Members who elect to withdraw their accumulated contributions remain eligible to receive the employer-provided share of the vested benefit. If vested members do not withdraw their contributions and die before age 65, their accumulated contributions, which includes interest, are paid to the designated beneficiaries.

Members who separate from service prior to accumulating 10 years of creditable service receive refunds of their accumulated contributions, which includes interest.

## State Police Retirement System

The State Police Retirement System was established on July 1, 1949, with participation a condition of employment for all uniformed officers of the Maryland State Police. **Exhibit 11.5** illustrates membership in the State Police Retirement System.

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### Exhibit 11.5 Membership in the State Police Retirement System As of June 30, 2021

<b>Membership</b>	
Active Members	1,353
Deferred Vested Members	86
Retirees and Beneficiaries	2,559
<b>Composite</b>	
Average Age – Active Members	36.5 Years
Average Years of Service – Active Members	12.3 Years
Average Annual Salary – Active Members	\$87,989
Average Age – Retirees and Beneficiaries	65.2 Years
Average Annual Benefit – Retirees and Beneficiaries	\$53,364

Source: Maryland State Retirement Agency

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## Member Contributions

State Police Retirement System members are required to contribute 8% of annual earnable compensation during employment. The pension reform enacted in 2011 did not change the contribution amount for members of this system. After 28 years of service, members no longer make contributions (once they have accrued the maximum benefit). State Police Retirement System members are the only State employees who do not participate in the federal Social Security program.

If all required contributions are not made prior to retirement, the member's retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

### **Retirement Eligibility and Allowances**

Except for the Superintendent, all members must retire by age 60; however, eligibility requirements and benefits differ depending on whether the member is subject to the 2011 pension reform provisions.

***Full Service Retirement – Members Hired on or Before June 30, 2011:*** Members of the State Police Retirement System who were hired on or before June 30, 2011, are eligible for a full service retirement allowance at age 50 or after accumulating 22 years of eligibility service regardless of age.

The benefit formula for full service retirement equals 2.55% of the member's highest *three* years' average final salary multiplied by the number of years of creditable service. However, the retirement allowance may not exceed 71.4% of the member's average final compensation. The highest three years' average final salary may be earned in nonconsecutive years.

$(2.55\% \times \text{Average Final Salary}) \times \text{Years of Creditable Service}$
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***Full Service Retirement – Members Hired on or After July 1, 2011:*** The pension reform enacted in 2011 increased eligibility requirements to receive a retirement allowance from the State Police Retirement System for members who were hired on or after July 1, 2011. Members of the State Police Retirement System who were hired on or after July 1, 2011, are eligible for a full service retirement allowance at age 50 or after accumulating 25 years of eligibility service regardless of age.

The benefit formula for full service retirement equals 2.55% of the member's highest *five* years' average final salary multiplied by the number of years of creditable service. However, the retirement allowance may not exceed 71.4% of the member's average final compensation. The highest five years' average final salary may be earned in nonconsecutive years.

$(2.55\% \times \text{Average Final Salary}) \times \text{Years of Creditable Service}$
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### **Early Retirement**

State Police Retirement System members are not eligible for early retirement.

### **Vesting**

***Members Hired on or Before June 30, 2011:*** Members of the State Police Retirement System who were hired on or before June 30, 2011, are vested in the system after five years of

service. If the member leaves State service prior to accumulating five years of creditable service, the member receives a refund of his or her accumulated contributions, which includes interest.

***Members Hired on or After July 1, 2011:*** Members of the State Police Retirement System who were hired on or after July 1, 2011, are vested in the system after 10 years of service. If the member leaves State service prior to accumulating 10 years of creditable service, the member receives a refund of his or her accumulated contributions, which includes interest.

Regardless of the date of hire, members of the State Police Retirement System may begin to draw a deferred vested retirement allowance at age 50 if they leave State service before retirement. The vested benefit is equal to the normal retirement allowance computed on the basis of the member's accumulated creditable service and average final salary at the point of separation.

In lieu of receiving an accrued vested retirement allowance, State Police Retirement System members may withdraw their accumulated contributions within two years of separation. If a member dies prior to age 50 and before withdrawing his or her accumulated contributions, the accumulated contributions, which includes interest, are paid to the designated beneficiary.

### **Deferred Retirement Option Program**

State Police Retirement System members are eligible to participate in a Deferred Retirement Option Program. During the program period, a member is deemed retired and the retirement allowance is placed in an account earning interest. At the end of the program period the lump-sum held in the program account is paid to the member who must then end employment and fully retire. Until July 1, 2018, the program period was a maximum of four years. Legislation in 2018 extended the program period by one year to a maximum of five years. Members who entered the program prior to July 1, 2018, may elect to extend their time in the program in accordance with certain limitations. Eligibility requirements and benefits for the program differ depending on whether the member is subject to the 2011 pension reform provisions.

***Members Hired on or Before June 30, 2011:*** Members of the State Police Retirement System who were hired on or before June 30, 2011, are eligible to participate in the Deferred Retirement Option Program if the member has at least 22 years of creditable service, has less than 30 years of service, and is under the age of 60. The member accrues interest in a program account at a rate of 4% a year, compounded *annually*.

***Members Hired on or After July 1, 2011:*** Members of the State Police Retirement System who were hired on or after July 1, 2011, are eligible to participate in the Deferred Retirement Option Program if the member had at least 25 years of creditable service, had less than 30 years of service, and is under the age of 60. These members accrue interest in a program account at a rate of 4% a year, compounded *annually*.

## Correctional Officers' Retirement System

Through legislation enacted in 1974 and 1982, the State established special benefits for Grade I – VI correctional officers who serve in the cellblocks at State penal institutions and for security attendants at the Clifton T. Perkins Hospital Center. Since 2006, eligibility for membership in the Correctional Officers' Retirement System has been expanded to include certain individuals working in State correctional institutions (*e.g.*, wardens and correctional maintenance officers) and juvenile detention centers (*e.g.*, resident advisors and community detention officers). Legislation enacted in 2022 included specified juvenile case managers and juvenile group life managers.

For actuarial purposes, the Correctional Officers' Retirement System is a subsystem of the Employees' Retirement System. Membership in the subsystem is a condition of employment for eligible individuals. As of June 30, 2021, there were 7,734 active members in the Correctional Officers' Retirement System. Membership and composite information for the Employees' Retirement System includes Correctional Officers' Retirement System members.

### Member Contributions

Members are required to contribute 5% of earnable compensation. The pension reform enacted in 2011 did not change the contribution amount for members of this system.

If all required contributions are not made prior to retirement, the member's retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

### Retirement Eligibility and Allowances

**Full Service Retirement:** Correctional Officers' Retirement System members are eligible for a full service retirement allowance after 20 years of creditable service regardless of age.

The benefit formula for full service retirement is calculated as one fifty-fifth (1.818%) of the average final salary multiplied by the number of years of creditable service. For members of the Correctional Officers' Retirement System who were hired on or before June 30, 2011, the average final salary is calculated on the highest three years. Pension reform in 2011 altered the calculation of the average final salary of members of the Correctional Officers' Retirement System who are hired on or after July 1, 2011, to the highest five years. In both cases, the highest earning years are not required to be consecutive.

$(1.818\% \times \text{Average Final Salary}) \times \text{Years of Creditable Service}$
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**Early Retirement:** Correctional Officers' Retirement System members are not eligible for early retirement.

## Vesting

***Members Hired on or Before June 30, 2011:*** Members of the Correctional Officers' Retirement System who were hired on or before June 30, 2011, are vested in the system after five years of service. They may begin to draw a deferred vested retirement allowance at age 55 with at least five years of creditable service. Members who separate from service prior to accumulating five years of creditable service receive refunds of their accumulated contributions, which includes interest.

***Members Hired on or After July 1, 2011:*** Members of the Correctional Officers' Retirement System who were hired on or after July 1, 2011, are vested in the system after 10 years of service. They may begin to draw a deferred vested retirement allowance at age 55 with at least 10 years of creditable service. Members who separate from service prior to accumulating 10 years of creditable service receive refunds of their accumulated contributions, which includes interest.

Regardless of the date of hire, the vested benefit is equal to the normal retirement allowance computed on the basis of the member's accumulated creditable service and average final salary at the point of separation. Members who withdraw their contributions after leaving service are no longer entitled to a vested benefit. If a vested member dies prior to age 55 and before withdrawing his or her accumulated contributions, the accumulated contributions, which includes interest, are paid to the designated beneficiary.

## Law Enforcement Officers' Pension System

The Law Enforcement Officers' Pension System was established on July 1, 1990, with participation now a condition of employment for the following public safety employees:

- Department of Natural Resources police and rangers;
- Law enforcement officers employed by the Field Enforcement Bureau or the Field Enforcement Division of the Alcohol and Tobacco Commission;
- Maryland Transportation Authority police officers;
- Baltimore City sheriffs who do not elect to join the Employees' Pension System;
- Deputy sheriffs employed by the Baltimore City Sheriff's Department;
- University System of Maryland police officers;
- Morgan State University police officers;
- State Fire Marshal and deputy State fire marshals;

- Maryland Aviation Administration Fire Rescue Service officers (Baltimore/Washington International Thurgood Marshall Airport);
- Department of General Services police officers;
- Maryland Department of Health police officers;
- Motor Vehicle Administration police officers;
- Department of Labor, Licensing, and Regulation police officers;
- Martin State Airport firefighters or law enforcement officers;
- State Department of Education Division of Rehabilitation Services police officers;
- Firefighters or paramedics employed by the Salisbury Fire Department;
- Department of State Police aviators operating aircrafts for the State Emergency Medical System;
- Maryland Transit Administration police officers;
- Law enforcement officers and firefighters of an electing governmental unit (participation is optional for law enforcement officers hired prior to their unit's participation date);
- Department of Public Safety and Correctional Services Internal Investigative Unit police officers;
- Baltimore City Community College police;
- Department of Public Safety and Correctional Services peace or police officers in the Warrant Apprehension Unit of the Division of Parole and Probation; and
- The Executive Director of the Alcohol and Tobacco Commission.

**Exhibit 11.6** summarizes membership in the Law Enforcement Officers' Pension System, as of June 30, 2021.

The Law Enforcement Officers' Pension System consisted of two components – a retirement plan (modeled after the Employees' Retirement System) and a pension plan (modeled after the Employees' Pension System). Retirement plan provisions are applicable to those officers who transferred into the Law Enforcement Officers' Pension System from the Employees'

Retirement System. Pension plan provisions are applicable to all other Law Enforcement Officers' Pension System members. The retirement plan is closed to new members and no longer has active members enrolled; therefore, this summary focuses on the pension plan.

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**Exhibit 11.6**  
**Membership in the Law Enforcement Officers' Pension System**  
**As of June 30, 2021**

**Membership**

Active Members*	2,697
Deferred Vested Members	293
Retirees and Beneficiaries	2,264

**Composite**

Average Age – Active Members	41.2 Years
Average Years of Service – Active Members	10.9 Years
Average Annual Salary – Active Members	\$73,956
Average Age – Retirees and Beneficiaries	62.2 Years
Average Annual Benefit – Retirees and Beneficiaries	\$37,356

\*Includes both State and local participating government employees.

Source: Maryland State Retirement Agency

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**Member Contributions**

Law Enforcement Officers' Pension System contributed 4% of earnable compensation until June 30, 2011. The comprehensive pension reform enacted in 2011 increased the member contributions to 6% as of July 1, 2011, and 7% as of July 1, 2012. After 32 years and 6 months of service, members no longer make contributions (once they have accrued the maximum benefit).

If all required contributions are not made prior to retirement, the member's retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

**Retirement Eligibility and Allowances**

**Full Service Retirement:** Members of the Law Enforcement Officers' Pension System are eligible for a full service retirement allowance upon reaching age 50 or after 25 years of eligibility service, regardless of age.

The full service retirement allowance is calculated as 2% of average final salary up to a maximum benefit of 65% (32.5 years of creditable service). For retirements prior to July 1, 2018, the maximum benefit was capped at 60%.

<p><b>Pension Plan Participants</b></p> <p>(2% x Average Final Salary) x Years of Creditable Service (Up to 32.5 Maximum)</p>
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For members of the Law Enforcement Officers' Pension System who are pension plan participants and were hired on or before June 30, 2011, the average final salary is calculated on the highest *three consecutive* years. For members who are pension plan participants and were hired on or after July 1, 2011, the average final salary is calculated on the highest *five consecutive* years.

**Early Retirement:** Law Enforcement Officers' Pension System members are not eligible for early retirement.

### **Vesting**

**Members Hired on or Before June 30, 2011:** Members of the Law Enforcement Officers' Pension System who were hired on or before June 30, 2011, are vested in the system after five years of service. Members who separate from service prior to accumulating five years of creditable service receive refunds of their accumulated contributions, which includes interest.

**Members Hired on or After July 1, 2011:** Members of the Law Enforcement Officers' Pension System who were hired on or after July 1, 2011, are vested in the system after 10 years of service. Law Enforcement Officers' Pension System members who separate from service prior to accumulating 10 years of creditable service receive refunds of their accumulated contributions, which includes interest.

Regardless of the date of hire, members of the Law Enforcement Officers' Pension System may begin to draw a deferred vested retirement allowance at age 50 if they leave State service before retirement. The vested benefit is equal to the normal retirement allowance computed on the basis of the member's accumulated creditable service and average final salary at the point of separation. If vested members do not withdraw their contributions and die before age 50, their accumulated contributions, which includes interest, are paid to the designated beneficiaries.

### **Deferred Retirement Option Program**

Members are eligible to participate in a Deferred Retirement Option Program. To participate in the program, a Law Enforcement Officers' Pension System member must have at least 25 years of creditable service, but less than 30 years. During the program period, a member is deemed retired and the retirement allowance is placed in an account earning interest. At the end of the program period, which may last no longer than five years, the lump-sum held in the program account is paid to the members who must end employment and fully retire. Deferred Retirement Option Program participants accrue interest in a program account at a rate of 4% a year, compounded *annually*.

## Judges' Retirement System

The Judges' Retirement System was established on June 30, 1969, with membership a condition of employment for all judges of the District Court, the circuit courts, the Court of Appeals, and the Court of Special Appeals. Full-time masters in chancery and masters in juvenile causes appointed prior to June 30, 1969, and Workers' Compensation Commission judges are also members of the system. **Exhibit 11.7** summarizes membership in the Judges' Retirement System, as of June 30, 2021.

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### Exhibit 11.7 Membership in the Judges' Retirement System As of June 30, 2021

<b>Membership</b>	
Active Members	315
Deferred Vested Members	7
Retirees and Beneficiaries	442
<b>Composite</b>	
Average Age – Active Members	57.8 Years
Average Years of Service – Active Members	8.3 Years
Average Annual Salary – Active Members	\$165,312
Average Age – Retirees and Beneficiaries	77.8 Years
Average Annual Benefit – Retirees and Beneficiaries	\$88,356

Source: Maryland State Retirement Agency

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### Member Contributions

Members contribute 8% of annual earnable compensation. Prior to July 1, 2012, members contributed 6%. Member contributions are only required during the first 16 years of service.

If all required contributions are not made prior to retirement, the member's retirement allowance is reduced to reflect the actuarial equivalent of the unpaid contributions plus interest to the date of retirement.

### Retirement Eligibility and Allowances

**Full Service Retirement:** Members of the Judges' Retirement System are eligible for full service retirement allowances at age 60 or upon retirement by order of the Court of Appeals with at least 16 years of eligibility service. All members must retire by age 70. Except for masters in chancery or masters in juvenile causes, the full service retirement allowance equals two-thirds (66.7%) of the annual earnable compensation paid to an active judge holding a comparable

position. The annual retirement allowance is prorated for members retiring with less than 16 years of eligibility service.

66.7% of Annual Earnable Compensation Paid to an Active Judge
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**Early Retirement:** Members of the Judges' Retirement System are not eligible for early retirement.

### **Vesting**

**Members Hired on or Before June 30, 2012:** Members of the Judges' Retirement System who were hired on or before June 30, 2012, are immediately vested in the system. Members leaving the bench before age 60 are eligible to receive their service retirement allowance upon attaining age 60.

**Members Hired on or After July 1, 2012:** Members of the Judges' Retirement System who were hired on or after July 1, 2012, are vested in the system after five years of service. Members leaving the bench with at least five years of service before age 60 are eligible to receive their service retirement allowance upon attaining age 60. Members may also receive a benefit with less than five years of service if their service equals the difference between the mandatory retirement age and the member's age when beginning membership in the system.

Regardless of the date of hire, the vested allowance for a member of the Judges' Retirement System equals the normal service retirement allowance computed on the basis of the member's accumulated creditable service and the salary of active judges holding comparable positions. Within six months after terminating service, but before receiving a retirement allowance, former members may elect to withdraw all accumulated contributions, which includes interest. However, members who withdraw their contributions after leaving service are no longer entitled to a vested benefit.

### **Legislative Pension Plan**

In 1966, legislation was enacted that provided for retirement allowances to be paid to members of the Maryland General Assembly under certain conditions. This Legislative Pension Plan was established as a subsystem within the Employees' Retirement System.

In 1970, a constitutional amendment was approved by the voters that created a nine-member General Assembly Compensation Commission and specified that the commission must submit salary, expense allowance, and pension recommendations to the legislature every four years. As a result of this constitutional amendment, the Legislative Pension Plan was redesigned but continues to be administered as a subsystem of the Employees' Retirement System. Membership and composite information for the Employees' Retirement System includes Legislative Pension Plan members.

The General Assembly Compensation Commission consists of five persons appointed by the Governor, two appointed by the President of the Senate, and two appointed by the Speaker of the House of Delegates. Appointees serve four-year terms. Members of the General Assembly and State and local government officers and employees are not eligible for appointment to the commission. The commission's recommendations must be submitted by means of a formal resolution to the General Assembly within 15 days after the beginning of the last regular legislative session in a four-year term of office. Through a joint resolution, the General Assembly may reduce or reject the recommendations included in the commission's resolution but may not increase those recommendations. Unless modified by the General Assembly, the commission's resolution has the force of law and takes effect at the beginning of the next General Assembly term.

The 2014 Resolution of the General Assembly Compensation Commission, effective for the term beginning January 14, 2015 (the start date of the 2015 through 2018 legislative term), made significant changes to the Legislative Pension Plan. Among the significant changes, the 2014 Resolution makes membership in the Legislative Pension Plan mandatory for all members serving on or after January 14, 2015. The following 2018 Resolution affirmed the significant changes made by the 2014 Resolution and aligned certain provisions of the Legislative Pension Plan with those in other plans in the State Retirement and Pension System.

The most recent commission resolution was submitted in January of 2022 for the 2023 through 2026 legislative term and recommended technical and clarifying changes to the Legislative Pension Plan.

### **Member Contributions**

Members are required to contribute 7% of annual earnable compensation.

### **Retirement Eligibility and Allowances**

**Full Service Retirement:** Members of the Legislative Pension Plan who have creditable service before January 14, 2015, are eligible for a full service retirement allowance at age 60. Members who do not have creditable service before January 14, 2015, are eligible for a full service retirement allowance at age 62.

The benefit formula for full service retirement for members of the Legislative Pension Plan is calculated as 3% of the salary of an active legislator in a similar position for each year of service. The maximum allowance is two-thirds of the current legislative salary payable to an active legislator. Thus, members stop accruing benefits after 22 years and 3 months and no longer make the 7% member contribution (but they may still continue serving in the General Assembly).

(3% x the Salary Paid to an Active Legislator in a Similar Position) x Number of Years of Service (capped at 22.3 years)

**Early Retirement:** Members of the Legislative Pension Plan who have creditable service before January 14, 2015, are eligible for an early retirement allowance at age 50. Members who

do not have creditable service before January 14, 2015, are eligible for an early retirement allowance at age 55.

The early retirement allowance is equal to the full service retirement allowance reduced by 6% for each year by which the member's retirement date precedes the date on which the member reaches the full service retirement age. For members who have creditable service before January 14, 2015, the full service retirement age is 60; therefore, the maximum reduction for early retirement is 60%. For members who do not have creditable service before January 14, 2015, the full service retirement age is 62; therefore, the maximum reduction for early retirement is 42%.

### **Vesting**

Members of the Legislative Pension Plan are vested in the system after eight years of service. Members with service prior to January 9, 2019, who have less than eight years of service credit may also become vested by paying the employer and employee contributions for the remaining amount of time they need to reach eight years. This ability to purchase future service credit is unique to the Legislative Pension Plan.

With eight years of service, a member is eligible for a retirement allowance equal to 24% of the current salary for an active legislator. For members who have creditable service before January 14, 2015, the retirement allowance is payable at age 60 (or a reduced benefit upon attaining age 50). For members who do not have creditable service before January 14, 2015, the retirement allowance is payable at age 62 (or a reduced benefit upon attaining age 55).

A legislator with less than eight years of service who resigns to become a judge or an official included in the Judicial Pension Plan is vested upon resignation. Legislators who withdraw their contributions after leaving service are no longer entitled to a vested benefit.

### **Forfeiture of Benefits**

A retired member, or a member's beneficiary, is prohibited from receiving a retirement allowance under the Legislative Pension Plan if the member is convicted of, or enters a plea of *nolo contendere* to (1) any felony or (2) a misdemeanor related to the member's public duties and responsibilities that was committed during the member's term of office and that involves moral turpitude for which the penalty may be incarceration. Members or retirees who are subject to the forfeiture of benefits from the Legislative Pension Plan are entitled to receive a return of the member's contributions with interest, less any benefits already paid prior to the forfeiture. If the member's conviction is later reversed or overturned, the member's benefits must be restored.

## **Pension Components Similar Among Principal Plans**

Many of the nine principal plans administered by the system have very similar components; therefore, the second part of this chapter focuses on the following similar components: payment options; death benefits; disability retirement allowances; COLAs; and post-retirement health

insurance. Unless otherwise noted, the information below is applicable to members in each of the following nine principal plans administered by the system: (1) the Teachers' Retirement System; (2) the Employees' Retirement System; (3) the Teachers' Pension System; (4) the Employees' Pension System; (5) the State Police Retirement System; (6) the Correctional Officers' Retirement System; (7) the Law Enforcement Officers' Pension System; (8) the Judges' Retirement System; and (9) the Legislative Pension Plan.

## **Payment Options**

### **Basic Allowance**

A retirement reserve is established for each member who retires. This reserve is the amount needed, with interest, to pay for the member's normal retirement allowance or basic allowance. A basic allowance is computed according to the specific rules of each plan. The basic allowance determines the monthly benefit a retiree is entitled to receive.

In the Teachers' and Employees' Retirement Systems, the Teachers' and Employees' Pension Systems, and the Correctional Officers' Retirement System, members may choose between the basic allowance and six other optional forms of payment. If a member of one of these systems chooses the basic allowance, even if the member has a surviving spouse or children, payments cease upon the death of the retiree.

In the State Police Retirement System, if a member is married or has children at the time of retirement, the member is required to have the basic allowance. However, in this system, upon the death of the retiree, the basic allowance provides 80% of the retiree's allowance to the surviving spouse for life, nondisabled children until they reach age 18, or to disabled children as long as they remain disabled.

Similarly, if a member of the Law Enforcement Officers' Pension System or the Judges' Retirement System is married or has minor children at the time of retirement, the member is required to have the basic allowance. However, in these systems, upon the death of the retiree, the basic allowance provides 50% of the retiree's allowance to the surviving spouse for life, nondisabled minor children until they reach age 26, or to disabled children as long as they remain disabled.

Members of the State Police Retirement System, the Law Enforcement Officers' Pension System, or the Judges' Retirement System who are not married and do not have children at the time of retirement may choose the basic allowance or one of six optional forms of payment. In this case, if the basic allowance is chosen, payments cease upon the death of the retiree.

If a member of the Legislative Pension Plan is married, the basic allowance provides 50% of the retiree's allowance to the surviving spouse for life upon the death of the retiree. An unmarried member of the Legislative Pension Plan may designate a beneficiary to receive the basic allowance or an optional form of payment. Unique to the Legislative Pension Plan, an unmarried member may choose the basic allowance and designate a beneficiary to receive 50% of the retiree's

basic allowance upon the death of the retiree and upon the beneficiary attaining age 60 (if the member has creditable service prior to January 14, 2015) or age 62 (if the member has no creditable service prior to January 14, 2015). A member may select an option for a 100% survivor benefit, which is an actuarially reduced benefit. If a member is married at the time of retirement, they must select their spouse as the beneficiary for this optional benefit.

### **Optional Forms of Payment**

A member may choose an optional form of payment in order to provide benefit protection for a spouse or other designated beneficiary. Since a member's retirement reserve is the amount needed, with interest, to pay for the member's normal retirement allowance, when an optional allowance is chosen, the member's normal service retirement allowance is reduced by an actuarially determined factor to provide a potential death benefit for the member's designated beneficiary. With the exception of the Legislative Pension Plan, the other principal plans offer six optional forms of payment:

- Option 1 provides a cash payout to the designated beneficiary or the retiree's estate in an amount equal to the excess of the present value of the retirement allowance at the date of retirement minus the total amount of payments (less COLAs) made to the date of death. The amount remaining in the retirement reserve is paid to the designated beneficiary or estate as a one-time lump-sum payment.
- Option 2 provides a 100% joint and survivor annuity, which means that upon the death of the retiree, the entire monthly payment continues to be paid to the beneficiary for the remainder of the beneficiary's life.
- Option 3 provides for a 50% joint and survivor annuity, which means that upon the death of the retiree, half of the monthly benefit continues to be paid to the beneficiary for the remainder of the beneficiary's life.
- Option 4 guarantees a minimum return of the members' accumulated contributions by providing that if the retiree dies prior to receiving all employee contributions with interest, the balance will be paid in a lump-sum to the designated beneficiary.
- Option 5 provides a 100% survivor pop-up. Upon the death of the retiree, the designated beneficiary is paid the retiree's entire allowance for the remainder of the beneficiary's life. However, if the beneficiary predeceases the retiree, the retiree may designate a new beneficiary or else the retirement allowance will pop-up to the retiree's maximum allowance, in which case all payments cease at the death of the retiree.
- Option 6 provides a 50% survivor pop-up. Upon the death of the retiree, the designated beneficiary is paid one-half of the retiree's allowance for the remainder of the beneficiary's life. However, if the designated beneficiary predeceases the retiree, the retiree may

designate a new beneficiary or else the retirement allowance will pop-up to the retiree's maximum allowance, in which case all payments cease at the death of the retiree.

In Options 2 and 5, a member may not designate a beneficiary who is more than 10 years younger than the member, unless the beneficiary is the member's spouse or disabled child as defined under the Internal Revenue Code.

In the Legislative Pension Plan, members may choose to provide a 100% joint and survivor annuity, which means that upon the death of the retiree, the entire monthly payment will continue to be paid to the surviving spouse, eligible child, or designated beneficiary for the remainder of the beneficiary's life. A member, however, may not designate a beneficiary who is more than 10 years younger than the member, unless the beneficiary is the member's spouse or disabled child as defined under the Internal Revenue Code.

## **Death Benefits**

### **Ordinary Death Benefit**

With the exception of the Judges' Retirement System and the Legislative Pension Plan, an ordinary death benefit is paid if an *active* member dies after completing one year of eligibility service. The benefit provided upon death is a lump-sum payment equal to the member's annual earnable compensation at the time of death plus all accumulated contributions, which includes interest. A surviving spouse may elect to receive a 100% survivor annuity rather than a lump-sum payment if the spouse is the sole primary designated beneficiary and the member was eligible to retire or was at least 55 years of age with at least 15 years of eligibility service (or, regardless of age, had at least 25 years of eligibility service in the Employees' Pension System or the Teachers' Pension System). A 100% survivor annuity means that upon the death of the member, the entire monthly payment that the member would have been entitled to receive at the time of the member's death will be paid to the beneficiary for the remainder of the beneficiary's life. If the member is not survived by a spouse, the member's children, if any, who are under the age of 26 or disabled may receive a benefit equal to 50% of the annuity.

### **Special Death Benefit**

With the exception of the Judges' Retirement System and the Legislative Pension Plan, if an active member dies while in the line of duty, a special death benefit equal to two-thirds of the member's final average compensation is paid as an annuity to the surviving spouse, plus a return of all accumulated member contributions, which includes interest. If the member is not survived by a spouse, the member's children, if any, who are under the age of 26 or disabled, receive the annuity. The annuity continues to surviving children until each child turns 26 years of age or to a disabled child regardless of age. If there is no surviving spouse or eligible children, the member's dependent parents, if any, may receive the annuity for life.

