Issue Papers
2021 Legislative Session



DEPARTMENT OF LEGISLATIVE SERVICES 2020

Issue Papers

2021 Legislative Session

Presentation to the

Maryland General Assembly

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

December 2020

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

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December 2020

The Honorable Bill Ferguson, President of the Senate
The Honorable Adrienne A. Jones, Speaker of the House of Delegates
Members of the General Assembly

Ladies and Gentlemen:

Each fall, the Office of Policy Analysis prepares an informational report on various issues to assist you in your deliberations during the upcoming legislative session. Once again, this document is a compilation of the issue papers arranged by major subject area topic. This year's report also includes a special section devoted to issues resulting from the COVID-19 pandemic. The information reflects the status of the topics as of November 30, 2020.

We trust this report will be a useful source of information for you. Following each paper is an identification and e-mail address of the staff who worked on a particular topic. If you should need additional information about a topic, please do not hesitate to contact us or the appropriate staff person.

Sincerely,

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COVID-19

Remote Learning and Reopening Schools

With the COVID-19 pandemic continuing, all public schools in Maryland started the school year learning remotely. Most school systems are providing in-person instruction to small groups of students, and some are moving toward a hybrid model for some students for the remainder of the fall semester. School systems are facing many challenges with effectively teaching most students remotely while at the same time safely reopening schools. Many students are suffering learning loss during remote learning, which is exacerbating the learning gap for struggling students that existed prior to the pandemic. Addressing students' learning loss as soon as possible is critical and will remain a challenge after the pandemic.

Background

The abrupt change from in-person instruction to an all-remote learning model in March due to the COVID-19 pandemic had an immediate impact on student access to instruction, student learning, and school resources. Local school systems and schools across the State struggled to provide student instruction using various remote learning models, with significant variation from one school system to the next and with limited success. With the continuation of the pandemic, all of Maryland's 24 local school systems began the 2020-2021 school year with all-remote instruction, although most systems planned to begin some form of in-person instruction later in the fall semester. With the additional time for school systems to plan over the summer, remote instruction in the 2020-2021 school year is intended to be more robust than the instruction that was provided in the spring. Schools across the State are working to address the many challenges of operating successful virtual instruction and navigating the challenges of safely returning to in-person learning amidst the COVID-19 pandemic.

According to the Maryland State Department of Education (MSDE), as of October 13, 2020, 19 school systems provided in-person instruction for small groups of students or limited hybrid instruction. Generally, systems opened in-person instruction first to students with disabilities, English learners, elementary students (including prekindergarten and kindergarten), and career and technical education students. Hybrid instruction involves a combination of remote and in-person instruction with typically two days of in-person instruction each week. Most systems plan to open schools for some in-person instruction in the second quarter of the fall semester, *i.e.*, mid-November. Baltimore City announced on November 2 that it will open 44 schools to in-person instruction for the second quarter, including students with disabilities, students experiencing homelessness, and students who are participating in remote instruction less than 20% of the time. Three systems – Frederick, Montgomery, and Prince George's counties – do not plan to offer any in-person instruction until the spring semester. As of November 2, 2020, the remaining two systems, Baltimore and Charles counties, had not yet begun any in-person instruction.

Baltimore County delayed the reopening of four special education centers planned for early November and has not announced a new timeline. Charles County plans to move to in-person instruction for small groups of students beginning November 9.

Several systems and schools have had to return to all-virtual instruction after reopening for in-person instruction due to increasing COVID-19 positivity and case rates. Dorchester County began in-person instruction for a small number of students on September 15 and began hybrid instruction for kindergarten, grade 6, and grade 9 students on October 13. However, Dorchester County announced it was returning to all virtual instruction after its county COVID-19 positivity rate increased from 2.5% on October 10, 2020, to 6.1% on October 21, 2020, which is above the 5% rate metric set by MSDE and the Maryland Department of Health (MDH). The MSDE/MDH guidance for reopening schools is discussed further below.

State and Local Recovery Plans

In June 2020, MSDE released *Maryland Together: Maryland's Recovery Plan for Education* (State Recovery Plan). The plan was designed to aid local school systems in developing and implementing their own plans for reopening schools in the fall and, ultimately, the students' safe return to in-person instruction. The plan required each local board of education to develop and submit a reopening plan to MSDE by mid-August that addressed multiple requirements for reopening schools, including following health and safety protocols for personnel and students and facility operations, addressing educational inequities, determining student learning loss and preparing for instructional success and recovery, tracking student attendance and remote learning engagement, following federal law for educating students with disabilities, establishing transportation protocols, and ensuring adherence to the Maryland College and Career Ready Standards and State frameworks for instructional content.

Each local recovery plan was developed in collaboration with a broad range of stakeholder groups, including teachers, parents, students, educators, local health experts, and other community members. After initial submission and after feedback from MSDE, each school system's plan was approved by MSDE and posted to the local school system's website.

However, after approving all 24 recovery plans, the State Board of Education, at the State Superintendent's request, adopted a student engagement requirement for local school systems. Each school system providing remote learning must provide an average of 3.5 hours of synchronous (*i.e.*, live) learning across all grades (K-12) for each school day by December 31, 2020. The synchronous learning requirement does not have to be met within each grade but across all grades. Further, a local school system must provide 6 hours of instruction per day, including asynchronous instruction.

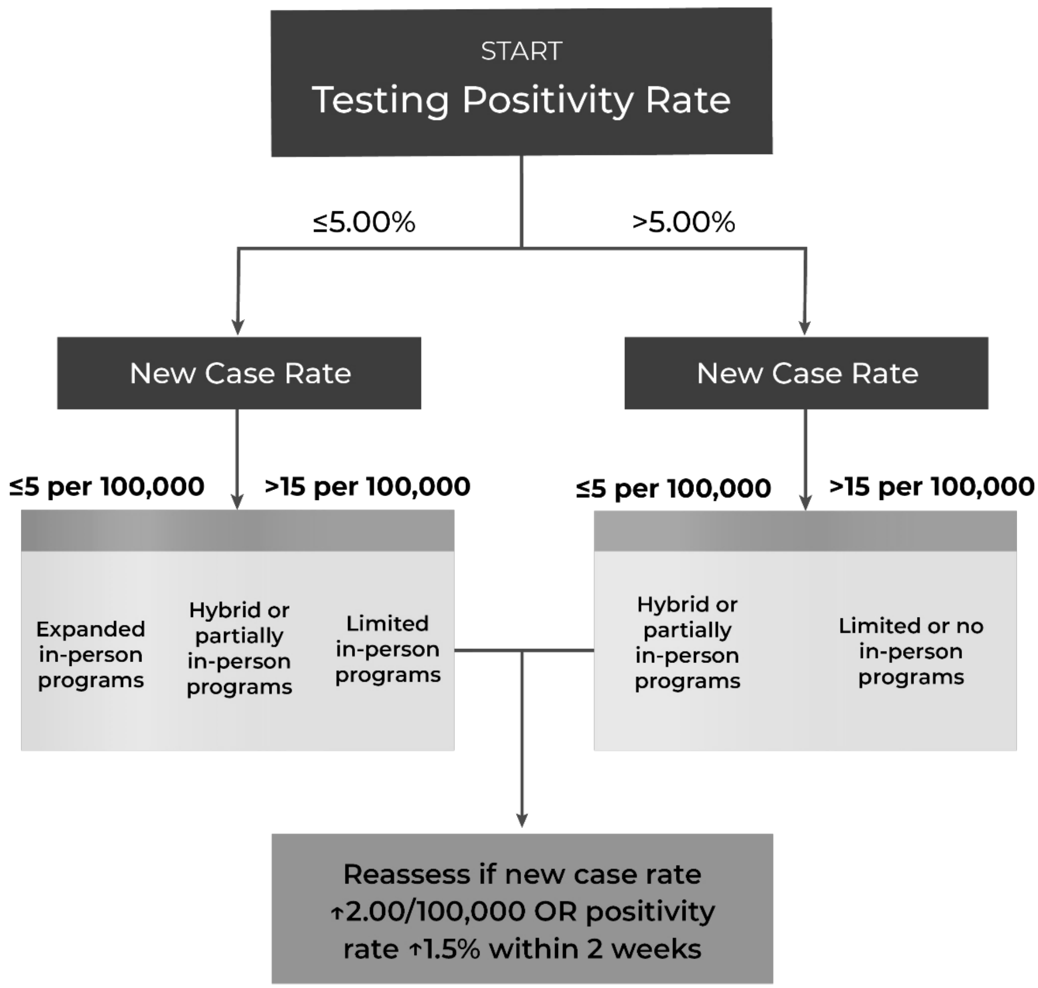
Factors for In-person School Reopening Decisions

The Governor and the State Superintendent have encouraged local school systems to open for in-person instruction if it is safe. Schools are expected to follow applicable guidelines from MDH, local health departments, and the Centers for Disease Control and Prevention (CDC). For the past few months and during the development of local recovery plans, local school systems have worked to address many challenges to safely reopen schools, including reopening metrics, safe facility operations, transportation, and school resources.

COVID-19 Metrics

In late August, following calls for specific public health metrics to guide school reopening decisions, the Governor, the Acting Deputy Secretary of Health, and the State Superintendent announced metrics to be used as guidance for reopening schools for in-person instruction. The metrics are based on the local jurisdiction's positive COVID-19 test rate and the number of new cases. As shown in **Exhibit 1**, a COVID-positive test rate at or below 5% and reports of new COVID cases at or below 5 per 100,000 people in the jurisdiction allow for expansion of in-person programs. However, MSDE and MDH have not, to date, provided clear guidance for when a school or system that is open to in-person instruction should be closed, nor has it provided guidance on notifying school staff and students and their families of positive cases. In the absence of State guidance, local school systems are developing their own protocols, in consultation with local health departments and in some cases other public health experts, including access to testing and contact tracing.

Exhibit 1
In-person School Reopening Guidance



Source: Maryland Department of Health; Maryland State Department of Education

Safe Facility Operations

Currently, there is no single accepted standard for when or how schools can be reopened safely. Local school systems are working to comply with health and safety guidelines from the federal CDC and the State, including (1) procuring large quantities of costly personal protective equipment (PPE) (masks, hand sanitizers, and face shields) and cleaning and sanitizing supplies; (2) considering school building modifications, *e.g.,* cleaning and disinfectant; heating, ventilation, and air conditioning systems; air filtration systems; air purifiers; Plexiglas; and plastic sheeting material; and (3) reorganizing school spaces to accommodate social distancing requirements. Addressing these issues requires additional expenditures from already strained budgets, and as a result, local leaders have requested a more centralized process to streamline and standardize procurement and resource allocation.

In order to help states combat COVID-19, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020. The Elementary and Secondary School Emergency Relief Fund provided a total of $207.8 million to MSDE to be used broadly for educational purposes and to coordinate, prepare, and respond to needs related to the coronavirus (*e.g.*, purchase of PPE, education technology, mental health services, school closures, remote learning, *etc.*). MSDE allocated $187 million to school systems, the SEED School of Maryland, and nonpublic schools with an additional $10 million being used to provide grants to school systems to cover the costs of reopening schools and the remainder for professional development and a statewide learning management system. School finance officials have stated that the available federal funds are not sufficient to cover their COVID-19-related costs, but a detailed accounting of the remaining costs has not yet been provided.

The switch to remote instruction and plans for reopening schools without the guarantee of a safe working environment is likely to exacerbate an already existing teacher shortage in the State. Many teachers have expressed concerns with the heavy workloads created by teaching in a remote or hybrid learning model or with being required to return to a school building to teach in person during the pandemic.

Transportation

Transportation of students to and from school is a barrier to in-person instruction because it is difficult to maintain social distance on school buses and public transportation, which is used by Baltimore City students. The CDC guidance regarding school buses recommends that each child sit one to a seat and that the rows in which children sit be alternated. For a 77-passenger bus, this would allow for approximately 13 students to be transported. MSDE recommended that schools follow CDC recommendations for school buses, provided suggestions on how to group passengers and alternate transportation arrangements, and recommended steps to take to ensure that buses are kept safe, including cleaning protocols. To reduce the number of students on school buses at the same time, many systems that have opened for in-person instruction have used alternating schedules and encouraged parents and guardians to transport students.

School Resources

In response to the pandemic, local school systems have had to quickly procure computer devices and work to provide broadband connectivity in order to facilitate remote learning. While the COVID-19 pandemic was not anticipated and school systems all over the country and world struggled to shift to remote learning, the lack of robust learning management systems in many school systems, which provide an integrated platform for multiple software systems used by teachers and administrators, exacerbated the challenge. Schools continue to provide free meals to students and their families during the months of closure, supported by federal funds. However, with schools closed, school systems' food service budgets, which are a self-supporting activity, are losing revenues from full-price meals.

Due to difficulties in engaging the youngest students through remote learning, preliminary student enrollment figures show declining enrollment, particularly at the prekindergarten and kindergarten levels. Homeschooling applications are also up significantly. This decline directly impacts the fiscal 2022 school budgets due to the school funding formulas being based on the prior year enrollment. It is unknown how many students who withdrew from school this year will return to public school next year, which could result in a longer-term enrollment issue for some school systems.

Addressing Student Learning Loss

Student learning loss is one of the most pressing problems stemming from closed schools and remote learning models. Learning loss at any grade level occurs under the remote virtual learning model due to a student's lack of access to remote instruction, low-quality remote instruction, differing levels of home support, an environment not conducive to learning (lack of a quiet work space, dedicated device, high-speed internet, or minimal parental academic supervision), loss of supports, and social emotional impacts (social isolation, anxiety, economic insecurity, stress, limited physical activities, and loss of important milestones).

The State Superintendent has cited research that estimates that students could lose between 3 to 11 months of learning, depending on the quality of the remote learning. This problem is heightened in populations of students who struggle and often require additional services, including low-income students, students with disabilities, and English language learners. The Commission on Innovation and Excellence in Education (known as the Kirwan Commission), in its final policy and funding recommendations made prior to the COVID-19 pandemic, proposed significant funding to support struggling learners in the State. Although the State Recovery Plan requires local school systems to identify students' learning loss and develop a plan for addressing it, local school leaders have expressed concern that there is no standard assessment for determining or tracking learning loss across students throughout the State.

The State allocated $100 million from the CARES Coronavirus Relief Fund to provide targeted tutoring and learning programs that meet certain criteria. Local school systems have used these funds to mitigate learning loss by employing various strategies beginning in summer 2020 and continuing into this school year. These include:

- ***Virtual Summer School:*** Many systems partnered with local community organizations to provide virtual tutoring services to students. Prince George's County spent $40,000 of its CARES Act funding to provide free summer school to thousands of students. Many systems, including Baltimore City and Anne Arundel, Harford, and Montgomery counties, provided similar services.

- ***Small In-person Instructional Groups:*** Baltimore City provided 200 students with in-person tutoring during summer 2020.

- ***Student Learning Centers:*** Many systems have provided classroom space for small groups of students to receive in-person assistance while engaging in virtual instruction. These opportunities are offered to prioritized students as determined by the local system, including English language learners, homeless students, students with disabilities, students of school employees, and those with lack of Internet access. Harford County opened the 2020-2021 school year with 1,800 students in 41 of 54 schools attending student learning centers five days per week. Baltimore City opened the school year with 15 schools hosting student learning centers.

Strategies like these and other innovative approaches will likely continue to be needed for several years to address student learning losses during the pandemic and those exacerbated by the pandemic. Of the $45.7 million Maryland received in the CARES Governor's Emergency Education Relief Fund, $10 million is being allocated by MSDE to implement unique or innovative approaches to engage students, teachers, and school communities to address academic accessibility as a result of the COVID-19 pandemic. MSDE announced 29 grant awards to public schools and school systems, nonpublic schools, and public and private higher education institutions in September. According to MSDE, grant recipients presented creative strategies to support disengaged students, students with disabilities, teachers, and families in need. Priority for funding was given to programs that address the needs of at-risk students.

Regional Virtual Schools

Another approach to remote learning is consortium learning models. Before the pandemic, some states established statewide or regional virtual schools to support full-time remote learning, often for students who live in rural areas and must travel long distances to attend in-person public school. Nine counties on the Eastern Shore (Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester) developed the Eastern Shore Consortium Blended Virtual Program using federal CARES funds. Parents can opt for this program, and students will use a shared (nonlocal school system) distance learning platform with classes taught by teachers within the school system or utilizing certified teachers from outside of the local school system. Three counties in Southern Maryland (Calvert, Charles, and St. Mary's) formed the Southern Maryland Consortium and are considering a blended virtual program for the second semester.

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COVID-19

Broadband Connectivity for Public Schools

While not a new problem, the lack of reliable broadband access for students at home has become an urgent issue with the shift to remote learning for most public school students. Students do not have access due to the lack of technology infrastructure, primarily in rural areas of the State, and the lack of affordable Internet service for low-income families in both urban and rural areas. The State and local school systems are utilizing federal COVID-19 funds to address the issue in the short term, by purchasing Wi-Fi hotspots and Internet subscriptions, and in the long term, by building out a statewide wireless education network.

Access to Reliable Broadband

While all public school buildings in the State have Internet access and computers for student use (although not necessarily a device for every student), with the sudden shift to remote learning in spring 2020 in response to the COVID-19 pandemic, it quickly became apparent that many students in the State did not have broadband access or digital devices at home. Broadband connectivity is not only a K-12 public school issue, but the continuing challenges of teaching school remotely have focused attention on public schools. Lack of broadband connectivity (and digital devices) is also an issue for college students taking virtual classes and individuals participating in online training or job search activities, among others.

Broadband provides a connection of wide bandwidth data over a high-speed Internet connection. The Federal Communications Commission (FCC) standard for high-speed Internet is a minimum of 25 megabits per second download and 3 megabits per second upload. In 2019, the Maryland Task Force on Rural Internet, Broadband, Wireless, and Cellular Service reported that 98% of Maryland households have access to broadband service. However, in some rural areas, connection speeds were slow and did not meet the minimum FCC standard for high-speed Internet. As a result, the task force determined that only approximately 64% of Maryland households have access to high-speed Internet service. The task force also found that 72% of Maryland residents can connect to the Internet either at home or at work, but that over 50% paid at least $80 per month for Internet service, regardless of income or service quality.

Students in urban areas also lack broadband access. A May 2020 Abell Foundation report found that 52,000 Baltimore City households lacked any reliable broadband access. Furthermore, even when broadband was available, the report found that 35% of Baltimore City residents with an annual household income of less than $25,000 do not have an Internet subscription.

Federal and State Budget Actions

The Office of Rural Broadband in the Department of Housing and Community Development (DHCD) works with rural counties and local Internet service providers (ISP) to build broadband infrastructure in underserved rural areas. To fund these projects, DHCD administers multiple grant programs, including the Local Government Infrastructure Fund, to provide low-cost capital grants and loans to local governments. The State also offers funds for rural broadband access through the Rural Maryland Prosperity Investment Fund and the Rural Broadband Assistance Fund. Prior to the pandemic, some ISPs provided discount plans for low-income households, and the State also offered discounts on Internet service through federal grants offered by the Public Service Commission.

As part of the federal response to COVID-19, the U.S. Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act provided funds to states to help with costs associated with the pandemic, including remote learning. In the relief package, Maryland local school systems and DHCD received a total of $135 million in CARES Act funds related to technology and broadband access through the Coronavirus Relief Fund (CRF) and the Governor’s Emergency Education Relief (GEER), including:

- $100 million in CRF technology grants disbursed by the Maryland State Department of Education (MSDE) directly to school districts to improve local school system technology;
- $15 million in GEER funds to DHCD to build a statewide educational wireless network for school districts;
- $10 million in CRF funds disbursed through grants to school districts by DHCD to subsidize Internet service for low-income families and provide wireless hotspots; and
- $10 million in GEER technology grants distributed by MSDE to school districts to improve high-quality and accessible distance education.

In August, DHCD reported that it had received applications from 21 of 24 local school systems totaling $7.9 million for the available CRF grants. Due to the required expenditure of CRF funds by December 31, 2020, school systems received this money immediately to help with purchases at the beginning of the school year. DHCD also reported that it is working to study, design, and construct the statewide educational wireless network for school districts using the $15 million in GEER funds. MSDE recently advised that DHCD will work with local partners to incorporate communications towers as part of the network infrastructure. The network is expected to be operational by the beginning of the 2021-2022 school year.

Local School System Response to the Digital Divide

In response to the shift to providing remote instruction, local school systems have used their own funds and federal funds to deliver a variety of methods of Internet access to students. Local school systems have extended Wi-Fi access to parking lots outside schools, provided Wi-Fi service on school buses parked at convenient community locations including libraries and area businesses, and distributed individual wireless hotspots. Some local school systems have partnered with ISPs to increase the availability of Internet subscriptions for low-income households at a discounted rate and have paid for Internet subscriptions for students. School systems have also purchased digital devices, such as laptops and Chromebooks, to distribute to students.

Although the CARES Act provided local school systems with funds to address the critical need of broadband access, MSDE reported in August that, based on data from June, the digital divide still existed for some students. Seventeen counties reported that fewer than 80% of students in the county have reliable Internet access. Somerset and Wicomico counties reported the lowest availability of reliable Internet access for students (20% to 40%). Of the school systems reporting that an estimated 40% to 60% of students have reliable Internet access, all eight were rural counties.