Under certain circumstances, an eligible individual may waive the special death benefit in lieu of an ordinary death benefit.

### **Special Provisions for the State Police Retirement System and the Law Enforcement Officers' Pension System**

If a member of the State Police Retirement System or the Law Enforcement Officers' Pension System dies after completing one year of eligibility service but less than two years of eligibility service, the member is eligible to receive the ordinary death benefit mentioned above. However, if an active member dies after completing at least two years of eligibility service prior to the date of death and does not die in the line of duty, in lieu of the ordinary death benefit, a special death benefit is paid as an annuity to the surviving spouse, plus a return of all accumulated contributions, which includes interest.

In the State Police Retirement System, this special death benefit equals 50% of the member's annual earnable compensation at the time of death plus a return of all accumulated contributions, which includes interest. In the Law Enforcement Officers' Pension System, this special death benefit equals 50% of the applicable ordinary disability allowance plus a return of all accumulated contributions, which includes interest. In both systems, if the member is not survived by a spouse, the member's children, if any, who are under the age of 26 or disabled, receive the annuity. The annuity continues to surviving children until each child turns 26 years of age or to a disabled child regardless of age. If there is no surviving spouse or eligible children, the member's dependent parents, if any, may receive the annuity for life.

Also, if a retired member dies, a survivor death benefit is paid if the retired member was receiving a service retirement allowance or a disability allowance. This survivor death benefit equals 80% of the retirees' retirement allowance in the State Police Retirement System and 50% of the retirees' retirement allowance in the Law Enforcement Officers' Pension System. In both systems, this benefit is paid as an annuity to the surviving spouse, or, if there is no surviving spouse, to the member's children who are of a certain age or disabled. In the State Police Retirement System, this special death benefit is available until the member's youngest child reaches age 18. In the Law Enforcement Officers' Pension System, this special death benefit is available until the member's youngest child reaches age 26. In both systems, disabled children receive the annuity regardless of age.

### **Special Provisions for the Judges' Retirement System**

In the Judges' Retirement System, a death benefit is paid if a member, former member, or retiree dies regardless of age or length of service. The death benefit equals 50% of the full service retirement allowance, which is paid as an annuity to the surviving spouse. If the deceased member is not survived by a spouse, the member's children, if any, who are under the age of 26 or disabled, receive the annuity. The annuity continues to surviving children until each child turns 26 years of age or to a disabled child regardless of age. In the event a deceased member, former member, or retiree is not survived by a spouse or a minor child, then all accumulated contributions, which includes interest, are refunded to the estate.

In the Judges' Retirement System, there is no distinction between a member's death that occurs outside of the line of duty or while in the line of duty. The death benefit described above is paid under both circumstances.

### **Special Provisions for the Legislative Pension Plan**

Upon the death of an active legislator who is a member of the Legislative Pension Plan and who had less than eight years of service as a legislator, the surviving spouse receives a death benefit consisting of one year's salary plus a return of the accumulated contributions, which includes interest. If the member is not survived by a spouse, the member's children, if any, who are under the age of 26 or disabled, receive the benefit. If the member does not have a surviving spouse or children, then the beneficiaries share equally the lump sum payment.

Upon the death of a member of the Legislative Pension Plan who had at least eight years of service, the surviving spouse has the option of receiving either the death benefit described above or a survivor's benefit that is equal to 50% of the retirement allowance accrued to the date of death. Payment to the surviving spouse begins at the member's death. If the member is not survived by a spouse, the member's children, if any, who are under the age of 26 or disabled, receive the benefit. The benefit continues to surviving children until each child turns 26 years of age or to a disabled child regardless of age. If the member is not survived by a spouse or children, then the payment goes to the designated beneficiary.

For a member who had creditable service before January 14, 2015, payment to the designated beneficiary begins when the beneficiary attains age 60 or, if elected, at any time after the designated beneficiary attains age 50. For a member who had no creditable service before January 14, 2015, payment to the beneficiary begins when the beneficiary attains age 62 or, if elected, at any time after the beneficiary attains age 55. If a beneficiary elects to receive payment prior to age 60 or 62 (depending on the date a member began accruing creditable service), the payment is reduced by 0.5% for each month by which the beneficiary's age precedes the date the beneficiary attains age 60 or 62. If the member designated multiple beneficiaries, then the beneficiaries share equally the lump-sum payment.

In the Legislative Pension Plan, there is no distinction between a member's death that occurs outside of the line of duty or while in the line of duty. One of the death benefits described above, depending on the member's length of service, is paid under both circumstances.

## **Disability Retirement Allowances**

### **Ordinary Disability Retirement Allowances**

In all of the systems listed above except the Judges' Retirement System and the Legislative Pension Plan, a member is eligible to receive an ordinary disability retirement allowance after completing five years of eligibility service and after receiving certification from the medical board that the member is permanently incapable of performing the necessary functions of the job. However, the calculation of the allowance differs among the systems.

In the Teachers' Retirement System and the Employees' Retirement System, the disability retirement allowance for Selection A and B members is equal to the greater of (1) a normal service retirement allowance (one fifty-fifth, which is 1.818%, of the highest three years' average final salary) or (2) either 25.0% of the member's average final salary or, if the member is under the normal retirement age (60 years), 1.818% of the average final salary for each year of creditable service that the member would have received had the member continued to work until age 60, whichever is less. For Selection C members (as required by the 1984 legislation), the disability retirement allowance is the greater of (1) an ordinary disability retirement allowance calculated using the Teachers' Retirement System formula given above or (2) an ordinary disability retirement allowance calculated using the Teachers' Pension System formula.

In the Correctional Officers' Retirement System, the disability retirement allowance is calculated the same as for Selection A and B members of the Teachers' Retirement System and the Employees' Retirement System, except that normal retirement age could be 55 years.

In the Teachers' Pension System and the Employees' Pension System, the disability retirement allowance is equal to the full service pension allowance if the member is at least 62 years of age on the date of retirement. Otherwise, the allowance equals the full service pension allowance computed as though the member had continued to accrue service credits until age 62 without any change in the rate of earnable compensation.

In the State Police Retirement System, the ordinary disability retirement allowance is equal to the greater of (1) a full service retirement allowance computed on the basis of the member's accumulated creditable service and average final salary; or (2) 35% of the member's average final salary.

In the Law Enforcement Officers' Pension System, the amount of the disability allowance depends on the member's status as a retirement plan participant or a pension plan participant. The ordinary disability allowance for a retirement plan participant equals the greater of (1) the normal service retirement allowance or (2) 25% of average final salary. For a pension plan participant, the ordinary disability allowance equals the full service pension allowance if the member is at least 50 years of age on the date of retirement. Otherwise, the allowance equals the full service pension allowance computed as though the member had continued to work until age 50 with no change in earnable compensation.

### **Special Provisions for the Judges' Retirement System**

In the Judges' Retirement System, members do not need to complete five years of service to be eligible for a disability retirement allowance. Members are eligible for a disability retirement allowance upon receiving certification from the medical board that the member is permanently incapable of performing the necessary job functions. The disability retirement allowance is equal to the full service retirement allowance based on the member's actual length of service. However, if a member has at least three years of eligibility service, the disability benefit will be at least one-third (33.3%) of the member's annual earnable compensation at the time of retirement.

### **Special Provisions for the Legislative Pension Plan**

Unlike the other systems mentioned earlier, in the Legislative Pension Plan a member must have at least eight years of creditable service to be eligible for a disability retirement allowance. The medical board must certify that the legislator is mentally or physically incapacitated for further performance of legislative duty and that the incapacity is likely to be permanent. The disability retirement allowance is computed on the member's creditable service.

### **Accidental Disability Retirement Allowances**

With the exception of the Judges' Retirement System and the Legislative Pension Plan, in all of the systems listed earlier, if during the course of job performance, a member becomes totally and permanently disabled as the direct result of an accidental injury, the member is eligible to receive an accidental disability retirement allowance. Prior to receiving this benefit, the medical board must certify that the member is, in fact, totally and permanently disabled.

The accidental disability allowance is equal to the lesser of (1) the sum of an annuity determined as the actuarial value of the member's accumulated contributions, which includes interest, and two-thirds (66.7%) of the member's average final salary or (2) the member's average final salary.

Additionally, in the Law Enforcement Officers' Pension System, a member can be eligible for an accidental disability retirement allowance if the member becomes totally and permanently incapacitated for duty as a result of an injury *arising out of* performance of the job, as well as an injury in the *actual* performance of the job. The same is true for members of the State Police Retirement System, but the allowance is called a special disability retirement allowance rather than an accidental disability retirement allowance.

In the case of members who transferred from the Teachers' Retirement System to the Teachers' Pension System or from the Employees' Retirement System to the Employees' Pension System, members who apply for disability retirement within two years of the transfer will have their disability benefits reduced by the amount that the member received in refunded contributions from the previous system.

Members of the Judges' Retirement System and the Legislative Pension Plan are not eligible to receive an accidental disability retirement allowance; however, if they are injured on the job, they may be eligible for an ordinary disability retirement allowance.

### **Disability Retirement Allowance Reductions**

Disability retirement allowances are generally reduced by workers' compensation benefits paid after retirement if, and to the extent that, such benefits are for the same injury and the same period of time for which the retirement benefits are paid. However, a workers' compensation benefit reduction cannot reduce any retirement allowance to less than the amount necessary to cover the retiree's monthly health insurance premiums. Disability retirement allowances for

members who are employees of participating governmental units are not reduced by workers' compensation benefits. Instead, the offset is taken against any workers' compensation benefits payable for the same injury and the same period of time for which the retirement benefits are paid.

### **Cost-of-living Adjustments**

With the exception of the Judges' Retirement System and the Legislative Pension Plan, all of the retirement allowances are adjusted each year based on the Consumer Price Index for all urban consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics. COLAs are effective July 1 of each year and are applied to all allowances payable for the year.

Prior to calendar 2009, the Consumer Price Index for all urban consumers had not had a negative change since automatic COLAs were first instituted in the early 1970s. However, as of December 31, 2009, the Consumer Price Index for all urban consumers declined by 0.356% over the previous calendar year. As a result, legislation was enacted in 2010 to prevent the reduction in retirement allowances in fiscal 2011. That legislation also required that COLAs in the succeeding year be adjusted to recover the difference the negative COLA that would have been applied and the zero COLA. Then legislation was enacted in 2011 that permanently precludes annual COLAs from being less than zero. In years in which COLAs would be less than zero due to deflation, retirees and beneficiaries do not receive a COLA, but COLAs in succeeding years are adjusted until the difference between the negative COLA that would have applied and the zero COLA is fully recovered.

The amount of the COLA differs depending on what plan the member is in and depending on when the service credit was earned.

#### **Service Credit Earned on or Before June 30, 2011**

In the Teachers' Retirement System and the Employees' Retirement System, the amount of a beneficiary's COLA depends on the member's selection made on July 1, 1984. Selection A members receive an unlimited annual COLA based on the Consumer Price Index. The COLA for Selection B members is limited to not more than 5% compounded annually. The COLA for members who chose Selection C is computed in two parts. For the service credits accrued prior to the member choosing Selection C, the COLA is unlimited unless the member chose Selection B prior to Selection C, in which case the COLA is limited to 5% compounded annually. For service credits that were accrued after the member chose Selection C up through June 30, 2011, the COLA is limited to 3% compounded annually.

In the Teachers' Pension System and the Employees' Pension System, for service credit earned on or before June 30, 2011, the COLA is limited to 3% compounded annually. However, Employees' Pension System members who do not receive the enhanced Employees' Pension System formula receive a simple, rather than a compounded, COLA limited to 3% annually.

In the Law Enforcement Officers' Pension System, the amount of a beneficiary's COLA depends on the member's status as a retirement plan participant or a pension plan participant. The

COLA for a retirement plan participant depends on the member's selection. Selection A members receive an unlimited annual COLA based on the Consumer Price Index. The COLA for Selection B members is limited to 5% compounded annually. The COLA for a pension plan participant is limited to 3% compounded annually for service credit earned on or before June 30, 2011.

In the State Police Retirement System and the Correctional Officers' Retirement System, for service credit earned on or before June 30, 2011, the COLA is unlimited.

### **Service Credit Earned on or After July 1, 2011**

With the exception of the Judges' Retirement System and the Legislative Pension Plan (where the retirement allowances are based on the salaries for the active judges and legislators), the 2011 pension reform linked COLAs for service credit earned on or after July 1, 2011, to the performance of the system's investment portfolio. For members of the Teachers' Retirement System (Selection C members), the Employees' Retirement System (Selection C members), the Teachers' Pension System, the Employees' Pension System, the State Police Retirement System, the Correctional Officers' Retirement System, and the Law Enforcement Officers' Pension System (pension plan participants), COLAs for service credit earned on or after July 1, 2011, are linked to the performance of the system's investment portfolio. If the portfolio earns its actuarial target rate (the assumed rate of return on investments), the COLA is subject to a 2.5% cap. If the portfolio does not earn the target rate, the COLA is subject to a 1.0% cap. For the fiscal 2022 valuation, the actuarial target rate is 6.80%.

### **Judges' Retirement System and Legislative Pension Plan COLAs**

The 2011 pension reform COLA provisions did not apply to active members or retirees of the Judges' Retirement System or the Legislative Pension Plan because their benefit increases are linked to the salaries of current judges and legislators, respectively, and are not limited to inflation rates. Whenever there is a salary adjustment for sitting judges or active legislators, the retirement allowance for a retiree of the Judges' Retirement System or the Legislative Pension Plan is increased, as applicable. This linking of post retirement adjustments to active salaries is regarded as an unlimited compound COLA.

### **Immediate Vesting**

An individual who is a secretary of a principal department or a head of a department, office, or other unit of the State government serving at the Governor's pleasure has immediate vesting rights on taking office in the State system in which the individual is a member. Since an appointed official is limited to vesting during the term for which the official is appointed, legislation was enacted in 2022 that established immediate vesting for an individual who serves as the head of a department, an office, or other unit of State government and is appointed by the Governor for a fixed term.

## **Post Retirement Health Insurance**

Members employed by the State may participate in the State Employee and Retiree Health and Welfare Benefits Program after retirement, which provides post retirement health insurance to eligible retirees. Members employed by a participating governmental unit are entitled to the post retirement health insurance provided by that particular employer.

In addition to comprehensive reform of the State's pension system, the Budget Reconciliation and Financing Act of 2011 (Chapter 397) implemented reforms to the State Health and Welfare Benefits Program. For more information on post retirement health insurance benefits for State retirees, please see "Chapter 15. Retiree Health Insurance" of this handbook.

## **Additional Plans Administered by the System**

The third part of this chapter focuses on the two additional plans administered by the system: the Optional Retirement Program; and a pension plan for governors and other constitutional officers.

### **Optional Retirement Program**

In 1975, the State established the Optional Retirement Program for certain eligible employees of public higher education institutions. Eligible employees are:

- members of the faculty of the University System of Maryland, Morgan State University, St. Mary's College of Maryland, or a community college;
- certain professional employees of the Maryland Higher Education Commission, community colleges, Morgan State University, and St. Mary's College of Maryland; and
- nonclassified employees of the University System of Maryland.

Eligible public higher education employees must elect to participate in (1) the Optional Retirement Program; (2) the Teachers' Pension System; or (3) the Employees' Pension System. Federal tax law requires employees to make the choice whether to join the Optional Retirement Program at the commencement of employment. This choice is a one-time, irrevocable decision.

Unlike the system's nine principal plans, which are defined benefit plans, the Optional Retirement Program is a defined contribution plan. A defined contribution plan provides a benefit based upon an accumulated account balance.

The optional program is a contract between the participant and the selected vendor. By the terms of the plan, the State contributes a defined percentage of pay in the name of the participant

to the vendor (currently 7.25% of salary). These contributions are held in an annuity fund until the participant retires, at which time they are paid out to the participant as a retirement allowance.

Unlike the system's nine principal plans, there is no mandated employee contribution in the Optional Retirement Program; in fact, employee contributions are not authorized. The two plan vendors may also offer supplemental retirement accounts, in accordance with § 401(a), § 403(b), or § 457 of the federal Internal Revenue Code, to Optional Retirement Program participants.

Also, unlike the system's nine principal plans, participants have immediate vesting in the Optional Retirement Program account balance. Benefits from the Optional Retirement Program may begin upon separation from employment; however, depending on the participant's age, a federal tax penalty may apply.

As of December 31, 2021, there are approximately 45,992 participants in the optional program.

When the Optional Retirement Program was first established in 1975, members were not eligible for retiree health benefits. However, in 1984, optional program employees, spouses, and children became eligible to receive retiree health benefits through the State Employee and Retiree Health and Welfare Benefits Program if the individual:

- ended service with a State institution of higher education with at least 10 years of service and was at least age 57;
- ended service with a State institution of higher education with at least 16 years of service; or
- retired directly from and had at least 5 years of service with a State institution of higher education with a periodic distribution of benefits from an Optional Retirement Program account.

With the passage of the 1984 legislation, optional program retirees who retired directly from a State institution of higher education became eligible to receive (1) a prorated health insurance subsidy if the retiree had at least 5 years of service but less than 16 years of service; or (2) the maximum health insurance subsidy if the retiree had at least 16 years of service. Retirees who had at least 25 years of service did not have to retire directly from a State institution of higher education in order to receive the health insurance subsidy. The State health insurance subsidy for retirees is one-sixteenth for each year of the retiree's service up to 16 years.

However, spouses and children of optional program retirees were not eligible for a State health insurance subsidy until legislation was enacted in 1993, which allows the retiree's spouse and children to receive the maximum State retiree health insurance subsidy if the retiree has at least 25 years of service. However, the retiree's spouse and children are not eligible for a prorated subsidy if the retiree has less than 25 years of service.

As was the case for many of the members of the principal plans within the system, the 2011 pension reform altered eligibility requirements for Optional Retirement Program employees who began State service on or after July 1, 2011. Members who began State service on or before June 30, 2011, continue to receive the benefits as described earlier. However, optional program members who began State service on or after July 1, 2011, are eligible for retiree health care coverage through the State Employee and Retiree Health and Welfare Benefits Program if the individual:

- ends service with a State institution of higher education with at least 10 years of service and is at least age 57;
- ends service with a State institution of higher education with at least 25 years of service; or
- retires directly from and has at least 10 years of service with a State institution of higher education with a periodic distribution of benefits from an Optional Retirement Program account.

Optional Retirement Program retirees who began State service on or after July 1, 2011, and retire directly from a State institution of higher education are eligible to receive (1) a prorated health insurance subsidy if the retiree had at least 10 years of service, but less than 25 years of service or (2) the maximum health insurance subsidy if the retiree had at least 25 years of service. The State health insurance subsidy for retirees is one-twenty-fifth for each year of the retiree's service up to 25 years. If the optional program retiree had at least 25 years of service, the retiree's spouse and children are eligible to receive the maximum State retiree health insurance subsidy; however, the retiree's spouse and children are not eligible for a prorated subsidy if the retiree had less than 25 years of service.

## **Retirement Provisions for Governors, Lieutenant Governors, and Constitutional Officers**

### **Governors**

The Governor's Retirement Plan is a noncontributory plan that is a subsystem of the Employees' Retirement System. The Governor of Maryland is automatically enrolled in the plan upon taking office. Membership and composite information for the Employees' Retirement System includes members of the Governor's Retirement Plan.

If a Governor served in office before January 21, 2015, the Governor's Retirement Plan provides a pension benefit beginning at age 55. However, legislation enacted in 2014 increased the retirement age to 62 for governors who begin serving on or after January 21, 2015.

If a Governor serves one term, the pension plan benefit is equal to one-third of the annual salary received by the current Governor in office. If a Governor serves two terms, the benefit is

equal to one-half of the annual salary received by the current Governor in office. The retirement allowance for members of the Governor's Retirement Plan increases whenever there is a salary adjustment for the current Governor. This linking of post retirement adjustments to active salaries is regarded as an unlimited compound COLA.

The Governor is eligible for a disability retirement allowance if the General Assembly adopts a resolution by a three-fifths vote that the Governor is unable to perform the duties of the office due to a physical or mental disability. If a Governor leaves office due to a disability, the retirement allowance begins immediately and continues through the period of disability. The disability retirement allowance is equal to the normal service retirement allowance. A surviving spouse receives 50% of the retirement benefit that the Governor received or would have received.

There are no specific provisions applicable to accidental disability retirement allowance for the Governor; however, if the Governor is injured on the job, he or she may be eligible for the disability retirement allowance described earlier.

Prior to legislation enacted in 2014, a Governor had the same eligibility requirements for retiree health care coverage through the State Employee and Retiree Health and Welfare Benefits Program as State employees. Therefore, a Governor who began serving in office on or before June 30, 2011, was eligible for a State health insurance subsidy after 5 years of service at one-sixteenth for each year of service. However, a Governor who began serving in office on or after July 1, 2011, is eligible for a State health insurance subsidy after 10 years of service at one-twenty-fifth for each year of service. However, since governors may serve no more than two consecutive terms, future governors with no other creditable service would not be able to meet the 10-year service requirement.

Therefore, the 2014 Governor's Salary Commission recommended that for purposes of the retiree health benefit, governors qualify immediately upon taking office and accrue one-sixteenth of the maximum State subsidy for each year of service. Legislation was enacted in 2014 that allows a former Governor who begins serving on or after January 21, 2015, and is receiving a normal service retirement allowance from the State Retirement and Pension System to participate in State retiree health benefits provided under the State Employee and Retiree Health and Welfare Benefits Program upon reaching age 62 and is entitled to one-sixteenth of the State premium subsidy for retiree health care services for each year of service as Governor. The former Governor's surviving spouse is entitled to the same benefit. A former Governor who begins serving on or after January 21, 2015, and is receiving a disability retirement allowance may also enroll in the retiree health benefits program at age 62 and receive the same subsidy as a State employee.

### **Lieutenant Governors and Constitutional Officers**

Lieutenant governors and other constitutional officers such as the Attorney General, the State Comptroller, the State Treasurer, and the Secretary of State, participate in the Employees' Pension System unless the individual served the State prior to January 1, 1980, and elected to remain in the Employees' Retirement System. All provisions of the Employees' Pension System and the Employees' Retirement System apply to participating constitutional officers with

two exceptions: (1) constitutional officers have immediate vesting rights; and (2) constitutional officers receive a minimum benefit equal to 10% of the salary received in the last term of service.

### **Forfeiture of Benefits**

Retirement benefits payable to the Governor and other constitutional officers may be forfeited in whole or in part if the official is found guilty of, pleads guilty to, or enters a plea of *nolo contendere* to specified crimes. The forfeiture applies only to crimes committed and service credit earned after January 9, 2019. Various protections are afforded to family members of the officials, and officials are allowed to receive a refund of accumulated contributions.

## Chapter 12. Actuarial Aspects

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The ultimate cost of any retirement system includes the benefits paid to participants and the expenses incurred for administration. These benefit costs can extend over several decades. For example, a retirement system's liabilities and obligations to a member can extend over the 30 years that the member works plus the 20 to 30 years that the member is retired. Therefore, a retirement system must have a long-term funding plan that provides for the system's ultimate cost.

### Funding Method

There are three basic methods by which retirement systems are funded. They are as follows:

- **Pay-as-you-go Funding:** The employer funds retirement benefits as they come due by using pension contributions from active employees to pay for benefits of current retirees, with the employer making up any shortfall. No provisions are made to fund retirement benefits when the liabilities are incurred (*i.e.*, during an employee's career), so there is no pension "trust fund" to administer. For example, Social Security is a pay-as-you-go system that uses proceeds from the Social Security payroll tax paid by current employees to pay benefits for current retirees. Although this method produces a low cash outlay in the system's early years before many employees transition to retirement, the liabilities continue to accumulate. As a result, the employer's cash outlay increases dramatically as the system matures and retirement benefits exceed contributions from current employees.
- **Terminal Funding:** At the time of retirement, the employer purchases an annuity to provide the retiree with an income during the remainder of the retiree's life. Again, this method produces a low cash outlay in the early years of a system. However, as the system matures, the employer's cash outlay increases and becomes volatile.
- **Forward Funding:** The employer funds retirement benefits as the liability is incurred by making periodic payments to a fund that is invested to provide future retirement benefits. While this method produces a higher cash outlay in the early years of a system than pay-as-you-go funding, its ultimate cost is less because the obligations and liabilities of the system are partially offset by investment income earned by the pension trust fund. The success of forward funding depends in large part on the accuracy of the actuarial assumptions that are used to project future benefit obligations, and hence determine the current payments that are made toward those future obligations. If actual experience deviates from those assumptions, the contributions made in the present day may not be sufficient to pay for future benefits. With the enactment of the federal Employee Retirement Income Security Act of 1974, all private defined benefit plans must be forward funded. Public pension plans are exempt from the Employee Retirement Income Security Act, but the vast majority are forward funded.

When the General Assembly established the Teachers' Retirement System, the Employees' Retirement System, and the State Police Retirement System, it intended to forward fund all of these systems. However, in the years between 1962 and 1974, the State granted various benefit enhancements that were not forward funded. Consequently, in 1979, the General Assembly reiterated its intent to forward fund all retirement benefits through the enactment of Chapters 23 and 24. Since that time, all of the State's systems are funded using a forward funding method.

## Accrued Liabilities

The system currently uses the entry age normal cost method to determine the actuarial accrued liability on which future employer contribution rates will be based. Under this funding method, the total contribution rate consists of two elements, the normal cost rate and the unfunded actuarial accrued liability rate. The normal cost represents the value of retirement benefits earned by employees in the current year, assuming all assumptions are precisely accurate, there are no changes in the plan over the lifetime of the employee, and all of the employee's service is accrued after the establishment of the plan. The accrued liability represents the value of retirement benefits earned in prior years, and includes:

- the liability for benefits earned by employees under pre-existing pension plans before the establishment of the current plan;
- the total liability associated with any retroactive benefit enhancement; and
- the net effect of any previous actuarial gains and losses resulting from actual experience differing from the actuarial assumptions, or changes in those assumptions.

## Actuarial Assumptions

As indicated earlier, advance funding is dependent on the accuracy of actuarial determinations based on a variety of demographic and economic assumptions. The assumptions are not intended to predict the behavior of an individual member or group of members in a given year, or of economic performance in a given year. Rather, the assumptions are intended to predict members' collective behavior as well as the performance of the underlying economy over time. As the calculation of accrued liabilities includes a projection of future liabilities for every current member of the system, it relies heavily on assumptions about their future behavior, including:

- **Mortality:** the number of deaths at various ages that are expected to occur annually;
- **Disability:** the number of employees who will retire on some type of disability allowance rather than on a normal service allowance;

- **Turnover:** the number of employees who leave service prior to retirement, either before eligibility for deferred benefits, or after eligibility;
- **Retirement Rate:** the percentage of members who choose to retire when they are first eligible and at subsequent intervals;
- **Future Salary Increases:** an estimate of future salaries for plan participants;
- **Cost-of-living Increase:** an assumption concerning retirees' post retirement cost-of-living increases; and
- **Investment Return:** the rate of return on the system's investment portfolio.

The assumptions used for the actuarial valuation of the State's system are recommended by the State's actuary and adopted by the board of trustees based upon periodic analysis of the system's experience. Differences between assumed and actual experience (actuarial gains and losses) affect the system's unfunded actuarial liabilities. Therefore, these actuarial assumptions are subjected to a periodic "experience study," which is a comparison of actual experience with the actuarial assumptions used. The variation of an assumption from actual experience can lead to a gain or loss that is reflected in the accrued liability and is amortized over time. Maryland law requires an experience study at least once in each five-year period. The last experience study was based on actuarial results from the four years through June 30, 2018.

Since the 2018 actuarial experience study, the State Retirement and Pension Systems' board of trustees has adjusted several of the system's economic and actuarial assumptions. As of the June 30, 2021, valuation, the following significant assumptions are in place:

- a rate of return on investments of 6.80% ;
- inflation of 2.25% ;
- aggregate payroll growth of 2.75% compounded annually, attributable to inflation;
- post retirement cost-of-living increases from 1.96% to 2.75% per year for service before July 1, 2011, and an increase of 1.30% to 2.75% for service after July 1, 2011, (service in the largest plans earned on or after July 1, 2011, is subject to a 1% cap if the system does not achieve its actuarial investment return and 2.5% if it meets or exceeds the actuarial investment return);
- rates of mortality, withdrawal, service disablement, and retirement based on actual experience.

Since the Great Recession, public plans across the country have been reviewing their assumed rate of investment return. Consistent with that practice, in 2013 the board implemented a phased-in lowering of its assumed rate of return from 7.75% to 7.55% at a rate of 0.05% per year. In 2017, after further review of the assumed rate of return, the board decided to lower the assumed rate of return to 7.50% for the 2017 valuation and 7.45% for the 2018 valuation. In consultation with the system's actuary, the board again reduced the assumed rate of return to 6.80% beginning with the June 30, 2021 valuation. Changes to the investment assumption also included lowering of the system's inflation assumptions. In consultation with its actuary and investment consultants, the board monitors the reasonableness of the assumed rate of return and other economic assumptions in the course of carrying out its fiduciary responsibilities throughout each fiscal year.

## **Asset Valuation**

The equation to calculate the pension system's unfunded liabilities has two components: the calculation of total liabilities, discussed in the previous section; and the calculation of the assets available to pay those liabilities, which is the focus of this section. Most public pension plans take advantage of their long-range horizons to adjust the market value of their assets using asset smoothing strategies. Asset smoothing is a mechanism that spreads out, or smooths, annual investment returns over a designated period of time in order to minimize volatility. The State Retirement and Pension System employs a five-year rolling average to calculate its actuarial value of assets. In this way, only one-fifth of a given annual gain or loss is recognized during the year in which it occurs.

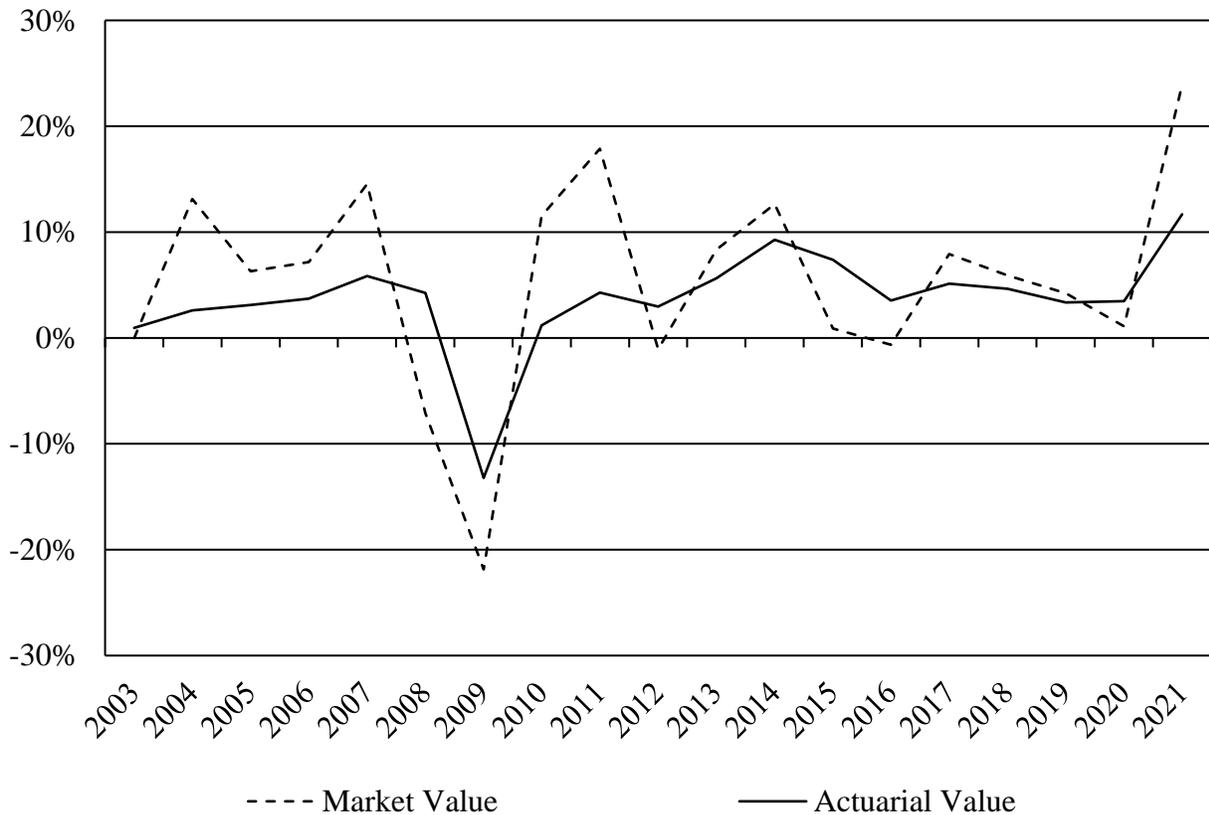
Asset smoothing protects the system from experiencing wild annual fluctuations in the value of its assets based on the performance of financial markets while still ensuring that all gains and losses are recognized in a timely fashion. Due to overall strong performance in spite of the COVID-19 pandemic, the system's fiscal 2021 investment return was 26.69%, with a market return of \$13.1 billion. Given the system's assumed rate of return for the year (6.80%), the expected return was about \$3.6 billion, resulting in an actuarial gain of about \$9.4 billion. The board adopted a proposal to recognize 40% of the investment gain from fiscal 2021, rather than the scheduled 20% recognized amount to offset some of the increase in unfunded liability. The remaining 60% of the fiscal 2021 gain will be recognized equally over the next four valuations of 15% each fiscal year.

Asset smoothing is often limited by a final adjustment to keep the actuarial value of assets from being too far from the market value of assets. For the State Retirement and Pension System, the actuarial value is not allowed to be lower than 80% of market value or higher than 120%. Prior to calendar 2009, this "collar" had never been invoked. However, due to the precipitous drop in the market value of assets due to the financial crisis of calendar 2008 through June 2009, the system ended fiscal 2009 with its actuarial value of assets representing 136.0% of its market value of assets. This required a one-time reduction to the actuarial value of assets of more than \$4.7 billion to bring it under the 120.0% ceiling. Although this represented a significant hit to the system in fiscal 2009, it also resulted in the system having fewer investment losses left to recognize over the

remaining four years. As of June 30, 2021, the actuarial value of assets was 92.9% of the market value.

**Exhibit 12.1** shows the annual percentage changes in both the actuarial and market value of assets since fiscal 2003. As the exhibit shows, both have experienced a fair amount of volatility, but because of asset smoothing, the fluctuations in the actuarial value of assets have been less severe than those for the market value of assets. This has provided a measure of stability to the State’s funding of the pension system while ensuring that smoothing policies have not excessively distorted the underlying performance of the system’s investments.

**Exhibit 12.1**  
**Actuarial versus Market Value of Assets**  
**Annual Percent Change**  
**Fiscal 2003-2021**

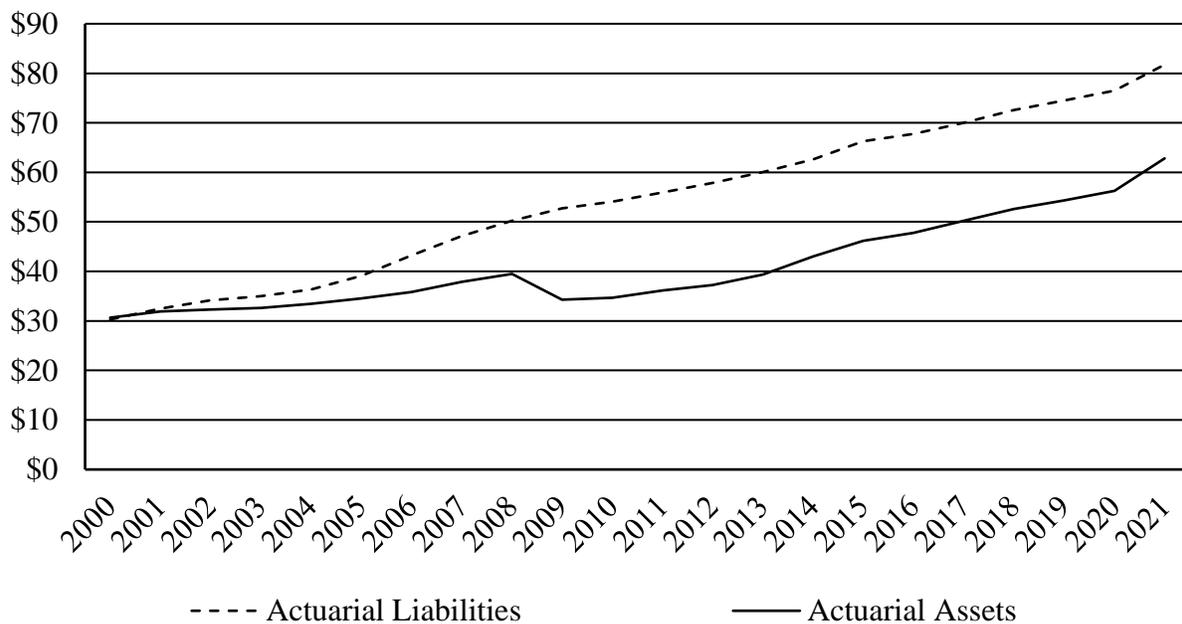


Source: State Retirement and Pension System Actuarial Valuations

## Unfunded Liabilities and Contribution Rates

The difference between the actuarial accrued liabilities and the actuarial value of assets calculated in a given year represents the system's total unfunded liabilities, which is shown in **Exhibit 12.2**. In fiscal 2000, the exhibit shows that actuarial assets and liabilities were equal to each other, reflecting a fully funded system. After that, liabilities continued to grow at a slightly faster pace than assets, until fiscal 2008, when investment losses prompted by the financial crisis resulted in a widening of the gap between them. Since then, the gap has remained fairly stable and has begun to narrow slightly in recent years.

**Exhibit 12.2**  
**Actuarial Liabilities and Assets**  
**Fiscal 2000-2021**  
**(\$ in Billions)**



Source: State Retirement and Pension System Actuarial Valuations

Each year, the system amortizes the total unfunded liabilities over a specified period of years and adds that to the normal cost calculation for that year. The sum of the normal cost and the annual amortization payment represents the system's total cost for that year. Based on system membership and payroll, the actuary then determines the annual contribution that, if all assumptions hold, is sufficient to pay the entire normal cost and the annual amortization payment for the accrued liability.

Chapters 475 and 476 of 2013 altered the amortization policy of the State Retirement and Pension System. From fiscal 2000 through 2012, the unfunded actuarial accrued liability had been amortized, as a level percentage of payroll, in two distinct pieces. The unfunded actuarial accrued liability that existed as of the June 30, 2000 actuarial valuation was amortized over a total of 20 years to June 30, 2020. The new layer of unfunded actuarial accrued liability that arose each year was amortized over a 25-year period from the date it was incurred. Under Chapters 475 and 476, however, all of the system's unfunded accrued liabilities are amortized over a closed 25-year period beginning July 1, 2013. All unfunded liabilities that arise in each succeeding year will be amortized over the remaining years of the 25-year closed period.

## Public versus Private Pension Plans

Under the provisions of the Employee Retirement Income Security Act, as amended by the federal Pension Protection Act of 2006, private plans are subject to very strict rules about how they calculate their liabilities and assets. Plans subject to Employee Retirement Income Security must amortize their unfunded accrued liability as annual level dollar amounts over a period of 7 years, substantially less than the typical 20 to 30 years used by public plans. Private plans are allowed to smooth their assets over no more than 24 months, whereas public plans typically smooth their assets over 5 to 10 years. Private plans are subject to a "collar" that restricts the actuarial value of assets to between 90% and 110% of the market value of assets. By contrast, Maryland's "collar" is 80% to 120%, which provides more flexibility in calculating the actuarial value of assets.

Perhaps the most meaningful difference between public and private plans is found in their investment return assumptions. Corporate investment return assumptions are based on corporate bond yields, which typically are significantly lower than the median investment return assumption used by most public plans. However, with bond yields at historically low levels for the 2012 plan year, corporate pension plans were under severe strain. Use of those rates to calculate plan assets and liabilities resulted in unusually high unfunded liabilities for corporate plans. In response, the federal Moving Ahead for Progress in the 21<sup>st</sup> Century Act, enacted in July 2012, allows corporate plans to use adjusted rates more in line with 25-year average yields.

The rationale for exempting public pension plans from the Employee Retirement Income Security Act's requirements is that sponsors of public plans, unlike private companies, are not expected to go out of business. Under the Employee Retirement Income Security Act, if a private plan sponsor goes bankrupt or otherwise cannot honor its pension obligation, the Pension Benefit Guaranty Corporation assumes the sponsor's pension liabilities and assets. The Employee Retirement Income Security Act's requirements are designed to ensure that private plans are well funded so that the Pension Benefit Guaranty Corporation's finances are not overwhelmed by the assumption of exorbitant unfunded liabilities. However, public plan sponsors typically do not go out of business and always have the option of raising additional revenue to honor their pension obligations. Therefore, they are exempt from the Employee Retirement Income Security Act's requirements and do not have the option of relying on the Pension Benefit Guaranty Corporation to assume control of their plans.

## **Actuarial Funding and the “Corridor” Funding Method**

During the economic recession of 2000 and 2001, when the pension fund experienced consecutive years of negative investment returns, the State determined that the mitigating effects of asset smoothing were not sufficient to protect it from a dramatic spike in pension contribution rates. As previously shown in Exhibit 12.2, the State Retirement and Pension System achieved full actuarial funding status in fiscal 2000 following nearly a decade of better-than-expected investment returns. However, the negative investment returns experienced in fiscal 2001 and 2002 resulted in a significant increase in the system’s unfunded liabilities, and a corresponding increase in State pension contributions, which had declined for the prior four fiscal years. This prompted the State to revise its approach to move the system back toward full actuarial funding while also controlling the growth in its contribution rates.

Faced with the prospect of dramatic increases in State contribution rates in fiscal 2002 due to investment losses, the State adopted a proposal to reduce the volatility of its contribution rates while still maintaining advance funding of its pension liabilities. Under the new approach, which was incorporated into the Budget Reconciliation and Financing Act of 2002 (Chapter 440), the rates for the largest systems – the employees’ and teachers’ systems – remained fixed at the fiscal 2002 certified rate as long as their funding levels remained in a “corridor” of actuarial funding from 90% to 110%.

Under the corridor funding method, contribution rates for plans that fell out of their corridors increased by an amount equal to one-fifth of the difference between the prior year’s budgeted rate and the “true” actuarial rate necessary to fully fund the systems. This had the effect of stretching out any increase in State contribution rates over five years. Any benefit enhancements or other changes to either plan would require adjustments to the fixed rate. At the time the corridor method was implemented, the employees’ systems were 102.2% funded, and the teachers’ systems were 93.5% funded. The employees’ systems fell out of their corridor in fiscal 2005, followed by the teachers’ systems in fiscal 2006.

The three smaller plans, the State Police Retirement System, the Judges’ Retirement System, and the Law Enforcement Officers’ Pension System, and the municipal pool of participating local units, were not affected by the corridor funding method, so their contribution rates were reset by the board of trustees and the actuary each year. The decision to exclude the smaller systems reflected concerns by the actuary and the board of trustees about the relative funding levels of these systems (the State Police Retirement System was 131% funded, while the Law Enforcement Officers’ Pension System was 57% funded). These smaller systems are more volatile and would be harder to keep within corridors.

In the long-term, the corridor approach created greater stability and predictability in budgeting but carried potential risks as well. As long as the employees’ and teachers’ systems stayed within their corridors, pension contributions increased only as a factor of payroll growth. Under the prior methodology, two consecutive years of poor investment performance would have caused the contribution rate to spike up at the same time that the State was experiencing declining

tax revenues. The corridor method insulated the State from having to dramatically increase its pension contribution when it could least afford to do so.

When it was enacted in 2002, the corridor funding method was expected to have minimal effect on the system's financial health because the pension system was expected to recover from the investment losses it experienced in fiscal 2001. However, it experienced additional losses in fiscal 2002, and, while returns were positive in fiscal 2003, they still fell below the actuarial investment target. As a result, the system's funding status continued to deteriorate, reaching a nadir after financial markets collapsed in fiscal 2008 and 2009. As a result, policymaking attention shifted from the corridor method's short-term benefits with regard to the State budget to its potential long-term fiscal effects.

The corridor method achieved its fundamental purpose by restricting the growth in State contributions under the teachers' and employees' retirement and pension plans. For the first eight fiscal years since the enactment of the corridor method, it saved the State between \$53.1 million and \$228.4 million in annual pension contributions when compared with what the State would have had to pay under full actuarial funding. However, the gap between full funding and corridor funding spiked in fiscal 2011, reaching \$594.0 million.

## **Return to Full Actuarial Funding**

Losses incurred during the Great Recession, combined with underfunding by the corridor, resulted in a funded ratio of 63.4% in fiscal 2010. The State's fiscal 2011 contribution under the corridor method was just 70% of the full actuarial cost of the retirement and pension plans for teachers and regular State employees. To improve the funded status, the State has reduced pension benefits, adopted a full actuarial funding, and required supplemental payments. Chapters 475 and 476 implemented a phase out of the corridor funding method over 10 years, moving the system closer to full actuarial funding in each intervening year. Subsequently, Chapter 489 of 2015 ended the phase out of the corridor, moving the system back to full actuarial funding beginning in fiscal 2017.

## **Supplemental Funding**

The 2011 pension reform addressed losses incurred during the Great Recession and underfunding under the corridor by providing for supplemental contributions by the State to the system. Provisions of Chapter 397 of 2011 established a goal that the State Retirement and Pension System would achieve an actuarial funding level of 80% within 10 years, in part by reinvesting savings generated by the pension changes into the pension trust fund in the form of a "supplemental contribution." The original intent of the supplemental contribution was to narrow the gap between the amount contributed under the corridor method and the much higher amount that would have been contributed under full actuarial funding. In fiscal 2012 and 2013, the supplemental contribution equaled all but \$120.0 million of the savings generated, or roughly \$190.0 million

each year. The supplemental contribution was scheduled to increase permanently to \$300.0 million beginning in fiscal 2014, but Chapter 464 of 2014 altered the amounts. For each of fiscal 2014 and 2015, the supplemental contribution was set at \$100.0 million. Beginning in fiscal 2016, Chapter 464 increased the supplemental contribution by \$50.0 million annually until it reached the original amount of \$300.0 million in fiscal 2019. With the elimination of the corridor funding method, Chapter 489 set the supplemental contribution at \$75 million per year until the pension fund reaches an actuarial funding level of 85%.

Additionally, Chapter 489 provided for additional supplemental contributions for fiscal 2016 through 2020. These supplemental contributions equal one-half of the unappropriated general fund surplus in excess of \$10,000,000 from the second prior fiscal year be paid to the system trust fund, up to a maximum of \$50,000,000 annually. Chapter 23 of 2017 repealed this requirement for fiscal 2018, and Chapter 10 of 2018 repealed it for fiscal 2019. Chapter 557 of 2017 extended the potential payments beyond fiscal 2021, but at a reduced maximum of \$25 million per year. These supplemental payments are colloquially referred to as “sweeper” contributions.

## Chapter 13. Investment Overview

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The Board of Trustees of the State Retirement and Pension System is responsible for the system's investment portfolio that, as of June 30, 2022, had a market value of \$64.6 billion. The portfolio is Maryland's largest public pool of capital. The State Retirement Agency's Investment Division is responsible for the day-to-day management of the portfolio in accordance with the policies and objectives established by the board. The chief investment officer, in consultation with the board's outside investment consultant, is responsible for the selection, supervision, and termination of external asset managers. Most investment funds are managed by external fund managers under the supervision of the chief investment officer and the Investment Division; in recent years, a small portion of the portfolio has been managed internally.

The portfolio began in 1927 with the establishment of the Teachers' Retirement System. Its investments were essentially limited to bonds and real estate until 1965, when the General Assembly authorized investments of up to 25% of the system's assets in equities. In 1980, legislation was enacted (Chapter 290) that changed the investment standards from those used by domestic life insurance companies (bonds and real estate) to the "prudent person" standard. As a result, the board of trustees is charged with fiduciary duties that encompass the responsibility of managing the assets of the system solely in the interests of participants and with the care, skill, and diligence that a prudent person would exercise in the conduct of similar affairs. This standard encourages the diversification of investments among various asset classes to avoid adverse experience, maximize returns, and provide financial stability. The board is required to adopt an investment policy manual setting forth the goals and objectives of the investment program and defining the policies that govern the selection and retention of investments.

### Investment Advisors

Beginning in 2002, the board retained the services of external investment consultants to help it navigate a market environment that has grown increasingly complex, challenging, and competitive. The role of the general consultant is to provide a broad array of investment consulting services to the board and staff, including asset liability studies, asset allocation advice, and periodic performance review of the system's outside investment managers. The general consultant also provides general information regarding investment trends and developments. Beginning in 2004, the system has also hired several specialty consultants in the areas of private equity, real estate, and absolute return. In addition to providing advisory, reporting, and analytical services, these specialty consultants help the system identify and conduct comprehensive due diligence on prospective investments. Investment advisors are listed in the system's Comprehensive Annual Financial Reports.

## **Asset Allocation**

Before fiscal 1987, the board's investment strategy for the allocation of system assets called for a 60.0% investment in equities and a 40.0% investment in fixed income securities. However, this asset allocation shifted dramatically in fall 1987 when the board of trustees used \$2.3 billion from the sale of equities and \$1.8 billion from the sale of fixed income securities to acquire nearly \$4.0 billion in additional fixed income securities. These bonds were then "dedicated" to paying the benefits of retirees who were retired as of June 30, 1987. The State's actuary had projected the cash flow required to pay the benefits of these retirees out to the year 2062. By establishing the Dedicated Bond Fund, the system matched the schedule of interest earnings and bond maturity dates to the schedule of these projected benefits. As a result, the system's unfunded liability decreased by approximately \$1.4 billion in fiscal 1990, which was largely responsible for the 1.4% decrease in the State's overall contribution rate to the systems (from 15.6% in fiscal 1989 to 14.2% in fiscal 1990). At the end of fiscal 1990, the board added approximately \$800 million in additional bonds to the fund, which was dedicated to paying the benefits of retirees who had retired as of June 30, 1989. As part of a restructuring of the system's fixed income program in the first quarter of 2003, the Dedicated Bond Fund was closed and its fixed income securities were transferred to an indexed bond portfolio.

During the late 1990s, when equities were realizing dramatic gains, the board shifted substantial funds from fixed income securities to equities to address what it perceived to be an "underweighting" of equities in the system's portfolio. It also, for the first time, branched out into alternative asset classes, establishing a 2.0% target in 1999 for investments in private equity partnerships. As a result, equity investments totaled 69.2% of the system's assets on June 30, 2002, while fixed income investments totaled just 22.1%. Following the precipitous decline in the equity markets in 2001 and 2002, the board reversed course, adopting a new asset allocation policy in calendar 2002 that established asset allocation targets based on three competing liability oriented objectives as follows:

- achieving and maintaining a fully funded pension plan;
- minimizing contribution volatility year to year; and
- achieving surplus assets.

The board initially established an equity allocation target of 60.0%, resulting in a gradual diminution in the system's reliance on equity investments, though they still represented a substantial majority of system assets. The equity allocation target was subsequently raised to 65.0%, with sub-asset targets for domestic, global, international, and private equity. The global equity sub-asset target (10.0%) did not take effect until fiscal 2006, resulting in a reduction of the domestic equity target from 48.0% to 40.0%. On June 30, 2005, equity totaled 65.3% of the system's assets.

In the aftermath of the worldwide financial crisis that began in fall 2007 and persisted for much of calendar 2008, the board once again revisited its asset allocation, making two substantial adjustments, first in January 2008 and again in September 2008. The fundamental purpose of these adjustments was to diversify the fund's investments by expanding its holdings in alternative asset classes and diminishing its holdings in both public equities and fixed income. Although public equities have historically had the highest annualized returns, they also experience the greatest volatility in annualized returns. This was clearly exhibited during the financial crisis, when public equities lost approximately 30% of their value. Thus, the changes were made to reduce year-over-year volatility while still achieving the fund's investment long-term objectives.

Between calendar 2008 and 2022, further adjustments were made to the asset allocation policies: (1) public equity allocations were reduced; (2) the private equity allocation, which has had strong returns over the long term, was substantially increased; (3) fixed income/rate sensitive and credit investments assumed a larger role in the portfolio; and (4) there was greater focus on emerging market equity and debt investments. In addition, the board has provided added flexibility by authorizing the chief investment officer to use hedge fund strategies in asset classes other than absolute return (public equity, fixed income, credit/debt, and real estate), with total exposure to hedge funds limited to 16% of the total fund.

The board engages in continued review and discussion of the system's asset allocation. The system's Investment Policy Manual requires review of the asset allocation on an annual basis in order to determine if a more formal allocation study is necessary, and requires a formal asset allocation study at least every two years. In 2022, the board updated its long-term asset allocation targets, effective July 1, 2022, as summarized in **Exhibit 13.1**. Achieving the asset allocation targets is done over time, and allocations to a particular asset class may fluctuate depending on investment performance. Within each asset class group, the board has also set ranges by which an asset class may fluctuate from its target, as well as constraints on types of asset holdings within asset classes and sub-asset classes. There is also a limit on total exposure to hedge funds, inclusive of hedge funds within the absolute return asset class as well as hedge fund investments in other asset classes. It bears noting, however, that the asset allocation changes represent long-term goals.

**Exhibit 13.1**  
**State Retirement and Pension System of Maryland**  
**Asset Allocation**

<u>Asset Class</u>	<u>7/1/22 Policy</u>	<u>Range</u>	<u>Constraints</u>
<b>Growth/Equity</b>	<b>50.0%</b>		Public Equity
U.S. Equity	15.0%		Hedge Funds: 0-20%
International Equity	9.0%	+/-7	Private Equity
International Emerging Markets	10.0%		Buyout: 60-90%
Private Equity	16.0%		Venture/Growth: 10-25%
			Special Situations: 10-30%
<b>Rate Sensitive</b>	<b>21.0%</b>		Long-term Government: 30-70%
Long-term Government Bonds	10.0%	+/-5%	Securitized/Corp: 10-50%
Securitized and Corporate Bonds	6.0%		Inflation-linked: 0-40%
Inflation-linked Bonds	5.0%		
<b>Credit</b>	<b>8.0%</b>		
High Yield Bonds and Bank Loans	7.0%	+/-4%	Hedge Funds: 0-30%
Emerging Market Debt	1.0%		Private Credit: 0-80%
<b>Real Assets</b>	<b>15.0%</b>		Real Estate
Real Estate	10.0%		Core: 50-100%
Natural Resources and Infrastructure	5.0%	+/-4%	Value Add: 0-25%
			Opportunistic: 0-25%
			REITs: 0-30%
			Commodities: 0-25%
<b>Absolute Return</b>	<b>6.0%</b>	+/-4%	
<b>Total Fund</b>	<b>100.0%</b>		

REIT: Real estate investment trust

Note: The total exposure to hedge funds is limited to 16% of the total fund, inclusive of hedge funds in the Absolute Return asset class, as well as other asset classes.

Source: State Retirement and Pension System Investment Policy Manual, July 2022

The asset classes are described as follows in the system's Investment Policy Manual:

- **Public Equity:** Investments in equity securities, known as shares or stocks, that represent an ownership interest in companies, and are generally traded on a stock exchange. Public equity assets consist of domestic stock (U.S. corporations traded on U.S. stock exchanges), international stock (non-U.S. corporations traded on exchanges in other countries), global stock (U.S. and non-U.S. corporations traded on U.S. and non-U.S. exchanges), and emerging markets (stock in corporations located in developing markets, traded on various local markets globally).
- **Rate Sensitive:** Investments in bonds, loans, or associated derivatives with an average portfolio credit quality of investment grade. Permissible bonds or loans may be nominal or inflation protected and those bonds or loans may be issued by an entity in any country. Generally, these securities are not traded on an exchange, pay interest on a regular schedule, and repay principle by maturity.
- **Credit:** Investments in bonds, loans, or associated derivatives with an average portfolio credit quality of below investment grade. Permissible bonds or loans may be fixed or floating rate, nominal or inflation protected, and those bonds or loans may be issued by an entity domiciled in any country. It includes distressed debt, mezzanine debt, structured debt, real estate debt, real asset debt, specialty finance, bank loans, convertible debt, high yield debt, emerging markets debt, and municipal debt.
- **Real Assets:** Investments whose performance is expected to exceed the rate of inflation over an economic cycle. The system's real assets program may include investment vehicles in both public and private investments in commodities, real estate, infrastructure, timber and other natural resources, energy and energy-related assets, agriculture, and multi-asset class portfolios with a real return mandate.
- **Absolute Return:** Investments whose performance is expected to exceed the three months U.S. Treasury bill by 4-5% over a full-market cycle and exhibit low correlation to public stocks. It includes hedge funds, multi-strategy, global tactical asset allocation, equity hedged, event driven, relative value, macro, insurance, private markets, opportunistic, and other similar investments.
- **Private Equity:** Investments in companies that are not registered with the Securities and Exchange Commission and are not traded in the public markets. Private equity may also be referred to as venture capital or buy-outs.