Additionally, MSDE reported that local school systems needed an additional 444,025 devices for students and 37,112 devices for teachers. Baltimore City and Montgomery and Prince George's counties all reported the greatest need of over 50,000 additional devices. Because of the shortage of devices in the supply chain, device shipments have been delayed. Local school systems have adjusted by using paper packets or having students use their personal devices.

In October, MSDE conducted a remote learning survey with local school systems to provide updated information on broadband access, affordability, and devices for students engaged in remote learning. The results of the survey are not available yet.

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COVID-19

Child Care Reopening

Child care programs have struggled to fully reopen after most were required to close in the spring in response to the COVID-19 pandemic. Increased operating expenses related to health and safety protocols and capacity limits caused financial strain, which was mitigated by State assistance using federal funding that has since expired. Approximately 16% of child care programs in the State remain closed, despite increased demand from parents due to remote K-12 learning for most public school students.

Reopening Timeline

On March 25, 2020, as part of the State's COVID-19 pandemic response, Governor Lawrence J. Hogan, Jr. issued an executive order authorizing the State Superintendent of Schools to close all licensed child care programs and to establish a program allowing certain providers to remain open only to serve children of essential personnel. The Maryland State Department of Education (MSDE) was also permitted to suspend regulations, such as allowing family or friend care in a provider's home, to aid families in caring for their school-age children while K-12 schools were closed. State Superintendent Karen B. Salmon ordered that all child care providers not approved to serve children of essential personnel were required to close after March 27, 2020.

MSDE referred to this initial period in which only providers participating in the department's Essential Personnel Child Care (EPCC) and Essential Personnel School-age (EPSA) programs were open as "Pre-Recovery" in *Maryland Together: Maryland's Recovery Plan for Child Care* (Recovery Plan), published on May 20, 2020. The May 2020 Recovery Plan outlined three gradual phases to reopen child care programs.

- ***Phase 1:*** Initiated on May 16, 2020, EPCC and EPSA providers were able to serve children of parents who worked at newly reopened businesses. MSDE continued to cover child care tuition for children of essential personnel and made subsidy payments through the Child Care Scholarship (CCS) program based on enrollment rather than attendance.

- ***Phase 2:*** The State advanced to Phase 2 in two steps. Beginning on June 10, 2020, MSDE allowed all parents to access child care and all providers to reopen as long as providers met health guidelines and capacity limits; capacity was increased from the initial phase. MSDE stopped paying child care tuition for children of essential personnel. Effective July 20, 2020, the CCS program returned to attendance-based payments, and MSDE closed EPSA sites and unlicensed family and friend care.

- ***Phase 3:*** State Superintendent Salmon lifted the capacity restrictions on center-based child care on October 1, 2020. During this phase, all child care providers are still required to meet health and safety guidelines.

Financial and Operational Challenges for Providers

Prior to the COVID-19 pandemic, child care capacity in Maryland was already in decline. From fiscal 2015 to 2019, MSDE reported a reduction of 3,069 slots, or 1.4%. MSDE attributed this trend to declining numbers of family child care providers operating in the State. The COVID-19 pandemic and resulting stay-at-home order in the spring has further increased operating costs that led providers to close and has caused new issues, such as restricted capacity and enhanced health and safety protocols.

EPCC/EPSA Program and Provider Closures

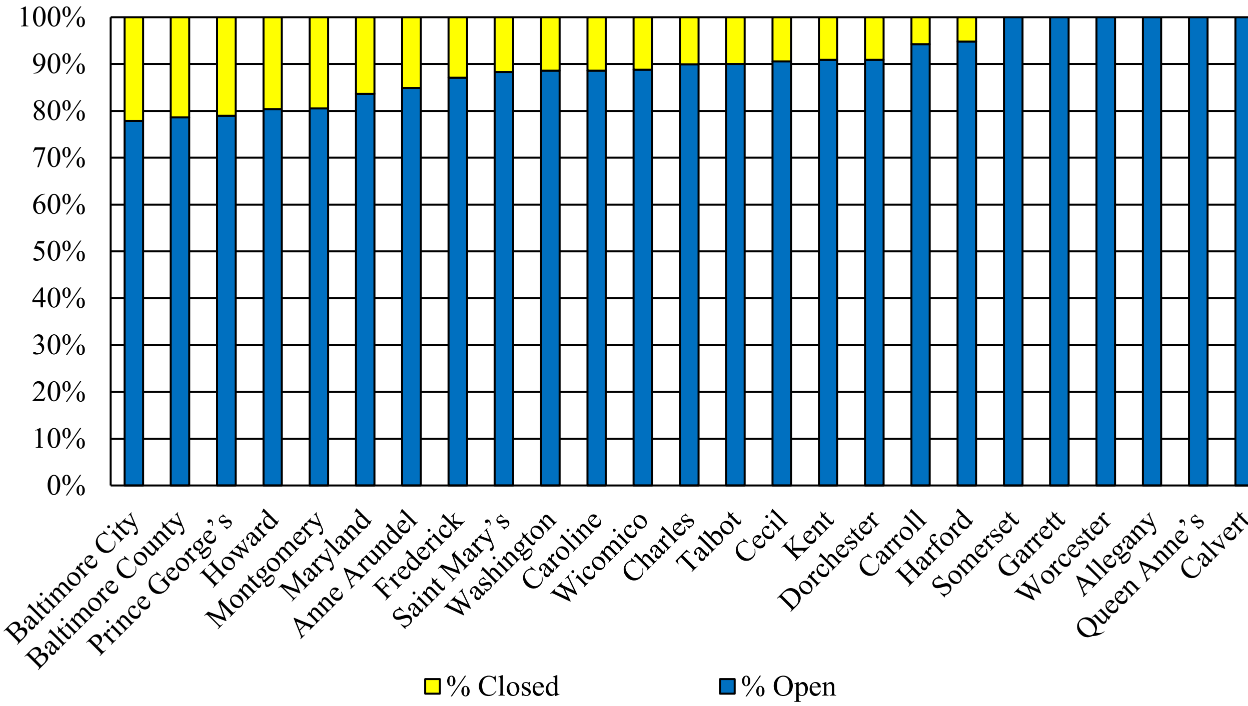
At the start of the EPCC and EPSA programs on March 30, 2020, MSDE indicated that 2,258 child care programs, or 28.7% of total licensed programs, were open. MSDE reimbursed these programs for each child that they served and provided $800 to $2,000 grants to buy cleaning supplies or personal protective equipment (PPE). The grants could also be used to supplement losses from operating at a lower capacity. Tuition reimbursement and provider grants were federally funded through the $45.8 million in additional funds from the Child Care and Development Block Grant awarded in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Of approximately 5,600 programs that were required to close, 1,169 programs served children participating in the CCS program prior to the statewide closures and continued to receive CCS reimbursements from MSDE based on enrollment. Any licensed provider was also eligible to apply for grants for cleaning supplies and PPE from MSDE upon reopening. Child care providers classified as a small business were eligible to apply for business assistance programs, such as the federal Paycheck Protection Program and the Maryland Small Business COVID-19 Emergency Relief Grant Fund. Some jurisdictions also allocated supplemental funds to assist child care providers, such as Anne Arundel County, which budgeted $3 million in CARES funding for grants up to $50,000, and Montgomery County, which budgeted $10 million for child care expenses.

However, not all providers were financially able to reopen starting June 10, 2020, and MSDE reported that 16% of programs statewide remain closed as of October 19, 2020. As shown in **Exhibit 1**, the share of licensed programs that have reopened varies by jurisdiction. For example, Baltimore City reported 576 licensed providers reopened (78%), while six counties (Allegany, Calvert, Garrett, Queen Anne’s, Somerset, and Worcester) report that 100% of their licensed providers reopened. It is also worth noting that the percent of reopened programs does not provide a clear measure for the number of available child care slots in each jurisdiction because this measure does not convey how many center-based slots remained closed due to restricted capacity.

Moreover, this measure does not show the impact of closures on the availability of *quality* child care programs, especially as increased operating costs may make it more difficult for providers to sustain and improve the quality of their programs.

Exhibit 1
Reopened Licensed Child Care Programs by Jurisdiction
As of October 19, 2020



Source: Maryland State Department of Education

Enhanced Health and Safety Protocols

Child care programs that remained open to serve essential personnel and programs that reopened after June 10, 2020, also faced operational challenges with following enhanced public health and safety protocols. MSDE issued guidance on March 15, 2020, for programs to prevent the spread of COVID-19 by social distancing, restricting visitors and volunteers from entering the facility, and following cleaning and disinfecting procedures. Similarly to other essential businesses and facilities that operated during the State's stay-at-home order, child care providers needed to procure PPE and cleaning supplies while there were shortages.

If there was a confirmed or probable case of COVID-19 among a child or staff member, programs were also required to close and quarantine for 14 days. MSDE and the Maryland Department of Health (MDH) have not published COVID-19 cases reported in child care programs, so the extent of outbreaks among children or staff and the extent of quarantine-related closures is unknown. However, MDH generally reports that individuals aged nine years old and younger make up the smallest share of COVID-19 cases and have not accounted for any COVID-19 deaths in the State as of October 27, 2020.

Financial Challenges for Parents and Families

Full-time and partial distance learning for prekindergarten and K-12 schools have led to higher demand for child care for school-age children as available slots in licensed child care programs are reduced. At an October 1, 2020 press conference, State Superintendent Salmon discussed how this increased demand for care has led some families to seek unlicensed and informal programs that are unregulated and could be unsafe. Diminished child care capacity will also lead some parents to stay home from work to care for their children.

In addition to limited child care capacity, the COVID-19 pandemic has accelerated a national trend of increasing child care costs that made quality child care inaccessible for some families. The Maryland Family Network found in its *2020 Child Care Demographics* report that estimated child care costs equaled between 17.0% and 32.8% of jurisdictions' median income for a family of four. MSDE implements the CCS program to subsidize child care costs for eligible low-income families. However, COVID-19 related public health requirements, closures, and limited capacity have increased operating expenses for providers and will likely cause statewide child care costs for families to rise further.

COVID-19

Reopening College Campuses and Lost Revenues

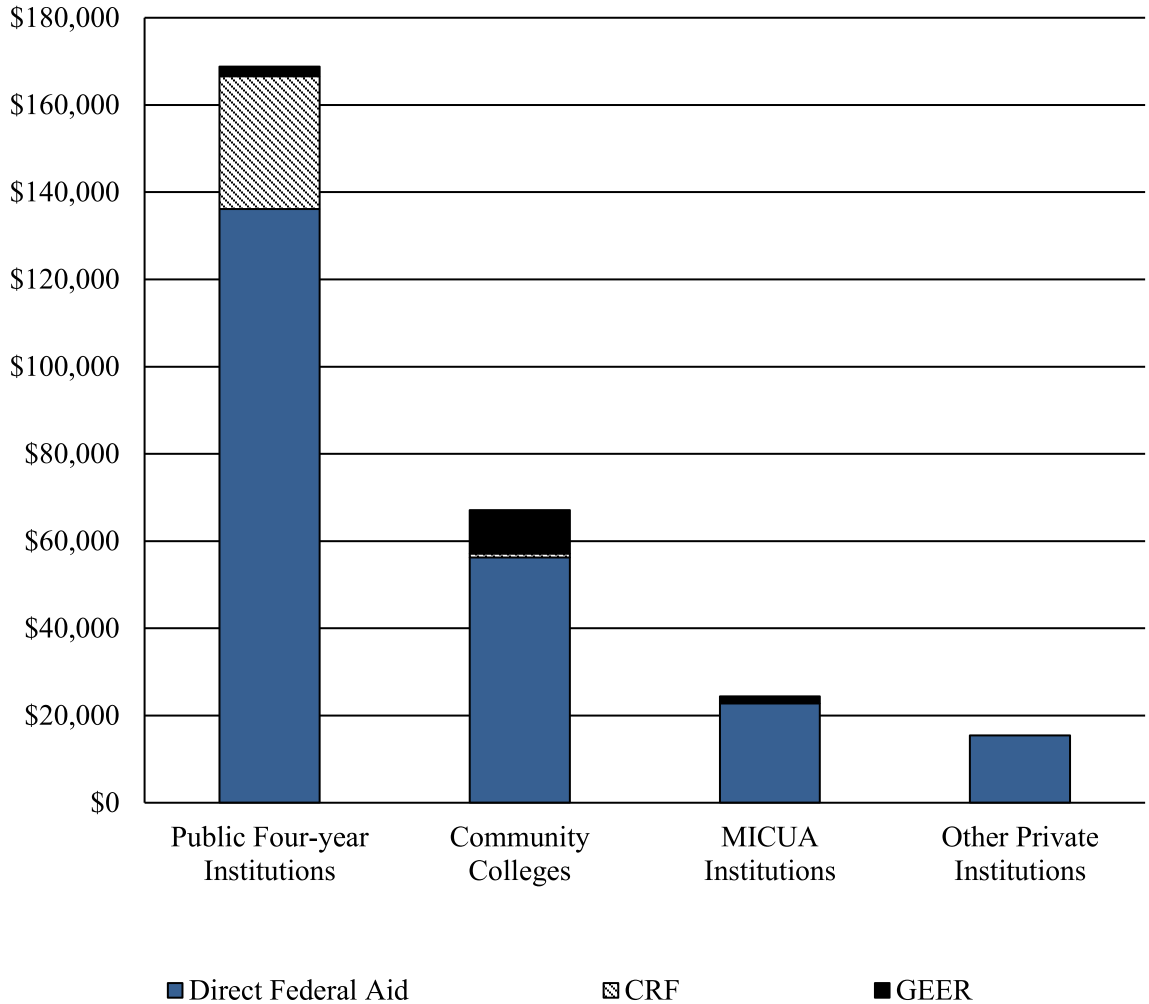
As COVID-19 spread in March, college campuses across the State closed and quickly pivoted to online learning. Federal Coronavirus Aid, Relief, and Economic Security Act funding has helped to ease the cost to students and institutions. Higher education institutions have approached reopening campuses in different ways, particularly those with residential housing, with most students continuing to take most courses online. The COVID-19 pandemic will have a financial impact on institutions in the current academic year and likely for several years to come.

College Campuses Closed in Spring

As COVID-19 spread across the State in March, higher education institutions quickly transitioned to distance learning. Campuses closed, students were sent home, and instruction switched to online learning after spring break. This resulted in substantial revenue losses to institutions as refunds were provided for room and board and other student fees such as parking, athletics, and student unions. In addition, institutions lost revenues from other sources, including bookstores, dining services, conferences, athletics, and health centers. The University System of Maryland (USM) estimated the revenue loss in fiscal 2020 to be $239.2 million of which $115.7 million was related to student refunds.

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act provided $14 billion in federal emergency relief directly to higher education institutions of which 90% was allocated on a formula basis – 75% based on full-time equivalent enrollment (FTE) of Pell recipients and the remaining 25% based on FTE of non-Pell students. At least 50% of the emergency relief funds had to be used for emergency financial aid for students, covering expenses related to the cost of attendance, such as food, housing, course material, technology, and health care. Institutions had discretion in how to use the remaining funds to cover expenses related to shifting instruction online. In addition, the CARES Act provided funding specifically for historically black colleges and universities (HBCU) and minority-serving institutions (MSI). As shown in **Exhibit 1,** Maryland institutions received a total of $275 million of which $47.7 million went to HBCUs and MSIs.

Exhibit 1
CARES Act Funding by Segment



CARES: Coronavirus Aid, Relief, and Economic Security
CRF: Coronavirus Relief Fund
GEER: Governor's Emergency Education Relief
MICUA: Maryland Independent College and University Association

CRF includes reimbursable funds; another $59 million remains to be allocated in fiscal 2022.
GEER includes Innovative Education Solutions Grants to fund strategies to address accessibility.

Source: Department of Legislative Services

Pivoting to Online Learning

In response to the needs created by the quick transition to online learning, USM's Kirwan Center partnered with the University of Maryland Global Campus to establish *OnTrack* to help USM faculty transition to teaching online. Institutions and faculty had the summer to prepare for the fall 2020 semester, and *OnTrack* continued to help institutions adapt technology infrastructure and teaching methods to develop effective learning environments. Initiatives undertaken included:

- supporting the use of adaptive courseware for large lecture, multisection courses to increase student interaction and allow faculty to use active, problem-based, online pedagogies. USM partnered with Lumen Learning to conduct two workshops in mid-October that will provide solutions to current problems and demonstrate the tools, services, and support available through *OnTrack*;

- providing faculty training and interinstitutional coordination in using Labster's virtual reality technologies in lower-level laboratory-based courses. USM upgraded to a systemwide site license that includes professional faculty development. Currently, nine USM institutions are using Labster in 109 courses with over 1,800 students engaging with simulations; and

- conducting a series of online teaching professional development workshops led by Quality Matters and the Kirwan Center, including designing for learner engagement, setting expectations with students, diversity and inclusion, and accessibility.

Reopening Campuses

In planning for the reopening of campuses for the fall semester, institutions considered numerous factors in deciding whether to allow students to return to campus and how courses would be delivered. Institutions made plans with the understanding that pivoting to all remote learning during the semester may be necessary. For USM, each institution made its plans according to the needs of the students and evaluated the necessity of offering a course face-to-face. Every residential campus offered courses requiring face-to-face learning, such as those requiring laboratory or clinical work, and allowed at least some students to live on campus, such as international students, students who would otherwise be homeless, students who did not have access to the Internet at home, and students whose home environment interfered with their ability to learn. After initially reopening, Towson University switched to all-remote learning just days before the semester began due to a growing number of positive cases that could not be satisfactorily contact traced. Campuses also shared all decisions with the local health department, including campus density plans and testing protocols.

Morgan State University (MSU) moved to a nearly all online learning environment with the exception of a small student population that continues to live on campus as their coursework required in-person laboratory work. St. Mary's College of Maryland (SMCM) opted for a hybrid model where most courses are available through a face-to-face synchronous remote format while students may also elect to attend in-person and live on campus. SMCM's in-person on-campus instruction will end, however, at the Thanksgiving break, with the remainder of the semester to take place via online instruction.

The community colleges each adopted reopening and learning models that were specific to their region's needs, consistent with local health department recommendations. Baltimore City Community College (BCCC) went entirely to an online learning environment. Six institutions retained some in-person courses but went primarily to an online platform (Anne Arundel, Cecil, Frederick, Harford, and Montgomery counties and the College of Southern Maryland). Prince George's Community College and Howard Community College adopted a hybrid in-person and online learning modality. The remaining seven community colleges retained in-person instruction as a learning option (Allegany, Baltimore, Carroll, and Garrett counties and Chesapeake, Hagerstown, and Wor-Wic community colleges).

As shown in **Exhibit 2**, for the fall 2020 semester, a majority of institutions are offering courses online. All public four-year and three private, nonprofit Maryland Independent College and University Association (MICUA) institutions required proof of a negative COVID-19 test prior to returning to campus. Nine community colleges required self-assessment or self-monitoring for students returning to campus. Most four-year institutions will either have final exams before Thanksgiving or switch to all remote instruction after the holiday. Conversely, most community colleges are planning to have some in-person instruction after Thanksgiving.

Exhibit 2
Summary of Fall 2020 Reopening Plans
As of August 2020

	Start Date	Delivery Method	On-campus Residency	Testing Upon Return	Student Return After Thanksgiving
Public Four-year Institutions	August 10 to September 9	40%-100% courses online/hybrid*	All but 1 USM institution opened dorms to students other than international/ out-of-state. In general limit of 1 student 1 room/2 students per bathroom	All require proof of negative test prior to returning	5 institutions – yes
Community Colleges	August 22 to September 9	7 colleges in-person, hybrid, and online; 6 colleges mostly online; 2 hybrid; 1 only online	n/a	9 colleges require self-assessment or self-monitoring; 5 conducting temperature checks; and 2 n/a or TBD	14 colleges – yes
Maryland Independent College and University Association	August 17 to September 3	9 colleges online*/ 2 colleges hybrid/ 1 college in-person, hybrid, and online	6 colleges limited residency	4 institutions are undecided for course online, only students with critical need on campus; 3 required testing; 1 required screening; 1 encouraged testing; 1 no requirement	1 institution – yes

TBD: to be determined
USM: University System of Maryland

*Some institutions started online then switched to in-person.

Note: Some USM institutions require all students to take an online course on COVID-19 and to sign a pledge. "Hybrid" means instruction delivered in-person and also synchronously online.

Source: Department of Legislative Services

Fall Enrollment and Budgets

There is much uncertainty about the impact of COVID-19 on enrollment. Preliminary numbers from the National Student Clearinghouse show nationally that undergraduate enrollment is down 4% from last fall – 9.4% at community colleges and 2% and 1.4% at four-year private nonprofits and public institutions, respectively. Of particular note is a 16.1% decline in first-time students, which will impact institutions in subsequent years. In addition, the mix of students has changed at Maryland's public four-year institutions with in-state students increasing and out-of-state students declining, which has negatively affected tuition and fee revenues. For instance, USM estimates an 18%, or $105.9 million, decline in tuition and fee revenues. Additionally, reducing the residential density on campuses has led to a significant loss of auxiliary revenue. USM projects revenues to be down 41%, or $237.6 million.