## **Terra Maria Program**

The Maryland State Retirement and Pension System formed an emerging manager program in April 2007. In September 2008, the system revised, expanded, and transformed the program into Terra Maria, the Maryland developing manager program. The program seeks to identify promising smaller or developing managers. While the original program's target had been raised from 1% to 2% of the portfolio, initial funding for the Terra Maria Program was earmarked at approximately 5%. Assets under management in the program in fiscal 2021 comprised \$2.7 billion in investments, totaling 4.0% of the system's assets. Each investment manager in the program has an active management mandate and is assigned to the appropriate asset or sub-asset class, depending on its respective holdings.

In fiscal 2017, the system reorganized the program's asset management to better utilize the asset diversification that the program can provide. The program transition included eliminating mandates for allocations to large-cap domestic equity and increasing mandates for international small-cap and emerging markets. The program consolidated under four managers. With the size of program investments in domestic equity in recent years, investment performance was tracking close to markets, making it more difficult to achieve excess returns in an asset class where it is already difficult to outperform the market, in addition to incurring active management fees. Since inception, all program managers have achieved returns above the system's assumed rate of return. The program has maintained a diverse roster of managers through the transition. Performance results have remained positive since the inception of the program.

Each program manager is responsible for recommending investment managers to the chief investment officer that are consistent with the program's focus. Program managers are instructed to focus on smaller investment managers. The program guidelines do not place a ceiling on the size of the firms in the program so that the program is not forced to "graduate" investment managers who successfully grow their portfolios. Although the program managers are responsible for performing due diligence on all firms that they recommend to the chief investment officer, all hiring, benchmark selection, and rebalancing decisions are left solely to the chief investment officer. Each investment manager in the Terra Maria Program is part of the State Retirement and Pension System portfolio and evaluated against its benchmark.

## **External Manager Oversight**

Prior to legislation in 2018 providing for the expansion of the system's Investment Division, all system assets were managed by external managers. With a large majority of system assets still managed by external managers, oversight of those managers is a key function of the board and Investment Division staff. Through its manager compliance program, the board seeks to minimize loss due to failings in the external managers' business processes, information systems, or internal controls. Through annual planning processes and regular site visits by Investment Division staff, the board determines resource needs on an ongoing basis while tracking progress and ensuring that each manager is meeting the system's objectives and expectations.

## Active and Passive Investing

The bulk of the State Retirement and Pension System investment portfolio is invested with active managers who strive to outperform relevant market indices or benchmarks. However, the system also makes extensive use of passive managers, who are charged with matching the performance of relevant market indices or benchmarks. Passive investing is used primarily in highly efficient, domestic markets where outperformance is difficult to achieve. Thus, as of June 30, 2022, the system had just under \$15 billion, or 23.1% of its total assets, invested through indexed investments. The system's focus on active management has yielded positive returns; as of June 30, 2022, the system's 1-, 5- and 10-year returns all exceed the relevant performance benchmarks by at least 51 basis points.

## Investment Division Governance

During the 2016 interim, the board of trustees requested legislation to give the State Retirement Agency authority to set the compensation of personnel in the State Retirement Agency's Investment Division and to establish positions within the division. Legislation introduced during the 2017 session did not pass, but language was included in the *Joint Chairmen's Report* for the fiscal 2018 State operating budget requiring the agency to submit a report on how the requested authority would be utilized. That report was presented at the October 25, 2017 meeting of the Joint Committee on Pensions.

The report noted that "it would be in the best interest of the System to be provided the additional authority to allow it to make necessary adjustments to the investment management program through time, specifically in the areas of compensation, creating and eliminating positions, and procuring investment-related products and services." The report noted that while authority to set compensation will not eliminate turnover, it would reduce compensation-related turnover, providing more staff continuity to the system. The ability to control the positions within the division (initially creating additional positions) would allow more senior managers to pass down necessary administrative functions to junior staff positions, allowing senior staff to focus more on developing and enhancing investment strategies. The report further noted that with control over personnel, the division can be structured so that no critical functions are the sole responsibility of one individual. Control over the number of division staff "will enable the division to expand the universe of potential managers or investments to pursue, enhance the methodology of evaluating those opportunities, or design tactical strategies to adjust the mix of investments for intermediate-term performance." As the fund has grown, the complexity of the assets under management has also grown. Authority over Investment Division staffing would allow the system to expand its staff resources as both the complexity of the fund assets and the size of the assets under management are expected to grow.

Longer term, the system indicated that economies of scale would likely necessitate adding some internal management functions. The system reported that out of 24 peer plans with assets greater than \$40 billion, only 4 (including Maryland) had no internal management functions. The

report noted that in the early 2000s, about one-third of system assets were under internal management, but the internal management functions were stopped due to the inability to attract and retain personnel to manage those assets. The report noted that a mix of internal and external management will be necessary and that moving into internal management will be a long-term process, phasing up to its target of 50% of assets managed internally over a 10-year period. One of the arguments for utilizing internal management is that it can reduce fees paid for asset management, resulting in net gains to the system.

Chapters 727 and 728 of 2018 gave the Board of Trustees for the State Retirement and Pension System authority to determine and create positions necessary to carry out the professional investment functions of the Investment Division and to set compensation for the positions, including incentive compensation. The legislation specified that compensation and operating expenses of the division are to be paid from the accumulation fund of each system instead of by participating employers, and that those expenses for the division are not subject to appropriation by the Governor and General Assembly. Incentive compensation for the Chief Investment Officer and other division staff is authorized under the legislation, is to be based on objective criteria, and is subject to a cap and other restrictions. Chapter 356 of 2022 further authorized the board to adjust compensation and pay incentive compensation in certain specified circumstances.

## **Internal Asset Management**

One of the goals of Chapters 727 and 728 was to provide the Investment Division with staffing capacity to manage a portion of system assets internally. With the authority provided, the system has been able to implement its goals of managing some assets internally. As of October 1, 2021, the system had \$7.3 billion in assets managed internally, consisting of investments in U.S. Treasury Inflation Protected Securities, U.S. long government bonds, Russell 1000 equity, and corporate bonds. The system has implemented a product development process to ensure that staff is proficient in managing assets internally and that the necessary tools and procedures are in place prior to moving assets to internal management. Management of assets internally will reduce the fees paid by the system.

The system has developed processes designed to evaluate the internal management of assets in a manner similar to the selection and oversight of external management of assets. This includes presenting the strategy to the investment committee in the same manner as external management strategies and independent annual evaluation of the internal management by the system's general consultant. The system has also established an internal management oversight committee to provide independent evaluation of the efficacy of internal management.

## **Investment Performance Overall**

**Exhibits 13.2, 13.3, and 13.4** illustrate the systems' history of total annualized returns since the financial crisis and through fiscal 2022. They show the growth of the investment portfolio

following the financial crisis and during the initial stages of the COVID-19 pandemic (due in large part to federal stimulus programs), as well as the post-pandemic drop in market performance. In 2004, the system lowered its investment target from 8.0% to 7.75%, where it remained until fiscal 2014, when it was lowered to 7.55% over three years. The target was again lowered to 7.50% for fiscal 2018 and 7.45% for fiscal 2019. For fiscal 2022 and beyond, the board lowered its investment target again to 6.8%. Significant losses in fiscal 2008 and 2009 prompted by the international financial crisis caused total assets to drop precipitously. By fiscal 2013, assets had returned to pre-crisis levels, and in fiscal 2018, assets exceeded \$50 billion. In fiscal 2021, assets exceeded \$60 billion for the first time. System assets at the close of fiscal 2022 had a market value of \$64.6 billion.

Overall system investment performance is driven largely by the allocation of assets. Detailed investment performance information can be found in the system's Comprehensive Annual Financial Reports, and current performance updates are regularly present at system board meetings.

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**Exhibit 13.2**  
**State Retirement and Pension System of Maryland**  
**Performance**  
**Fiscal 2011-2022**  
**(\$ in Billions)**

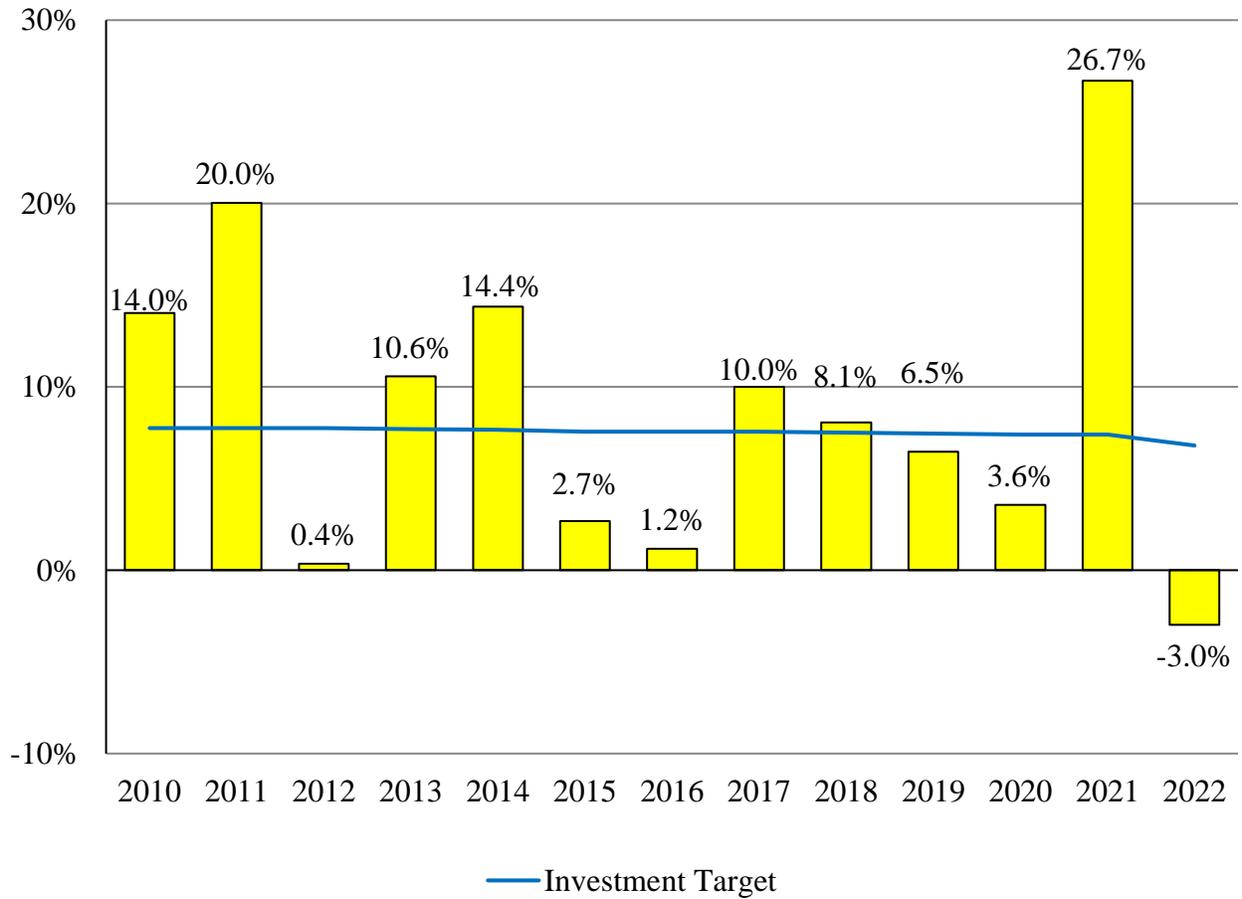
<u>12 Months Ending June 30</u>	<u>Market Value</u>	<u>Annual Return</u>
2022	\$64.6	-3.0%
2021	67.9	26.7%
2020	54.8	3.6%
2019	54.2	6.5%
2018	52.0	8.0%
2017	49.1	10.0%
2016	45.5	1.2%
2015	45.8	2.7%
2014	45.4	14.4%
2013	40.3	10.6%
2012	37.1	0.4%
2011	37.5	20.0%

Note: Annual returns are net of management fees.

Source: State Retirement and Pension System

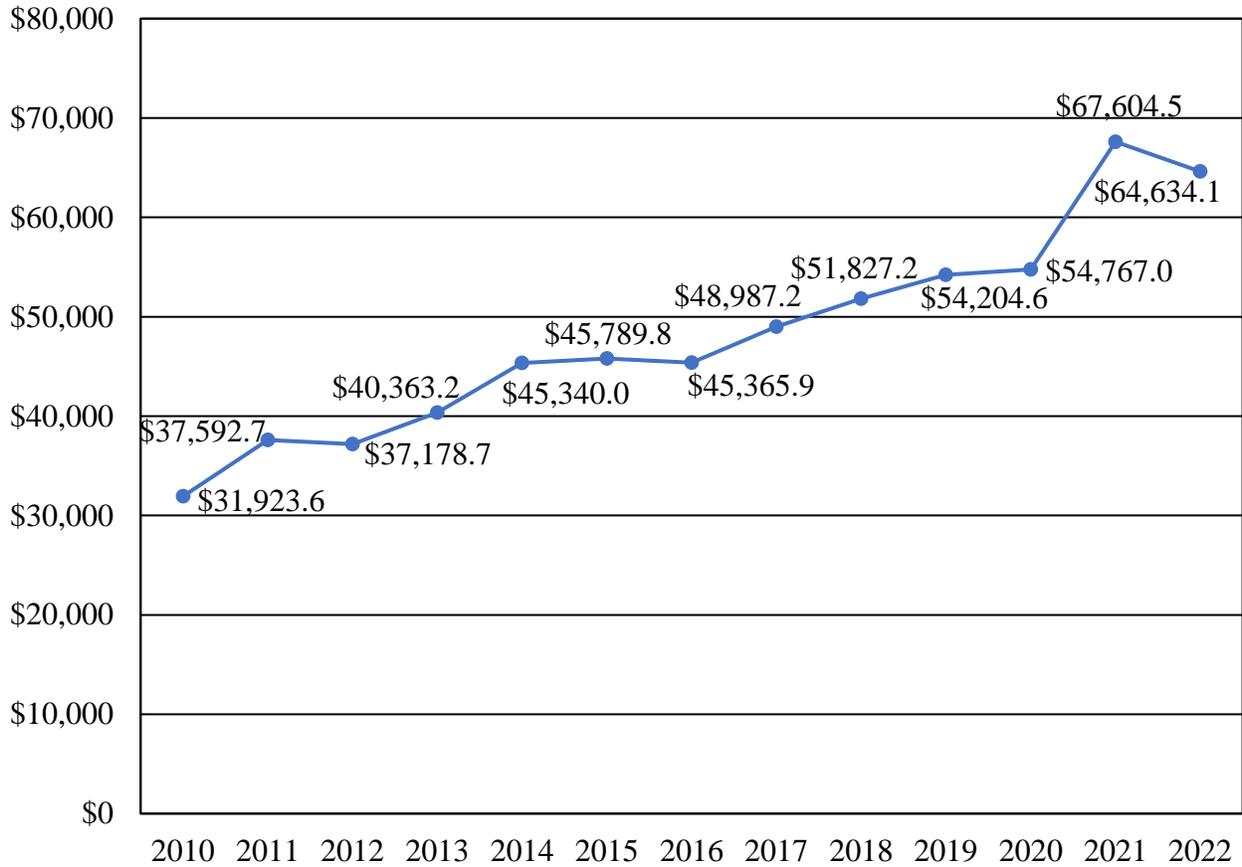
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**Exhibit 13.3**  
**State Retirement and Pension System**  
**Annual Investment Returns**  
**Fiscal 2010-2022**



Source: State Retirement and Pension System

**Exhibit 13.4**  
**State Retirement and Pension System**  
**Market Value of Assets**  
**Fiscal 2010-2022**  
**(\$ in Millions)**



Source: State Retirement and Pension System



## **Chapter 14. Maryland Teachers' and State Employees' Supplemental Retirement Plans**

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The State of Maryland has authorized four different defined contribution plans for its employees in accordance with federal income tax laws and regulations. While these plans are not part of the State Retirement and Pension System of Maryland, they provide an increasingly important supplemental benefit for employees who elect to participate. As of July 1, 2022, the defined contribution plans authorized by the State were the:

- Deferred Compensation Plan operated pursuant to Internal Revenue Code Section 457(b);
- Tax-Deferred Annuity Plan for Educational Employees under Internal Revenue Code Section 403(b);
- Savings and Investment Plan under Internal Revenue Code Section 401(k); and
- Employer Matching Plan operated under Internal Revenue Code Section 401(a).

Each of these four plans accepts traditional pre-tax contributions directly from payroll, which means that the tax-deferred account may grow by additional contributions and investment earnings without paying income taxes until those amounts are withdrawn from the plans. Beginning in April 2011, after-tax Roth contributions are permitted into the 457(b) and 401(k) plans directly from payroll, which means that no further taxes will be due on these contributions or their earnings as eligible payouts from the plans.

### **Administration**

Prior to 1985, responsibility for the administration of the various plans was scattered among several State agencies. The 457(b) plan was the responsibility of a seven-member Board of Trustees of the State Employees Deferred Compensation Plan. The 403(b) plan was the responsibility of the Board of Trustees for the State Retirement and Pension System, and the 401(k) plan was the responsibility of the Department of Personnel.

However, since enactment of Chapter 741 of 1985, responsibility for the administration of the 457(b), 403(b), and 401(k) plans has been vested in a single nine-member Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans. In 1998, Chapter 530 allocated the additional responsibility of administering the 401(a) plan to the board. The board members are appointed by the Governor to staggered four-year terms. Three members must be appointed from the following State departments and offices:

- the Department of Budget and Management;
- the Maryland State Department of Education;
- the Office of the Comptroller;
- the Office of the Treasurer;
- the State Retirement Agency; and
- the Maryland Higher Education Commission.

In addition, three members must be appointed from those eligible to participate in the plans, and three must be members of the public who are not eligible to participate, including one who has experience with deferred compensation and salary reduction plans.

The board's operating budget for fiscal 2022 was \$1.985 million, which was financed by a 0.05% fee on the assets of the participants in all of the plans and a monthly per account charge of \$0.50 on every account with at least \$500 in the 401(k), 457(b), and 403(b) plans (there is no \$0.50 charge on 401(a) plans). In addition to a 13-member staff, the board contracts for outside investment advisory services. As of June 30, 2022, investment advisory services are provided by Segal Advisors. The actual hands-on administration, including participation and investment carrier coordination, is performed by Nationwide Retirement Solutions, Inc. and is financed by a 0.0775% fee on the assets of the plans' participants. Therefore, participants pay the full costs of the plans in a combined asset fee of 0.12% and a \$0.50 charge per month for each account valued at more than \$500. **Exhibit 14.1** provides a summary of Nationwide and board fees as a percentage of total assets for the supplemental plans for fiscal 2017 through 2021 and the board's operating expenses and reserves for the same period of time.

**Exhibit 14.1**  
**Assets and Participants' Fees and Agency Operating Budgets**  
**Fiscal 2017-2021**  
**(Invested Assets \$ in Billions)**

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Net Total Assets (\$ in Billions)	\$3.74	\$4.02	\$4.15	\$4.25	\$5.34
<b>Plan Administrator</b>					
<b>Fees</b>	<b>\$3,102,426</b>	<b>\$4,055,312</b>	<b>\$3,697,123</b>	<b>\$3,721,081</b>	<b>\$4,892,555</b>
As Percent of Assets	0.08%	0.10%	0.09%	0.09%	0.09%
<b>Board Asset Fee</b>	<b>\$1,755,171</b>	<b>\$1,055,427</b>	<b>\$1,976,369</b>	<b>\$1,839,296</b>	<b>\$1,450,726</b>
As Percent of Assets <sup>1</sup>	0.05%	0.03%	0.05%	0.04%	0.03%
\$0.50 Monthly Charge Per Account	366,465	370,090	229,461	380,929	483,602
One-time Settlement Revenue	122,406	69,765	0	2,094	63,674
Adjustment for Timing Differences <sup>2</sup>	-17,007	0	143,175	-142,156	-33,373
<b>Total Board Revenue</b>	<b>\$2,227,035</b>	<b>\$1,495,282</b>	<b>\$2,349,005</b>	<b>\$2,078,069</b>	<b>\$1,900,954</b>
Operating Expenses	\$1,782,930	\$2,016,003	\$1,807,147	\$1,834,045	\$1,935,723
Adjustment for Timing Differences <sup>2</sup>	142	0	2,499	-22,924	
<b>Total Operating Expenses</b>	<b>\$1,783,072</b>	<b>\$2,016,003</b>	<b>\$1,809,646</b>	<b>\$1,811,121</b>	<b>\$1,935,273</b>
Carryover Balance	\$795,838	\$275,116	\$814,475	\$1,081,423	\$1,046,654
Carryover Balance as Percent of Operating Expenses	44.6%	13.6%	45.0%	59.7%	54.1%

<sup>1</sup> The board asset percentage in fiscal 2021 is reduced due to a five month asset fee holiday from March through July 2021.

<sup>2</sup> Timing adjustment is needed to align with Financial Management Information System accounting. Expenditures are budgeted on a fiscal year while plans and revenues are on calendar years.

Source: Maryland Supplemental Retirement Plans; Department of Legislative Services

### **457(b) Plan – Deferred Compensation**

The 457(b) plan is the oldest of the four State-sponsored, defined contribution plans, with enrollments beginning in 1975. Participation is open to (1) officers and employees of the State; (2) members of the General Assembly; (3) judges, clerks, and employees of the various courts; (4) registers and other employees of the Office of the Register of Wills; and (5) part-time and contractual State employees. Beginning January 1, 2022, participants may contribute up to 100% of adjusted gross salary annually, not to exceed \$20,500, which is accomplished through payroll deductions. Participants over the age of 50 may contribute an additional \$6,500 in “catch-up” contributions, or in the three years prior to retirement, may be eligible to contribute a special catch-up of \$20,500. For the year ended December 31, 2021, the 457(b) plan had 34,500 participants and assets totaling nearly \$2.4 billion. The average 457(b) participant account was \$66,973.

### **403(b) Plan – Tax Sheltered Annuities**

Participation in the 403(b) plan is limited to employees of the State, local governments, or local boards of education who perform services in or for educational entities. Beginning January 1, 2022, the maximum deferral is the lesser of \$20,500 annually, or 100% of annual adjusted gross salary. Participants over the age of 50 may defer an additional \$6,500 in catch-up contributions. The board assumed administrative control over this program from the State Retirement and Pension System in October 1986. As of December 31, 2021, the 403(b) plan had 804 participant accounts worth \$131.3 million. The average participant account was \$163,022.

### **401(k) Plan – Savings and Investment**

Participation in the 401(k) plan, which became operational on January 1, 1990, is open to all State officers and employees. Similar to the 403(b) plan, the maximum annual deferral is 100% of adjusted gross salary annually and limits participants’ deferrals to \$20,500, beginning January 1, 2022. Participants over the age of 50 can contribute an additional \$6,500 annually. As of December 31, 2021, the 401(k) plan had the largest amount of assets of the four State-sponsored supplemental retirement plans. The plan totaled \$2.78 billion, with 31,823 participants and an average individual account value of \$87,321.

### **401(a) Plan – Employer Matching Plan**

The 401(a) employer matching plan became operational in fiscal 2000 and was open to all State employee members of the Employee Pension System and certain members of the Employee Retirement System. The State was required to contribute a dollar-for-dollar amount, not to exceed \$600 in a year, for each participant who actively contributed to one of the employer-sponsored

supplemental retirement accounts. However, the match requirement was reduced or eliminated in previous years due to fiscal restraints and was ultimately eliminated beginning fiscal 2011. As of December 31, 2021, the 401(a) match plan had a total value of \$257.5 million, with an average account value of \$10,077.

## **Investment Options**

Participants in the 457(b), 401(k), and 401(a) plans have the option of investing in a stable value fund called the Investment Contract Pool. The Investment Contract Pool is invested in a diversified portfolio of fixed investment assets backed by insurance contracts that permit a monthly declared interest rate credited to participant balances. In addition, participants in the 403(b) plan, who are excluded from the fixed-rate contract pool, may invest in a money market fund, the Vanguard Prime Money Market Fund.

Participants in all four plans may take advantage of various mutual fund options. There is a diversified list of both low-cost index funds and actively managed funds. Additionally, participants may invest in Targeted Retirement Funds, otherwise known as lifecycle funds. These are target-date retirement funds that feature an asset mix that adjusts over time as the individual investor ages through their approximate retirement at 65 years old. With lifecycle funds, asset allocation is handled by the fund managers, so members in essence receive investment management services for the same fees they currently pay to individual mutual fund managers.

## **All Plans – Assets, Deferrals, Participants, and Average Accounts**

**Exhibit 14.2** provides a summary of the plans' assets, deferrals, participants, and average account values for calendar 2017 through 2021.

**Exhibit 14.2**  
**All Plans – Assets, Deferrals, Participants, and Average Account Values**  
**Calendar 2017-2021**  
**(\$ in Millions)**

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>% Change</u> <u>2020-2021</u>	<u>% Change</u> <u>2017-2021</u>
<b>Invested Assets</b>							
457(b)	\$1,705.7	\$1,649.7	\$1,913.6	\$2,139.8	\$2,408.0	12.5%	41.2%
403(b)	99.0	91.0	103.3	117.4	131.3	11.8%	32.6%
401(k)	1,911.6	1,827.0	2,165.3	2,454.6	2,778.8	13.2%	45.4%
401(a)	195.8	178.3	207.5	228.5	257.8	12.8%	31.7%
<b>Total</b>	<b>\$3,912.1</b>	<b>\$3,746.1</b>	<b>\$4,389.9</b>	<b>\$4,940.4</b>	<b>\$5,575.9</b>	<b>12.9%</b>	<b>42.5%</b>
<b>Deferrals</b>							
457(b)	\$73.0	\$74.5	\$83.0	\$85.8	\$91.8	7.0%	25.8%
403(b)	2.5	2.3	3.0	4.7	2.6	-44.7%	4.0%
401(k)	91.8	91.8	87.0	89.2	95.7	7.3%	4.2%
401(a)	—	—	—	—	—	—	—
<b>Total</b>	<b>\$167.3</b>	<b>\$168.6</b>	<b>\$173.02</b>	<b>\$200.30</b>	<b>\$190.05</b>	<b>-5.1%</b>	<b>13.6%</b>
<b>Number of Participant Accounts</b>							
457(b)	33,577	34,857	35,557	36,147	35,954	-0.5%	7.1%
403(b)	826	831	784	775	804	3.7%	-2.7%
401(k)	32,919	32,611	32,548	32,111	31,823	-0.9%	-3.3%
<b>Total</b>	<b>67,322</b>	<b>68,299</b>	<b>68,889</b>	<b>69,033</b>	<b>68,581</b>	<b>-0.7%</b>	<b>1.9%</b>
401(a)	30,739	31,435	28,755	26,973	25,580	-5.1%	-16.8%
Multi-accounts	7,171	7,222	7,229	7,147	7,071	-1.1%	-1.4%

Source: Maryland Supplemental Retirement Plans

## **Chapter 15. Retiree Health Insurance**

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Upon retirement, retired State employees who receive a retirement allowance from the State Retirement and Pension System are eligible to participate in health insurance options provided by the State Employee and Retiree Health and Welfare Benefits Program. Prior to the enactment of Chapter 397 of 2011, retired State employees received the same health coverage that they had as active employees. Health benefits provided to retirees are often referred to as Other Post Employment Benefits to distinguish them from pension benefits. This post employment benefit, like pensions, creates a long-term accounting liability for the State, although retiree health benefits are not a contractual benefit similar to pension benefit and may be altered by the State. Unlike pensions, however, the State generally has not forward funded Other Post Employment Benefits, instead funding it on a pay-as-you-go basis. Due to changes to accounting standards governing Other Post Employment Benefits, those long-term liabilities (which have always existed but were not fully reflected in the State's financial reporting) are now reflected on its balance sheet.

### **Governmental Accounting Standards Board Standards**

The Governmental Accounting Standards Board is an independent, nonprofit foundation that establishes accounting standards for local and state governments, including standards related to the accounting of Other Post Employment Benefits, which are defined as post employment benefits other than pensions. Prior to 2004, the Governmental Accounting Standards Board allowed public employers to account for Other Post Employment Benefits on a pay-as-you-go basis, so balance sheets only showed the annual cost of providing the benefit to retirees, not any long-term liabilities.

In 2004, the Governmental Accounting Standards Board released standards for the purpose of requiring states to apply an accounting methodology similar to the one used for pension liabilities to account for retiree health benefits. Under these standards, incorporated into the Governmental Accounting Standards Board Statements 43 and 45, the State was required to account for the cost of retiree health benefits as they accrued to employees based on their employment with the State rather than on a pay-as-you-go basis.

The 2004 standards required the State to conduct an actuarial valuation of its Other Post Employment Benefits liability at least every two years, and beginning in 2006, the State has conducted annual valuations. The valuations determine the State's accrued Other Post Employment Benefits liabilities, defined as the value of the retiree health benefits promised to current and retired employees based on their actual and projected employment with the State. Each valuation credits the State with the value of any assets (including pay-as-you-go expenditures) deposited in an irrevocable trust for the purpose of funding its Other Post Employment Benefits liabilities. The difference between the State's Other Post Employment Benefits liabilities and its trust fund assets represented the unfunded actuarial accrued liability.

Under the 2004 standards, the Governmental Accounting Standards Board allowed governments to amortize the unfunded actuarial accrued liability over a period not exceeding 30 years. The annual amortization payment resulting from that calculation was then added to the normal cost (also known as the service cost), which is the value of the benefits accrued by active employees during the current year. The sum of the unfunded actuarial accrued liability amortization payment and the normal cost was the annual required contribution, later renamed the actuarially determined contribution, that represented the amount necessary to pay down the total Other Post Employment Benefits liability over the amortization period (30 years, for example). Each year, the standards required public employers to calculate the difference between the actuarially determined contribution and actual payments. The net Other Post Employment Benefits obligation represented the sum of the annual differences, plus interest, and it was that net Other Post Employment Benefits obligation that was reflected on balance sheets. Thus, public employers that paid the full actuarially determined contribution every year had no obligation to report on their balance sheet, but most employers, like Maryland, that funded Other Post Employment Benefits on a pay-as-you-go basis saw their liabilities grow rapidly, at least from an accounting perspective.

### **Governmental Accounting Standards Board Standards: Statements 74 and 75**

New accounting standards incorporated in the Governmental Accounting Standards Board Statements 74 and 75, which were released in May 2014 and supersede the previous standards, require governments to reflect their full unfunded Other Post Employment Benefits amounts on their balance sheets. The new standards also change the method for deriving the discount rate used to calculate the present value of Other Post Employment Benefits liabilities, and they require the use of the market value of assets rather than the actuarial value of assets in determining the unfunded (or net) Other Post Employment Benefits liability. Under the new standards, the actuarially determined contribution and its two components (normal cost and amortization payments) are not calculated. The State's fiscal 2017 Other Post Employment Benefits valuation was the first to use the new standards and methodology. To allow for a year-over-year comparison, the State's fiscal 2017 valuation recalculated the fiscal 2016 results using the new methodology, but did not calculate the actuarially determined contribution for fiscal 2017.

In summary, Statements 74 and 75 implement the following changes from Statements 43 and 45:

- ***A Change in Focus to Unfunded Accrued Liabilities Instead of Expense:*** Actuarial required contributions and the net Other Post Employment Benefits obligation are no longer reported.
- ***More Measurements Closer to Real Time:*** Statement 74 measurements are provided as of the end of the plan year, while Statement 75 measurements are required no later than the end of the fiscal year. Governments select a measurement date, and there must be a valuation every two years with a measurement every year.

- ***Less Latitude in Assumption Selection:*** Discount rate rules are more prescribed. Unfunded plans are based on a spot rate, which could result in more volatile expense calculations, and more guidance is offered for blending rates for partially funded plans.
- ***Increased Disclosure:*** More information on liabilities, expenses, assumptions, and histories are required.
- ***Changes in Annual Expense Calculations:*** Use of market value of assets rather than actuarial value of assets.

As a result of these changes, the State will have higher and more volatile Other Post Employment Benefits liability calculations on its balance sheet, but, barring benefit changes, the underlying value and cost of the benefits will not change substantially on a year-over-year basis. Also, the change in the accounting standard has no impact on the actual pay-as-you-go cost of the plan, which is determined by plan design and experience.

### **Postretirement Health Benefits Trust Fund**

Chapter 466 of 2004 established the Postretirement Health Benefits Trust Fund to assist the State in financing the retiree health insurance subsidy paid by the State. The purpose of the fund is to provide a vehicle to forward fund Other Post Employment Benefits, which enables investment earnings to offset some of the cost and thus enhances the sustainability of the benefits. Under the Governmental Accounting Standards Board standards, forward funding also allows the State to use a higher discount rate to calculate its Other Post Employment Benefits liability. The fund is a tax-exempt trust in accordance with Section 115 of the Internal Revenue Code. Shortly after the 2004 Governmental Accounting Standards Board standards took effect, Maryland attempted to forward fund a portion of its Other Post Employment Benefits liabilities, but those efforts were derailed by the international financial crisis and resulting fiscal challenges due to reduced general fund revenues. Funding was provided in fiscal 2007 (\$100 million), 2008 (\$50 million), and 2009 (\$105 million, later reduced by \$46 million by the Board of Public Works) to forward fund the Other Post Employment Benefits liability. The State has not made any additional contributions to the Other Post Employment Benefits trust fund since fiscal 2009. As of March 31, 2022, the trust fund held \$443.2 million, which represents approximately 3.0% of the State's unfunded Other Post Employment Benefits liability amounts.

The Governmental Accounting Standards Board standards require only that governments calculate their Other Post Employment Benefits liabilities and reflect their obligations on their annual financial statements; they do not require governments to prefund their Other Post Employment Benefits liabilities. Indeed, the Governmental Accounting Standards Board has no mechanism of its own to enforce governmental adherence to their standards. However, adherence to the standards and maintaining affordable levels of short- and long-term debt are both important factors considered by credit rating agencies. For many years, Maryland has been one of only a handful of states that has maintained an AAA bond rating from all three agencies. Rating agencies'

comments have noted that the State has not recently contributed to the trust fund that was established to prefund its Other Post Employment Benefits liability.

### **“Sweeper” Provision for the Postretirement Health Benefits Trust Fund**

State law requires that the Administration appropriate an amount equal to any unassigned general fund balance in excess of \$10 million into the Rainy Day Fund, referred to as the “sweeper.” This appropriation is made to the budget two years after the unassigned general fund surplus is realized at closeout. Chapter 557 of 2017 diverts a portion of the sweeper amount to support Other Post Employment Benefits and pensions. Specifically, it requires that, beginning in fiscal 2021 and each year thereafter, 25% of any unassigned general fund balance above \$10 million be assigned to the Postretirement Health Benefits Trust Fund, up to a maximum amount of \$25 million; another 25% is assigned to the pension trust fund (up to \$25 million), and the remainder of the balance continues to be paid to the Rainy Day Fund.

### **Health Benefits for Retired State Employees**

As noted above, State employees may be eligible to remain in the State Employee and Retiree Health and Welfare Benefits Program when they retire, and they may also qualify for a premium subsidy, depending on how long they work for the State. Chapter 397 established new eligibility requirements for retirees to enroll in the program and qualify for the premium subsidy if they are hired on or after July 1, 2011. Therefore, the eligibility requirements to enroll in the program are different for those who began employment with the State before July 1, 2011, and those who began employment with the State on or after that date. Employees hired before July 1, 2011, are eligible to enroll and participate in the group coverage when they retire if they have:

- retired directly from the State with at least 5 years of service;
- retired directly from State service with a disability;
- ended State service with at least 16 years of service;
- ended State service with at least 10 years of creditable service and within 5 years of retirement age; or
- ended State service on or before June 30, 1984.

Employees who begin employment with the State on or after July 1, 2011, are eligible to enroll in the program if they:

- retire directly from the State with at least 10 years of service;

- retire directly from State service with a disability;
- end State service with at least 25 years of service; or
- end State service with at least 10 years of creditable service and within 5 years of normal retirement age.

Similarly, eligibility for the premium subsidy differs depending on when the retiree began employment with the State. For those hired before July 1, 2011, eligible retirees must have at least 16 years of service to receive the same subsidy of health insurance premiums that is provided to active employees (80% of preferred provider organization premiums or 85% of exclusive provider organization and integrated health model premiums). If a retiree has less than 16 years of State service (but more than 5 years), the benefit is prorated based on a maximum subsidy being earned with 16 years of service. Retirees who began employment with the State on or after July 1, 2011, must have 25 years of service to receive the same subsidy as that provided to active employees. If a retiree has less than 25 years (but more than 10) the benefit is prorated based on a maximum subsidy being earned with 25 years of service.

As noted earlier, Chapter 397 made additional changes to health benefits provided to State retirees, particularly in the area of prescription drug coverage. First, it authorized the State to establish separate health insurance benefit options for retirees that differ from those for active State employees. In response to the new authority to establish separate coverage for retirees, the Department of Budget and Management established a new Employer Group Waiver Plan, effective January 1, 2014, to provide prescription drug coverage to Medicare-eligible retirees. Employer Group Waiver Plans are authorized under the federal 2003 Medicare Prescription Drug Modernization Act and essentially “wrap” employer coverage around the Medicare Part D prescription drug coverage. Participating retirees are not impacted by any change in their coverage because all interaction between the State plan and Medicare are handled administratively.

Chapter 397 also increased the share of the premium for prescription drug coverage paid by retirees from 20% to 25% (it remained 20% for active State employees) and raised out-of-pocket limits for retirees to \$1,500 for a single retiree and \$2,000 for family drug coverage (previously, the limit had been \$750 for single or family coverage for both active employees and retirees). Finally, it provided that the State would no longer provide prescription drug coverage for Medicare-eligible retirees beginning in fiscal 2020 when a coverage gap in the Medicare prescription drug plan would be closed. Chapter 10 of 2018 (the Budget Reconciliation and Financing Act) accelerated the date for this change in prescription drug coverage for Medicare-eligible retirees to January 1, 2019, as discussed later in this chapter.

Health insurance for retirees is one of the fastest growing areas in the State budget due to an aging population, longer life spans, and increasing health care costs. As illustrated in **Exhibit 15.1**, retiree enrollment in the State health plan continues to grow faster than active employee enrollment. Retiree enrollment in the State health plan as a percentage of total health plan enrollment increased from 41.4% in fiscal 2018 to 43.1% in fiscal 2021. This trend is expected

to continue as the population continues to age and the size of the State workforce remains fairly stable. Retiree enrollment in the prescription plan also increased from fiscal 2018 to 2021 from 42.7% of total enrollment to 44.9%; however, the population enrolled in retiree prescription drug coverage is expected to decrease substantially as Medicare-eligible retirees are transitioned into Medicare Part D prescription drug coverage pending resolution of litigation discussed later in this chapter. Per Chapter 10, non-Medicare-eligible spouses, surviving spouses, dependent children, and surviving dependent children of Medicare-eligible retirees are authorized to continue prescription drug coverage with the State.

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**Exhibit 15.1**  
**Retiree Health Plan Enrollment**  
**As a Percentage of Total Plan Enrollment**  
**Fiscal 2018-2021**

<u>Plan Type</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Health	41.4%	42.5%	42.3%	43.1%
Prescription	42.7%	43.5%	43.8%	44.9%
Dental	37.8%	39.2%	39.4%	40.6%

Note: Does not include enrollment data for satellite and direct pay organizations.

Source: Department of Budget and Management

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While the number of retired enrollees is increasing faster than the number of active employee enrollees, retiree claims costs are roughly equivalent to employee costs on a per enrollee basis. **Exhibit 15.2** shows that medical costs on a per enrollee basis are actually lower for retirees than for active employees, with retirees averaging \$7,301 in claims cost and active employees averaging \$10,699, a difference of \$3,398. However, retirees average \$7,822 in prescription drug costs, compared with \$4,860 for active employees, a difference of \$2,962. Dental costs for retirees on a per enrollee basis are slightly lower than per enrollee costs for active employees (\$452 for retirees compared with \$546 for active employees). These differences can be attributed to several factors, including the role played by Medicare in paying for a substantial portion of retirees' non-prescription claims costs and lower rates of retiree enrollment in dental coverage.

**Exhibit 15.2**  
**Health, Prescription, and Dental Claims**  
**Cost on a Per Enrollee Basis**  
**Fiscal 2021**

	<b>Active Employees</b>		
	<u>Claims</u>	<u>Enrollment</u>	<u>Per Enrollee</u>
EPO	\$500,388,030	40,034	\$12,499
PPO	270,913,546	23,246	11,654
IHM	25,167,750	2,883	8,730
POS <sup>1</sup>	1,982,849	209	9,914
<b><i>Subtotal Health Plan</i></b>	<b><i>\$798,452,175</i></b>	<b><i>66,372</i></b>	<b><i>\$10,699</i></b>
Prescription	\$291,692,266	60,025	\$4,860
Dental	35,352,377	64,745	546
<b>Total</b>	<b>\$1,125,496,818</b>	<b>191,133</b>	<b>\$16,105</b>
	<b>Retirees</b>		
	<u>Claims</u>	<u>Enrollment</u>	<u>Per Enrollee</u>
EPO	\$171,740,014	21,568	\$7,963
PPO	158,663,966	28,912	5,488
IHM	862,132	102	8,452
<b><i>Subtotal Health Plan</i></b>	<b><i>\$331,266,112</i></b>	<b><i>50,582</i></b>	<b><i>\$7,301</i></b>
Prescription	\$382,045,870	48,844	\$7,822
Dental	19,998,705	44,247	452
<b>Total</b>	<b>\$733,310,687</b>	<b>143,673</b>	<b>\$15,575</b>

EPO: exclusive provider organization  
 IHM: integrated health model

POS: point-of-service  
 PPO: preferred provider organization

<sup>1</sup> POS plans were discontinued in fiscal 2015 for all members except State Law Enforcement Officer Labor Alliance members.

Source: Department of Budget and Management

## 2011 Reforms Reduce State's Long-term Other Post Employment Benefits Liability

With the number of retirees receiving health insurance from the State continuing to grow faster than the number of active employees, the Public Employees' and Retirees' Benefit Sustainability Commission, established in 2010, determined that the State's retiree health benefits were not sustainable. The commission concluded that eligibility requirements for retiree health coverage should focus on employees who devote the vast majority of their careers to State service. It also found that the 2004 addition of a prescription drug benefit within Medicare negated the need for the State to continue to provide prescription drug benefits to Medicare-eligible retirees. As the Medicare prescription drug benefit was being phased in over many years, the commission recommended that the State maintain full prescription drug coverage for Medicare-eligible retirees until fiscal 2020, when Medicare coverage was expected to be fully phased in. The federal 2018 Bipartisan Budget Act (H.R. 1892) accelerated the date of full Medicare prescription drug coverage to January 1, 2019. In response, Chapter 10 (Budget Reconciliation and Financing Act) altered the transition date for Medicare-eligible retirees to January 1, 2019.

The commission's recommendations regarding retiree health coverage were included in Chapter 397 of 2011, resulting in the new eligibility requirements for employees hired on or after July 1, 2011, described earlier, and the eventual termination of prescription drug coverage for Medicare-eligible retirees. Together these measures substantially reduced the State's long-term actuarial liability for retiree health care costs, making the program more sustainable over the long term. **Exhibit 15.3** shows long-term liabilities and other costs associated with the benefits for fiscal 2017 through 2021.

To assist the transition for State retirees to Medicare Part D coverage, Chapter 767 of 2019 established prescription drug out-of-pocket reimbursement or catastrophic coverage programs for specified State retirees and their dependents, or surviving dependents, among other things. The enactment of the legislation has been delayed due to the pending lawsuit. Chapter 767 prevents the implementation of retiree drug plan changes from going into effect until the start of the plan year following a resolution to the lawsuit if the resolution occurs at least nine months prior to the start of the open enrollment period. As there has been no final resolution to the litigation as of the publication of this volume, Medicare-eligible retirees will not have any changes to their participation in the State's prescription drug plan at least through the 2023 plan year.

Fluctuations in unfunded liabilities and required contributions reflect plan experience and adjustments to actuarial assumptions used to calculate liabilities that follow from that experience. Valuation assumption changes in fiscal 2017, some of which resulted from the transition to Statements 74 and 75, decreased the Other Post Employment Benefits liability as a result of lower per capita health costs, an increased discount rate, a change in participation and coverage election for future retirees, and a change in prescription drug manager.

**Exhibit 15.3**  
**Maryland OPEB Liabilities,**  
**Annual Required Contributions, and PAYGO Contributions**  
**Fiscal 2017-2021**  
**(\$ in Millions)**

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Total OPEB Liability	\$11,392	\$10,901	\$14,641	\$16,780	\$15,253
Value of Assets	307	329	351	355	454
<b>Unfunded/Net OPEB Liability</b>	<b>\$11,085</b>	<b>\$10,571</b>	<b>\$14,290</b>	<b>\$16,425</b>	<b>\$14,799</b>
Service Cost	\$476	\$366	\$337	\$427	\$568
<b>Annual OPEB Expense<sup>1</sup></b>	<b>\$576</b>	<b>\$350</b>	<b>\$3,075</b>	<b>\$1,064</b>	<b>\$749</b>
<b>Budgeted State Contribution<sup>2</sup></b>	<b>\$526</b>	<b>\$562</b>	<b>\$500</b>	<b>\$601</b>	<b>\$630</b>

OPEB: Other Post Employment Benefits

PAYGO: pay-as-you-go

<sup>1</sup> Annual cost of providing OPEB benefits for accounting purposes.

<sup>2</sup> Annual State contribution for retiree OPEB costs.

Source: Actuarial Valuation and Review of Other Post Employment Benefits, Segal Consulting

At the time of this publication, the lawsuit filed in fall 2018 that challenges the termination of prescription drug benefits for Medicare-eligible retirees continues to be adjudicated. Delay of the transition will substantially affect the State's budgeted contribution in the applicable fiscal year in which Chapter 767 is implemented. Additionally, if the 2011 requirement that the prescription drug benefit be discontinued for Medicare-eligible retirees is altered or not permitted to take place, it can be expected to increase the State's Other Post Employment Benefits liability described above in an amount similar or higher than the \$6 billion estimated reduction in liabilities attributed to the change in 2011.



# Chapter 16. Overview of Procurement

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## Introduction to the Procurement Process

The procurement process is the State’s system for acquiring supplies, services, and leases for real or personal property. The procurement process may include some or all of the following: identifying a need; specifying the requirements to fulfill the need; identifying potential vendors; soliciting bids and proposals; evaluating bids and proposals; awarding contracts; tracking progress and ensuring compliance; taking delivery; inspecting and inventorying deliveries; and paying the vendor. The procurement process is designed to (1) ensure that State contract awards are based on technical merit and price after effective competition between vendors and (2) immunize the system from improper influence.

The State’s contracting and procurement process results in a significant amount of dollars being awarded to the private sector for goods and services each year. The Governor’s Office of Small, Minority, and Women Business Affairs reported that the total dollar value of contracts awarded by the major State agencies between fiscal 2018 and 2021 was more than \$30 billion. The total contract dollars awarded in fiscal 2018 through 2021 are shown in **Exhibit 16.1**.

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**Exhibit 16.1**  
**Total State Contract Dollars Awarded by Fiscal Year**  
**Fiscal 2018-2021**

<u>Fiscal Year</u>	<u>Contract Dollars Awarded</u>
2018	\$8,623,142,340
2019	7,957,796,523
2020	6,865,426,241
2021	6,561,990,879
<b>Total</b>	<b>\$30,008,355,983</b>

Source: Department of Legislative Services (based on information provided by the Governor’s Office of Small, Minority, and Women Business Affairs)

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## **Origins of the Current Maryland Procurement Law**

As a result of an intensive procurement study conducted by the State from 1977 through 1980, the procurement law was enacted in 1980, effective July 1981. The initial version of the Maryland procurement law generally was patterned after the Model Procurement Code developed by the American Bar Association.

In 2013 and 2014, analyses of the State's procurement system released by the Board of Public Works and the Department of Legislative Services, respectively, portrayed a system that was inefficient and fragmented. The analyses also found that vendors were reluctant to participate in State procurements and that procurement staff in the State lacked adequate training and growth opportunities. The Governor's Commission to Modernize State Procurement, established by executive order in February 2016, released its final report in December of that year. The report included 57 recommendations to address many of the issues raised by the two earlier reports.

Maryland procurement law was again updated during the 2017 session to implement the commission's recommendations, with many of the changes going into effect October 1, 2019. Maryland's procurement law is found in Division II, Titles 11 through 19 of the State Finance and Procurement Article and in regulations.

## **Purposes of the Procurement Law**

The procurement law was enacted to ensure that State contracts are immune from inappropriate influences and are awarded on the basis of technical merit and price after effective competition between vendors. Specifically, the purposes and policies of the procurement law include:

- providing for increased confidence in State procurement;
- ensuring fair and equitable treatment of all persons who deal with the State procurement system;
- providing safeguards for maintaining a State procurement system of quality and integrity;
- fostering effective broad-based competition in the State through support of the free enterprise system;
- promoting increased long-term economic efficiency and responsibility in the State by encouraging the use of recycled materials;
- providing increased economy in the State procurement system;

- getting the maximum benefit from the purchasing power of the State;
- simplifying, clarifying, and modernizing State procurement law;
- allowing the continued development of procurement regulations, policies, and practices in the State; and
- promoting development of uniform State procurement procedures to the extent possible.

Generally, the procurement law applies to units of State government for (1) expenditures under procurement contracts; (2) procurements on behalf of other governmental agencies or other entities; and (3) procurements for services to benefit specific categories of individuals, even if the procurement contract does not involve a State expenditure and does produce State revenue. Units of State government are officers or other entities in the Executive Branch of State government that are authorized by law to enter into procurement contracts. Generally, the procurement law does not apply to the Legislative or Judicial branches, multistate or multicounty government agencies, or other political subdivisions in the State.

## **Exemptions from the Procurement Law**

Although the procurement law applies broadly to the Executive Branch, for various policy reasons, certain types of procurement and certain units of State government are exempt from its provisions. Examples of types of procurement that are exempt include:

- transactions in which an agency procures from another State agency, a political subdivision of the State or one of its agencies, a government (including the government of another state, the United States, or another country) or one of its agencies or political subdivisions, or a multistate or multicounty governmental agency;
- procurements in support of enterprise activities for the purpose of direct resale or remanufacture and subsequent resale;
- grants awarded by the State to the Chesapeake Bay Trust for the restoration or protection of the Chesapeake Bay or other aquatic and land resources; and
- except for certain provisions, public-private partnerships.

When the procurement law became effective in 1981, few units of State government were exempt; however, the number has substantially increased over time. In 1986, after an intensive review that spanned several years, the General Assembly identified a total of 14 agencies which, at least in part, were determined to be inappropriate for inclusion in the general procurement process because the agencies performed specialized functions. Accordingly, legislation was

enacted to provide limited or full exemptions for each of these agencies but required most of the agencies' procurement processes to comply with the underlying purposes of the procurement law. Today, the number of exemptions for specific agencies has increased to over 30.

**Exhibit 16.2** provides examples of units of State government that are now exempt from the Maryland procurement law, cites the current statutory provision that describes the exemption, and references the original enactment that established the exemption. For a full understanding of the nature of the exemption, however, Exhibit 16.2 should be read in conjunction with the statutory provision granting the exemption because many of the units are exempt only in certain situations. For example, the Maryland State Arts Council is exempt only when the procurement is for the support of the arts.

Although the units identified in Exhibit 16.2 are generally exempt from the procurement law, many are still required to comply with provisions of law that address:

- collusion in procurement for the purpose of defrauding the State (State Finance and Procurement Article, § 11-205);
- Board of Public Works approval for designated contracts (State Finance and Procurement Article, § 10-204);
- supervision of capital expenditures and real property leases (State Finance and Procurement Article, Title 12, Subtitle 2);
- required clauses regarding nondiscrimination (State Finance and Procurement Article, § 13-219);
- disclosures to the Secretary of State (State Finance and Procurement Article, § 13-221);
- policies and procedures for exempt agencies (State Finance and Procurement Article, Title 12, Subtitle 4);
- change orders (State Finance and Procurement Article, § 15-112);
- suspension and debarment of contractors (State Finance and Procurement Article, Title 16); and
- special provisions regarding State and local subdivisions (State Finance and Procurement Article, Title 17).

Furthermore, minority business participation requirements apply to most exempt entities.

## Exhibit 16.2

### Examples of Units Exempt from the Maryland Procurement Law

<u>Agency</u>	<u>Statutory Exemption</u>	<u>Enabling Legislation</u>
Blind Industries and Services of Maryland	SFP, § 11-203i	Chapter 608 of 1982
Canal Place Preservation and Development Authority	FI, § 13-1027	Chapter 544 of 1993
Maryland 529	SFP, § 11-203	Chapter 208 of 2004
Department of Commerce	SFP, § 11-203	Chapter 555 of 1993
Department of General Services	SFP, § 11-203	Chapter 198 of 2009
Department of Natural Resources	SFP, § 11-203	Chapter 428 of 2010
Maryland Automobile Insurance Fund	IN, § 20-201	Chapter 73 of 2013
Maryland Developmental Disabilities Administration of the Department of Health	SFP, § 11-203	Chapter 471 of 2003
Maryland Economic Development Corporation	EC, § 10-111	Chapter 498 of 1984
Maryland Energy Administration	SFP, § 11-203	Chapter 412 of 2003
Maryland Environmental Service	NR, § 3-103	Chapter 196 of 1993 (replacement) [Chapter 840 of 1986 (repealed)]
Maryland Food Center Authority	SFP, § 11-203	Chapters 650 and 675 of 1983
Maryland Health and Higher Educational Facilities Authority	SFP, § 11-203	Chapter 840 of 1986
Maryland Health Benefit Exchange	IN, § 31-103	Chapter 1 of 2011
Maryland Historical Trust	SFP, § 11-203	Chapter 840 of 1986
Maryland Industrial Training Program or the Partnership for Workforce Quality Program in the Department of Commerce	SFP, § 11-203	Chapter 840 of 1986
Maryland Public Broadcasting Commission	SFP, § 11-203	Chapter 840 of 1986
Maryland Stadium Authority	SFP, § 11-203	Chapter 123 of 1987
Maryland State Archives	SFP, § 11-203	Chapter 111 of 2017
Maryland State Arts Council	SFP, § 11-203	Chapter 292 of 1984
Maryland State Lottery and Gaming Control Agency	SFP, § 11-203	Chapter 548 of 1997
Maryland State Planning Council on Developmental Disabilities	SFP, § 11-203	Chapter 292 of 1984
Maryland Technology Development Corporation	EC, § 10-407	Chapter 661 of 1998

<u>Agency</u>	<u>Statutory Exemption</u>	<u>Enabling Legislation</u>
Maryland Venture Capital Trust	EC, § 10-706	Chapter 222 of 1990
Morgan State University	ED, § 14-109 SFP, § 11-203	Chapter 485 of 2004 Chapter 273 of 2004
Rural Maryland Council	SFP, § 11-203	Chapter 119 of 1995
St. Mary's College of Maryland	SFP, § 11-203	Chapter 255 of 2006
State Retirement and Pension System	SFP, § 11-203	Chapter 840 of 1986
University of Maryland University College	SFP, § 11-203	Chapter 555 of 1983
University System of Maryland	SFP, § 11-203	Chapter 515 of 1999
Public Institutions of Higher Education (for Cultural, Entertainment, and Intercollegiate Athletic Procurement Contracts)	SFP, § 11-203	Chapter 840 of 1986
Maryland Corps Program	SFP, § 11-203	Chapter 37 of 2022

EC: Economic Development Article

ED: Education Article

FI: Financial Institutions Article

IN: Insurance Article

NR: Natural Resources Article

SFP: State Finance and Procurement Article

Source: Department of Legislative Services

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## Chapter 17. Organization of State Procurement

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### Board of Public Works

The Board of Public Works was established by the Maryland Constitution of 1864 and consists of the Governor, the Comptroller, and the Treasurer. By statute, the Board of Public Works has been granted the responsibility for oversight of capital appropriations and State public works projects. Each year it deals with hundreds of millions of dollars. The board is constitutionally required to meet four times each year and is authorized to meet more often when necessary. In practice, the board usually meets once every two weeks.