MSU anticipates a 5% decrease in enrollment with the largest impact in the number of international and out-of-state students. MSU is projecting a deficit in excess of $12.6 million for fiscal 2021 with the majority of this deficit related to decreased revenue generated from auxiliary enterprises. SMCM's fall 2020 first-year admitted student yield was down 4% compared to fall 2019. SMCM revenues in fiscal 2021 are expected at 35% of the budgeted level with auxiliary enterprises trailing expectations due to the lower than expected counts on campus. As primarily residential campuses, revenues at MICUA institutions are likely affected similarly.

Furthermore, due to the impact of COVID-19 on the State budget, in July, the Board of Public Works reduced general funds for higher education by $178.6 million for fiscal 2021: USM by $117.3 million; MSU by $9.0 million; SMCM by $2.1 million; the Sellinger formula for MICUA institutions by $10.6 million; the Cade formula for local community colleges by $36.4 million; and BCCC by $3.2 million. These budget cuts have led institutions to implement salary reductions, eliminate vacant positions, reduce general operating budgets, and make transfers from fund balance. The availability of CARES Act funds has also helped institutions to balance their budgets.

Preliminary fall 2020 enrollments at community colleges suggest a fairly significant decrease. Typically, enrollment at community colleges increases during economic downturns, but the impact of COVID-19 is proving to be anything but typical. As a result, tuition and fee revenues at community colleges will face the same pressure as four-year institutions. State formula funding for community colleges (BCCC and Cade formula) and MICUA institutions (Sellinger formula) for fiscal 2022 is based on actual fiscal 2020 FTE, so the impact of enrollment in the 2020-2021 academic year will not affect the State formula funding for these institutions until fiscal 2023.

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COVID-19

An Overview of COVID-19 – Globally, Nationally, and in Maryland

COVID-19 is a disease caused by a novel coronavirus that has resulted in a global pandemic with nearly 59 million cases and 1.4 million deaths worldwide and 12.3 million cases and 257,000 deaths nationally. In Maryland, there have been nearly 184,000 cases and 4,300 deaths. To date, one drug has been approved for treatment of COVID-19, with a second approved for emergency use only. No vaccines have been approved but initial results from Phase 3 clinical trials are promising. The impact of COVID-19 has been far-reaching, affecting all aspects of Marylanders' lives and every arm of State government.

Background

In December 2019, a novel strain of coronavirus known as severe acute respiratory syndrome coronavirus 2 emerged in Wuhan, China. Coronavirus disease (COVID-19) is an infectious disease caused by this virus. As the number of cases spread globally by March 2020, the World Health Organization (WHO) declared COVID-19 a pandemic, with the U.S. Centers for Disease Control and Prevention (CDC) stressing that COVID-19 is a serious global health threat.

Virus Transmission

According to CDC, the virus that causes COVID-19 most commonly spreads between people in close contact with one another (within about six feet). It spreads through respiratory droplets or small particles produced when an infected person coughs, sneezes, sings, talks, or breathes. These particles can be inhaled and cause infection. Droplets can also land on surfaces and objects, although touching a surface or object with the virus on it is not thought to be the main way the virus spreads. There is growing evidence that droplets and airborne particles can remain suspended in the air, where they can be breathed in by others, and travel beyond six feet. In general, indoor environments without good ventilation increase this risk.

Testing, Cases, and Deaths

Globally and Nationally

As of November 23, 2020, 58.8 million cases of COVID-19 and 1.4 million deaths were reported globally. The United States had the highest number of reported cases (12.3 million), followed by India (9.1 million), and Brazil (6.1 million). The United States also reported the highest number of deaths (256,837) – followed by Brazil (169,183), and India (133,738) – and, according to WHO, had the twelfth highest per capita death rate (767.16 per one million population) of any nation.

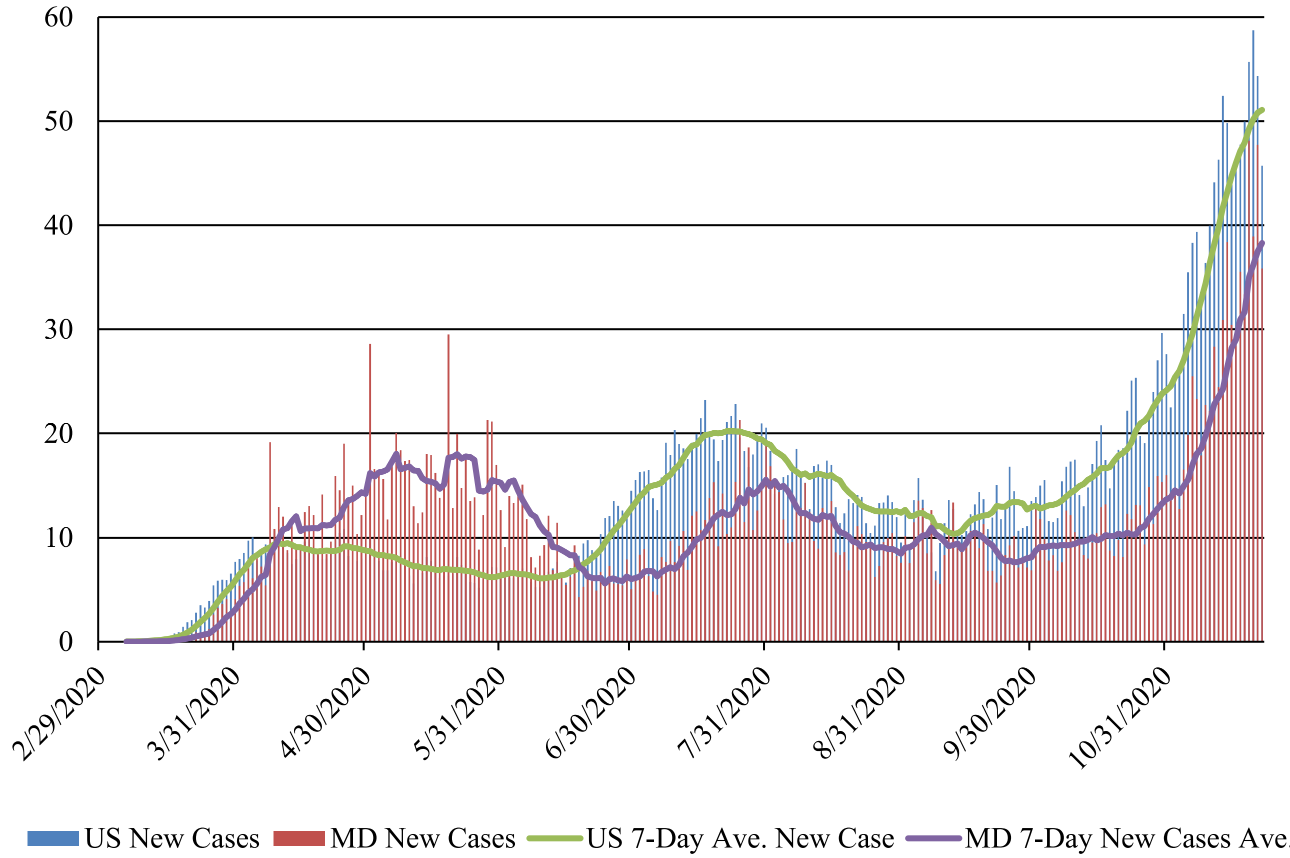
Maryland

According to data from the Maryland Department of Health (MDH), Maryland's first three confirmed cases of COVID-19 were recorded on March 6, 2020, with the first two deaths occurring on March 16, 2020. As of November 23, 2020, Maryland reported a total of 183,797 confirmed cases, 19,769 individuals ever hospitalized, and 4,293 confirmed deaths. A total of 4.2 million COVID-19 tests have been performed. The jurisdictions with the highest number of cases have been Prince George's County (38,985), Montgomery County (31,389), Baltimore City (22,932), and Baltimore County (27,223). Statewide, 9.9% of cases (18,203) and 52.1% of COVID-19 deaths (2,237) occurred in congregate living settings (*i.e.*, nursing homes, assisted living, and group homes), with most deaths among residents. Updated data on COVID-19 testing, cases, and deaths in Maryland is available on the MDH dashboard: https://coronavirus.maryland.gov/.

Case Trends Nationally and in Maryland

As shown in **Exhibit 1**, nationally, the seven-day average trend for new COVID-19 cases per 100,000 population first peaked in April 2020, then declined into June 2020, before peaking a second time in July above the initial April peak. The seven-day per capita average then declined into September, before beginning a steady increase in October. By November 22, 2020, the United States reached 45.7 new cases per 100,000 population and a seven-day average new case rate of 51.1 in the third and largest wave of cases to date, with more than one million cases reported in a single week.

Exhibit 1
Daily and Seven-day Average Trend for New COVID-19 Cases Per 100,000 Population
February 26, 2020 to November 22, 2020



MD: Maryland
US: United States

Source: The COVID Tracking Project; Department of Legislative Services

In Maryland, the seven-day average trend of new cases per capita first peaked at 18 per 100,000 in May 2020, followed by a decline in June, with average new cases rising again in July, and declining in August and September. Since October, this average has increased, passing 18 per 100,000 again in early November. Since that time, each day has brought a record high rate for the seven-day average new cases per capita – 38.3 per 100,000 as of November 22, 2020.

Prevention, Treatment, and Vaccine Development

Preventing the Spread of COVID-19

Wearing face masks covering the nose and mouth when unable to stay more than six feet apart from others or when indoors, social distancing, frequent hand hygiene, and cleaning and disinfecting frequently touched surfaces are the most effective strategies available for reducing COVID-19 transmission. Social distancing includes such actions as avoiding handshakes and hugs, nonessential travel, crowds, and unnecessary errands, and working from home if possible.

Treatment Guidelines

According to the National Institutes of Health (NIH), individuals of all ages are at risk for infection and severe disease. However, the probability of serious COVID-19 disease is higher in people age 60 or older, those living in long-term care facilities, and those with chronic medical conditions. NIH recommends specific clinical interventions based on disease severity. In October 2020, the U.S. Food and Drug Administration (FDA) approved Remdesivir as the first drug for treatment of COVID-19 after clinical trials demonstrated a shortened recovery time. Remdesivir, an antiviral, was initially approved by FDA in May 2020 for emergency use only. It is now approved for use in patients 12 years of age and older for the treatment of COVID-19 requiring hospitalization. In November 2020, FDA granted emergency use authorization for an experimental antibody treatment made by Regeneron, which may be used in patients 12 years of age and older who have tested positive for the coronavirus and who are at high risk of developing severe COVID-19. Additional experimental treatments, including blood plasma transfers, immune modulators, and stem cell treatments, are also under study.

Vaccine Development

Vaccines help protect an individual exposed to a virus by training the immune system to recognize and attack. While vaccines can help prevent and reduce the severity of a disease, they are not cures. As of November 23, 2020, FDA has not approved any vaccines for use. However, there are 37 vaccines in Phase 1 clinical trials (testing safety and dosage), 17 vaccines in Phase 2 clinical trials (expanded safety trials), 13 vaccines in Phase 3 clinical trials (randomized, large-scale efficacy tests), and 6 vaccines approved for early or limited use (in Russia and China without awaiting Phase 3 trial results). As of November 23, 2020, three manufacturers have announced preliminary results indicating that their vaccine is up to 90% effective (AztraZeneca) or 95% effective (Pfizer and Moderna). Other vaccines may prove as effective. Pfizer has applied for emergency use authorization for its vaccine; FDA plans to convene an advisory group on December 10, 2020 to discuss the vaccine. Due to limited quantities, distribution of any approved vaccines will likely begin with priority groups such as health care workers, first responders, and individuals most vulnerable to severe disease and death. It is not known when a vaccine for the general public will be available, but it will likely be at least six months after FDA approval.

Impact of COVID-19

The COVID-19 pandemic has had far-reaching effects on nearly every aspect of Marylanders' lives and every arm of State government. State revenues have declined, businesses have closed, jobs have been lost, schools and child care centers have closed, access to health care has been constrained, and the demand for assistance has increased dramatically. More detailed discussions of these impacts – including the impacts on public assistance and child welfare caseloads, poverty and food insecurity, child and elder abuse reporting, secondary and higher education, child care centers, health care facilities and providers, the delivery of health care, behavioral health, unemployment insurance, State and federal grant and loan programs, energy assistance, workplace safety, courts, housing, the environment, and elections – can be found throughout this *Issue Papers of the 2021 Session*.

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COVID-19

Maryland's Response to COVID-19

Beginning with declaration of a state of emergency in March 2020 and legislation to expand the Governor's emergency powers, Maryland has taken several actions to respond to COVID-19. Efforts have included executive orders restricting activities and requiring individuals to wear masks to reduce the spread and measures to increase hospital surge capacity, secure and distribute personal protective equipment, expand testing capacity, implement contact tracing, and prepare for deployment of a vaccine.

Initial Actions to Respond to COVID-19

The arrival of COVID-19 in Maryland in March 2020 prompted Governor Lawrence J. Hogan, Jr. to declare a state of emergency to mobilize all available State resources. Maryland also enacted emergency legislation authorizing the Governor to take certain actions to respond.

State of Emergency Declaration and Initial Executive Response

On March 5, 2020, the Governor declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration, which has been renewed several times, initiated a series of executive actions during the month of March. Among other actions, the Governor moved the Maryland Emergency Management Agency (MEMA) to its highest activation level, activated the National Guard, and closed all public schools. The Governor then ordered the closure of bars and restaurants and banned mass gatherings of more than 50 people. This action was followed by a more extensive stay-at-home order on March 30, 2020, requiring closure of all nonessential businesses. This order remained in effect until May 15, 2020.

Early Executive Branch actions also included an order directing an increase in hospital surge capacity by 6,000 beds, activating the State's medical reserve corps, allowing for interstate reciprocity of practice for any individual who holds a valid health care license, and allowing for inactive clinicians to practice without first reinstating their inactive licenses. The Maryland Department of Health (MDH) also issued guidance to restrict access to long-term care, nursing, and veterans' facilities.

COVID-19 Public Health Emergency Protection Act

Emergency legislation, Chapters 13 and 14 of 2020 (the COVID-19 Public Health Emergency Protection Act of 2020) authorized the Governor, for the duration of the emergency, to take actions relating to health insurance, Medicaid, retailer profits, employer actions, and personnel at State health care facilities as a result of the state of emergency and catastrophic health emergency relating to COVID-19. More specifically, the Acts authorized the Governor to (1) facilitate access to health care and the provision of that care and (2) mitigate costs to individuals for COVID-19 diagnosis and treatment, including by prohibiting cost-sharing by health insurance carriers for COVID-19 testing, ordering MDH to cover the cost of testing if not paid for by a carrier or another third party, and requiring carriers to cover a COVID-19 immunization (if and when available) without cost-sharing. The Acts also authorized the Governor to establish or waive telehealth protocols and order MDH to reimburse certain Medicaid telehealth services for COVID-19 patients. Additionally, the Acts authorized the development and implementation of orders to minimize disruption in enrollment in health insurance and Medicaid and to facilitate reimbursement for certain services relating to COVID-19.

Maryland Strong: A Roadmap to Recovery

On April 24, 2020, Governor Hogan released *Maryland Strong: A Roadmap to Recovery*, a plan to gradually reopen Maryland's economy in phases, beginning with reopening of low-risk activities and businesses and proceeding to reopening of medium-risk and high-risk activities and businesses. Reopening under each phase is determined by the Governor based on achievement of benchmarks, such as a 14-day downward trajectory of hospitalization rates with flexibility given to the health officers of county and municipal governments to expand the permitted activities and businesses in consideration of regional differences in COVID-19 conditions.

The plan also identified four building blocks necessary for the State to move toward recovery: (1) generating hospital surge capacity; (2) procuring sufficient personal protective equipment (PPE) for frontline healthcare workers; (3) having adequate testing capacity; and (4) having a robust contact tracing program. Accordingly, MDH has identified these building blocks as areas of focus in its response efforts.

Hospital Surge Capacity

Governor Hogan directed MDH to increase by 6,000 the number of hospital beds available to handle a surge in hospitalizations related to COVID-19 of which beds 25% must be for critical care. Working with hospitals, this effort included the establishment of a 250-bed field hospital at the Baltimore Convention Center; reopening of Laurel Regional Hospital and Washington Adventist Hospital; installation of 50, 10-bed advanced medical tents across the State (including 5 at Jessup and Hagerstown correctional facilities); and the installation of 8-bed intensive care units at Adventist Hospital in Fort Washington and Prince George's Hospital Center. As of September 2020, MDH had identified 6,700 beds for a surge in COVID-19 hospitalizations.

Personal Protective Equipment

Due to the demands of the pandemic across the nation and around the world, Maryland experienced a shortage of PPE – the surgical masks, N95 (and KN95) masks, gloves, gowns, and face shields used by hospitals, first responders, long-term care facilities, and other frontline personnel to protect them from exposure to COVID-19. MDH worked to secure and distribute PPE to local health officers through a process managed by MEMA. As of September 2020, MDH reported that it had distributed over 78 million pieces of PPE. The State also established the Maryland Manufacturing Network Supplier Portal, operated by the Maryland Department of Commerce, to connect local sellers of PPE with potential buyers.

Testing Capacity

In the early part of the pandemic, access to testing required a referral and was limited to priority groups such as high-risk individuals showing symptoms, as specified by the U.S. Centers for Disease Control and Prevention (CDC). Widespread testing is now available for anyone without a referral, and MDH publishes all testing site locations on its website: https://coronavirus.maryland.gov/pages/symptoms-testing.

In an effort to expand testing capacity and make testing broadly available, the State established a goal for the performance of 20,000 tests a day. As of September 2020, approximately 2.2 million cumulative polymerase chain reaction tests had been conducted statewide with daily testing volumes that exceeded 20,000 tests a day. Initial actions by the State to expand testing capacity included the procurement of 500,000 test kits from LabGenomics, a company in South Korea, but reports of false positives have hindered the use of these tests. The State also established partnerships with commercial and academic labs to process tests, including the University of Maryland School of Medicine's research lab at the Institute for Genome Sciences.

Additional actions to expand testing have included the establishment of testing sites at the Baltimore Convention Center and Six Flags America in Prince George's County as well as community-based testing at Vehicle Emissions Inspection Program stations and other pop-up sites across the State. Testing was provided at these sites at no cost. In September 2020, MDH announced the purchase of 250,000 rapid point-of-care tests with plans to purchase an additional 250,000 tests. The rapid antigen-based tests can produce results in 15 minutes, and MDH expects to deploy these tests to congregate care settings to enable decisions about isolation, patient care, and the identification of symptomatic individuals in the earliest stages of infection.

Contact Tracing

To slow the spread of COVID-19, the State contracted with the National Opinion Research Center (NORC) to increase to 1,000 the number of contact tracers working to perform public health surveillance. To date, the contracted capacity of 1,000 cases/10,000 contacts per day has not been reached as only about two-thirds of cases provide at least one named contact. For 13 local jurisdictions, including Baltimore City and Baltimore, Montgomery, and Prince George's counties, NORC conducts initial investigation and contact tracing, while local health departments (LHD) receive referrals for cases requiring additional attention. In 10 jurisdictions, LHDs have primary responsibility for investigation and contact tracing.

MDH uses a contact tracing platform called covidLINK to assist in the monitoring and collection of information about COVID-19 and community transmission. MDH supports identified COVID-19 patients and contacts through isolation and quarantine. In September 2020, MDH announced its intention to participate in the Apple/Google Exposure Notification Express contact tracing software, which would allow those who opt in to use a cellphone application to receive notifications if they have come into contact with someone who has tested positive for COVID-19.

Phased Reopening

As COVID-19 cases and hospitalizations decreased during the spring and summer, Maryland progressed through phased-in reopening of activities under Governor Hogan's *Roadmap to Recovery.* Maryland moved through the first two phases of reopening in May and June with a gradual reopening of retail, manufacturing, houses of worship, and some personal services initially, followed by a reopening of workplaces and additional businesses, including child care centers and indoor dining establishments at 50% capacity. In September, Governor Hogan relaxed restrictions further by announcing the State's entry into Phase Three under the roadmap, allowing the reopening of movie theaters and live entertainment establishments subject to certain restrictions and increasing the indoor capacity of bars, restaurants, and houses of worship from 50% to 75%. In November, however, with the State's positivity rate exceeding 5% for the first time since June and health metrics spiking across the nation, the Governor announced a series of measures to slow the spread of COVID-19. These measures included an emergency order reducing indoor operations for bars and restaurants from 75% to 50% and a public health advisory discouraging indoor gatherings of 25 people or more.

Masks, Social Distancing, and Sanitation Requirements

CDC has identified the use of cloth face coverings as a critical tool to reduce the spread of COVID-19. In April 2020, Governor Hogan issued an order requiring the use of masks or face coverings in grocery stores, pharmacies, and other retail establishments as well as on public transit. The mandate was later expanded, requiring all Marylanders older than age five to wear face coverings in all indoor public spaces and outdoors when unable to maintain social distancing. In addition, MDH has initiated the *#MasksOnMaryland* campaign focusing on the benefits of wearing a mask. To reduce the spread of the virus, Governor Hogan also required retail establishments to designate at least six-foot spacing for persons in lines and to sanitize, or provide customers with a means to sanitize, handles of carts and baskets available to customers.