The 1981 revision of the procurement law centralized full authority over all State procurement in the Board of Public Works. The board was given “power and authority over the procurement, management, and control of all supplies, services, construction, and other items procured by the State.” At the same time, however, the General Assembly authorized the board to delegate any of its procurement authority that it determines to be appropriate for delegation and required board approval for specified procurement actions. The board implements the procurement law by setting policy, adopting regulations, and establishing internal procedures. The board, however, does not have authority over capital expenditures by the Maryland Department of Transportation or the Maryland Transportation Authority in connection with State roads, bridges, or highways.

### Primary Procurement Units

State law establishes seven primary procurement units with exclusive jurisdiction over their own procurements, subject to the authority of the board. The seven primary procurement units are:

- State Treasurer;
- Department of General Services;
- Maryland Department of Transportation and the Maryland Transportation Authority;
- University System of Maryland;
- Maryland Port Commission;
- Morgan State University; and
- St. Mary’s College of Maryland.

In addition, four of the seven agencies are authorized to control and supervise the procurement of specified goods or services by other agencies. These agencies are referred to as control authorities. Two of the control authorities actively oversee the procurement of other agencies: the State Treasurer (for banking and financial services, insurance, and insurance services) and the Department of General Services (for leases of real property; supplies; construction; construction-related services; architectural or engineering services; services by a unit; leases of motor vehicles; construction (including supplies, materials, and equipment) and construction-related services for State correctional facilities; information processing equipment, cloud computing equipment, and associated services; telecommunication equipment, systems, or services; and cybersecurity upgrades and modernization). The Maryland Department of Transportation and the Maryland Port Commission are also recognized as control authorities but do not have active oversight of other agencies.

The authority of the Department of General Services also includes:

- developing performance metrics for procurement activity;
- implementing strategic sourcing when appropriate;
- compiling comprehensive statistics on the procurement system by agency, amount, and type of procurement;
- effecting and enhancing communication on procurement matters, with an emphasis on disseminating information on current developments and advances in the management of the State procurement system;
- assisting State agencies with questions regarding procurement;
- overseeing the implementation of procurement officer training;
- overseeing the implementation of appropriate risk analysis and insurance requirements for State procurement; and
- coordinating with governmental entities and local entities to maximize the use of intergovernmental cooperative purchasing agreements.

**Exhibit 17.1** illustrates the type of procurement authority granted to agencies.

In general, the board authorizes the control authorities to enter into procurement contracts not exceeding \$200,000 without board approval. Any procurement contract over this amount must be submitted to the board for approval. The control authorities also may modify specified contracts without board approval but must secure board approval for contract modifications that exceed \$50,000.

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**Exhibit 17.1**  
**Procurement Authority Delegated to Agencies**

<u>Agency</u>	<u>Type of Delegation</u>
State Treasurer	Primary Procurement Unit and Control Authority
Department of General Services	Primary Procurement Unit and Control Authority
Maryland Department of Transportation and Maryland Transportation Authority	Primary Procurement Unit and Control Authority
Maryland Port Commission	Primary Procurement Unit and Control Authority
University System of Maryland	Primary Procurement Unit
Morgan State University	Primary Procurement Unit
St. Mary's College of Maryland	Primary Procurement Unit

Source: Department of Legislative Services

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**Exhibit 17.2** lists the areas of procurement authority for each primary procurement unit and the amount of funds that can be spent before obtaining board approval. The exhibit also shows if a control authority sub-delegated its authority to another agency.

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**Exhibit 17.2**  
**Areas of Procurement Authority**

**State Treasurer Delegation – COMAR 21.02.01.04E**

<u>May Engage in or Control Procurement of:</u>	<u>Delegation Level</u>
Banking, investment, and other financial services contracts	Unlimited
Contracts for insurance and insurance-related services	Unlimited

**Department of General Services Delegation – COMAR 21.02.01.04B**

<b><u>May Engage in or Control Procurement of:</u></b>	<b><u>Delegation Level</u></b>
Commodities and supplies (except for contracts for single items of equipment or single equipment leases over \$200,000)	Unlimited
Capital construction, including capital construction change orders	\$200,000 or less
Capital construction-related service, including capital construction-related service change orders	\$200,000 or less
Architectural/engineering	\$200,000 or less
Maintenance	\$200,000 or less
Contracts for rental vehicles supplied to using agencies under certain circumstances	\$200,000 or less
Secondary competition awards, renewal options, and modifications	\$200,000 or less
Capital equipment (unless funded with general obligation bond proceeds)	\$200,000 or less
Contract modifications	In limited circumstances, subject to specified restrictions
Invoices necessary to administer capital improvement contracts	Unlimited
Sole source contracts	\$100,000 or less
Contracts in which only one bid or offer received	\$50,000 or less
Leases for agency-supplied employee housing	Unlimited
Purchasing, leasing, and rental contracts for the acquisition of motor vehicles for the use by State officials and employees	Unlimited

### Department of General Services – Sub-delegation

The Department of General Services has sub-delegated its authority to approve contracts as follows:

<u>Agency</u>	<u>Delegation Level</u>
All agencies	\$50,000 for commodities, except for vehicle leases (for which there is no delegation).
All agencies	\$200,000 for maintenance
All agencies	\$200,000 – awards to preferred providers
All agencies	\$200,000 – awards for facilities maintenance contracts
Department of Public Safety and Correctional Services	\$200,000 – awards for construction and construction-related services
Department of Transportation Department of Human Services Department of Health Department of State Police (for helicopter maintenance only)	\$100,000 for services and information technology contracts

Note: For additional details see “Agency Delegated Approval Authority for Commodity, Facilities Maintenance, Construction/Construction Related Services, Services and Information Technology Procurements” effective June 11, 2020, available from the Department of General Services Office of State Procurement.

### Maryland Department of Transportation/Maryland Transportation Authority Delegation – COMAR 21.02.01.04C

<u>May Engage in Procurement of:</u>	<u>Delegation Level</u>
Transportation-related construction and change orders	\$200,000 or less
Capital expenditures contracts in connection with State roads, bridges, and highways	Unlimited
Capital construction-related service and change orders	\$200,000 or less

<b><u>May Engage in Procurement of:</u></b>	<b><u>Delegation Level</u></b>
Architectural and engineering	\$200,000 or less
Maintenance	\$200,000 or less
Capital equipment (unless funded with general obligation bond proceeds)	\$200,000 or less
Contract modifications	In limited circumstances, subject to specified restrictions
Sole source contracts	\$100,000 or less
Contracts in which only one bid or offer received	\$50,000 or less
Supplies and services for aeronautics-related activities	Unlimited
Secondary competition awards, renewal options, and modifications	\$200,000 or less

**Maryland Port Commission Delegation – COMAR 21.02.01.04F**

<b><u>May Engage in Procurement of:</u></b>	<b><u>Delegation Level</u></b>
Construction contracts and change orders for port facilities	\$200,000 or less
Construction-related service contracts and change orders for port facilities	\$200,000 or less
Port-related architectural/engineering services	\$200,000 or less
Capital equipment (unless funded with general obligation bond proceeds)	\$200,000 or less
Services including information technology services but excluding banking, insurance, and financial services	\$200,000 or less
Contract modifications	In limited circumstances, subject to specified restrictions
Port-related maintenance	\$200,000 or less

**May Engage in Procurement of:****Delegation Level**

Change cargo and equipment handling rates in stevedoring or terminal services contracts approved by the board	When the contract modification does not change the price of the original contract by more than 20%
Commodities and supplies	Unlimited
<ul style="list-style-type: none"> <li>• Including motor vehicles and information technology supplies</li> <li>• Excluding commodities and supplies funded by the proceeds of State general obligation funds, insurance, and insurance-related services</li> </ul>	
Sole source contracts	\$100,000 or less
Contracts in which only one bid or offer received	\$50,000 or less
Leases of real property for port-related activities if lease payments in whole or in part are not made from the General Fund	\$50,000 or less per year

Source: Code of Maryland Regulations (COMAR) and the Department of Legislative Services (based on information provided by the designated agencies)

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## Components of the State Procurement Process

### Procurement Improvement Council

The Procurement Improvement Council was created to provide oversight of the State procurement process. In 2021 the Council for the Procurement of Health, Educational, and Social Services was merged into the Procurement Improvement Council. The council is composed of 20 members representing various State departments; a representative of local government with expertise in State procurement matters; 2 representatives of social service providers in the State; a representative of a minority-, woman-, or veteran-owned business in the State; 2 members of the general public, at least 1 of whom has expertise in State procurement matters; and 2 members of the Maryland General Assembly (one each from the Senate and House of Delegates). The chief procurement officer is the chair of the council.

The council is required to meet at least quarterly and has several important functions, including:

- ensuring that the State's procurement system uses the most advanced procurement methods and management techniques;
- effecting and enhancing communication among State agencies on procurement matters;
- providing a forum for the discussion of specific procurement issues and problems that arise;
- advising the Board of Public Works on problems in the procurement process and making recommendations for improvement of the process;
- reviewing existing procurement regulations; and
- advising the General Assembly on proposed legislation to enhance the efficiency and transparency of State procurement.

### **Procurement Advisor**

The procurement advisor is appointed by the Board of Public Works and serves at the pleasure of the board. The duties of the procurement advisor include:

- ensuring that the State's procurement system utilizes the most advanced procurement methods and management techniques;
- examining all procurements that are subject to review by the Board of Public Works and making recommendations to the board as to the appropriateness of each procurement;
- preventing and detecting fraud, waste, and abuse, and fostering competition in the procurement of supplies, services, or construction;
- conducting investigations into procurement policies, practices, and procedures;
- investigating complaints concerning fraud, waste, and abuse in the procurement process and alleged violations of procurement law or regulations;
- reporting findings of apparent criminal violations to the Board of Public Works, Office of the Attorney General, U.S. Attorney, and State or local prosecutors, as appropriate;

- reporting findings of other apparent violations of law or regulation to the Board of Public Works, the appropriate agency head, and any other appropriate body for administrative action;
- producing an annual report of the activities of the Procurement Advisor and submitting the report to the Board of Public Works and the General Assembly;
- assisting agencies and the public with questions regarding procurement policy;
- establishing policies for the effective training of State procurement officials;
- coordinating activities with other entities performing similar functions;
- reviewing and commenting on internal audit reports; and
- notifying the Legislative Auditor when the Procurement Advisor undertakes certain investigations.

### **Chief Procurement Officer**

The chief procurement officer is appointed by the Governor, with the advice and consent of the Senate, and provides oversight of procurement for the Executive Branch of State government. The chief procurement officer is the chair and principal staff of the Procurement Improvement Council. The chief procurement officer is an official of the Department of General Services and has the authority to engage in or control procurement for the department. Primary procurement units other than the department are not subject to oversight by the chief procurement officer.

### **General Counsel**

The general counsel is appointed by the Board of Public Works and serves at the pleasure of the board. The general counsel provides independent legal advice to the board and makes recommendations to the board as to the legal sufficiency of the procurements that are subject to review by the board. The general counsel has numerous other duties that include assisting the procurement advisor in investigations and responding to complaints concerning abuse or alleged violations of the procurement law and regulations and reviewing regulations proposed by the board for legality.

### **Maryland Green Purchasing Committee**

The Maryland Green Purchasing Committee consists of representatives of the Department of General Services, the Department of Budget and Management, the Department of Natural

Resources, the Maryland Department of the Environment, the Maryland Department of Health, the Department of Commerce, the Maryland Department of Transportation, the Department of Public Safety and Correctional Services, the University System of Maryland, the Department of Information Technology, the Maryland State Department of Education, and the State Treasurer. The committee was established by legislation enacted in 2010 and is required to provide the State with information and assistance concerning environmentally preferable purchasing. Specifically, the committee is required to:

- promote environmentally preferable purchasing through education and training;
- develop and implement statewide policies, guidelines, programs, best practices, and regulations;
- coordinate with other State or federal agencies, task forces, workgroups, regulatory efforts, research and data collection efforts, or other programs and services relating to environmentally preferable purchasing;
- publish environmentally preferable specifications to be adopted by State agencies; and
- provide a framework and format for environmentally preferable purchasing reports.

The committee also is required to establish a single point of contact for State agencies and other interested parties regarding issues related to environmentally preferable purchasing.

## **Oversight of Energy Performance Contracts**

State procurement law requires special oversight for energy performance contracts. An energy performance contract is an agreement for the provision of energy services, including electricity, heating, ventilation, cooling, steam, or hot water in which a person agrees to design, install, finance, maintain, or manage energy systems or equipment to improve the energy efficiency of a building or facility in exchange for a portion of the energy savings. Before an agency may issue a request for proposals for an energy contract, the agency is required to consult with the Department of General Services and the chief procurement officer. The Department of General Services is charged with reviewing the request to ensure that it meets the State energy standards and preserves the State's flexibility to investigate and use economically justifiable new technologies. In addition, before an agency enters into a contract, the Board of Public Works is required to review the contract to ensure that the projected annual energy savings will exceed the projected annual payments to the contractor and that the proposed energy technology is appropriate for the time period provided in the contract. State law authorizes the duration of an energy performance contract to be up to 30 years.

## Chapter 18. Source Selection

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### Methods

Maryland uses numerous methods for awarding procurement contracts; however, most contracts are awarded using competitive sealed bidding or competitive sealed proposals. Noncompetitive negotiation, sole source procurement, emergency or expedited procurement, small procurement, intergovernmental cooperative agreement, auction bids, architectural and engineering services qualification (also known as qualification-based selection), master contracting, and pay-for-success contracting are other procurement methods. A procurement officer determines which method to use for awarding each procurement contract.

### Competitive Sealed Bidding

Competitive sealed bidding is a process under which a State agency solicits sealed bids to complete a project from vendors and awards the contract to the most responsible bidder. In competitive sealed bidding, a procurement officer issues an invitation for bids, which generally includes the contract specifications and whether it will be awarded based on the lowest bid price, the lowest evaluated bid price, or, for certain contracts, the bid most favorable to the State. If the contract is based on the lowest evaluated bid price, the invitation for bids must include the objective measurable criteria for determining the lowest bid price. The invitation for bids must also include any expected degree of minority business enterprise participation or designated small business preference.

If the preparation of specifications is impractical, the invitation for bids may include a request for unpriced technical offers or samples. The invitation for bids may direct bidders to submit price bids with the technical offer or sample or after the agency evaluates the offer or sample. An agency may not open price bids until after evaluating the offer or sample. An agency also may only consider price bids from bidders that submit acceptable offers or samples. This method is called multistep sealed bidding.

In general, agencies are required to give reasonable public notice of an invitation for bids at least 10 days before bid opening. If the amount of the bid is expected to exceed \$50,000 and at least part of the procurement contract will be performed in Maryland or Washington, DC, the public notice must be published at least 20 days before bid opening. Notice of an invitation for bids must be published on eMaryland Marketplace, the State's Internet-based procurement system.

A procurement officer must award the contract to the responsible bidder who submits a responsive bid at the lowest bid price; (if the invitation for bids so provides), to the lowest evaluated bid price; or, under certain circumstances, the bid most favorable to the State. If, after competitive sealed bids have been opened, a procurement officer determines that only one responsible bidder has submitted a responsive bid, the agency may negotiate the contract with that bidder under the procedure for sole source procurements. Further, a procurement officer may

award a contract based on revised bids if, after competitive sealed bids have been opened (1) all bids are rejected; (2) all bid prices exceed the funds available; or (3) the procurement officer, with approval from the agency head, determines that all bids are unreasonable and the delay from issuing a new invitation for bids would be fiscally disadvantageous or otherwise not in the best interest of the State. An agency must publish notice of an award within 30 days after the execution and approval of a contract in excess of \$50,000. Notice of award must be published on eMaryland Marketplace.

### **Competitive Sealed Proposals**

Procurement by competitive sealed proposal is a process under which a State agency solicits sealed proposals to complete a project from vendors and awards the contract to the most responsible offeror. A competitive sealed proposal is the preferred method for the procurement of human, social, cultural, or educational services. A competitive sealed proposal method is also used for real property leases.

A procurement officer using competitive sealed proposals must begin by issuing a request for proposals. A request for proposals must include a statement of the scope of the contract (including the expected minority business enterprise participation), a summary of the factors used to determine the expected degree of minority business enterprise participation for the contract, factors to be used in evaluating proposals (including price), and the relative importance of each factor. Any restrictions on revocability must be specified in the request for proposals. The public notice requirements for this procurement method and awards under this method are the same as for an invitation for bids.

After receipt of proposals, but before contract award, an agency may discuss the proposal with an offeror to obtain the best price for the State or to ensure full understanding of the proposal or request for proposal. If discussions occur, the agency must allow each responsible offeror that it considers to be a possible awardee the opportunity to participate. The agency must treat these responsible offerors fairly and equally and may allow an offeror to revise the proposal by submitting a best and final offer. An agency may conduct more than one series of discussions and requests for best and final offers. A procurement officer must award the contract to the responsible offeror that submits the proposal or best and final offer determined to be the most advantageous to the State, considering the evaluation factors in the request for proposals.

### **Noncompetitive Negotiation**

Noncompetitive negotiation is the process by which an agency may award a procurement contract for specified human, social, or educational services if the agency head determines, on the basis of continuing discussion or past experience that an award under this process will serve the best interests of the State. Specifically, a procurement officer may use this method only if (1) the procurement is for human, social, or educational services to be provided directly to individuals with disabilities, or who are aged, indigent, disadvantaged, unemployed, mentally or physically ill, handicapped, displaced, or minors; (2) the procurement is one of a class for which the

Department of Budget and Management has approved this method; and (3) the agency determines that at least two sources are available, but the absence of effective competition makes it unreasonable to expect bids or proposals from the available sources.

If a procurement is based on noncompetitive negotiation, an agency must publish a request for general expressions of interest. The request should state the general requirement for services, request interested service providers to respond in writing, and be published in the same manner as an invitation for bids or request for proposals. An agency may conduct discussions with any responsible service provider that has submitted an expression of interest. Notice of an award must be published on eMaryland Marketplace.

### **Sole Source Procurement**

Procurement by the sole source method is a process under which an agency awards a contract to a vendor without competition. An agency may use the sole source method if the agency determines that there is only one available responsible source. An agency also may use this method with the prior written approval of the Attorney General to obtain services that require confidentiality in connection with threatened or pending litigation, appraisal of real property for State acquisition, or collective bargaining. An agency is prohibited from using this method if the agency reasonably anticipates a continuing need for the appraisal or collective bargaining services. Notice of an award must be published on eMaryland Marketplace.

### **Emergency and Expedited Procurement**

An emergency procurement is a procurement that an agency may make by any method considered most appropriate to mitigate or avoid serious damage to public health, safety, or welfare. An emergency is defined as an occurrence or condition that creates an immediate and serious need for services, materials, or supplies that cannot be met through normal procurement methods and are required to avoid or mitigate serious damage to public health, safety, or welfare. The agency must obtain as much competition as possible and limit, both in type and quantity, the items procured to those necessary for the mitigation or avoidance. After awarding the contract, the procurement officer must submit a written justification to the Board of Public Works and the appropriate control agency for the use of the emergency procurement procedure. The Governor or the head of a unit, when authorizing an emergency procurement during a declared state of emergency, is required to provide notice to the Legislative Policy Committee within 72 hours after the execution of the contract or the expenditure of funds. The Legislative Policy Committee may request that the Office of Legislative Audits conduct an audit of an emergency procurement contract authorized during a declared state of emergency.

With the approval of the board, both the Maryland Port Commission and the Maryland Aviation Administration may make an expedited procurement if the head of the agency and the board find that (1) urgent circumstances require prompt action; (2) an expedited procurement best serves the public interest; and (3) the need for the expedited procurement outweighs the benefits

of using competitive sealed bids or competitive sealed proposals. The agency must obtain as much competition as reasonably possible.

Notice of an award for these procurements must be published on eMaryland Marketplace within 30 days after the execution and approval of the award. Real property leased under these procurement processes must be leased for the minimum practicable period of time.

### **Small Procurement**

A small procurement is one in which (1) an agency spends \$50,000 or less; (2) a contractor provides certain services for expected annual revenues of \$50,000 or less; (3) the Department of General Services or the Department of Transportation spends \$100,000 or less for construction; (4) the Department of Natural Resources spends \$100,000 or less for capital projects or maintenance; or (5) the State Retirement Agency spends \$50,000 or less during a fiscal year for certain expenses for purposes of administering benefits other than service retirement benefits. An agency may make small procurements in accordance with regulations adopted by primary procurement agencies. A procurement may not be artificially divided into a small procurement. In all small procurements, competition should be sought to the extent practical.

### **Intergovernmental Cooperative Purchasing Agreements**

An intergovernmental cooperative purchasing agreement is a contract:

- entered into by at least one governmental entity (federal, State, or municipal) and a person selected in a manner consistent with the purposes of State procurement; available for use by the governmental entity and at least one additional governmental entity that may, but need not be, the original party to the contract; and intended to promote efficiency and savings that can result from intergovernmental cooperative purchasing; or
- between a primary procurement unit and a person who, at the time that the intergovernmental cooperative purchasing agreement is awarded, has a contract with the federal government and who agrees to provide the unit with identical prices, terms, and conditions as stipulated in the federal contract.

A State primary procurement unit must make a written determination before initially sponsoring or participating in an intergovernmental cooperative purchasing agreement, renewing an intergovernmental cooperative purchasing agreement, or modifying an intergovernmental cooperative purchasing agreement. To initially sponsor or participate in an intergovernmental cooperative purchasing agreement, the written determination must include (1) sufficient evidence that the intergovernmental cooperative purchasing agreement will provide cost benefits to the State *or* will promote either administrative efficiencies or intergovernmental cooperation and (2) a statement that the intergovernmental cooperative purchasing agreement is in the best interest of the State and is not intended to evade the purposes of State procurement law. If a primary procurement unit seeks to renew or modify an existing intergovernmental cooperative purchasing

agreement, the written determination must include (1) sufficient evidence that the intergovernmental cooperative purchasing agreement will provide cost benefits to the State *and* will promote either administrative efficiencies or intergovernmental cooperation and (2) a statement that the intergovernmental cooperative purchasing agreement is in the best interest of the State and is not intended to evade the purposes of State procurement law.

An intergovernmental cooperative purchasing agreement must be awarded in a manner consistent with State procurement law, including compliance with all notice requirements. Additionally, an intergovernmental cooperative purchasing agreement must be approved by the agency head and is subject to any other approval required by law. A protest or contract claim involving an intergovernmental cooperative purchasing agreement that is not sponsored by a State procurement unit must be handled in accordance with the terms of the agreement.

### **Auction Bids**

An auction bid is a process under which an agency may accept multiple price bids from the same vendor until the time when, or event on which, bidding ends. A primary procurement agency may use auction bids to procure supplies and services if the agency determines that auction bids are in the State's best interest. An invitation for auction bids must include contract specifications, whether the contract will be awarded based on lowest bid price or lowest evaluated bid price (including any objective measurable criteria), any small business preference, and the dates and times when bidding will begin and end. An invitation for auction bids may include a request for technical offers or samples before submission of price bids.

A bidder may submit multiple price bids in response to an invitation for auction bids. If a person submits multiple bids, an agency must judge each bid independently. The amount of any price bid, but not the identity of the bidder, is available for public inspection from the time that the bid is received.

An agency must give public notice of an invitation for auction bids in the same manner as required for an invitation for bids. The procurement officer must award the contract to the responsive bidder who submits the lowest bid price, or if applicable, the lowest evaluated bid price.

Notice of a procurement contract awarded on an auction bid basis must be published on eMaryland Marketplace within 30 days after the execution and approval of the contract.

### **Qualification Based Selection**

Qualification based selection may be used only by the Department of General Services and the Maryland Department of Transportation and only if a procurement (1) is for architectural services, engineering services, or land surveying services; (2) is made on a competitive basis; (3) includes an evaluation of the technical proposals and qualifications of at least two persons; and (4) is for services that cannot be provided feasibly and economically by existing in-house resources. Proposals for a procurement using qualification based selection are sought by the

procurement officer issuing a request for architectural services, engineering services, or land surveying services. The request must include a statement describing the services that are the subject of the procurement and indicating how an interested person may receive information about the procurement.

The department must evaluate the technical proposals and qualifications of the persons submitting the proposals and determine an order of priority based on the evaluations. From the results of the selection process, the department is required to (1) begin to negotiate with the most qualified persons and (2) try to negotiate a contract with that person at a rate of compensation that is fair, competitive, and reasonable based on the scope and complexity of the services required. In determining the rate of compensation, the department must consider the scope and complexity of the services required, conduct a detailed analysis of the cost of those services, and comply with limits on costs reimbursement. If the department is unable to negotiate a satisfactory procurement contract, it must terminate negotiations with the most qualified person and negotiate in the same manner with the next most qualified person and continue until the agency reaches an agreement. Certain requirements relating to qualification based selection may be waived under limited circumstances.

The department is prohibited from awarding a contract based on qualification based selection unless the person submits an affidavit of noncollusion and a price quotation. For a procurement contract costing more than \$200,000, the person must also execute a truth-in-negotiation certificate. Additionally, the department is prohibited from awarding a contract for services that is a cost-plus-a-percentage-of-cost contract or includes fee schedules that are based on a percentage of construction costs.

### **Master Contracting**

Master contracting is a streamlined procurement method that provides for the qualification of bidders and offerors for the procurement of services, supplies, or commodities. The only agencies authorized to adopt master contracts are the Department of General Services, the Department of Information Technology (only for certain contracts executed before July 1, 2022), and the Maryland Department of Transportation. The streamlined process must include (1) categories of services, supplies, or commodities for which offerors may submit their qualifications; (2) a procedure for the consideration and approval of proposals for qualification of multiple offerors in each category; (3) the execution of a standard contract for a specified period of time with an offeror approved as a master contractor; and (4) a performance evaluation procedure.

An authorized State agency may then issue task order solicitations for services, supplies, or commodities. If the expected cost of a solicitation is more than \$100,000, the agency must issue the solicitation to all master contractors in the appropriate category. If the solicitation is expected to cost \$100,000 or less, the agency must issue a solicitation to at least six master contractors or all master contractors, whichever is less. Selection of a master contractor is based on the proposal that is most advantageous to the State. Certain requirements related to solicitation for a task order

do not apply to a master contract for construction if the master contract is awarded through a competitive process and states how task orders will be awarded and the maximum number of qualified contractors that will be awarded a master contract.

### **Pay-for-success Contracting**

Pay-for-success contracting is a performance-based procurement method through which an agency contracts with an organization to deliver services or commodities in exchange for payment based on the achievement of outcomes. An agency may enter into a pay-for-success contract only if the procurement officer determines that the contract will produce estimated financial savings or other quantifiable public benefits for the State and a substantial portion of the outcome payment due under the contract will be paid only after specific outcomes have been documented. The Department of Agriculture, the Department of the Environment, the Department of Natural Resources, the Department of Transportation, the Maryland Environmental Service, and the Department of General Services are authorized to enter into a pay-for-success contract for (1) delivery of an environmental outcomes project or (2) already certified environmental outcomes. Other State and local entities may participate in a pay-for-success contract in accordance with an intergovernmental cooperative purchasing agreement. The authorization to enter into a pay-for-success contract does not apply to certain purchases of nitrogen load reductions.

A pay-for-success contract entered into by an authorized State agency must include:

- a quantification plan approved by the agency;
- a statement of the environmental outcomes to be procured and how defined performance measures will demonstrate progress in achieving the outcomes;
- requirements regarding the content and frequency of progress reports;
- a methodology for calculating the amount and timing of outcome payments when the designated evaluator determines that performance measures have been achieved;
- a statement that the basis of payment is the determination of achievement of environmental outcomes by the evaluator; and
- terms addressing the application of specified State laws and related contract requirements.

A pay-for-success contract may also include provisions regarding (1) long-term maintenance and monitoring of environmental services; (2) a requirement that a State agency hold contract funds in a reserve account for payments; (3) for agriculture services, payment for achievement of baseline water quality requirements; or (4) termination prior to the first payment.

Beginning July 2025, and every three years thereafter, the Maryland Environmental Service must review and evaluate the results of all pay-for-success contracts for the previous three fiscal years. The review must include a number of specified items about projects undertaken using pay-for-success contracts, including project costs, the length of time taken to complete the projects, and whether projects met contract terms. The Maryland Environmental Service must provide a copy of each review to the appropriate unit and to specified committees of the General Assembly.

## **Procedures**

### **Administrative**

State law establishes procedures that apply to all types of source selection. A procurement officer must maintain a file on each procurement that includes a substantive record of all inquiries, all written solicitations by an agency, all offers received, all internal and external correspondence, written documentation from the procurement officer describing efforts to confirm the information in the affidavits submitted by the successful bidder or offeror, and the final contract. An agency must draft specifications to encourage maximum practicable competition and is prohibited from drafting specifications to favor a single prospective bidder or offeror. Further, prospective bidders or offerors of supplies or construction must state whether the procurement will include recycled materials, including the types, amounts, and applications of these materials.

### **Rejection and Cancellation of Bids**

A procurement officer must reject a bid or proposal if the procurement officer determines that the bid is nonresponsive or the proposal is unacceptable, or that the bidder or offeror is not responsible. In addition, with Board of Public Works approval, if an agency determines that it is fiscally advantageous or otherwise in the best interests of the State, the agency may cancel a solicitation or reject all bids or proposals.

### **Bid Security**

Bid security submitted with a bid helps ensure that, on contract award, the bidder will execute the contract at the bid price. Bid security includes surety bonds, cash, or other forms of security that are authorized by State or federal regulation or deemed satisfactory by the unit awarding the contract. If a successful bidder does not enter into a contract, the bid security will be forfeited. Generally, an agency is prohibited from requiring bid security for a procurement expected to be for \$100,000 or less. An agency, however, must require a bidder or offeror to provide bid security on a procurement contract for construction if the price is expected to exceed \$100,000 or, for smaller contracts, security is required by federal law or a condition of federal assistance. The amount of bid security required for a procurement contract for construction is at least 5% of the bid or price proposal or, if the price is unknown, an amount determined by the procurement officer. An agency may require a bidder or offeror to provide bid security set by the

agency on a procurement contract for services, supplies, or construction-related services if the price of the procurement contract is expected to exceed \$50,000. Additionally, an agency must require security on those types of contracts if required by federal law or a condition of federal assistance. If a bidder or offeror withdraws a bid or proposal, action may be taken against the bid security unless there is a mistake in the bid or proposal, and the agency allows the bidder or offeror to withdraw before the contract is awarded.

## **Unlawful Conduct and Conflict of Interest**

During the procurement process, a bidder or offeror may not knowingly offer or promise future employment, a business opportunity, or money or other gifts to an agency procurement official. Further, a bidder or offeror is prohibited from soliciting from an agency employee any proprietary or source selection information regarding the procurement. In addition, for invitations for bids or requests for proposals that involve the selection of a consultant, the bidder or offeror must provide to the agency an affidavit that discloses any actual or potential conflict of interest of which the bidder or offeror knows, or can reasonably be expected to know.

An individual who assists an Executive Branch procurement unit in drafting specifications or solicitations is prohibited from participating in the resulting procurement either by submitting a bid or proposal or assisting or representing another person, directly or indirectly, who is submitting a bid or proposal. The prohibition against participation applies for at least two years – specifically from the date of issuance of the first relevant invitation for bids or request for proposals until the later of either (1) two years from the date of issuance or (2) the awarding of a contract or reissuance of the invitation for bids or request for proposals. The prohibition does not apply to a subsequent invitation for bids or request for proposals for which the specifications are reused after the initial prohibitions are no longer applicable. The prohibition also applies to a person that employs the individual during the period of assistance.



# Chapter 19. Preferences

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## **In General**

State law requires that a State or State-aided entity buy supplies and services, if available, from Maryland Correctional Enterprises, Blind Industries and Services of Maryland, or a community service provider or an individual with disability-owned business under the Employment Works Program (if not required to buy from another unit), in that order of priority. To the extent practicable, a prime contractor on a State contract that includes housekeeping or janitorial services must procure janitorial products from Blind Industries and Services of Maryland if the products are made, manufactured, remanufactured, or assembled by Blind Industries and Services of Maryland and are available. Maryland also has preferences for small, minority-owned, veteran-owned, disabled veteran-owned businesses, and certified local farm enterprises. In addition, several other purchasing preferences exist, including a reciprocal preference for resident bidders competing with bidders from outside the State. Other procurement preferences relate to products made from recycled paper and other recycled material, low noise supplies, coal operated heating systems, biofuels, mercury-free products, locally grown foods, steel, conflict minerals, and manufactured goods.

## **Small- and Veteran-owned Business Programs**

### **Preference Programs**

The Small Business Preference Program applies to the procurement of supplies, general services, and construction-related services by the Department of General Services, the Maryland Department of Transportation, the University System of Maryland, Morgan State University, and, with respect to the construction of correctional facilities in effect before October 1, 2019, the Department of Public Safety and Correctional Services.

Under the program, a small business may receive a baseline maximum 5% price preference, and an additional 3% for a disabled veteran-owned small business or 2% for a veteran-owned small business. These preferences allow a small business to be awarded a contract even if the small business submits a responsive price bid that exceeds the lowest responsive bid by the applicable percentage. To qualify as a small business, a firm must (1) be independently owned and operated; (2) not be a subsidiary of another firm; (3) not be dominant in its field of operation; and (4) not exceed employment or gross sales figures specific to wholesalers, retailers, manufacturers, the service industry, the construction industry, or the architectural and engineering services industry. The qualification of a business as a small business for the exclusive purpose of pursuing out-of-state contracts includes requirements that the business have 250 or fewer employees or average annual gross receipts of \$10,000,000 or less averaged over its most recently completed three fiscal years. Specified lead agencies, with the help of the Department of Commerce, are required to compile and maintain a comprehensive bidder's list of small businesses and to adopt

other procedures, including procedures related to outreach, to facilitate the involvement of small businesses in the public procurement process.

### **Reserve Programs**

The Governor's Office of Small, Minority, and Women Business Affairs administers the State's two reserve programs: the Small Business Reserve Program; and the Veteran-Owned Small Business Enterprise Program. The Small Business Reserve Program requires all units of State government to structure their procurement procedures so that, subject to limited exceptions, at least 15% of the total dollar value of goods and services it procures are from small businesses. In addition, with some exceptions, State procurements with a value between \$50,000 and \$500,000 are required to be automatically set aside for small businesses. The set-aside requirement for procurements between \$50,000 and \$500,000 does not apply to (1) purchases from preferred providers; (2) specified procurements involving federal dollars; (3) procurement of human, social, cultural, or educational services; or (4) certain term and master contracts. Through the program, specified procurements are limited to responses from eligible small businesses that are registered on eMaryland Marketplace and payment for the procurement of goods, supplies, services, maintenance, construction, construction-related services, and architectural and engineering services is expended directly to small businesses at the prime contract level. Small businesses self-certify on eMaryland Marketplace in accordance with the statutory criteria for designation as a small business.

The Veteran-Owned Small Business Enterprise Program requires an Executive Branch agency to structure its procurement procedures to try to achieve or exceed awarding an overall percentage goal of its procurement contracts to veteran-owned small businesses. The Governor's Office of Small, Minority, and Women Business Affairs is required to adopt regulations establishing the overall percentage goal, which is set at 1% for fiscal 2023. Veteran-owned small businesses are businesses that (1) meet size standards adopted by the United States Small Business Administration and (2) are at least 51% owned by individuals who are veterans and who control the management and daily operations of the business.

### **Minority Business Enterprise Program**

In the late 1970s, the General Assembly concluded that underutilization of minority businesses in State contracting was primarily due to past and present discrimination. More recent studies conducted by the State continue to show that marketplace discrimination makes it more difficult for Minority Business Enterprises to compete for business from the State and from vendors who do business with the State. These studies have shown that prime contractors will use Minority Business Enterprises on public-sector projects with Minority Business Enterprise requirements but will seldom use these businesses on projects without these requirements.

To address these issues, the General Assembly established the Minority Business Enterprise Program, which set goals for agencies to try to achieve greater participation in government contracting by Minority Business Enterprises.

The ultimate goal of the program is to develop qualified minority businesses that will be able to do business without the need of the program. In accordance with a United States Supreme Court decision, the program is evaluated on an ongoing basis to determine whether evidence of continuing discrimination exists and supports the reauthorization of the program.

A Minority Business Enterprise is a legal entity, except a joint venture, that is organized to engage in commercial transactions and is at least 51% owned, controlled, and managed by socially and economically disadvantaged individuals. The law provides that a rebuttable presumption exists that “socially and economically disadvantaged individuals” include African Americans, Native Americans, Asians, Hispanics, women, and physically or mentally disabled individuals. An individual with a net worth exceeding the cap – adjusted annually for inflation but not including specific interests in minority businesses, primary residences, or qualified retirement plans – may not be found to be economically disadvantaged. The net worth cap for calendar 2022 is \$1,847,024.

The program requires that a statewide goal for Minority Business Enterprise contract participation be established biennially through the regulatory process. The biennial statewide goal is established by the Special Secretary for the Governor’s Office of Small, Minority, and Women Business Affairs, in consultation with the Secretary of Transportation and the Attorney General. Each agency must structure procurement procedures to try to achieve the statewide goal of Minority Business Enterprise participation in State contracts. In a year for which there is a delay in establishing the statewide goal, the previous year’s goal applies. The Special Secretary is also required to establish biennial guidelines for State procurement units to consider in deciding whether to establish subgoals for different minority groups recognized in statute. In a year for which there is a delay in issuing the guidelines, the previous year’s guidelines apply. As of fiscal 2023, the statewide Minority Business Enterprise participation goal is 29%, which has been in effect since 2013.

If a contractor does not achieve all or part of the goals for participation by Minority Business Enterprises on a contract, the agency is required to make a finding of whether the contractor has demonstrated that it took all necessary and reasonable steps to achieve the goals, including the performance of required outreach to Minority Business Enterprises. The agency is required to grant a waiver from the participation goals if the contractor provides a reasonable demonstration of good-faith efforts to achieve the goals.

An agency head may also waive the Minority Business Enterprise requirements for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate the use of those procedures.

The Board of Public Works has designated by regulation the Maryland Department of Transportation to certify, recertify, and decertify Minority Business Enterprises. That agency must develop and maintain a central directory of Minority Business Enterprises that are certified or have

been decertified for specified reasons. A State agency may not allow a person to participate in a procurement as a certified Minority Business Enterprise unless the Maryland Department of Transportation has appropriately certified the person. The board is also required to adopt regulations promoting and facilitating the certification of Minority Business Enterprises that have received certification from the federal Small Business Administration or a county that uses a certification process that is substantially similar to the State process.

In addition, the Governor's Office of Small, Minority, and Women Business Affairs and the Office of State Procurement in the Department of General Services, in consultation with the Office of the Attorney General and the Board of Public Works are required to adopt by regulation criteria used to determine whether a prime contractor has persistently failed to meet contract goals in the absence of mitigating factors. The Governor's Office of Small, Minority, and Women Business is required to refer prime contractors identified as persistently failing to meet contract goals in the absence of mitigating factors to the Office of Attorney General for consideration for debarment proceedings.

Within 90 days after each fiscal year, each agency is required to submit a report to the Governor's Office of Small, Minority, and Women Business Affairs, the Maryland Department of Transportation in its role as the certification agency, and the Joint Committee on Fair Practices and Personnel Oversight. The report must include for the previous fiscal year:

- the total number and value of procurement contracts awarded to Minority Business Enterprises, catalogued by category of Minority Business Enterprise and industry type, including whether the Minority Business Enterprise participated as a prime contractor or as a subcontractor;
- the percentage of the total number and value of contracts awarded to Minority Business Enterprises, catalogued by category of Minority Business Enterprise and by industry type;
- the total number and the names of certified Minority Business Enterprise contractors that participated as prime contractors or subcontractors on agency contracts;
- all contracts awarded for each participating Minority Business Enterprise, including a description of the contracts and industry types;
- unless waived by the Special Secretary for the Office of Small, Minority, and Women Business Affairs, the results of each compliance assessment conducted by each agency to verify whether the Minority Business Enterprises listed in a successful bid or proposal actually participated to the extent listed in bid or proposal for the contract; and
- any other information required by the Governor's Office of Small, Minority, and Women Business Affairs and the Maryland Department of Transportation, as approved by the Board of Public Works.

The office is required to submit a summary report of this information to the board and the Legislative Policy Committee by the end of each calendar year.

Additional functions of the office are to implement outreach activities to support the Minority Business Enterprise Program. The office has established many partnerships with State and local governments, private business entities, and business development organizations to support the program. To enhance the development of Minority Business Enterprises, the office also holds outreach forums and seminars to publicize government contracting opportunities and to educate Minority Business Enterprises on the State's certification and procurement processes.

## **Certified Local Farm Enterprise Program**

The purpose of the Certified Local Farm Enterprise Program is to encourage each State agency to try to achieve an overall percentage goal of 20% of the agency's total dollar value of procurement contracts for food from certified local farm enterprises. A certified local farm enterprise is one that meets specified nutrient management requirements in current law and is certified by the Department of Agriculture.

The Office for the Certified Local Farm Enterprise Program administers the program and must establish (1) guidelines for each agency to consider when determining the appropriate participation goal for each food contract procurement; (2) procedures governing how the participation of certified local farm enterprises is counted toward contract goals; and (3) regulations to maximize notice to (and the opportunity to participate in the food procurement process by) a wide range of local farm enterprises.

Each agency must (1) consider the practical severability of procurement contracts for food and may not bundle contracts; (2) implement a program that enables the agency to evaluate each contract for food to determine the appropriate local farm enterprise participation goals (if any) based on certain factors; (3) monitor and collect data with respect to the compliance with the certified local farm enterprise goals; and (4) institute corrective action when the agency does not make good faith efforts to comply with the contract goals. If an agency does not achieve the goal set for a specific contract, it must demonstrate to the Office for the Certified Local Farm Enterprise Program that it took all necessary and reasonable steps to achieve the goal. The office may grant a waiver if a unit provides a reasonable demonstration of good faith efforts to achieve the goal. Waivers may also be granted for sole source, expedited, or emergency procurements.

## **Miscellaneous Purchasing Preferences**

### **Resident Bidders**

When procuring architectural or engineering services, an agency is required to apply a preference to a proposal from a resident firm if (1) a nonresident firm is a responsible offeror and

is determined to be the most qualified person to submit a proposal; (2) the state in which the principal office of the nonresident firm is located has a resident preference; (3) the resident firm is a responsible offeror (and at the time it submits the proposal, certifies that it meets the requirements for a resident firm); and (4) the preference is the same as the preference given by the other state and does not conflict with a federal law or grant affecting the procurement. If the resident firm qualifies for the resident preference in addition to another preference under State procurement law, the agency is prohibited from applying more than one preference and is required to apply the preference that is most advantageous to the resident firm.

For all other types of services, when an agency uses competitive sealed bidding or competitive sealed proposals to award a procurement contract, the agency may, but is not required to, give a preference to a resident bidder or offeror who submits the lowest responsive bid or best proposal from a resident if (1) for bids, the resident bidder is a responsible bidder; (2) for bids, a responsible bidder whose principal office or operation is in another state submits the lowest responsive bid; (3) the state in which the nonresident bidder or offeror's principal office is located or in which the nonresident bidder or offeror has its principal operation gives a preference to its residents; and (4) the preference does not conflict with a federal law or grant affecting the procurement contract. A preference may include a percentage preference or an employee residency requirement. The preference given must be identical to the out-of-state preference.

### **Recycled Paper**

To the extent practicable, the Secretary of General Services must buy or approve for purchase only supplies that are produced from recycled paper. Of the total volume of paper that the Department of General Services buys, at least 90% must be recycled paper.

### **Low Noise Supplies**

To the extent practicable, each State agency must buy or lease for use by the State government the quietest available supplies, which include supplies that are certified as low-noise-emission products under the federal Noise Control Act of 1972.

### **Coal in Heating Systems**

The design of a heating system in a building or facility constructed after July 1, 1986, may not preclude the use of Maryland coal if the State provides at least 50% of the money used for construction of the building or facility and if a determination is made that coal products will be used to fuel the heating system. This preference does not apply to a building or facility for which (1) the Maryland Department of the Environment determines that the use of coal products would violate provisions of the Environment Article or regulations adopted under that article or (2) the Department of General Services or another appropriate agency determines that the use of coal products would not be cost effective.

## **Biofuel for State Vehicle Fleet**

Half of all diesel-powered vehicles in the State fleet and State-owned heavy equipment must use a fuel blend that consists of 5% biodiesel or other biofuel approved by the federal Environmental Protection Agency. This requirement also applies to specified State-owned heating equipment, subject to the availability of the biofuel. However, the requirement does not apply if a mechanical failure due to the use of biodiesel fuel or other biofuel would void the manufacturer's warranty.

## **Zero-emission Vehicles in State Vehicle Fleet**

It is the intent of the General Assembly that 100% of the passenger cars in the State vehicle fleet be zero-emission vehicles by 2031 and other light-duty vehicles in the State vehicle fleet be zero-emission vehicles by 2036.

The State must ensure that (1) in fiscal 2023 through 2025, at least 25% of the passenger cars purchased for the State vehicle fleet are zero-emission vehicles; (2) in fiscal 2026 and 2027, at least 50% of the passenger cars purchased for the State vehicle fleet are zero-emission vehicles; (3) beginning in fiscal 2028, 100% of the passenger cars purchased for the State vehicle fleet are zero-emission vehicles; and (4) beginning in fiscal 2024, any passenger car purchased for the State vehicle fleet that is not a zero-emission vehicle must be a hybrid vehicle. Further, the State must ensure that (1) in fiscal 2028 through 2030, inclusive, at least 25% of all other light-duty vehicles purchased for the State vehicle fleet are zero-emission vehicles; (2) in fiscal 2031 and 2032, at least 50% of all other light-duty vehicles purchased for the State vehicle fleet are zero-emission vehicles; and (3) beginning in fiscal 2033, 100% of all other light-duty vehicles purchased for the State vehicle fleet are zero-emission vehicles.

These requirements do not apply to the purchase of vehicles that have special performance requirements or to the purchase of vehicles by the Maryland Department of Transportation or the Maryland Transit Administration that will be used to provide paratransit service. The Department of General Services is required to ensure the development of charging infrastructure to support the operation of zero-emission vehicles in the State vehicle fleet. Each year, the Chief Procurement Officer must submit a report to the General Assembly that includes data for the preceding fiscal year on the purchase of passenger and other light-duty vehicles, the purchase of zero-emission vehicles, any related operational savings, and an evaluation of existing charging infrastructure, among other information.

## **Environmentally Preferable Products**

To the extent practicable, each State agency is required to adopt environmentally preferable specifications developed by the Maryland Green Purchasing Committee for the purpose of encouraging the maximum purchase of environmentally preferable products and services. An environmentally preferable product or service is a product or service that, throughout its full lifecycle (1) is energy efficient, water efficient, biobased, non-ozone depleting, made with recycled

content, or nontoxic or (2) has other attributes recognized as environmentally preferable by the Maryland Green Purchasing Committee. The committee is required to keep its specifications online.

State agencies are not required to purchase environmentally preferable products and services if purchasing them would (1) limit or supersede any requirements under law or (2) result in the purchase of products and services that do not perform adequately for the intended use, exclude adequate competition, or are not available at a reasonable price in a reasonable period of time.

### **Mercury-free Products**

All State agencies must give a price preference not exceeding 5% to products and equipment that are mercury free or contain the least amount of mercury necessary to meet product or equipment performance standards. An agency also may limit a procurement to mercury-free products.

### **Maryland Food Growers**

Maryland food growers or distributors of Maryland grown food may receive a 5% price preference if the bid meets all other requirements specified by the procurement.

### **Steel**

A public body (which includes the State, a unit of the State, and other governmental entities that award contracts for public construction or other public work) must require a contractor or subcontractor to use or supply only American steel products in the performance of a contract for:

- constructing or maintaining a public work; or
- buying or manufacturing machinery or equipment that is composed of at least 10,000 pounds of steel and is to be installed at a public work site.

An agency, however, does not have to use American steel products if:

- the price of American steel products is not reasonable;
- American steel products are not produced in sufficient quantity to meet the requirements of the contract; or
- the purchase of American steel products would not be consistent with the public interest.

## **Compost**

To the maximum extent practicable, State and local agencies that maintain public lands must give preference to the use of compost in any land maintenance activity paid for with public funds. The intent of this requirement is to foster the composting of landscaping waste from State land and to increase the percentage of landscaped area fertilized by compost.

## **Public Employee Uniforms and Equipment**

A public employer (defined as a unit of State or local government, a school district, or a special district) may not knowingly buy, furnish, or require an employee to acquire any apparel or safety equipment that is for use while on duty unless the item is manufactured in the United States. Exceptions to this prohibition apply if (1) the item or a similar item is not made or available for purchase domestically at all or in reasonable quantities; (2) the price of the item or similar item manufactured domestically exceeds that of a similar available foreign item by an unreasonable amount; (3) the quality of the item or similar item manufactured domestically is substantially less than the quality of a comparably priced, similar, and available foreign item; or (4) the public employer entered into the contract for acquisition before October 1, 2011.

## **Outdoor Lighting Units**

State funds may not be used to install or replace permanent outdoor lighting on the grounds of any State building or facility unless the lighting (1) is designed to maximize energy conservation and minimize light pollution, glare, and trespass; (2) produces the minimum illumination necessary for its purpose; and (3) restricts the escape of visible light if the lighting emits high amounts of visible light (subject to a waiver granted by the Board of Public Works). Exceptions to this prohibition include lighting on the grounds of a correctional facility, lighting required for storm operation activity performed by the Maryland Department of Transportation, and lighting used to illuminate the flag of the State or the United States.

## **Conflict Minerals**

Federal law requires a person who uses conflict minerals (minerals, including coltan, cassiterite, gold, and wolframite, that are extracted and sold to finance human conflict) in the manufacture of goods to disclose annually if the minerals originated in the Democratic Republic of the Congo or a neighboring country. A unit of State government may not knowingly procure supplies or services from a person who fails to comply with this federal law.

## **Investment Activities in Iran**

A person that engages in specified investment activities in Iran is ineligible to and is prohibited from bidding on, submitting a proposal for, or entering into or renewing a procurement contract with a public body in the State. Investment activities that trigger the prohibition include (1) providing goods or services of at least \$20 million in the energy sector in Iran or (2) for financial

institutions, extending credit of at least \$20 million for at least 45 days to another person who is officially identified on a government list as a person engaging in investment activities in Iran and who will use the credit to provide goods or services to Iran's energy sector.

### **Electronic Products**

A unit of State government may purchase only electronic products that have either gold or silver ratings from the Electronic Product Environmental Assessment Tool (an environmental rating system for computers and other electronic devices based on standards approved by the American National Standards Institute) or meet other nationally recognized and consensus-based standards approved by the Department of Information Technology. On request, the department may waive this requirement. Likewise, a contract for electronic recycling services may be awarded only to a recycler that is R2 or e-Stewards certified (certifications for safe and environmentally friendly recycling of computers and electronics) or that meets comparable standards approved by the Maryland Department of the Environment (in consultation with the Department of General Services).

### **Manufactured Goods**

A public body (defined as a unit of State or local government, a school district, or a special district) must require a contractor or subcontractor to use or supply American-manufactured goods in the performance of a contract to build or maintain a public work or buy or manufacture equipment to be installed at a public work site. Exceptions to this prohibition apply if the head of the public body determines that (1) the item or a similar item is not manufactured or available for purchase domestically in reasonable quantities; (2) the price of the American manufactured goods exceeds that of a similar available foreign item by an unreasonable amount; (3) the quality of the item or similar item manufactured domestically is substantially less than the quality of a comparably priced, similar, and available foreign item; or (4) the procurement of a manufactured good would be inconsistent with the public interest. State law also provides an exception to this prohibition for emergency life safety and property safety goods.

### **Invasive Plant Species**

Beginning July 1, 2022, State funds may not be used to purchase or plant an invasive plant species for an outdoor project. The prohibition on the use of State funds does not apply if the plant species is commonly used for agricultural or horticultural purposes and is being maintained for the purposes of education or research. Additionally, entities that receives State funding and State agencies are required to prioritize, whenever possible, the use of plants native to the State for every planting project.

## Chapter 20. Contract Formation

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### Contract Method and Pricing Preferences

An agency may enter into a procurement contract based on any method of pricing that will promote the best interests of the State. However, if practicable, an agency must give preference to a fixed-price form of procurement contract. An agency is prohibited from entering into a cost-plus-a-percentage-of-cost procurement contract, and a contractor who is subject to a cost-reimbursement contract is prohibited from entering into a cost-plus-a-percentage-of-cost subcontract.

Additionally, an agency may not enter into a cost-reimbursement contract unless the procurement officer determines that a cost-reimbursement contract is likely to be less costly to the State than any other type of contract or, except for leases of real property, the kind or quality of procurement that the agency requires cannot be obtained practicably under any other type of contract. Before an agency enters into a contract that is wholly or partly a cost-reimbursement contract, the procurement officer must first determine that the contractor's accounting system is adequate for the timely development of all necessary cost data and to allocate costs in accordance with generally accepted accounting principles. Furthermore, a cost-reimbursement contract must provide that costs, including costs for subcontractors, will be reimbursed only if the costs are allowable and allocable under the contract or by regulation.

A contractor under a cost-reimbursement contract must give notice to and obtain approval from the agency before the contractor enters into a cost-reimbursement subcontract, or any subcontract involving more than \$25,000, or 5%, of the estimated cost of the procurement contract.

### Contract Provisions

State law requires each procurement contract to include a number of specific contract provisions. After the parties enter into a contract, they may include additional clauses in the contract by consent and without consideration. Each procurement contract must include clauses covering:

- termination for default;
- termination wholly or partly by the State for its convenience if the agency head of the primary procurement unit determines that termination is appropriate;
- variations that occur between estimated and actual quantities of work in a contract;
- liquidated damages, as appropriate;

- specified excuses for nonperformance;
- except for real property leases, the unilateral right of the State to order in writing changes in the work, if the changes are within the scope of the contract, or a temporary stop or delay in performance;
- the obligation of the contractor to comply with political contribution reporting requirements;
- nonvisual access for information technology;
- the application of preexisting regulations;
- for construction contracts, modifications and contract claims;
- for a multi-year contract, including a lease of real property, the automatic termination of the contract that discharges both parties from future performance of that contract, but not from existing obligations (the Board of Public Works, on recommendation from the Department of General Services, may waive this required clause for a contract to acquire renewable energy); and
- nondiscrimination requirements.

### **Payment or Performance Security**

Generally, a procurement officer may not require a contractor to provide a performance bond, payment bond, or other security on a procurement contract for construction, construction-related services, services, or supplies if the price of the procurement contract is \$100,000 or less. However, a procurement officer must require a contractor to provide a performance bond, payment bond, or other security if required by federal law or a condition of federal assistance. If the price of a procurement contract for construction exceeds \$100,000, a procurement officer must require a contractor to provide security as required under Title 17, Subtitle 1 of the State Finance and Procurement Article (the “Maryland Little Miller Act”). Additionally, a procurement officer may require a contractor to provide a performance bond or other security on a procurement contract for supplies, services, or construction-related services where circumstances warrant security, and the price of the procurement contract exceeds \$100,000.

In general, retainage is a portion of the final payment due to the contractor that is withheld pending final completion of a project. If a contractor has furnished 100% payment security and 100% performance security, the percentage specified in the contract for retainage may not exceed 5% of the total amount. A contractor may not retain a percentage of payments due to a subcontractor that exceeds the percentage retained by the State.