Priority Response Efforts for Fall 2020

During fall 2020, MDH is prioritizing an expansion of its *#MasksOnMaryland* campaign, flu vaccination outreach, a roll-out of new antigen testing and other rapid point-of-care tests to keep Maryland open, refining data analytics to improve publicly available data, integrating contact tracing analysis with testing efforts for more targeted intervention, ensuring hospital capacity for COVID-19 and flu patients, and preparing for COVID-19 vaccine deployment. In October 2020, MDH released a draft plan for a two-phase COVID-19 vaccine deployment program with the first phase prioritizing vaccination of health care workers and vulnerable populations due to a likely limited availability of doses and the second phase including the general population.

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COVID-19

Impact of COVID-19 on Maryland's Hospitals, Nursing Homes, and Assisted Living Facilities

The COVID-19 pandemic has posed unprecedented challenges to hospitals, nursing homes, and assisted living facilities in the State. Early in the pandemic, hospitals doubled available beds and hired additional staff in anticipation of a patient surge and experienced a peak in hospitalized patients in late April 2020. At the same time, emergency department visits and elective surgery procedures declined. Nursing homes and assisted living facilities have been addressing issues related to infection control, visitation, and staff safety and retention as nearly 10% of cases and more than 50% of deaths from COVID-19 have occurred in congregate living facilities. Federal funding has been allocated to hospitals and nursing homes for COVID-19 expenses and lost revenue.

COVID-19 Poses Unprecedented Challenges

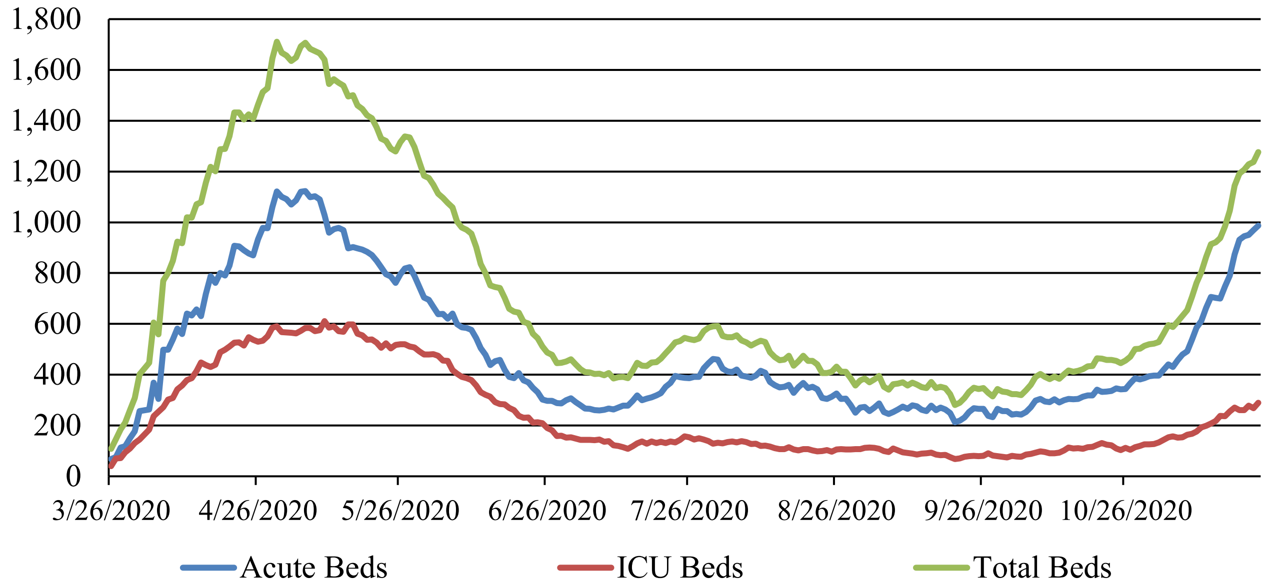
Throughout the COVID-19 pandemic, hospitals, nursing homes, and assisted living facilities have faced challenges unique to their industries. Similar to facilities in other states, Maryland facilities initially struggled to acquire sufficient personal protective equipment (PPE) and testing resources. Front-line staff reported and exhibited increased levels of stress, risking burnout in an already demanding profession. Patients and residents, particularly those suffering from degenerative cognition conditions, have suffered increased stress and rapid cognitive decline due to safety protocols that limit interaction with others. Meanwhile, industry administrators have responded to unpredictable revenues and expenses since March 2020.

Impact on Hospitals

In anticipation of a surge in COVID-19 patients, the State increased the number of available hospital beds from 6,800 to 12,800. This surge capacity required physical alterations to facilities, reassigning and retraining staff, and increased equipment purchases. Hospitals adjusted staffing schedules and hired additional personnel to meet staffing needs, while managing the loss of staff who self-isolated or became ill. As surge capacity building went into effect, some hospital staff had to reuse disposable PPE or treat potentially infected patients without PPE.

The Maryland Department of Health (MDH) provides data on COVID-19 hospitalizations, including data on the number of total, acute, and intensive care unit beds occupied, on its dashboard: https://coronavirus.maryland.gov. As seen in **Exhibit 1**, COVID-19 hospitalizations peaked at 1,711 occupied beds on April 30, reached a low of 281 on September 20, and steadily increased to 1,276 as of November 23, 2020. As of November 22, 2020, hospital beds were 84.6% full, with 15.5% of beds occupied by patients with COVID-19.

Exhibit 1
COVID-19 Hospitalizations in Maryland
March 26, 2020 to November 23, 2020



ICU: intensive care unit

Source: Department of Legislative Services, Maryland Department of Health

Although there was an increase in hospitalizations due to COVID-19 patients, hospitals' total patient visits dropped significantly in 2020 due to executive orders that prohibited certain medical services and reluctance among individuals to seek hospital services during a pandemic. In April 2020, the number of emergency department visits in the State was half the total number of such visits in April 2019. The number of visits per month began to rise after April 2020 but has remained about 25% lower than the same months in 2019. Patients who did visit a hospital were much sicker as many patients delayed seeking treatment. This shift in patient behavior added to the workload of emergency departments and intensive care units.

When elective surgeries were temporarily prohibited by executive order in April 2020, operating rooms were used at one-third the rate of usage in April 2019. In addition, patient utilization of telehealth grew significantly beginning in March 2020. For a more detailed discussion of this issue, see the section "Impact of COVID-19 on Health Insurance and Health Care Delivery" within COVID-19 of this *Issue Papers of the 2021 Session*. Coinciding with increased utilization of telehealth, in-person visits dropped significantly at Maryland hospitals. According to MHA, the net financial impact of COVID-19 on hospitals remains unknown as the pandemic is still ongoing and patient volume across services has not returned to pre-pandemic levels. On November 20, 2020, Governor Lawrence J. Hogan, Jr. issued an emergency order to prohibit all hospital visitation (with specified exceptions) and warned hospitals and other medical facilities to avoid any elective procedure admissions that are not life-saving.

Impact on Nursing Homes and Assisted Living Facilities

There are 227 nursing homes with over 22,000 residents and approximately 1,600 assisted living facilities with approximately 25,000 residents in Maryland. Nursing homes and assisted living facilities have been a major source of COVID-19 cases and deaths. The combination of elderly patients with underlying health conditions and a congregate living environment exacerbated the impact of the novel coronavirus, especially before safety protocols were implemented. A June 2020 analysis conducted by *The Wall Street Journal* showed that COVID-19 fatalities in nursing homes accounted for approximately 43% of such deaths nationally. In Maryland, this rate has been even higher. According to MDH, as of November 23, 2020, 9.9% of COVID-19 cases and 52.1% of COVID-19 deaths in Maryland occurred in nursing homes, assisted living facilities, and group homes (including both residents and staff).

In an effort to mitigate COVID-19 in nursing homes and assisted living facilities, MDH issued guidelines in April 2020 that included (1) monitoring staff and residents for symptoms; (2) providing PPE for all personnel when they interact with residents who tested positive for COVID-19 or exhibited symptoms; (3) isolating residents confirmed or suspected positive; (4) reporting confirmed cases to the local health department; (5) prohibiting visitors; and (6) reinforcing sick leave policies for staff. MDH revised this guidance eight times from April to October 2020. On November 20, 2020, Governor Hogan issued an emergency order requiring mandatory twice-weekly testing for all staff at Maryland nursing homes and weekly testing of residents. Indoor visitation at Maryland nursing homes was also limited to compassionate care visits only and visitors must have proof of a negative coronavirus test with 72 hours of their visit.

Certain protocols have been challenging for facilities, including acquiring the necessary PPE, restrictions on visitors, and the need to conduct weekly testing. Visitor restrictions have been of particular concern because of their potential to result in the social isolation of residents. Initially, MDH only allowed outdoor visitation, but in late August 2020, the federal Centers for Medicare and Medicaid Services (CMS) issued guidance to allow indoor visitation under certain conditions. On October 1, 2020, MDH adopted CMS guidelines for visitation. In addition, while MDH initially provided assistance to conduct and finance testing, funding and logistical support was suspended after August 15, 2020, leaving facilities responsible for the costs of testing. In addition to these challenges, nursing homes and assisted living facilities have struggled with employee retention and understaffing due to staff self-isolation, illnesses, and deaths.

Federal Provider Relief Fund

In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provided $2.2 trillion in stimulus aid in response to the economic fallout of the COVID-19 pandemic. The CARES Act Provider Relief Fund earmarked $175 billion to hospitals and health care providers nationally to be used for health care-related expenses or lost revenue due to COVID-19. As of August 14, 2020, Maryland had received $1.5 billion from the Provider Relief Fund with $714 million allocated for hospitals and $101 million for nursing homes.

The U.S. Department of Health and Human Services provides guidance to hospitals on CARES Act funding, including reporting requirements and information on the funds that can be retained versus the funds that may be at risk of return. This guidance is updated frequently and has generated concern among hospitals throughout the country. As a result of this uncertainty, some hospitals in Maryland are no longer accepting CARES Act funding.

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COVID-19

Racial Disparities and COVID-19

COVID-19 has disproportionately impacted racial and ethnic minorities, with Black and Hispanic Marylanders comprising a disproportionate share of cases, and Black Marylanders also representing a disproportionate share of deaths. The federal government has provided grant funding to states to support linkages to COVID-19 testing, vaccination, and other services in communities disproportionately impacted by COVID-19. The Maryland Department of Health has also provided funding and outreach to address the effects of COVID-19 on minority communities. Minority participation in COVID-19 clinical trials is low, but efforts are being made to increase participation.

Impact of COVID-19 on Racial and Ethnic Minorities in the United States

From the beginning of the COVID-19 pandemic, a disproportionate impact on racial and ethnic minorities has been demonstrated through lower rates of testing and higher rates of cases, hospitalizations, and deaths than nonminorities. These disparities are tied to many factors, including social determinants of health. Additionally, the pandemic has intensified the housing and food insecurity issues already present in minority communities. Minorities are more likely to become infected due to living in multigenerational homes and crowded environments or working in service industry jobs for which teleworking is not an option. The disparity in cases, hospitalizations, and deaths is also linked to health issues that disproportionately impact minority populations such as diabetes, obesity, hypertension, and asthma.

Racial and Ethnic Data for Cases, Hospitalizations, and Deaths

As the COVID-19 pandemic spread in spring 2020, only a small portion of the data provided to the U.S. Centers for Disease Control and Prevention (CDC) included a patient's race or ethnicity. In April 2020, a CDC review showed that racial and ethnic information was missing in over 50% of the total cases reported. Complete racial and ethnic data is necessary to track public health trends in order to target outreach and develop informed policy. CDC now publishes race and ethnicity data received through case-based reporting on the CDC website and collects data from over 250 acute care hospitals in 14 states and publishes hospitalization rates by race and ethnicity on a weekly basis.

As more complete racial and ethnic data has been made available, the pandemic's disparate impact on minority populations has become clear. According to the Kaiser Family Foundation (KFF), federal, state, and local data show disparities in both cases and deaths for Black, American Indian, and Alaskan Native people and in cases among Hispanic people. In June 2020, the Pew Research Center reported that Black Americans account for 13% of the U.S. population but 24% of COVID-19 deaths. An additional KFF analysis conducted in August 2020 found that

Black Americans accounted for more cases and deaths relative to their share of the population in 30 of 49 states reporting cases and 34 of 44 states reporting deaths.

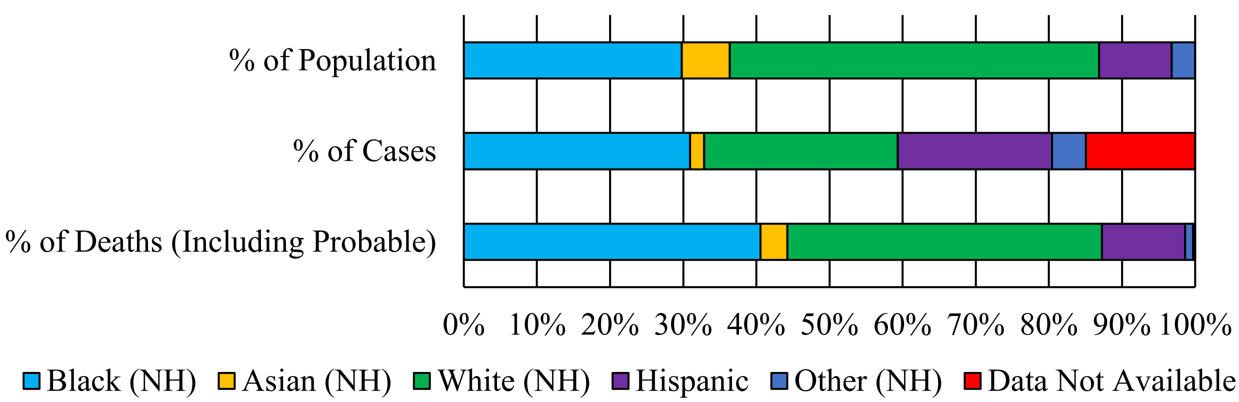
Federal Initiatives to Support Minority Populations

The U.S. Department of Health and Human Services' Office of Minority Health announced a competitive grant of $40 million to support linkages to COVID-19 testing, vaccination, and other health and social services in communities disproportionately impacted by COVID-19. Additionally, the U.S. Food and Drug Administration (FDA) developed and disseminated COVID-19 health education materials in multiple languages, created a multilingual resources webpage, and developed a bilingual (English/Spanish) media toolkit.

Impact of COVID-19 on Racial and Ethnic Minorities in Maryland

The disproportionate impact of COVID-19 on Black and Hispanic Maryland residents has mirrored national trends. The Maryland Department of Health (MDH) collects data on race and ethnicity relating to COVID-19, which is updated frequently and available on MDH's dashboard (https://coronavirus.maryland.gov/). As shown in **Exhibit 1**, although representing only 39.7% of the State's population, Black and Hispanic residents represent 52.0% of COVID-19 cases, while White residents, who comprise 50.5% of the State's population, comprise 26.5% of cases. Black residents also represent a disproportionate share of deaths, comprising 30.9% of cases but 40.6% of deaths. In comparison, Hispanic residents comprise 21.1% of cases and 11.4% of deaths.

Exhibit 1
Share of COVID-19 Cases and Deaths in Maryland by Race/Ethnicity



NH: non-Hispanic

Source: Maryland Department of Health; Department of Legislative Services

Outreach Efforts to Minority Populations in Maryland

The Office of Minority Health and Health Disparities (OMHHD) within MDH has provided funding to address the impact of COVID-19 on minority communities. MDH has partnered with local health departments (LHD) in Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties and provided $1.2 million to address socioeconomic needs and communication efforts. In order to make testing more accessible and affordable in minority communities, MDH has supported various site models, including partnering with the Motor Vehicle Administration and LHDs to offer free testing at Vehicle Emissions Inspection Program sites and other community sites. MDH also provided more than 4,000 kits of essential supplies that included hand sanitizer, disposable masks, toilet paper, bottled water, nonperishable food items, and multilingual COVID-19-related information sheets that outline best practices to help slow the spread of the coronavirus to Black, Hispanic, and Haitian communities.

Outreach to Hispanic Communities

In August 2020, MDH formed a Hispanic Outreach Task Force, an interagency task force of partners from the State, Baltimore City, and faith-based and community organizations with the goal of reducing the positivity rate within the Hispanic community starting with the 21224 ZIP code. The task force provides operational support and technical assistance to Baltimore City and nongovernmental partners for human and social services; noncongregate housing and isolation strategies; contact tracing; prevention and mitigation; and communications and outreach, including mobile outreach, flyers, and educational materials and a sound truck in targeted neighborhoods to deliver educational materials. MDH is also exploring a short-term COVID-19 Intervention Pilot Program for Hispanic individuals who test positive and their families. The pilot will serve 10 families and will include isolation, medical care and services, cash assistance, food delivery, and wrap-around services. The task force may be expanded to additional ZIP codes if necessary. In addition to efforts in Baltimore City, MDH is working with Montgomery County to support outreach to the Hispanic community there. MDH has also established a mobile education unit that circulates through neighborhoods with large Hispanic populations. The unit provides free face masks at designated points along the route and also provides information in Spanish and English about testing, isolating, social distancing, and resources. The State also offers a health hotline in Spanish that residents can call to schedule a COVID-19 test and receive referrals for food and cash assistance, eviction-prevention support, and access to isolation housing.

Minority Participation in Vaccine Development

Since minority populations are more likely to contract COVID-19 and to be hospitalized and die from the disease, the participation of these populations in vaccine clinical trials is critical. However, data indicates Black and Hispanic individuals are not likely to participate in such trials. According to FDA, in 2019, Black participants made up about 9% of the total for trials in novel drugs, while nearly three out of every four participants were White. Low drug trial participation by Black individuals may be linked in part to a mistrust of the medical system, caused in part by historical events such as the notorious Tuskegee Syphilis Study and the decades-long, nonconsensual use of tissue cells taken from Black woman Henrietta Lacks for medical research.

In September 2020, the National Institutes of Health announced a $12 million award for outreach and engagement efforts in ethnic and racial minority communities disproportionately affected by the COVID-19 pandemic. The award to RTI International, a nonprofit research institution, will support teams in 11 states established as part of the National Institutes of Health Community Engagement Alliance (CEAL) Against COVID-19 Disparities. The CEAL research teams will focus on COVID-19 awareness and education research, especially among Black, Hispanic, and American Indian populations, and will promote and facilitate the inclusion and participation of these groups in vaccine and therapeutic clinical trials to prevent and treat the disease.

In an effort to regain trust in the medical system, initiatives to encourage minority participation in clinical trials are underway. Researchers are collaborating with community leaders, advocacy organizations, and churches to educate minority populations about the benefits of vaccines and participation in research. The National Black Church Initiative (NBCI), which includes approximately 150,000 churches, is working with Moderna to enroll minority participants in their research. NBCI had begun working with the pharmaceutical industry before COVID-19 and uses pastors to educate church members about vaccines and encourage enrollment in clinical trials.

COVID-19 Vaccine Outreach to Minority Communities

Compounding the lack of minority participation in clinical trials is the fact that Black Americans are unlikely to get vaccinated even when a vaccine becomes available. According to a poll conducted by KFF and ESPN's *The Undefeated*, half of Black respondents would not be willing to take a COVID-19 vaccine. Resistance to being vaccinated is being attributed to the same mistrust of the medical community that hampers participation in clinical trials.

The federal Advisory Committee on Immunization Practices is advising CDC on a COVID-19 vaccine distribution plan. The group is considering a framework proposed by the National Academy of Sciences in which 10% of vaccines would be reserved for people living in communities hardest hit by the pandemic, often Black and Hispanic populations. The framework is based on principles of equity and justice in order to mitigate the inequities of the higher burden of COVID-19 experienced by these populations.

As part of an effort to influence minorities to receive a COVID-19 vaccination, MDH has assembled a Vaccination Outreach Planning Team consisting of representatives from the Maryland Emergency Management Agency, MDH's Office of Communications and Office of Government Affairs and Contact Tracing Unit, and OMHHD. The planning team met for the first time in

October 2020 and will develop strategies for outreach to minority communities with culturally relevant communications and messaging.

COVID-19

Impact of COVID-19 on Health Insurance and Health Care Delivery

COVID-19 has altered the delivery, reimbursement, and receipt of health care in Maryland. In response, the State has taken action to enhance access to care, including suspending certain health occupations laws and regulations, adopting emergency insurance regulations, opening a special enrollment period for the Maryland Health Benefit Exchange, and expanding access to and coverage for telehealth. Although there are some concerns, Maryland may want to consider making expanded access to telehealth coverage permanent.

Introduction

The COVID-19 pandemic has significantly altered the delivery of patient care and its reimbursement. Public officials have urged individuals to be tested and, as necessary, treated for COVID-19 and have encouraged individuals and health care providers to defer elective in-office visits and procedures. Recognizing that delaying diagnosis and treatment is not in the best interest of patients, health care providers have worked with carriers to provide access to care, increasingly in the form of telehealth. As the effects of the pandemic receded in the summer and fall, patients gradually began seeking in-person care again. However, many stakeholders agree that some of the changes, particularly in regard to telehealth, should become permanent.

State Actions during the COVID-19 Pandemic

In a March 16, 2020 executive order, Governor Lawrence J. Hogan, Jr. suspended certain State laws and regulations regarding licensing, certification, and credentialing of health care practitioners. The order expanded interstate reciprocity, expanded scopes of practice, and allowed for active practice by those holding an inactive status license. The order also authorized the State Board of Physicians and the Maryland Board of Nursing to suspend certain requirements if the suspensions would not endanger the public and would augment the health care workforce.

The Maryland Insurance Administration has adopted several sets of emergency regulations and bulletins related to the pandemic, including requiring carriers to (1) waive any cost-sharing for any visit to diagnose or test for COVID-19, regardless of the setting of the testing; (2) waive any cost-sharing for laboratory fees to diagnose or test for COVID-19; (3) waive any cost-sharing for vaccination for COVID-19, when a vaccine becomes available; (4) evaluate a request to use an out-of-network provider to perform diagnostic testing of COVID-19; and (5) consider an adverse decision on a request for coverage of diagnostic services for COVID-19 an emergency case for which an expedited grievance procedure is required. The emergency regulations do not apply to Medicare supplement policies. Additionally, the Insurance Commissioner has issued bulletins prohibiting the cancellation or nonrenewal of individual health policies for nonpayment of a premium.

As part of the State's overall response to COVID-19, and in an effort to prioritize health and safety, the Maryland Health Benefit Exchange (MHBE) opened a new special enrollment period (SEP) on March 16, 2020. As of October 24, 2020, more than 26,601 individuals enrolled in qualified health plans through MHBE. SEP ends December 15, 2020. MHBE advises that an estimated 195,000 individuals may have lost employer-sponsored health insurance coverage in Maryland this year. The Attorney General's COVID-19 Access to Justice Task Force has recommended that a health insurance checkbox be incorporated into applications for unemployment insurance (similar to the Maryland Easy Enrollment Health Insurance Program in which a health insurance checkoff is included on State income tax returns) under which the Maryland Department of Labor (MDL) would forward the contact information of the applicant to MHBE for assistance in determining their health insurance options. MDL has indicated that it cannot incorporate a check box because the unemployment insurance unit is federally funded; however, Kentucky has taken a similar approach.

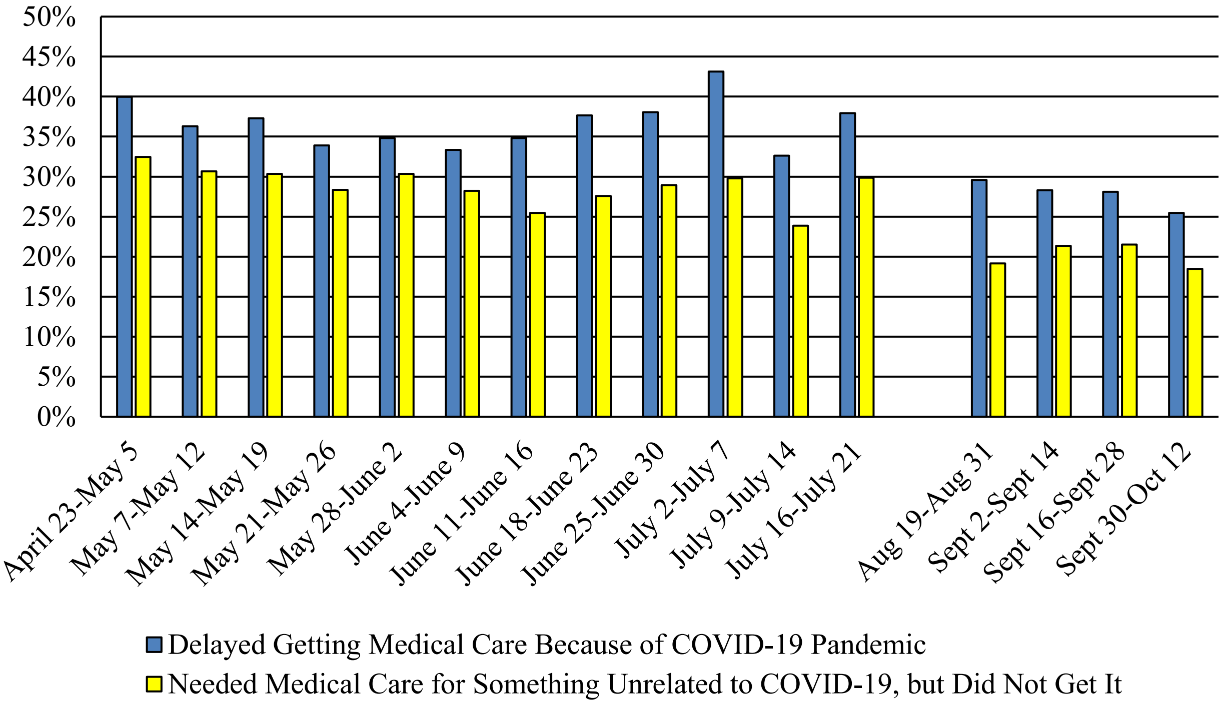
Trends in Health Care Delivery during the Pandemic

Governor Hogan's March 16, 2020 executive order authorized the Secretary of Health to control and restrict elective medical procedures. In response to the Secretary's restrictions, and due to concern about exposure to COVID-19, many Marylanders opted to avoid or delay care early in the pandemic, as shown in **Exhibit 1**. This trend has decreased, but COVID-19 remains a significant factor in patients' decisions whether to seek needed care.

To reduce COVID-19 exposure during the pandemic, the U.S. Centers for Disease Control and Prevention (CDC) recommend that health care practitioners (1) consider nonoperative approaches when feasible; (2) minimize the use of procedures or techniques that might produce infectious aerosols when feasible; (3) minimize the number of people in the operating or procedure room to reduce exposures; (4) use the extent of community transmission and an assessment of the likelihood for patient harm if care is delayed to make decisions about canceling or postponing elective surgeries and procedures; and (5) implement universal source control measures, which includes having patients wear a cloth face covering (as tolerated) and having practitioners wear a facemask at all times while they are in a health care facility.

CDC has reported that orders for childhood vaccines fell sharply early in the pandemic as doctor's offices closed or reduced hours and parents concerned about exposure to COVID-19 postponed or canceled well-child visits. To address the decrease in immunization rates and improve access options, the U.S. Department of Health and Human Services issued an order on August 19, 2020, to authorize any state-licensed pharmacist to order and administer childhood vaccines to children ages 3 to 18.

Exhibit 1
Access to Health Care in Maryland during the COVID-19 Pandemic



Note: The survey question posed whether the respondent delayed or did not get needed medical care within the prior four weeks. No data was collected from July 22 through August 18.

Source: Household Pulse Survey, U.S. Census Bureau; Department of Legislative Services

Maryland Telehealth Legislation

During the 2020 legislative session, the General Assembly passed emergency legislation (Chapters 15 and 16 of 2020) authorizing health care practitioners to establish a practitioner-patient relationship through a telehealth interaction under specified circumstances. The legislation prohibits a health care practitioner from prescribing a Schedule II opiate for the treatment of pain through telehealth unless the individual receiving the prescription is in a specified health care facility or the Governor has declared a state of emergency due to a catastrophic health emergency. While State and federal laws exclude audio-only (telephone call) telehealth visits from insurance coverage, these visits are covered under federal and State emergency health declarations.

The General Assembly passed additional emergency legislation (Chapter 18 of 2020) requiring Medicaid, subject to the limitations of the State budget, to provide mental health services appropriately delivered through telehealth to a patient in the patient's home setting.

Health Care Delivery through Telehealth

Telehealth has long been a popular means of accessing health care for patients in rural areas, faced with mobility issues or limited transportation options, or favoring the convenience of remote communication. With the onset of the pandemic, remote visits slowed the spread of COVID-19 by reducing the need for infectious people to travel. The Maryland Health Care Commission reports the following adoption rates of telehealth delivery in response to the pandemic: 70% of physician practices (up from 11% prior to the pandemic); 100% of acute care hospitals (up from 96%); 45% of nursing homes (up from 12%); 65% of home health agencies – limited to remote patient monitoring (up from 27%); and 6% of dental practices (up from 4%). One health system reported conducting approximately 100,000 telehealth visits in May and June, up from approximately 100 per month before COVID-19.

Despite the popularity of telehealth, both practitioners and patients have raised concerns about ensuring the appropriate delivery model for health care and the efficacy of treatment methods. Practitioners and patients also have privacy concerns, including the use of technology compliant with the Health Insurance Portability and Accountability Act (HIPAA).

Insurance Coverage of Telehealth

The expansion of insurance coverage for telehealth during the pandemic has largely been driven by coverage through Medicaid and Medicare. Executive orders from the Governor and waivers from federal requirements have resulted in increased Medicaid coverage for telehealth services, while the federal Coronavirus Aid, Relief, and Economic Security Act and federal regulatory changes have resulted in increased Medicare coverage. Expanded coverage includes coverage for telehealth services (1) originating at a participant's home or other secure location; (2) delivered by audio-only technology, including by phone; and (3) delivered by non-HIPAA compliant technology. These expansions will terminate with the end of COVID-19 emergency orders unless extended through additional executive orders or legislation.

Private health insurance carriers have not been required to comply with the same coverage requirements for telehealth as Medicaid and Medicare but have made similar accommodations. Since the beginning of the pandemic, carriers have expanded telehealth coverage to additional systems and platforms, additional provider and service types, and phone-only consultations. Additionally, carriers have waived cost-sharing for telehealth visits and provided reimbursement parity between virtual and in-person consultations. Accommodations have varied by carrier, however, and carriers have indicated that some expanded coverage will be terminated or reduced at the end of the federal and State public health emergencies. Legislation would be necessary to make these accommodations for telehealth coverage a permanent requirement.

On October 14, 2020, the federal Centers for Medicare and Medicaid Services released new guidance concerning Medicaid flexibility for coverage of telehealth services compared to Medicare and commercial third-party carrier coverage, which may be less flexible. The guidance states that Medicaid will reimburse for telehealth services if an individual has Medicare or third-party coverage in addition to Medicaid and Medicare or the third-party carrier denies coverage for the services because it requires a face-to-face visit.

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Impact of COVID-19 on Behavioral Health

While the full toll of the COVID-19 pandemic on behavioral health is not yet known, reported symptoms of depression and anxiety and an increased need for crisis call services are reflective of the challenges facing individuals statewide. Early indications of increased rates of suicide and overdose fatalities are likely attributable to the pandemic's contribution to risk factors such as economic stress, social isolation, and increased barriers to adequate mental health care.

COVID-19 Contributes to Worsening Behavioral Health Trends

Many researchers have posited that the COVID-19 pandemic could exacerbate already troubling national behavioral health trends due to increased economic stress and social isolation and decreased access to mental health services and other community supports. Although the full impact of the pandemic on Marylanders' mental health is unknown, behavioral health trends, call volume from crisis response services, and survey data indicate areas of concern.

Trends in Suicide and Overdose Fatalities

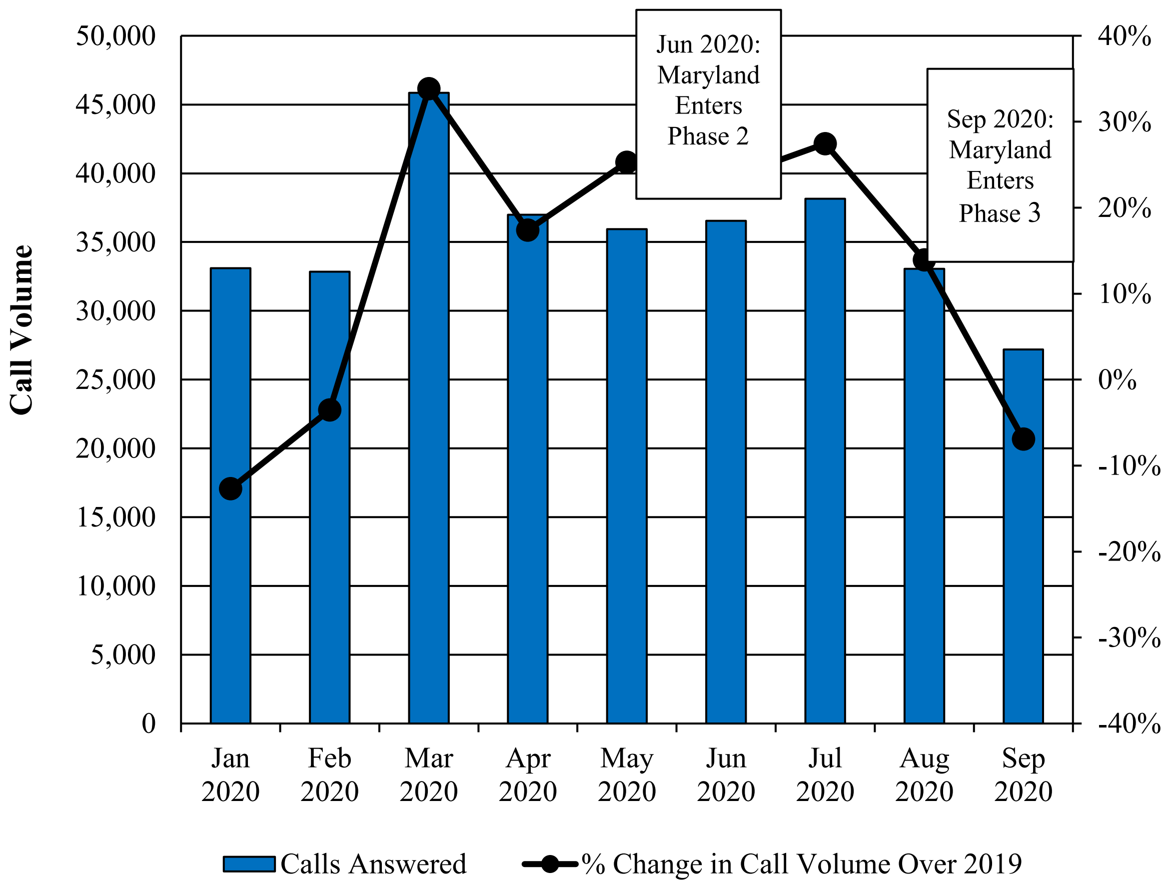
Prior to the COVID-19 pandemic, rates of suicide had been increasing both nationally and in Maryland. In 2018, 650 people died from suicide in Maryland, a rate of 10.2 per 100,000 residents. While Maryland has consistently been below the national suicide rate and has a lower rate than all but four states, the rate of suicide for Marylanders has increased every year from 2015 to 2018 (the most recent national data available). The *Journal of American Medicine* pointed to several risk factors for suicide that the pandemic is likely compounding, including economic stress and reduction in labor force participation due, in part, to parents caring for children learning from home; social isolation caused by social distancing; and increased barriers to adequate mental health care. A significant warning sign of the potential increase in suicides during the COVID-19 pandemic is the increase in suicide ideation observed by the U.S. Centers for Disease Control and Prevention (CDC) in a national survey conducted by the U.S. Census Bureau in June 2020. The survey found that 10.7% of respondents had seriously considered suicide in the prior 30 days – more than twice this measure from 2018 (4.3%).

Other research has tied some of these risk factors to an increase in overdose fatalities. To the extent that the pandemic is increasing social isolation, decreasing economic wellbeing, and adding barriers to care, these same factors could be contributing to the greater number of overdose deaths observed statewide. These concerns are supported by the June 2020 census survey, which found that 13.3% of those surveyed started or increased substance use to cope with the pandemic. For further discussion of this issue, see the section "The Opioid Epidemic" within Health and Health Insurance of this *Issue Papers of the 2021 Session*.

Increases in Crisis Hotline Call Volume

An early indicator of the impact of the COVID-19 pandemic on Marylanders is the increase in calls to 2-1-1 Maryland, the statewide call system that connects those in need with available resources throughout the State. **Exhibit 1** shows the total calls answered by 2-1-1 Maryland during the pandemic and the change in call volume over the corresponding months in 2019.

Exhibit 1
Call Volume to 2-1-1 Maryland and Change Over 2019
January to September 2020



Source: 2-1-1 Maryland; Department of Legislative Services

As shown, the first two months of 2020 had call volumes below 2019; however, calls increased significantly in March 2020 when COVID-19 cases were first identified in the State. 2-1-1 Maryland found that, in addition to the pandemic increasing the need for the services traditionally connected through 2-1-1, they began receiving calls about COVID-19, including inquiries about where individuals could be tested, the symptoms of COVID-19, and what to do when an individual felt ill. 2-1-1 Maryland also reported an increase in the volume of texts and chats through their services, prompting the Maryland Department of Health to start a separate mental health text line, MD Mind Health.

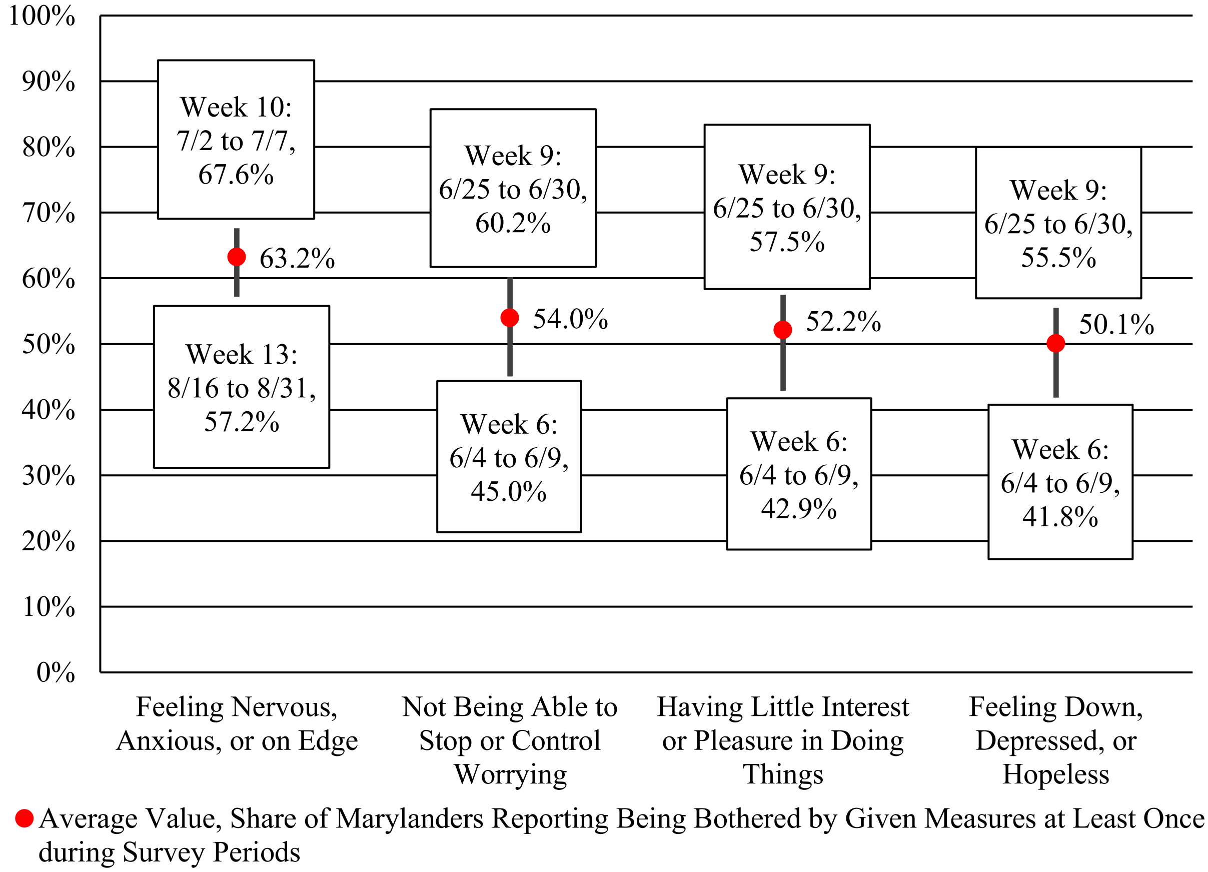
Other helplines in the State have also experienced an increase in call volumes in 2020. Here2Help, the behavioral health crisis hotline in Baltimore City, reported a more than 50% increase in call volumes for June (54% over June 2019), July (69% over July 2019), August (66% over August 2019), and September (59% over September 2019).

U.S. Census Bureau Household Pulse Survey

In April 2020, the census began conducting the Household Pulse Survey (HPS) to "provide timely data to help understand the experiences of American households" during the pandemic. HPS sampled American households weekly, either by phone or emailed survey. HPS asked four questions about the mental wellness of Americans – two addressing anxiety and two focusing on depression. **Exhibit 2** shows the average share of Marylanders responding that they have "been bothered by" certain prompts targeting anxiety or depression at least once in the reporting periods surveyed. Exhibit 2 also identifies the highest and lowest weeks and values in each measure.

To further understand the mental stress caused by the pandemic, the Department of Legislative Services examined individual reporting periods to observe differences throughout demographics sampled. Consistently, in each period analyzed, feelings of anxiety and depression were more frequent and common among younger Marylanders. Women also routinely expressed higher rates and frequency in these measures than men. The economic situation of Marylanders also impacted their reported mental health and wellbeing. Those respondents whose households had experienced a loss in employment income and lower income households consistently reported more frequent markers of anxiety and depression as surveyed.