# Chapter 21. Dispute Resolution

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## **In General**

The dispute resolution process begins when an aggrieved party submits a bid protest or contract claim to a procurement officer, who must review the protest or claim and any other appropriate information and may conduct discussions or negotiations with interested parties. The procurement officer may negotiate a settlement or grant or deny whole or partial relief. The procurement officer's decision is then reviewed by the agency head who may approve, disapprove, modify, or remand the decision. If the protester or claimant is not satisfied by the agency's final decision, the protester or claimant may appeal to the Maryland State Board of Contract Appeals. If either of the parties is not satisfied by the board's decision, the party may appeal to the appropriate court. This chapter discusses this process.

## **Complaints**

### **Types of Complaints**

Two types of complaints arise under the procurement process. A protest arises out of the formation of a contract and includes disputes related to the qualifications of bidders or offerors or contract award. The protest procedures described here do not apply to (1) except as authorized by regulation by the Board of Public Works, an act or omission by an agency under the Veteran-Owned Small Business Enterprise Participation Program (reserve program); (2) a violation of certain requirements related to the solicitation of certain service contracts; or (3) an unintentional failure to use eMaryland Marketplace when required for publication of a procurement or award. A contract claim arises out of the contract itself and includes disputes related to performance, breach, modification, or termination of the contract. Different procedures apply to the resolution of protests and contract claims.

### **Protest**

The protest process begins when a prospective or actual bidder or offeror submits a protest to the procurement officer against the award or the proposed award of a contract. A protest must be filed within seven days after the basis for the protest is known or should have been known, whichever is earlier, with two exceptions. First, if a protest is based on an invitation for bids and the basis for the protest is apparent before the initial bid opening or closing, the protest must be filed before the initial bid opening or closing, respectively. Second, if a protest is based on competitive sealed proposals and the basis for the protest did not exist in the initial request for proposals, the protest may not be filed later than the next closing date for receipt of proposals following the inclusion of alleged impropriety.

## Contract Complaint

**Complaint by Contractor:** Contract claims begin with two steps. First, the claimant must submit a notice of a contract claim to the procurement officer within 30 days after the basis for the claim is known or should have been known. Second, unless provided an extension by the procurement officer or final payment has been made on the contract, a contractor must file the claim within 90 days of filing notice of a construction contract claim and 30 days of filing notice of a contract non-construction claim. A claim must be in writing and include:

- an explanation of the claim and pertinent contract provisions;
- the amount of the claim;
- the facts on which the contract claim is based;
- all relevant data and correspondence that may substantiate the contract claim; and
- a certified statement that the claim is made in good faith.

**Complaint by Agency:** A State agency may assert a claim against a contractor by sending a written notice to the contractor and procurement officer that includes:

- the basis for the contract claim;
- to the extent known, the amount, or the performance or other action, requested by the agency in the contract claim; and
- the date by which the contractor is required to provide a written response to the contract claim.

## Procurement Officer's Duties

A procurement officer's duties in the decision-making process for procurement disputes depend on the type of complaint filed.

### Protests

#### General Procedures

When a procurement officer receives a protest, the procurement officer:

- must review the substance of the protest;
- may request additional information;
- may conduct discussions or negotiations; and
- unless clearly inappropriate, must seek the advice of the Office of the Attorney General.

### **Requests for Additional Information**

If a procurement officer requests additional information from a party, the party has five days after receipt of the request to produce the information unless the officer specifies another time. Failure to produce the requested information in a timely manner may result in the procurement officer's resolution of the protest without consideration of the requested information.

### **Discussions or Negotiations**

A procurement officer may conduct discussions or negotiations with the interested parties and resolve a protest by agreement with any one or more of the interested parties. The agreement must be in writing and is subject to the approval of the reviewing authority and the Office of the Attorney General.

### **Recommended Decisions**

If discussions and negotiations do not lead to an agreement, the procurement officer must wholly or partly grant or deny the protest and the relief sought. The procurement officer must write the decision as expeditiously as possible and must include in the decision:

- a description of the controversy;
- a statement of the decision and any supporting material; and
- if the protest is denied, a paragraph stating that the decision is the final action of the agency, which may be appealed to the Maryland State Board of Contract Appeals within 10 days after the date the decision is received.

### **Contract Claims**

#### **General Procedures**

After a procurement officer receives a contract claim, the procurement officer:

- must investigate and review the facts pertinent to the claim;

- may request additional information or substantiation through appropriate procedure;
- may conduct discussions or negotiations; and
- unless clearly inappropriate, must seek the advice of the Office of the Attorney General.

### **Requests for Additional Information**

Unlike for protests, there is no specific time limit for submitting additionally requested information.

### **Discussions or Negotiations**

A procurement officer may conduct discussions or negotiations with the interested parties and settle a claim by agreement. Like a protest agreement, a contract claim settlement must be in writing and is subject to the approval of the reviewing authority and the Office of the Attorney General. Unlike a protest agreement, however, a contract claim settlement must provide for a release and be supported by a written statement that the agreement is in the best interest of the State.

### **Recommended Decisions**

If a settlement is not reached, the procurement officer must wholly or partly grant or deny the claim. The procurement officer must include in the decision:

- a description of the claim;
- a reference to pertinent contract provisions;
- a statement of factual agreements and disagreements;
- a statement of the proposed decision and supporting rationale; and
- a paragraph stating that the decision is the final action of the agency, which may be appealed to the Maryland State Board of Contract Appeals within 30 days from the date the decision is received.

## **Duties of the Reviewing Authority**

### **Protest and Contract Complaints**

Before the procurement officer's decision on a protest or contract claim is finalized, it must be approved by the reviewing authority. The reviewing authority is the head of the procurement officer's agency. The reviewing authority may approve, modify, or disapprove the procurement officer's decision within 180 days after receiving the contract claim or a longer period to which the parties agree. The reviewing authority may also remand it to the procurement officer. If the reviewing authority approves, modifies, or disapproves the decision, it becomes the final agency action. On receipt of the final agency action, an aggrieved party may appeal to the Maryland State Board of Contract Appeals. A party to a protest has 10 days after receipt of the notice of final action to file an appeal, while a party to a contract claim has 30 days to file a notice to appeal.

### **Construction Contract Complaints**

In addition to the duties that the reviewing authority has for protests and contract claims, the reviewing authority must comply with specific notification requirements for construction contract claims. The reviewing authority must give written notification of its final decision to a contractor within:

- 90 days after a procurement officer receives a claim in an amount for which the board's accelerated procedure may be used;
- 180 days after the procurement officer receives a claim in an amount for which the board's accelerated procedure cannot be used; or
- a longer period that the contractor agrees to in writing.

Failure to make a final decision within these time limits may be considered a decision to deny the claim, which may be appealed to the board.

If the final decision grants the claim in part and denies the claim in part, the procurement agency must pay the amount granted. However, payment is not an admission of liability, and if a subsequent determination modifies the reviewing authority's final decision, the agency may recover the amount paid.

## **Maryland State Board of Contract Appeals**

The Maryland State Board of Contract Appeals is an independent agency in the Executive Branch that consists of six full-time members qualified to serve in a quasi-judicial capacity and possessing a thorough knowledge of procurement practices and processes. Appeals

are heard before a panel of not more than three members, as designated by the chairman. The chairman and other members are appointed by the Governor with the advice and consent of the Senate. The board is authorized to employ staff and is required to employ at least three law clerks who have graduated from designated regional institutions.

The board adjudicates appeals regarding protest and contract disputes between State agencies and contractors or vendors doing business with the State. Matters involved in protest disputes include the preparation and interpretation of bid specifications, qualification and selection of bidders, the bidding process, and other concerns relating to the formation of a procurement contract. Issues in contract disputes include the quality of performance, compliance with contract provisions, compensation, claims and change orders, and termination. At the request of a party, the board may subpoena witnesses and documents and may compel the testimony of witnesses. Board decisions are subject to judicial review, and any aggrieved party, including a State agency, may appeal a final decision. The board does not have jurisdiction over (1) an unintentional failure to use eMaryland Marketplace when required for publication of a procurement or an award; (2) except as authorized by the Board of Public Works, an act or omission by an agency under the Veteran-Owned Small Business Enterprise Participation Program (reserve program); or (3) contract claims relating to a lease of real property.

The board must give priority to an appeal of a final agency decision on a bid protest. Also with respect to an appeal of a bid protest, discovery is limited to document production absent extraordinary circumstances. The board must decide an appeal of a bid protest expeditiously.

Unless the parties agree to a longer period, the board must make a decision regarding an appeal on a contract claim within 180 days after the day on which all briefs were filed or, if later, the day on which the record was closed. An appellant may elect to use a “small claims” (expedited) appeal for a dispute of \$50,000 or less or an “accelerated” appeal for a dispute of \$100,000 or less. Appeal procedures are streamlined under these processes, and decisions must be rendered within 120 or 180 days, respectively, after the board receives written notice of the appellant’s election to use these processes.

## Chapter 22. Penalties for Noncompliance

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### **In General**

Noncompliance with the State procurement law may result in a contract being found void or voidable, the suspension or debarment of a party to a procurement contract, or a criminal penalty.

### **Void Contracts**

A contract is considered void if it violates the State procurement law, unless the contract is determined voidable as discussed below. A void contract cannot be enforced. When a contract is found to be void, the contractor must be awarded compensation for actual expenses reasonably incurred under the contract and a reasonable profit if the contractor:

- acted in good faith;
- did not directly contribute to the violation; and
- had no knowledge of the violation before the contract was awarded.

### **Voidable Contracts**

Even though a contract violates the State procurement law, the contract may be enforceable. The Board of Public Works may determine that a contract is voidable, rather than void, if the board determines that:

- all parties acted in good faith;
- enforcement of the procurement contract would not undermine the purposes of the State procurement law; and
- the violation was insignificant or otherwise did not prevent substantial compliance with the State procurement law.

The State agency that entered into the contract must make the affirmative decision to ratify a voidable contract. Before ratifying the contract, the agency must determine that the contract is in the best interests of the State. If the agency does not ratify the contract, it may void the contract subject to above-noted payment of expenses and profit.

## **Debarment**

A debarred contractor may not be considered for the award of, be awarded, or perform, directly or indirectly, a contract with the State during the time of debarment. Debarment may be imposed for a number of reasons including:

- conviction for a variety of specified federal and State offenses;
- an admission, in writing or under oath, of an act or omission that constitutes grounds for conviction or liability under certain federal or State laws;
- being a successor, assignee, subsidiary, or affiliate of a debarred or suspended person;
- operating in a manner designed to evade the application or defeat the purpose of the State procurement law;
- debarment on the federal level;
- previous failure to perform procurement contracts;
- persistent failure to meet certain Minority Business Enterprise contract goals in the absence of certain mitigating factors;
- being found in a final adjudicated determination to have discriminated against other entities on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, disability, or any otherwise unlawful form of discrimination;
- conviction for specified offenses under the Minority Business Enterprise Program; or
- any cause the Board of Public Works determines to be so serious as to affect the integrity of the procurement process.

While a person who is convicted of certain crimes related to bribery is debarred by operation of law, debarment for any other reason occurs as a result of the Attorney General initiating a proceeding against a contractor by filing an administrative complaint with the Board of Public Works. The board is required to notify a person of the proceedings and that the person is entitled to a hearing before the board if requested within 30 days after receiving the notice. If a person does not make a request within the 30 days, the person waives the right to a hearing and is automatically debarred.

The board decides whether to debar a contractor by determining if the debarment would serve the integrity of the contracting process and the best interests of the State. In making this determination, the board must consider:

- the nature and seriousness of the act;
- the time that the act occurred;
- whether and to what extent the person cooperated with the authorities and the conditions under which the person cooperated; and
- the conduct of the person after the act occurred.

The board is required to provide notice of its determination to the person in question.

A business is automatically debarred if the board debar an officer, director, controlling shareholder, or partner of the business, or an employee directly involved in the procurement process. The business is debarred as long as the debarred person remains with the business in any of the listed capacities or until the debarment is terminated.

The board may place a person or business on suspension while the debarment proceeding is pending. Suspension means that a person may not be considered for the award of, be awarded, or perform, directly or indirectly, a contract with the State.

A suspension or debarment terminates automatically if the underlying conviction is reversed or voided. The board also may grant a petition for removal of the debarment after specified time periods have elapsed. A list of presently debarred contractors and their term of debarment can be found on the Board of Public Works website.

## **Criminal Penalties**

### **Collusion**

Collusion occurs when a person acts with another person to defraud the State in connection with the procurement process. A person who acts in collusion is liable for damages equal to three times the value of the loss to the State created by the collusion.

### **Falsification, Concealment, or Suppression of Material Facts**

In connection with a procurement contract, a person may not willfully (1) falsify, conceal, or suppress a material fact; (2) make false or fraudulent statements or representations of material fact; or (3) use a false writing or document that contains a false or fraudulent statement or entry of

material fact. Additionally, a person may not aid or conspire with another person in committing any of those acts. A person who violates any of these provisions is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years, or both.

**Appendix 1**  
**Salary Setting Authorities and Personnel Systems**  
**Independent of the State Personnel Management System**

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<u>Department/Agency</u>	<u>Authority</u>	<u>Groups Covered</u>
African American Museum	State Government Article § 9-2604	All employees
Baltimore City Community College	Education Article § 16-510	All employees
Correctional Training Commissions*	Correctional Services Article § 8-206	Executive director, deputy director, and other designated positions unique to the commission
Department of Budget and Management	Education Article § 6-302	Teachers employed in Department of Juvenile Justice facilities, hospitals, prisons, certain vocational rehabilitation programs, and certain correctional education programs operated by the Department of Labor
Department of Commerce*	Economic Development Article § 2-115	All employees
Employment Services and Unemployment Insurance*	Labor and Employment Article § 8-305	All employees
Health Care Commission*	Health-General Article §§ 19-106 and 19-107	Executive director, deputy directors, principle section chiefs, and staff
Health Services Cost Review Commission*	Health-General Article §§ 19-206	All employees

<b><u>Department/Agency</u></b>	<b><u>Authority</u></b>	<b><u>Groups Covered</u></b>
Historic St. Mary's City Commission	Education Article § 24-510	All employees
Judiciary	Declaration of Rights Article 8; Maryland Constitution Article IV	All employees, except judges
Department of Legislative Services	State Government Article § 2-1205	All employees
Maryland Automobile Insurance Fund	Insurance Article § 20-204	Executive director, technical, and professional positions
Maryland Aviation Administration	Transportation Article § 5-201.1	Management personnel (up to 12 positions)
Maryland Energy Administration	State Government Article § 9-2002	All employees
Maryland Environmental Service	Natural Resources Article §§ 3-103.1 and 3-103.2	All employees
Maryland Food Center Authority	Economic Development Article § 10-206	All employees
Maryland Health Benefit Exchange*	Insurance Article § 31-105	All staff
Maryland Insurance Administration*	Insurance Article § 2-105	Professional, management, and technical employees
Maryland Port Administration	Transportation Article § 6-201.2	Management personnel (up to 12 positions) for private operating companies

<u>Department/Agency</u>	<u>Authority</u>	<u>Groups Covered</u>
Maryland Public Broadcasting	Education Article § 24-204	Executive service, management service, and special appointment employees
Maryland Stadium Authority	Economic Development Article § 10-610	All employees
Maryland Transit Authority	Transportation Article § 7-206	Executive and management positions, and other employees
Maryland Transportation Authority	Transportation Article § 4-205	Executive management positions and attorneys, consulting engineers, accountants, construction and financial experts, superintendents, managers, and any other necessary agents and employees
Maryland Veterans' Home Commission	State Government Article § 9-928	All employees of the commission
Morgan State University	Education Article § 14-104	Professional positions, including faculty
Office of People's Counsel	Public Utilities Companies Article § 2-203	Deputy people's counsel, certain attorneys, and positions unique to the People's Counsel
Police Training Commissions*	Public Safety Article § 3-206	Executive director, deputy director, and other positions necessary for general administrative and training management functions
Public Service Commission	Public Utilities Companies Article § 2-108	Executive director, other specified executive management positions, employees in the management service, and positions unique to the Public Service Commission

<u>Department/Agency</u>	<u>Authority</u>	<u>Groups Covered</u>
State Board of Physician Quality Assurance*	Health Occupations Article § 14-204	All employees
State Highway Administration	Transportation Article § 8-204	Executive management positions
State Lottery and Gaming Control Agency*	State Government Article § 9-108	All employees
State Racing Commission	Business Regulation Article § 11-206	Stewards and harness judges
State Retirement Agency	State Personnel and Pensions Article § 21-118.1	Chief investment officer
State Retirement Agency Investment Division	State Personnel and Pensions Article § 21-122	All employees
State Soil Conservation Committee	Agriculture Article § 8-203	All employees of the committee except certain clerical employees
St. Mary's College	Education Article § 14-408	All positions
Transportation	Transportation Article § 2-103.4	All employees
University System of Maryland	Education Article §§ 12-110 and 12-111	All employees, including former board of trustees institutions
Water Quality Finance Administration*	Environment Article § 9-1604	Employ consultants, accountants, attorneys, financial experts, and other personnel and agents as may be necessary in its judgment, and fix their compensation

\*Authority to set compensation is limited to positions that are unique to the employing entity, require specific skills or experience to perform the duties of the positions, and do not perform functions comparable to functions performed in other units of the Executive Branch.

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

## Appendix 2

### Creation and Abolition of State Positions through the Budget

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#### I. Position Request

- A. The requesting agency normally initiates requests for a position authorization, to be funded through:
  - 1. Regular Budget – may be anticipated in the agency’s budget request or incorporated into the agency’s budget as part of a program enhancement or new initiative.
  - 2. Supplementary or deficiency budget as an addition to the regular budget.
  - 3. Board of Public Works – if it is within the legislatively prescribed position limit, created with non-State funds, or created through a contractual conversion, the Board of Public Works can approve the creation of positions.
  
- B. The requesting agency needs justification for additional positions. Each requested position is described in terms of:
  - 1. workload;
  - 2. organizational implications;
  - 3. whether it is a statutorily created position;
  - 4. funding; and
  - 5. related costs.

#### II. Position Approval

- A. New position requests are reviewed by the budget analyst for the requesting agency for inclusion in the budget or on the Board of Public Works agenda.
  - 1. Legislative and judicial requests are reviewed for consistency with the Legislative Branch request format, but not for approval/disapproval.
  - 2. Position actions with the nonbudgeted independent agencies, including the Maryland Automobile Insurance Fund, the Food Center Authority, and the Maryland Transportation Authority, are not reviewed by the Department of Budget and Management but must be consistent with statute.

3. Executive Branch requests for positions are subjected to a full review of the requesting agency's need justification and related position matters including whether:
  - a. the workload can be quantified;
  - b. the quantity and types of positions are appropriate for the workload to be performed;
  - c. existing staff can absorb the proposed workload;
  - d. there are excessive vacancies in the program or unit, which may be filled before new positions are created;
  - e. the workload is continuing or can be resolved with the use of temporary positions; and
  - f. the requested position/positions conform to statute, budget bill language, and the *Joint Chairmen's Report*.

B. Department of Budget and Management Processing of Position Actions

1. For new positions that have been approved in the budget, a position identification number is assigned through Workday, the State's human resources application.
2. Position creations not specified in the annual budget are subject to the Board of Public Works approval, after a position identification number is assigned through Workday.

III. Position Maintenance

- A. The Department of Budget and Management, Office of Personnel Services and Benefits determines the appropriate job title and pay level for each new position based on each position's assigned duties and responsibilities, consulting with departmental personnel where necessary for clarification. The position identification number is entered into the office's data files along with the approved job title and corresponding pay range, creating a position which then may be filled by an employee. The requesting agency is then notified.
  1. The office, subject to approval of the Secretary of Budget and Management, must establish classifications for all positions in the State Personnel Management System.

2. Changes in the duties, if material, may result in an agency requesting a position be abolished and a new position be created. The Office of Budget Analysis, also part of the Department of Budget and Management, controls the need and funding aspects of reorganized positions, while the assignment to a classification is handled within the department's Office of Personnel Services and Benefits.

However, unless the change involves a large number of employees, agencies are given the discretion to abolish and create positions on their own as the result of changes in duties.

3. The office audits a random sample of positions under its jurisdiction to determine whether the positions are correctly classified and correctly compensated.

B. Position Transfer and Casual Abolition

1. The Office of Budget Analysis affects position transfers based on requests from the State agencies. The Department of Budget and Management reviews requests for the transfer of position identification numbers to reflect interagency organizational change. Funds for any transferred position identification numbers remain with the originating agency.
2. Position abolitions are made from time to time outside of the annual budget:
  - a. to reflect law changes;
  - b. as a result of special or federal fund lapses;
  - c. from contractual replacement of State employees;
  - d. because of reorganization; and
  - e. because of financial difficulties faced by the State.

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



**Appendix 3**  
**Comparison of Maryland State Retirement and Pension Plans**

	<b>Teachers' and Employees' Pension Systems<sup>1</sup></b>	<b>State Police System</b>	<b>Correctional Officers' System</b>	<b>Law Enforcement Officers' System</b>	<b>Judges' System</b>	<b>Legislative Pension Plan</b>	<b>Governor's Plan</b>
<b>Participation</b>	Condition of employment	Condition of employment	Condition of employment	Condition of employment	Condition of employment	Mandatory	Automatic
<b>Vesting</b>							
Hired on or Before 6/30/11	5 years of service	5 years of service	5 years of service	5 years of service	Immediate	8 years of service	One full term
<i>Hired on or After 7/1/11; or Judges Hired on or After 7/1/12</i>	<i>10 years of service</i>	<i>10 years of service</i>	<i>10 years of service</i>	<i>10 years of service</i>	<i>5 years of service</i>	<i>No change</i>	<i>No change</i>
<b>Member Contributions<sup>2</sup></b>	7.0% of salary	8.0% of salary	5.0% of salary	7.0% of salary	8.0% of salary, for 16 years	7.0% of salary, for 22 years, 3 months	None
<b>Service Retirement Conditions</b>							
Hired on or Before 6/30/11	Age 62 or 30 years of service; or age 55 with 15 years, reduced benefit	Age 50 or 22 years of service	20 years of service	Age 50 or 25 years of service	Age 60	Age 60; or age 50 with 8 years, reduced benefit	Age 55

	<b>Teachers' and Employees' Pension Systems<sup>1</sup></b>	<b>State Police System</b>	<b>Correctional Officers' System</b>	<b>Law Enforcement Officers' System</b>	<b>Judges' System</b>	<b>Legislative Pension Plan</b>	<b>Governor's Plan</b>
<i>Hired on or After 7/1/11; Judges Hired on or After 7/1/12; Legislators and Governors who Begin Serving in or After January 2015</i>	<i>Age 65 with 10 years of service or Rule of 90<sup>3</sup>; or age 60 with 15 years, reduced benefit</i>	<i>Age 50 or 25 years of service</i>	<i>No change</i>	<i>No change</i>	<i>Age 60 with 5 years of service</i>	<i>Age 62; or age 55 with 8 years, reduced benefit</i>	<i>Age 62</i>
<b>Allowance</b>							
Hired on or Before 6/30/11	1.2% of salary for years of service prior to 7/1/98; plus 1.8% of salary for years of service on or after 7/1/98 (calculated on the highest 3 consecutive years of salary)	2.55% per year of service (calculated on highest 3 years of salary)	1.818% per year of service (calculated on highest 3 years of salary)	2.0% per year (calculated on the highest 3 consecutive years of salary)	2/3 of active judge salary at 16 years; prorated if less than 16 years	3.0% of current legislative salary per year of service	1/3 of current annual salary for one term; or 1/2 of current annual salary for two terms

	<b>Teachers' and Employees' Pension Systems<sup>1</sup></b>	<b>State Police System</b>	<b>Correctional Officers' System</b>	<b>Law Enforcement Officers' System</b>	<b>Judges' System</b>	<b>Legislative Pension Plan</b>	<b>Governor's Plan</b>
<i>Hired on or After 7/1/11</i>	<i>1.5% of salary (calculated on the highest 5 consecutive years of salary)</i>	<i>Calculated on highest 5 years of salary</i>	<i>Calculated on highest 5 years of salary</i>	<i>Calculated on the highest 5 consecutive years of salary</i>	<i>No change</i>	<i>No change</i>	<i>No change</i>
<b>Post Retirement Adjustments<sup>4</sup></b>							
<i>Service Credit Earned on or Before 6/30/11</i>	<i>Limited to 3.0%, compounded annually</i>	<i>Unlimited annual cost-of-living adjustment (COLA)</i>	<i>Unlimited annual COLA</i>	<i>Limited to 3.0%, compounded annually</i>	<i>Based on salary of active judges</i>	<i>Based on salary of active legislators</i>	<i>Based on salary of current Governor</i>
<i>Service Credit Earned on or After 7/1/11</i>	<i>Limited to 2.5% in any year the system earns the assumed rate of return; otherwise limited to 1.0%</i>	<i>Limited to 2.5% in any year the system earns the assumed rate of return; otherwise limited to 1.0%</i>	<i>Limited to 2.5% in any year the system earns the assumed rate of return; otherwise limited to 1.0%</i>	<i>Limited to 2.5% in any year the system earns the assumed rate of return; otherwise limited to 1.0%</i>	<i>No change</i>	<i>No change</i>	<i>No change</i>

	<b>Teachers' and Employees' Pension Systems<sup>1</sup></b>	<b>State Police System</b>	<b>Correctional Officers' System</b>	<b>Law Enforcement Officers' System</b>	<b>Judges' System</b>	<b>Legislative Pension Plan</b>	<b>Governor's Plan</b>
<b>Ordinary Disability Retirement</b>							
Conditions	Incapacitated for duty after 5 years eligibility service	Incapacitated for duty after 5 years eligibility service	Incapacitated for duty after 5 years eligibility service	Incapacitated for duty after 5 years eligibility service	Incapacitated for duty	Active legislator must have 8 years of service and be certified disabled by the BOT medical board	General Assembly adopts resolution by 3/5 vote that Governor is unable to perform duties of office due to physical or mental disability
Allowance	Service retirement projected to age 62	Service retirement with minimum of 35.0% of salary	Service retirement with minimum of 25.0% of salary	Service retirement projected to age 50	Service retirement with minimum of 33.3% of salary	3.0% of current legislative salary per year of service	If in first term, 1/3 of current annual salary; if in second term, 1/2 of current salary
<b>Accidental Disability Retirement</b>							
Conditions	Permanently and totally disabled by accident in the performance of duty	Permanently and totally disabled by accident in the performance of duty	Permanently and totally disabled by accident in the performance of duty	Permanently and totally disabled by accident in the performance of duty	Not applicable	Not applicable	Not applicable

	<b>Teachers' and Employees' Pension Systems<sup>1</sup></b>	<b>State Police System</b>	<b>Correctional Officers' System</b>	<b>Law Enforcement Officers' System</b>	<b>Judges' System</b>	<b>Legislative Pension Plan</b>	<b>Governor's Plan</b>
Allowance	2/3 of salary plus annuity based on member contributions	2/3 of salary plus annuity based on member contributions	2/3 of salary plus annuity based on member contributions	2/3 of salary plus annuity based on member contributions	Not applicable	Not applicable	Not applicable

BOT: Board of Trustees for the State Retirement and Pension System

<sup>1</sup> The Teachers' and Employees' Retirement Systems are not shown because the systems closed to new members as of December 31, 1979; however, the provisions of these plans are discussed in "Chapter 11. Plan Summaries" of this handbook.

<sup>2</sup> Member contributions for teachers and employees were increased to 7% as of July 1, 2011; contributions for Law Enforcement Officers' Pension System members were increased to 6% as of July 1, 2011, and 7% as of July 1, 2012; contributions for judges were increased to 8% as of July 1, 2012; and contributions for legislators were increased to 7% as of January 14, 2015.

<sup>3</sup> Rule of 90: The sum of an employee's age and years of service must equal 90 or more.

<sup>4</sup> Other post retirement adjustment formulas apply to retirees who retired on or before June 30, 2011, retirees of the Employees' and Teachers' Retirement Systems, and retirees who chose various selection options.

Note: Table reflects abbreviated discussion of plan provisions; see "Chapter 11. Plan Summaries" of this handbook for a more detailed discussion of plan provisions.

Source: Department of Legislative Services