Exhibit 2
Share of Marylanders Reporting Measures of Anxiety and Depression during COVID-19

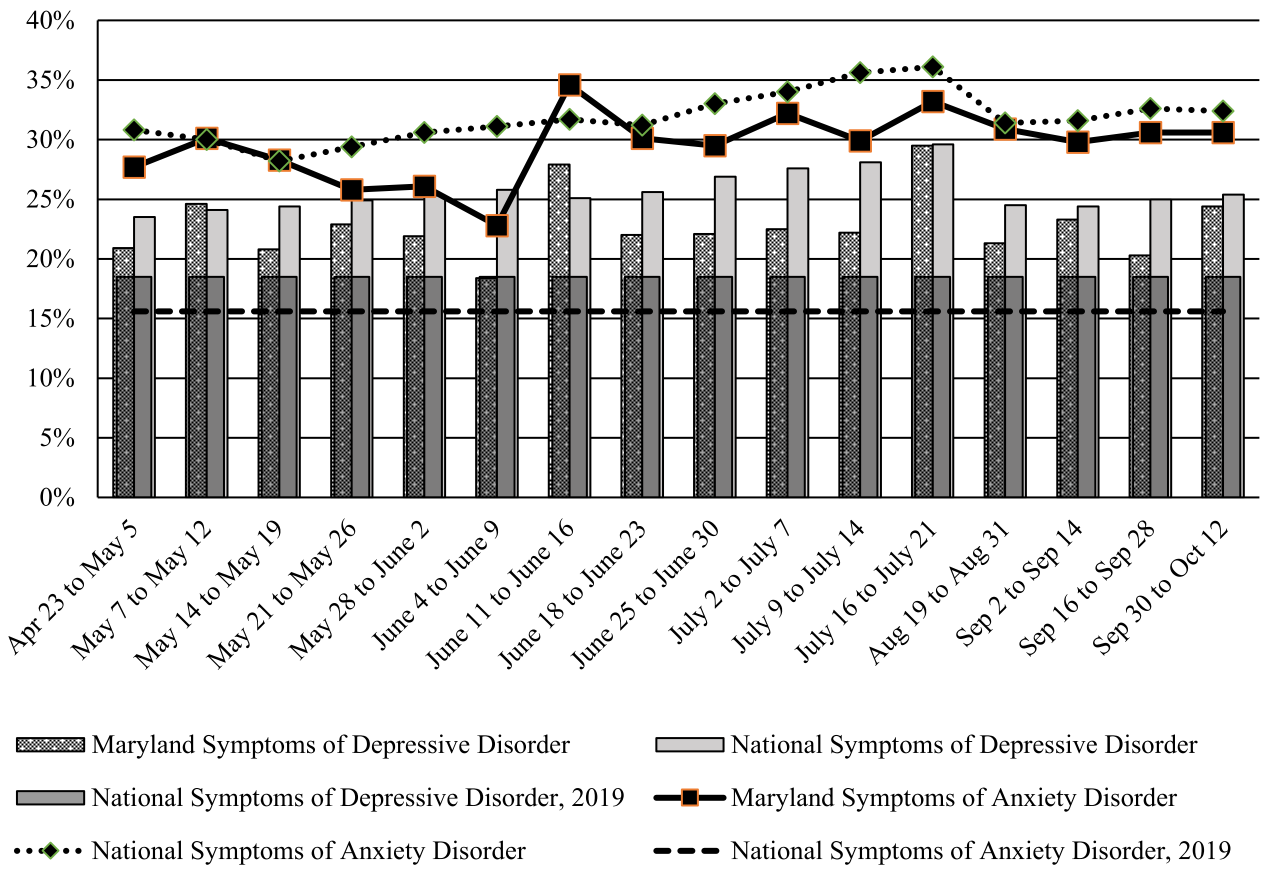


Source: U.S. Census Bureau; Department of Legislative Services

Depression and Anxiety in Maryland versus National Trends

Other national outlets and federal agencies have been working to provide insight into how COVID-19 has impacted behavioral health. The measures of depression and anxiety asked in HPS were adapted from the CDC's National Health Interview Survey (NHIS). With the information gathered through HPS, CDC was able to identify rates of individuals in Maryland and nationwide experiencing symptoms of anxiety and depression. **Exhibit 3** shows the national rates for those displaying symptoms of anxiety disorder and depressive disorder in each of the HPS reporting periods, compared to Maryland.

Exhibit 3
Symptoms of Anxiety and Depression
Maryland and Nationwide during COVID-19



Source: Centers for Disease Control; U.S. Census Bureau; Department of Legislative Services

As a point of reference, Exhibit 3 overlays NHIS rates of anxiety and depression found in the 2019 survey at 15.6% and 18.5%, respectively. CDC and HPS data clearly show that the figures for 2020, both in Maryland and nationwide, well exceed the 2019 marks in the wake of the COVID-19 pandemic. As seen in Exhibit 3, Maryland generally tracked the same, directionally as the nation, although often with lower rates in both measures.

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COVID-19

Impact of COVID-19 on State Transportation

The COVID-19 pandemic has had a number of significant impacts on the revenues, expenditures, and operations of State transportation systems. Reduced travel by all modes of transportation is translating into lower revenue attainment, and the reduction in demand has led to reduced service levels for most modes.

Federal Aid

As shown in **Exhibit 1**, the Maryland Department of Transportation, the Maryland Transit Administration (MTA), the Maryland Aviation Administration (MAA), local airports, and the Washington Metropolitan Area Transit Authority (WMATA) have each received aid from the federal government through the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Maryland Port Administration (MPA), the Motor Vehicle Administration (MVA), and the Maryland Transportation Authority (MDTA) are not independently eligible for aid from the CARES Act. However, because departments of transportation are units of state government, MPA, MVA, and MDTA are eligible for a portion of the $150 billion made available to state and local governments under the CARES Act.

Exhibit 1
CARES Act Transportation Aid
($ in Millions)

Agency/Transportation Mode	Funds Received
Maryland Transit Administration	$392
Maryland Department of Transportation (MDOT)	$151.3 for locally operated transit systems $23.5 for MDOT operations
Washington Metropolitan Area Transit Authority	$876.8
Maryland Aviation Administration	$87.6 for Baltimore-Washington International Thurgood Marshall Airport and Martin State Airport
Local Maryland Airports	$20.1

CARES: Coronavirus Aid, Relief, and Economic Security

Source: Department of Legislative Services

Transportation Trust Fund

Motor fuel taxes (MFT) are the largest revenue source for the Transportation Trust Fund (TTF). MFT revenue attainment is influenced by the number of gallons of gasoline sold and the price of gasoline. Personal travel nationwide for the week of March 23, 2020, decreased by 44% compared to the week of February 22, 2020 (before the pandemic was officially declared). Trucking was also down for this same time period, although not to the degree seen with personal travel. Overall, the decline in road traffic for the week of March 23 compared to the week of February 22 was approximately 38%. Meanwhile, gas prices remain low, and reduced demand will likely continue to contribute to low gas prices.

The vehicle titling tax and the corporate income tax are both influenced by the strength of the economy. Rising unemployment and a likely recession will almost certainly lead to reduced attainment in both of these sources, although the magnitude is uncertain at this point in time.

For additional information on the impacts of COVID-19 on the TTF, see the section "Transportation Trust Fund Overview" within Operating Budget of this *Issue Papers of the 2021 Legislative Session*.

Maryland Aviation Administration

Passenger airline travel, which supports MAA-earned revenues, has seen a dramatic decline. On March 31, 2020, the Transportation Security Administration screened just over 146,000 passengers at U.S. airports, a 94% decline from the 2.4 million passengers screened at U.S. airports on the same day in 2019. Passenger traffic at Baltimore-Washington International Thurgood Marshall Airport (BWI Marshall Airport) has rebounded faster than other airports in the Washington, DC region. BWI Marshall Airport received more than 50% of the region's air passengers in both June and July 2020, though passenger counts still reflect a more than 60% decrease from the same period in 2019.

MAA operates BWI Marshall Airport, which has remained open throughout the COVID-19 state of emergency. MAA has taken actions to contain the spread of COVID-19 at BWI Marshall Airport, including restricting access to BWI Marshall Airport to ticketed passengers and employees with badges and requiring that masks be worn throughout the airport. All airline partners at BWI Marshall Airport also require masks during ticketing, boarding, and flights. As of October 2020, all of these restrictions remain in place.

Maryland Port Administration

MPA derives revenue from cargo traffic at the publicly owned marine terminals at the Port of Baltimore. Declines in cargo traffic globally are likely to impact the revenue produced by cargo traffic at the Port of Baltimore.

MPA has continued operations at the Port of Baltimore throughout the COVID-19 state of emergency. Ports America Chesapeake, the company that operates the Seagirt Marine Terminal, has been adjusting Seagirt gate hours due to lower international container volumes. The other five public marine terminals at the Port of Baltimore (Dundalk, Fairfield, Masonville, North Locust Point, and South Locust Point) continue to operate with normal hours.

State Highway Administration

The State Highway Administration (SHA) has continued its operations during the COVID-19 state of emergency. To protect the safety of its workforce, SHA has instituted social distancing and screening procedures in its facilities.

Maryland Transit Administration

MTA has continued to operate buses, light rail, and metro subway during the COVID-19 state of emergency. However, ridership declines in these systems resulting from the stay-at-home order, and social distancing practices will significantly reduce fare revenue received by MTA. Any long-term changes in commuter habits brought on by COVID-19 might have long-running impacts on MTA revenues.

MTA has taken steps to enhance its cleaning practices to help ensure the safety of employees and transit users, including daily disinfecting of vehicles; additional midday wipe downs for light rail and metro subway; and daily disinfecting of high touch surfaces in stations. As of October 2020, several MTA services are operating on modified schedules due to the impacts of COVID-19, including changes to local bus routes, Maryland Area Regional Commuter trains, and commuter bus routes.

Motor Vehicle Administration

MVA suspended many of its revenue-generating operations for a short period of time at the beginning of the state of emergency to support measures to combat COVID-19. These suspensions included performing emissions tests; processing vehicle registrations; and issuing business licenses, drivers' licenses, and ID cards. However, MVA continued operations even during the closure and was able to process more than 740,000 transactions. As of October 2020, MVA facilities, including Vehicle Emissions Inspection Program stations, are open with social distancing measures in place that limit the number of customers in each facility at any given time.

Washington Metropolitan Area Transit Authority

Over the course of the pandemic, daily ridership on Metrorail has been down as much as 93% compared to the equivalent calendar day a year earlier. Metrobus ridership has also been down during the pandemic by as much as 82% compared to 2019. Significant reductions to fare revenue are expected. Any long-term changes in commuter habits brought on by COVID-19 might have long running impacts on WMATA revenues.

Maryland Transportation Authority

Toll revenues comprise the largest revenue stream for MDTA. Commuter traffic losses resulting from the pandemic could range from 50% to 60%. This decline in traffic would have substantial impacts on toll revenue. Additionally, the recession might lead customers to seek alternative routes that do not include tolls due to financial pressure on household budgets.

In an effort to eliminate contact at toll plazas, MDTA made all-electronic tolling permanent at all facilities across the State. As of October 2020, E-ZPass customer service centers at MDTA toll facility buildings are open with limited capacity of only two customers allowed in at a time. Additionally, both employees and customers are required to wear face coverings while in the center.

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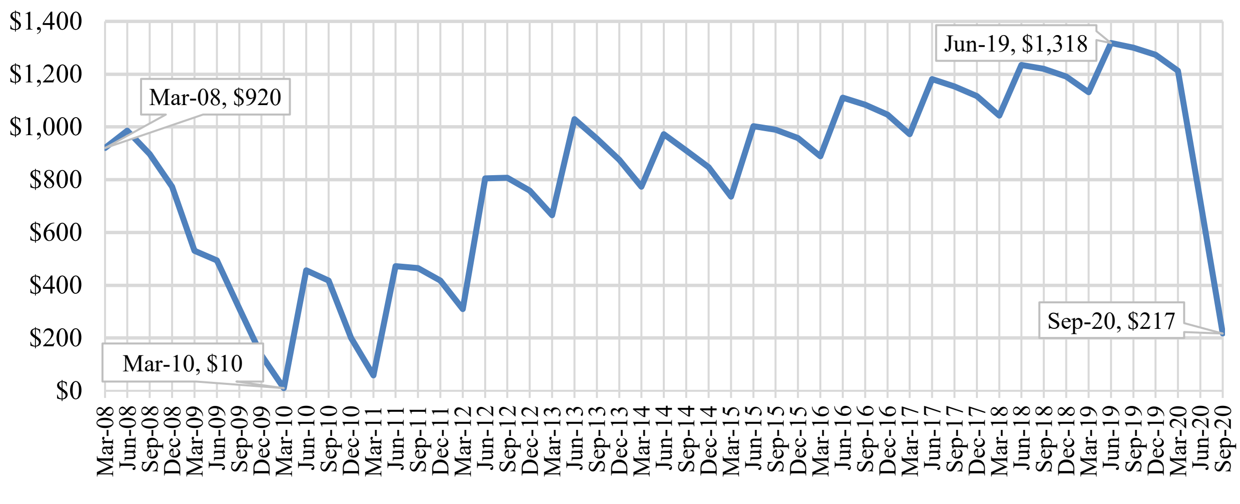
Unemployment Insurance – Employers

The Unemployment Insurance Trust Fund will be largely depleted by the end of 2020; the Maryland Department of Labor has been approved to borrow up to $300.0 million from the federal government to get through the year. As a result, employers will likely experience significant increased State unemployment insurance taxes beginning in 2021 and continuing until the trust fund is replenished. Work sharing is an option for an employer to reduce employees' hours but maintain employment.

State Trust Fund Depleted by Record Unemployment Insurance Claims

The State's Unemployment Insurance Trust Fund (UITF) balance has fallen precipitously from its recent high of $1.3 billion, far outpacing the drop experienced during the Great Recession, as shown in **Exhibit 1**. The $1.4 billion in payments made from March through September 2020 has nearly depleted the trust fund, requiring the State to seek authorization to borrow up to $300.0 million to get through the year. These payments are distinct from those made under expanded federal programs, which are entirely federally funded and do not affect the UITF. For more information on claims and benefit payments, see the section "Unemployment Insurance – Claimants" within COVID-19 of this *Issue Papers of the 2021 Session.*

Exhibit 1
Trust Fund Balance, March 2008 to September 2020
($ in Millions)



Source: Department of Legislative Services; U.S. Department of the Treasury

Overview of State Unemployment Insurance Taxes

Unemployment insurance (UI) is administered and funded through a federal-state partnership. Funding for each state program is provided by employers through UI taxes paid to both the federal government for administrative and other expenses and to the states for deposit in their UI trust funds. Most Maryland employers pay State UI taxes, although State and local governments and some nonprofit organizations reimburse UITF for claims paid in lieu of paying taxes. Therefore, for most Maryland employers, the State UI tax rate is a function of:

- the employer's specific unemployment claim history; and
- the applicable tax table, which is based on the State's UITF balance and applies to most taxable employers.

The typical process is as follows. On July 1 each year, an employer's benefit ratio is calculated based on the relative amount of UI claims in the three immediately preceding fiscal years. More specifically, the benefit ratio is the sum of the benefits charged to an employer's account (*i.e.,* the amounts paid to unemployed individuals) divided by the employer's taxable wages during that time. Taxable wages are defined as the first $8,500 earned by each covered employee in a calendar year. The benefit ratio is then applied to the tax rate table, which is determined by measuring the adequacy of UITF to pay benefits, to determine an employer's tax rate. Taxes are billed quarterly.

Exhibit 2 shows the range of State UI taxes a typical employer owes based on the tax table in effect; there are other rates for new employers or employers who did not file quarterly tax and wage reports.

Legislation Passed in 2016 Requires the State to Maintain Higher Tax Rates for Longer

Generally, the tax table determination is made September 30 each year for the upcoming year and is based on the UITF balance as a percentage of taxable wages in the State. However, Chapter 337 of 2016 requires federal solvency guidelines to be met before the State moves to a tax table with lower rates. Put another way, under existing State law, once the State moves out of Table A and into Table F, it will not move to any other tax table until the UITF balance meets federal solvency guidelines, even if it would otherwise do so. At the time of passage, the Administration indicated the UITF balance necessary to meet the federal solvency guidelines was about $1.5 billion; however, the guidelines are based in part on the highest annual amounts of benefits paid and are therefore subject to change due to the effects of COVID-19 on the economy.

Exhibit 2

Tax Tables and Applicable Employer Tax Rates

	As of Sept 30, If the Trust Fund Balance, As a Percentage of Taxable Wages		Trust Fund Balance ($ in Millions)*		Then Next Year's Tax Rates Range From…			Annual Tax Per Employee (Rate x $8,500)*		
Tax Table	**Exceeds**	**Up to**	**Exceeds**	**Up to**	**No Claims**	**Single Claim***	**Up to**	**No Claims**	**Single Claim***	**Up to**
A	5.00%	N/A	$995.8	N/A	0.30%	0.60%	7.50%	$25.50	$51.00	$637.50
B	4.50%	5.00%	$896.2	$995.8	0.60%	0.90%	9.00%	$51.00	$76.50	$765.00
C	4.00%	4.50%	$796.6	$896.2	1.00%	1.50%	10.50%	$85.00	$127.50	$892.50
D	3.50%	4.00%	$697.1	$796.6	1.40%	2.10%	11.80%	$119.00	$178.50	$1,003.00
E	3.00%	3.50%	$597.5	$697.1	1.80%	2.60%	12.90%	$153.00	$221.00	$1,096.50
F	0.00%	3.00%	$0.0	$597.5	2.20%	3.10%	13.50%	$187.00	$263.50	$1,147.50

Note: Fund balance threshold dollar amounts are based on the 2020 taxable wage base and are subject to change each year. A "single claim" represents the tax rate applicable to the lowest possible rate associated with nonzero (.0001 to .0027) benefit ratios. Taxes are applied to the first $8,500 earned by each employee, each year; compensation less than that amount reduces taxes owed accordingly. Table F is assumed to be in effect in 2021; Table A had been in effect since 2016.

Source: Department of Legislative Services

Substantial Increases to Employer Taxes Likely in 2021

An employer's State UI taxes in 2021 will be based on the employer's claims history and taxable wages for the three fiscal years ending June 30, 2018, 2019, and 2020. Those factors will be used to determine a specific benefit ratio for the employer. That benefit ratio will be applied to the tax table in effect in 2021 to determine a specific tax rate within the allowable range. Based on the UITF balance as of September 30, 2020, it is assumed that Table F will be in effect in 2021. The first quarterly tax payment is due April 30, 2021. It is important to note that while taxes are due quarterly, only the first $8,500 in wages paid per year are taxed; for many employers, the first quarter is the largest amount owed.

Using the information in Exhibit 2, an employer with no claims history for the past three years will see an increase in State UI taxes from $25.50 per employee to $187.00 per employee – a more than seven-fold increase – as a result of the likely move from Table A in 2020 to Table F in 2021. Further, as discussed above, employer taxes are also affected by the employer's claim history. For example, if that same employer were to instead have one modest claim in March-April 2020, the employer's taxes would be at least $263.50 per employee.

Benefit Charge Waiver Remains an Option for Taxable Employers

Under State law, the Secretary of Labor may waive the benefit charges against the earned rating record of an employer during a state of emergency if the benefits are paid to the claimant during a period in which the claimant is temporarily unemployed because the employer shut down due to a natural disaster. The Administration has indicated that COVID-19 qualifies as a natural disaster for the purposes of this waiver, but that applications for waivers would be evaluated on a case-by-case basis. As the provision only applies to benefit charges (and therefore employer taxes) it does not affect employers who elect to reimburse UITF in lieu of paying taxes. As discussed above, reducing benefits charges reduces the tax rate applicable to an employer within that year's tax table.

Effects of Expanded Federal Unemployment Insurance Programs

Under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, three new temporary programs greatly expanded the eligibility for and the amount of unemployment benefits available to various types of workers. For more information on these programs, see the section "Unemployment Insurance – Claimants" within COVID-19 of this *Issue Papers of the 2021 Session.* The CARES Act also provided relief to reimbursing employers in the form of a 50.0% credit for benefits paid through 2020. The CARES Act programs are 100.0% federally funded and do not affect the UITF balance or employer taxes.

Work Sharing Remains an Option for Employers to Reduce Hours but Maintain Employment

The State has adopted an optional Short-Time Compensation Program, more commonly known as Work Sharing, as allowed under federal law. Maryland employers who participate in Work Sharing can retain employees by temporarily reducing the hours of work, within a range of 20.0% to 50.0%, among employees within an affected unit. Federal law is more permissive than State law in this case: the allowable federal range is 10.0% to 60.0%. The employees with reduced work hours receive partial UI benefits – the same percentage as the hourly reduction – to supplement lost wages. For example, an employer could reduce hours by 20.0%, and then those affected employees would be entitled to 80.0% of their normal earnings, plus 20.0% of their UI benefit. Work Sharing benefits are 100.0% federally funded under the CARES Act in 2020.

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COVID-19

Unemployment Insurance – Claimants

Tasked with implementing several new federal programs in the midst of an ongoing systemwide modernization effort and unprecedented claims volume, the Maryland Department of Labor encountered significant administrative challenges in processing a large number of unemployment claims. Many claimants experienced substantial difficulties in reaching a representative of the department and receiving benefit payments. The department has undertaken a number of steps to fully modernize the web portal, increase staffing, and improve the overall experience of claimants and employers as the COVID-19 pandemic continues.

Recent State and Federal Enhancements to Unemployment Insurance

State Legislation Expands Eligibility to Affected Employees

Consistent with guidance offered by the U.S. Department of Labor, the Maryland General Assembly passed legislation during the final days of the 2020 session (Chapters 13 and 14 of 2020) that authorized the Secretary of Labor to determine that an individual is eligible for unemployment insurance (UI) benefits if: (1) the individual's employer temporarily ceases operations due to COVID-19, preventing employees from coming to work; (2) the individual is quarantined due to COVID-19 with the expectation of returning to work after the quarantine is over; or (3) the individual leaves employment due to a risk of exposure or infection of COVID-19 or to care for a family member due to COVID-19. An individual need not separate from the individual's employment to be eligible for benefits.

Federal CARES Act Expands Eligibility, Amount, and Duration of Benefits

On March 27, 2020, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act became law. Under the Act, various workers became eligible for unemployment benefits, gained access to additional benefits (in the form of a $600 supplement to the weekly benefit) or extended benefits (based on a 13-week extension), or both under three new temporary programs that work in tandem. First, the Pandemic Unemployment Assistance (PUA) program covered individuals who are typically ineligible for regular unemployment benefits and who cannot work due to COVID-19. These individuals include those who are self-employed, independent contractors, or gig workers or who meet other specified criteria. Second, the Federal Pandemic Unemployment Compensation Program increased the standard $430 maximum weekly benefit amount for UI benefits by $600, totaling a maximum of $1,030 for benefit weeks ending on or before July 31, 2020. The $600 add-on lapsed on that date. Third, the Pandemic Emergency

Unemployment Compensation (PEUC) program extended the timeframe within which a worker may receive unemployment benefits from 26 weeks to 39 weeks. The State is required to provide flexibility in the requirements that an individual be able and available to work and actively seeking work if the individual is unable to meet the requirements because of COVID-19. The Act further established additional provisions for "reimbursing employers" like nonprofit organizations and local governments to provide them with flexibility and support.

Lost Wages Assistance Program Provides $300 Supplement to Claimants

On August 8, 2020, President Donald J. Trump issued an executive order that established the Lost Wages Assistance (LWA) Program, which required the Federal Emergency Management Agency to assist in providing benefits from the Disaster Relief Fund and called upon the states to use their Coronavirus Relief Fund allocation "to bring continued financial relief to Americans who are suffering from unemployment due to the COVID-19 outbreak." The order specifically authorized a $300 add-on for claimants eligible for at least $100 in unemployment compensation. The add-on provided retroactive federal benefits for the six-week period covering the weeks ending August 1 through September 5, making the maximum add-on $1800 per claimant.

Changes to Law Required Retooling of State UI Program

The new eligibility standards under State and federal law described above required an overhaul of the State's UI program, which included staff hiring and retraining, reprogramming of the online portal, and changes to the claims management process. Although some of the federal programs streamlined the eligibility verification process – the Maryland Department of Labor cited PUA and PEUC as falling into this category – the differentiation among programs added to the complexity of the scenario.

Implementation Challenges

Claims Volume

Tasked with implementing the federal programs in the midst of an ongoing systemwide modernization effort and unprecedented claims volume, the department encountered significant challenges in processing a large number of claims. For context, in the first eight weeks that the pandemic affected the State, the department received more than double the total number of claims that it received throughout the entire previous year. In September, the department reported that it had processed more new claims since March than in the previous three years combined. Prior to March 9, 2020, the department received an average of 2,000 claims per week; in the first few months following March 9, the weekly average was more than 60,000 claims. For several weeks, the volume reached 100,000 claims per week. By comparison, during the Great Recession the department received a maximum of 6,000 claims per week.

System Modernization

In September 2020, the department completed a multi-year modernization effort to replace its aging mainframe computer systems – developed in the 1980s and 1990s – and facilitate greater self-service for claimants and employers. Fiscal 2020 was expected to be the final year of funding for the project, but the completion date was delayed from May to September due in part to the COVID-19 pandemic.

Before the fully modernized, integrated system launched in September, the department made available an intermediary platform, the "BEACON One Stop Application." BEACON One Stop was designed to allow claimants – including those who are eligible for the PUA program, the PEUC program, and individuals who were previously required to file by phone – to file claims for many unemployment benefit programs through a single application. The system crashed the day that it went live (April 24), prompting many claimants to repeatedly attempt to access the system and contact the department without success. For weeks after its launch, BEACON One Stop continued to present access problems for claimants, which were compounded by many claimants' inability to reach a representative of the department by phone or email.

"BEACON 2.0," the final phase of the multi-year modernization effort, launched for claimants on September 20 and for employers on September 21. The launch followed a planned outage in which BEACON One Stop was taken offline from September 16 at 5:00 p.m. to September 20 at 12:01 a.m. to convert data from the legacy system. The federal funds for modernization expired on September 30. The new system integrates all benefits, appeals, tax, and reemployment functions of the unemployment insurance system into a fully cloud-based system that allows employers and claimants to conduct nearly all activities online.

Delays in Benefit Payments and Other Administrative Issues

The extraordinary unprecedented claims volume, changes in eligibility standards, overloaded call centers, and technological glitches contributed to a backlog of unemployment applications that affected hundreds of thousands of Marylanders. The department, in partnership with the U.S. Attorney's Office and the U.S. Department of Labor, also uncovered and managed a widespread fraud scheme that involved tens of thousands of fraudulent claims. In July, the department reported finding more than 47,500 fraudulent claims totaling over $501 million. Implementing program integrity measures contributed to the load placed on staff for the Division of Unemployment Insurance. Many other issues stemmed from claimants' inability to reach a representative to ask questions about topics such as eligibility, error messages on the web portal, claim status, the weekly certification process, Bank of America debit cards, and benefit amounts.

To address these and other issues, the department hired hundreds of additional staff and accepted State employees from other agencies. The department also expanded call center hours to cover all seven days, modified various aspects of the online claims management process, established several dedicated email addresses, and created a system for legislators to submit constituent concerns. These measures were designed to better prepare the State for future increases in COVID-19-related layoffs.

As an example of the claims volume and the related issues it created, on May 13, the department reported that it had received a total of 494,728 new claims since March 9, which presented 931,772 individual issues that could only be resolved through manual review and adjudication. Of the total number of claims, 66% had been paid, 7% had been denied, and 27% were "pending adjudication." Claims "pending adjudication" require follow-up from department staff, which presented challenges due to the constraints placed on the system. As of September 17, the department indicated that approximately 96% of all complete claims had been processed and approximately 4% of cases were "pending adjudication," which was consistent with pre-pandemic rates.

As an example of the type of procedural issues that claimants have faced, in order to receive the LWA $300 add-on, a claimant was required to (1) complete a one-time self-certification that the person was unemployed or partially unemployed due to disruptions caused by COVID-19 and (2) be eligible for at least $100 of unemployment compensation under any of the UI programs that the State administers. The department began allowing claimants to self-certify for the $300 add-on payments on September 11, less than a week before the scheduled outage for the new web portal. This self-certification was in addition to the weekly claim certification that claimants are required to file in order to continue receiving benefits. If a claimant filed the regular, weekly claim certification on Sunday, Monday, Tuesday, or Wednesday of that week before the outage, the claimant's benefit payment should not have been interrupted. If a claimant was unable to file a claim certification during that time period, however, benefit payment could have been interrupted until the claimant filed during a six-day grace period the following week and received benefits retroactively.

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COVID-19

State and Federal Grant and Loan Programs

Maryland businesses benefited from both federal and State grant and loan programs designed to provide relief during the COVID-19 pandemic. Federal programs provided more than $13.0 billion to Maryland businesses, nonprofits, and other entities, and State programs provided more than $490.0 million to these entities.

Federal Assistance Programs

In response to the COVID-19 pandemic, the federal government implemented three programs to provide economic relief to the nation's businesses: the Paycheck Protection Program (PPP); the Employee Retention Credit (ERC); and the Economic Injury Disaster Loan (EIDL) program. While each of these programs is quite complex depending on the individual circumstances of a business, a general overview of each is provided below.

Paycheck Protection Program

PPP was established by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 and later expanded by the Paycheck Protection Program Flexibility Act. It is a no-fee small business loan program implemented by the Small Business Administration (SBA) with support from the U.S. Department of the Treasury; these loans are forgivable under certain circumstances. The Department of the Treasury defines a "small business" as any business with 500 or fewer employees or that is considered a small business concern under federal law. In addition to traditional types of businesses, other entities eligible for a loan under the program included nonprofits, veterans' organizations, tribal concerns, self-employed individuals, sole proprietorships, and independent contractors. Nationwide, the program made 5.2 million loans totaling $525.0 billion. In Maryland, 87,007 businesses received loans totaling $10.1 billion.

PPP provided small businesses with funds to pay up to 24 weeks of payroll cost, including benefits. Small businesses that received funds under the program are permitted to use up to 40% of those funds to pay, among other expenses, interest on mortgages, rent, and utilities. Applications for small businesses and sole proprietorships opened on April 3, 2020, and applications for independent contractors and self-employed individuals opened on April 10, 2020. The application period closed on August 8, 2020.

The loans have a 1.0% interest payment and mature after either two years or five years, depending on when the application was made. The loans may be fully or partially forgiven if the proceeds are used for eligible purposes. Additional conditions for forgiveness include maintaining the number of employees and maintaining not less than 75.0% of total salary. SBA authorized employers to rehire any employees who were terminated or furloughed and reinstate any pay that decreased by more than 25.0% to meet the requirements of forgiveness, if those changes in employment were made because of the COVID-19 pandemic during a specific period.

Employee Retention Credit

ERC is a tax credit against an employer's share of Social Security taxes equal to 50.0% of qualified wages paid to employees between March 13, 2020, and the end of the calendar year. The amount of the credit is capped at $5,000 per employee. The credit includes qualified health care expenses paid by the employer and is fully refundable (meaning if the value of the credit exceeds the taxes owed, then the employer receives the difference). The credit is available to employers, including tax-exempt employers, that fully or partially suspended operations in 2020 because of government orders to limit activity due to COVID-19 or that experienced a significant decline in gross receipts (*i.e.*, less than 50.0% of gross receipts over the same time period in 2019). Unlike PPP, ERC is available to an employer regardless of the size of the business. An employer that received a PPP loan is not eligible for the tax credit. Since the credit is taken against Social Security payments made by the employer, there should be no impact on Maryland revenues resulting from the credit.

The Economic Injury Disaster Loan Program

In order to mitigate the economic impact of COVID-19, the federal government expanded eligibility for the EIDL program. Administered by SBA, the program provides loans to small businesses, nonprofit organizations of any size, and agricultural businesses with 500 or fewer employees to relieve temporary losses in revenue due to the pandemic. These 30-year loans have an interest rate of 3.75% for businesses and 2.75% for nonprofits. Repayment is deferred for 1 year at the election of the borrower, and there is no prepayment penalty or fee. Unlike PPP, EIDL remains open for applications and is not a forgivable loan. While a business may participate in both the PPP and the EIDL programs, any funds received may not be used for the same purposes. As of October 19, 2020, nationwide, the EIDL program issued 3.6 million loans worth $192.0 billion. In Maryland, as of September, 64,855 businesses have received loans totaling $3.4 billion.

State Assistance Programs

The State implemented several programs using federal funds and the State's Rainy Day Fund to support businesses during the COVID-19 pandemic. The largest of these programs are the COVID-19 Emergency Relief Grant and Loan Programs in the Maryland Department of Commerce (Commerce). These and other State relief programs are described below.

COVID-19 Emergency Grant and Loan Programs

In March 2020, Commerce established the COVID-19 Emergency Grant and Loan Programs to assist businesses with fewer than 50 employees. Both programs were initially funded using flexible federal funds from the CARES Act. The grant program was allocated $103.0 million in federal funding ($50.0 million initially, and an additional $53.0 million announced at the end of June), while $75.0 million was allocated to the loan program. In October 2020, the Governor announced a third round of funding for the grant program, consisting of $50.0 million from the State's Rainy Day Fund. Businesses were eligible for up to a $50,000 loan, and businesses and nonprofits were eligible for up to a $10,000 grant. Of the additional funding provided for the grant program in June, $8.0 million was reserved for nonprofits. However, Commerce was able to fund all nonprofit grant applications with just under $6.0 million and transferred $2.0 million to the Department of Housing and Community Development for use in their nonprofit assistance program (discussed below). Under both the grant and loan programs, recipients may use the funding to support operating expenses, such as payroll, rent or mortgage payments, and utility expenses.

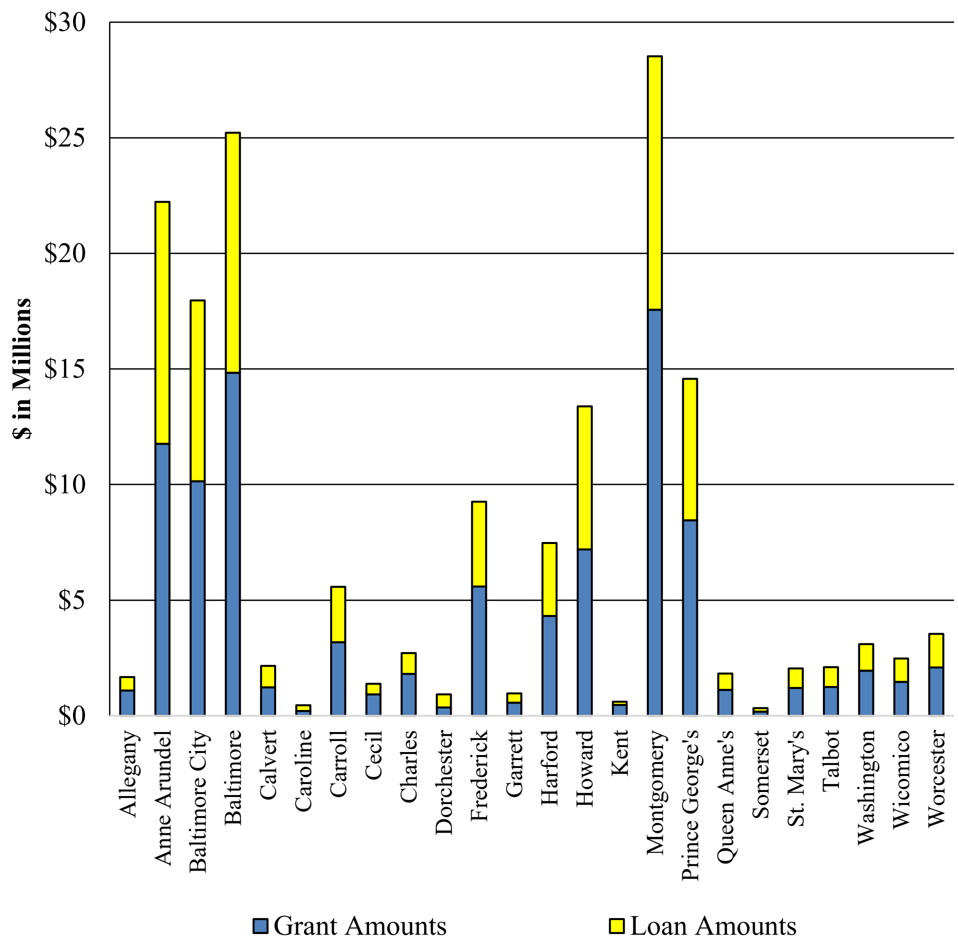
Applications for the programs opened on March 23, 2020, and closed on April 6. As of October 16, 2020, Commerce had awarded approximately $99.0 million in grants to more than 10,000 recipients and $71.6 million in loans to more than 1,500 businesses. The third round of funding announced in October will allow Commerce to make awards to all eligible businesses that applied for the grant program. **Exhibit 1** shows the grant and loan amounts awarded by county as of October 16.

Other State Programs

Business assistance provided by other State programs is summarized in **Exhibit 2**. Combined with the grant and loan programs discussed above, State programs provided a total of $391.0 million to support businesses and nonprofits during the pandemic. In addition, the Governor announced $100.0 million in additional funding from the Rainy Day Fund to establish an Emergency Rapid Response Fund that will be deployed to assist businesses as new needs arise.

Exhibit 1
Grant and Loan Awards by County

County	Grant Amounts	Loan Amounts
Allegany	$1,092,561	$578,300
Anne Arundel	11,770,288	10,458,029
Baltimore City	10,150,159	7,813,159
Baltimore	14,842,646	10,374,635
Calvert	1,226,114	930,000
Caroline	214,000	239,000
Carroll	3,181,693	2,398,850
Cecil	927,499	455,000
Charles	1,806,619	910,000
Dorchester	353,100	573,000
Frederick	5,591,432	3,674,700
Garrett	570,200	395,000
Harford	4,312,722	3,162,999
Howard	7,203,671	6,173,308
Kent	477,174	137,000
Montgomery	17,561,976	10,957,331
Prince George's	8,457,395	6,118,400
Queen Anne's	1,122,538	707,352
Somerset	180,000	150,000
St. Mary's	1,205,104	843,385
Talbot	1,242,900	867,000
Washington	1,947,842	1,148,357
Wicomico	1,461,823	1,020,345
Worcester	2,084,776	1,465,000
Total	**$99,034,232**	**$71,550,149**



Source: Department of Legislative Services

Exhibit 2
Other State Business and Nonprofit Assistance Programs

Program	Responsible Agency	Funding	Funding Sources	Description
Layoff Aversion Program	MDL	$30.0 million	$7.0 million from the CARES Act; $3.0 million from federal WIOA grants; $20.0 million from the Rainy Day Fund.	Grants of up to $50,000 to companies with fewer than 500 employees in order to mitigate potential layoffs; $10.0 million awarded to 445 companies as of October 2020.
MSBDFA	Commerce	$10.0 million	$5.0 million from the CARES Act; $5.0 million from the Rainy Day Fund.	Loans of $25,000 to $200,000 to economically and socially disadvantaged businesses; $5.0 million awarded to 65 companies as of October 2020.
Emergency Relief Manufacturing Fund	Commerce	$5.0 million	CARES Act	Grants of up to $100,000 to incentivize production of PPE; $3.7 million awarded to 52 businesses as of October 2020.
Emergency Arts Grants	Commerce	$7.0 million	$3.5 million from the CARES Act; $3.0 million from the Rainy Day Fund; $0.5 million in general funds from the Maryland State Arts Council.	First round grant awards: $869,318 awarded to 65 arts organizations; and $130,682 awarded to 60 independent artists. Second round grant awards: $1.0 million for county arts agencies; $435,000 for arts and entertainment district management agencies; and a further $1.6 million for grants to arts organizations and individual artists. The remaining $3.0 million has not been allocated as of October 2020.

Program	Responsible Agency	Funding	Funding Sources	Description
Restaurant Relief	Commerce	$50.0 million	Rainy Day Fund	Funding will be distributed through local jurisdictions to restaurants for expenses such as rent, cleaning services, PPE, and the purchase of equipment and services to expand outdoor dining capabilities; funds must be expended by December 31, 2020.
Hometown Tourism Program	Commerce	$2.0 million	Rainy Day Fund	Funding will be awarded to Destination Marketing Organizations to encourage visitors to frequent local stores, restaurants, and attractions.
Nonprofit Recovery Initiative	DHCD	$41.0 million	CARES Act	Grants of $5,000 to $50,000 to nonprofits engaged in the economic recovery, health and human services, and housing of underserved populations; $10.0 million was reserved for providers licensed by the Behavioral Health Administration or Developmental Disabilities Administration for grants of up to $75,000; $5.0 million, including the $2.0 million transferred from the Department of Commerce, will be used for grants of $75,000 to $500,000 to tourism nonprofits such as museums, cultural attractions, zoos, and aquariums.
Relief for Entertainment Venues	DHCD	$15.0 million	Rainy Day Fund	Grants of $75,000 to $500,000 to nonprofit and for-profit live music and performance venues as well as independently owned local movie theaters.

Program	Responsible Agency	Funding	Funding Sources	Description
Relief for Main Street Communities	DHCD	$5.0 million	Rainy Day Fund	Grants of $75,000 to $500,000 will be distributed to the 33 Maryland Main Street and 8 Baltimore City Main Street organizations to support businesses in these communities impacted by the pandemic; funds must be expended by April 30, 2021.
Total:		**$165.0 million**		

DHCD: Department of Housing and Community Development
MDL: Maryland Department of Labor
MSBDFA: Maryland Small Business Development Financing Authority
PPE: Personal Protective Equipment
WIOA: Workforce Innovation and Opportunity Act

Source: Department of Legislative Services

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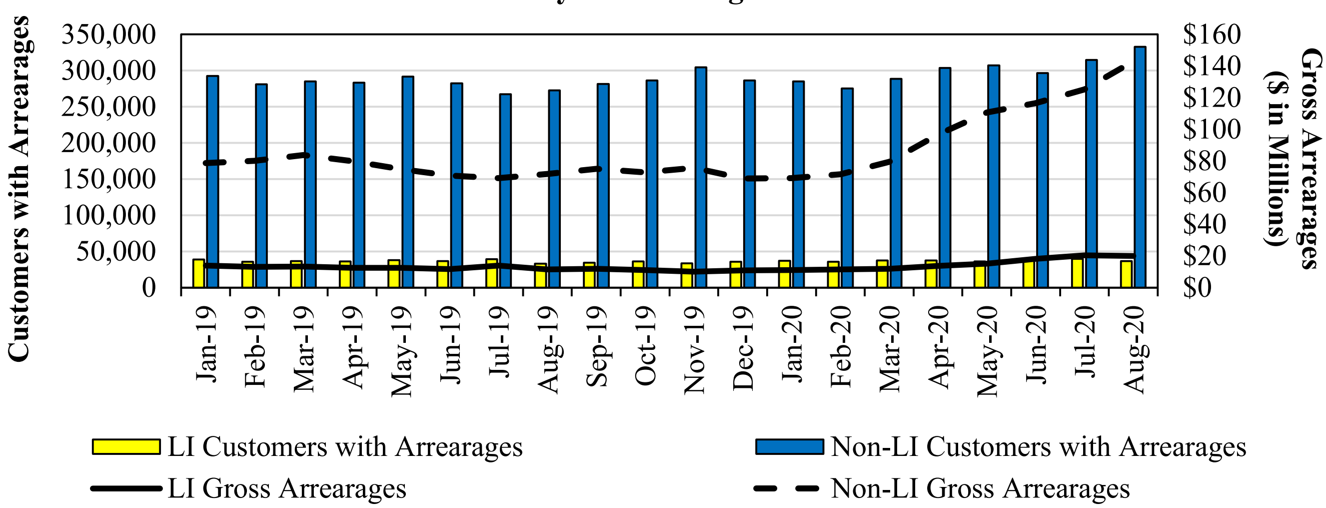
Energy Assistance Programs

Utility customer arrearages have increased substantially due to the economic pressures of COVID-19 and the related moratoriums on utility terminations. Recent data indicates that demand for energy assistance is now also on the rise. The Department of Human Services administers the State's four energy assistance programs, which provide bill payment and arrearage assistance through local administering agencies.

Customer Arrearage Trends

Customer arrearages owed to utilities have increased drastically in the wake of the COVID-19 economic recession and the related State-issued moratoriums on utility terminations, which expired October 1, 2020 (with utility service turn-offs starting November 15). As shown in **Exhibit 1**, while the number of customers with arrearages has risen, the gross amount owed has risen even more sharply due to an increase in the average amount owed per customer, particularly with respect to non-low-income customers.

Exhibit 1
Customers with Arrearages and Gross Arrearages for Select Utilities
January 2019 to August 2020



LI: low income

Note: Data is for Baltimore Gas & Electric, Delmarva Power, Potomac Electric Power Company, and Potomac Edison, which distinguish between low-income and non-low-income customer owed arrearages.

Source: Department of Legislative Services; Public Service Commission

More specifically, in August 2020, data reported by certain investor-owned utilities indicates that the number of customers with arrearages rose 10.6% year-over-year, while the number of non-low-income customers with arrearages rose 22.1%. Concurrently, arrearages per customer rose 57.1% for low-income customers and 63.2% for non-low-income customers. When combined, these trends result in gross arrearages that were 73.7% and 99.2% higher than the prior year for low-income customers and non-low-income customers, respectively.

Energy Assistance Programs

Overview

The Department of Human Services (DHS) Office of Home Energy Programs administers the State's energy assistance programs through local administering agencies (LAA). The LAAs are typically community action agencies, local government offices, or local departments of social services. The State offers four types of energy assistance:

- Electric Universal Service Program (EUSP) bill payment assistance (electricity only);
- EUSP arrearage assistance (electricity only);
- Maryland Energy Assistance Program (MEAP) bill payment assistance (heating source); and
- Natural Gas Arrearage Assistance.

Eligibility for these programs is determined by the same income threshold of 175% of the federal poverty level (FPL). For EUSP, this level is determined solely by State law. Federal rules set eligibility limit guidelines for Low Income Home Energy Assistance Program (LIHEAP) funded benefits (in Maryland, known as MEAP), but states can set their eligibility rules within those guidelines. The federal rules require the maximum income eligibility to be no lower than 110% of FPL, but no greater than 150% of FPL, or 60% of the State median income. Maryland uses the same eligibility guidelines for MEAP as it does for EUSP. This is possible because 60% of the State median income is more than 175% of FPL. With limited exceptions, a customer may receive arrearage assistance benefits only once every seven years.

In addition to the energy assistance programs administered by the State, various forms of arrearage assistance are provided by utilities. Following the recent increase in customer arrearages, some utilities have begun to offer additional payment plan options, and the Public Service Commission (PSC) has requested that utilities submit Arrearage Management Plans. Additional discussion of PSC-driven customer protections may be found in "Public Service Commission Initiatives" in the Business Regulation section of the *Issue Papers of the 2021 Session*. Notably, some PSC actions and arrearage management proposals by certain utilities are preconditioned on a customer's receipt of energy assistance from the State. This could drive up the use of State energy assistance programs.

Funding

Funding for the State's four energy assistance programs is provided through both State and federal sources. Federal LIHEAP funding is used primarily for MEAP and the natural gas assistance program, but it has also been used in some years to support the two EUSP programs. In general, the EUSP programs are funded primarily with State sources, specifically, (1) a ratepayer surcharge on electric customers and (2) the Strategic Energy Investment Fund (SEIF). DHS typically uses ratepayer surcharge funds for bill payment assistance and administrative expenses and uses SEIF funds for arrearage assistance. SEIF funds not needed for arrearage assistance are used for additional bill payment assistance.

Specific ratepayer surcharges are determined by PSC following the amounts authorized to be collected ($37 million annually) and provisions governing the collection of the surcharge in State law. As to SEIF funding, under State law, at least 50% of the revenue from the Regional Greenhouse Gas Initiative (RGGI) is dedicated to energy assistance. All revenues from RGGI are deposited in the SEIF. The revenue varies by year based primarily on the results of quarterly auctions. Between fiscal 2017 and 2020, due to programmatic changes, budgeting, and declining revenue during a portion of that time, SEIF spending for energy assistance decreased from $31.4 million to $19.9 million. In fiscal 2021, SEIF funding available for EUSP is budgeted at $19.9 million.

The amount of federal LIHEAP funds available each year is determined by the total federal appropriation and Maryland's share of the appropriation. This funding does not vary by the number of benefit recipients, meaning more recipients results in less funding per recipient. The recent three-year average funding for Maryland is approximately $80.2 million. In federal fiscal 2020, Maryland received $99.4 million, which includes $19.4 million available through federal stimulus legislation. DHS retained the federal stimulus funding, plus approximately $8.0 million of regular funding, for use in fiscal 2021. This funding is available due to the crossover between the federal and State fiscal year and allows the State to begin paying benefits before completion of the federal appropriation process. States are authorized to carry over 10% of LIHEAP funds between federal fiscal years. The funds from the stimulus legislation are available through September 30, 2021.

Application Trends

In early fiscal 2021, applications for energy assistance were below typical levels, continuing a trend that started during the Great Recession recovery; however, the trend appears to be moderating as the economic effects of COVID-19 continue. In a recent hearing before the House Economic Matters Committee, DHS reported that applications began to increase in late September. Consistent with this reported uptick, as shown in **Exhibit 2**, applications for the two bill payment assistance programs are approaching prior year levels, and applications for the two arrearage assistance programs already exceed those levels. Data on recipients does not yet reflect the higher application volume, likely due to application processing times; however, eligibility limitations based on the frequency of receipt may also impact the number of applicants for and recipients of EUSP arrearage assistance.

Exhibit 2
Energy Assistance Applications and Recipients
Fiscal 2020-2021 (through September in Each Year)

	2020	2021	Change	% Change
Applications				
MEAP	58,522	54,470	-4,052	-6.9%
EUSP Bill Payment	56,673	51,760	-4,913	-8.7%
EUSP Arrearage	16,761	18,381	1,620	9.7%
Gas Arrearage	9,785	11,330	1,545	15.8%
Receiving Benefits				
MEAP	34,363	23,165	-11,198	-32.6%
EUSP Bill Payment	32,818	24,076	-8,742	-26.6%
EUSP Arrearage	4,038	2,275	-1,763	-43.7%
Gas Arrearage	2,935	1,132	-1,803	-61.4%
Average Benefit				
MEAP	$559	$472	-$87	-15.6%
EUSP Bill Payment	$493	$457	-$36	-7.3%
EUSP Arrearage	$794	$870	$76	9.6%
Gas Arrearage	$652	$644	-$8	-1.2%

EUSP: Electric Universal Service Program
MEAP: Maryland Energy Assistance Program

Source: Department of Legislative Services; Department of Human Services

Significant outreach is underway in advance of the beginning of the window for utility terminations. Based on information received regarding calls to the 2-1-1 information line, interest in energy assistance has increased as the potential for the end of the utility termination moratorium has neared. Calls related to utility assistance, compared to the same month in the prior year, were higher in each month from July through September 2020, after being substantially below the prior year volume since March. As a result, the expectation is that applications will continue to increase in coming months.

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COVID-19

Leave and Workplace Safety

The onset of the COVID-19 pandemic has brought issues of leave access and workplace safety to the forefront of public consciousness. State and federal law provide for various protections and categories of leave for workers impacted by COVID-19, although most of the measures are temporary.

Leave Available Due to COVID-19

State and federal laws establish several job protections and categories of leave for employees who need to take time off for COVID-19-related reasons. The Maryland Healthy Working Families Act provides sick and safe leave at the State level, while the Federal Families First Coronavirus Response Act (FFCRA) provides paid sick leave and family and medical leave at the federal level. Chapters 13 and 14 of 2020, emergency legislation passed by the General Assembly in response to the pandemic, do not establish leave but instead authorize the Governor to prohibit an employer from terminating an employee solely on the basis of the employee being required to self-isolate or quarantine.

Maryland Healthy Working Families Act

The Maryland Healthy Working Families Act requires an employer with 15 or more employees to have a sick and safe leave policy under which an employee earns at least 1 hour of paid sick and safe leave, at the same rate as the employee normally earns, for every 30 hours an employee works. An employer with 14 or fewer employees, based on the average monthly number of employees during the preceding year, must at least have a sick and safe leave policy that provides an employee with at least 1 hour of unpaid sick and safe leave for every 30 hours an employee works. An employer is not required to allow an employee to earn or carry over more than 40 hours of earned sick and safe leave in a year, use more than 64 hours of earned leave in a year, accrue more than 64 hours at any time, or use earned sick and safe leave during the first 106 calendar days that the employee works for the employer. An employee is eligible to use sick and safe leave under specified circumstances, including to care for or treat the employee's mental or physical illness, injury, or condition; to obtain preventive medical care for the employee or employee's family member; and to care for a family member with a mental or physical illness, injury, or condition. Several of the authorized reasons for taking leave align with potential usage needs during the pandemic. An employer may not require an employee to exhaust leave provided under the Maryland Healthy Working Families Act before taking leave granted under the FFCRA.

Families First Coronavirus Response Act

The FFCRA helps combat the workplace effects of the pandemic by reimbursing, in the form of tax credits, private employers with fewer than 500 employees for the cost of providing employees with paid leave taken for specified reasons related to COVID-19. Small businesses with fewer than 50 employees may qualify for an exemption from the requirement to provide leave due to school closings or the unavailability of child care if the leave requirements would jeopardize the viability of the business as a going concern. The U.S. Department of Labor's Wage and Hour Division administers the paid leave portions of the FFCRA. The FFCRA requires certain employers to provide their employees with paid sick leave under the Emergency Paid Sick Leave Act (EPSLA) and expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act (EFMLEA) for specified reasons related to COVID-19. These provisions apply from April 1, 2020, through December 31, 2020. The FFCRA leave supplements any existing leave that an employee may have earned or been granted by an employer.

Emergency Paid Sick Leave Act

Under the EPSLA, employees of covered employers are eligible for two weeks (up to 80 hours) of paid sick leave for specified reasons related to COVID-19. Examples of reasons for taking the leave include the employee or someone the employee is caring for is subject to a government quarantine order or has been advised by a health care provider to self-quarantine, the employee is experiencing COVID-19 symptoms and is seeking medical attention, or the employee is caring for a child whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19. The leave is generally fully paid if the employee is unable to work because of the employee's own health and is partially paid for other reasons outlined in the law.

Emergency Family and Medical Leave Expansion Act

The EFMLEA requires specified employers to provide up to 10 weeks of paid and 2 weeks unpaid expanded family and medical leave. The leave is paid at a rate of two-thirds of the employee's regular rate of pay and is available if an employee has been employed for at least 30 calendar days and is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

The EFMLEA only provides leave for reasons related to COVID-19. However, some states have established paid family and medical leave insurance programs that cover other reasons. Paid family and medical leave for an employee generally includes parental leave to care for and bond with a child after the birth or placement of the child, family leave to care for a family member with a serious health condition, and medical leave to attend to the employee's own serious health condition. Eight states (California, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington) and the District of Columbia have enacted paid family and medical leave insurance programs. Additionally, during the past several years, many state legislatures, including the General Assembly, have considered legislation that would establish some sort of paid family and medical leave insurance program. With more employees needing to take extended leave to care for themselves or family members during the pandemic, there may be renewed interest in establishing paid family and medical leave insurance programs in states where these programs do not currently exist.

Overview of Workplace Safety Measures

Multiple agencies at the federal and State levels are working to help keep workers safe from COVID-19. At the federal level, the Centers for Disease Control and Prevention and the federal Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor have issued guidance on preparing workplaces for COVID-19. The Division of Labor and Industry within the Maryland Department of Labor administers the Maryland Occupational Safety and Health (MOSH) program. The requirements of the MOSH program are codified by the MOSH Act. In general, these requirements parallel safety standards established by OSHA. MOSH is assisting employers and employees during the pandemic by developing targeted COVID-19 resource documents, answering technical questions, providing proper channels to file complaints regarding the Governor's executive orders related to COVID-19, utilizing inspections and investigating complaints to ensure compliance with regulations, and evaluating reports of worker deaths and initiating fatality inspections when warranted. Advocates for workers have called on states to establish and enforce mandatory guidelines, as the OSHA guidance remains voluntary. To this end, Virginia has established an "emergency temporary standard."

Beyond MOSH, which can only enforce laws and regulations, not executive orders, State police, local police, and local health departments are also involved in enforcing workplace standards related to COVID-19. Health officials from each county and Baltimore City are authorized to close locations that are unsafe and at risk for spreading COVID-19. Businesses, organizations, and other facilities may be instructed to modify their operations or movements to comply with social distancing guidelines or ordered to close altogether. The Department of Commerce is also providing assistance to businesses during the pandemic.

The State has created several Internet resources to assist businesses to operate safely during the pandemic. General information regarding Maryland's COVID-19 business response can be found at https://govstatus.egov.com/md-coronavirus-business. Updates and best practices for companies reopening during the COVID-19 outbreak can be found at https://open.maryland.gov/backtobusiness.

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COVID-19

COVID-19 and the Courts

In response to the COVID-19 health emergency, the Judiciary limited court activity to emergency operations only and closed court buildings to the public. The Judiciary implemented a plan for the progressive resumption of operations, including social distancing protocols and remote proceedings. While the Judiciary resumed full operations on October 5, 2020, the courts have since reverted to a more restrictive phase of operations due to rising COVID-19 infection rates.

Suspension of Nonessential Activities and Courthouse Closures

The Judiciary has taken numerous actions through administrative orders to balance public health and safety with the need for courts to remain operational during the COVID-19 health emergency. These actions began with three administrative orders issued during March 2020, which (1) temporarily suspended judicial activities deemed nonessential; (2) temporarily suspended all civil and criminal jury trials in circuit courts and established a process to resolve criminal matters with jury trials pending during the specified suspension period; and (3) closed court buildings to the public, except for emergency matters, for a specified period of time beginning on March 16, 2020.

Progressive Reopening of the Courts

The Judiciary formed workgroups in both the District Court and circuit courts to review and address best practices to safely reopen court buildings and phase-in court functions. On May 22, 2020, the Judiciary issued four administrative orders regarding the gradual reopening of the courts. The *Amended Administrative Order on the Progressive Resumption of Full Function of Judiciary Operations*, which amended one of the original orders and was issued on June 3, 2020, outlined how courts across the State would gradually return to full operations through a five-phase approach, which is described below.

During Phase I (March 16, 2020, to June 5, 2020), court buildings were generally closed to the public and court activity was limited to emergency operations only. Examples of Phase I matters included bail reviews, bench warrants, and peace and protective order petitions. Effective March 16, 2020, certain statutory and rule deadlines were tolled to account for the closure of the courts. Phase II began June 5, 2020, when courts began hearing additional matters with some in-person and some remotely. This included matters that were postponed during the health emergency and other priority matters (*e.g.,* bail reconsiderations, problem-solving courts proceedings, competency matters, uncontested family law matters, and on the record appeals in the circuit courts). Phase III began July 20, 2020, when courts started to hear an even broader range of matters, such as various landlord/tenant matters, contested juvenile delinquency proceedings, District Court trials for incarcerated defendants, and nonjury criminal trials in the circuit courts.

Effective July 20, 2020, the courts were considered open to the public and tolling periods for certain statutory and rule deadlines began to expire. Phase IV began August 31, 2020, when courts resumed a broader range of activity including all criminal and civil matters in the District Court; nonjury civil trials in the circuit courts; and contested hearings in criminal, civil, family, and juvenile cases. Phase V began October 5, 2020, when courts resumed full operations and circuit courts began hearing jury trials again.

The Judiciary stated that it may return to a more restrictive phase for a period of time or in certain areas of the State if the health emergency worsens. This possibility materialized on November 12, 2020, when in response to the rapid increase of COVID-19 infection rates throughout Maryland, the Judiciary issued the *Fifth Administrative Order Restricting Statewide Judiciary Operations Due to the COVID-19 Emergency*. This administrative order ordered courts to operate under Phase III, effective November 16, 2020 through December 31, 2020. Under the *Third Amended Administrative Order Re-Imposing the Statewide Suspension of Jury Trials and Maintaining Grand Juries*, also issued on November 12, 2020, civil and criminal jury trials in circuit courts are tentatively expected to resume January 4, 2021.

Social Distancing and Jury Trials

The Judiciary has implemented extra safety measures and social distancing based on guidance from the Centers for Disease Control and the Maryland Department of Health. The Judiciary recommends that visitors call the court or review the local court's website before visiting a court location. Before entering a court building, individuals must answer COVID-19 screening questions, be willing to submit to a temperature check, wear a face mask or covering, and maintain social distancing.

The resumption of jury trials across the State was of particular interest to stakeholders and the public. In a September 2020 briefing to legislators, the Judiciary noted that while jury trials would resume in October 2020, courts would not revert to pre-pandemic jury service procedures. Prospective and selected jurors will not be confined in small areas and may be asked to report to alternative sites, including fire stations and school gymnasiums, if existing court facilities cannot accommodate social distancing protocols. Jurors will also be subject to mask requirements, temperature checks, and virus screenings. Jurors who are sick, exhibit symptoms of COVID-19, or have been exposed to someone who tested positive for COVID-19 will have their jury service rescheduled. Courts may also stagger panels of prospective jurors and utilize technology to facilitate remote communication with prospective jurors and socially distant communication between attorneys and judges within the courtroom. As noted above, while jury trials resumed on October 5, 2020, they have since been temporarily suspended until January 4, 2021.

Remote Proceedings and Hearings

The Judiciary has also embraced remote technology as a means to provide access to judicial services during the pandemic. In addition to outlining the Judiciary's phase-in plan, the Judiciary's administrative orders authorize courts to use technology for remote proceedings during all phases, to the extent that the phase's matters can be handled remotely.

The shift to remote proceedings during the pandemic presents its own challenges and issues. Remote hearings may take more time and require more coordination and resources. Additionally, not all individuals have the means or capability to access judicial services remotely. On the other hand, the adoption of remote technology spurred by the pandemic may allow more members of the public to access a variety of judicial services.

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COVID-19

COVID-19 and Evictions and Foreclosures

The federal government, the State, and local jurisdictions have taken steps to keep Marylanders housed during the current health pandemic, including eviction moratoria, rental assistance, and increased funding for the provision of free legal services relating to housing matters for low-income Marylanders. Despite these efforts, the potential still exists for a housing crisis once eviction protections are lifted.

COVID-19 and Evictions and Foreclosures

Maryland is facing a potential housing crisis due to the health and economic consequences of the COVID-19 pandemic. According to the Attorney General of Maryland, as of September 1, 2020, nearly one million Marylanders had lost their jobs since the declaration of a state of emergency on March 5, 2020, and 330,000 Maryland renters are predicted to face eviction by the end of the year. The virus that causes COVID-19 spreads easily between people who are in close contact with one another. The ability to maintain stable housing greatly impacts an individual's ability to comply with recommendations from health experts to prevent the spread of the virus, such as quarantines, isolation, and social distancing.

Federal Response to the Eviction and Foreclosure Crisis

Signed into law on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act included a 120-day federal eviction moratorium for tenants living in covered property, including public housing, federally subsidized housing, and residential property that is subject to a federally backed mortgage. The CARES Act also provides protections for homeowners with federally backed mortgages including (1) prohibiting lenders and servicers from beginning judicial or nonjudicial foreclosures against homeowners or from finalizing foreclosure judgments or sales and (2) authorizing homeowners to request and obtain forbearance.

In response to the expiration of the moratorium under the CARES Act, the Centers for Disease Control and Prevention (CDC) issued an order under the Public Health Service Act halting residential evictions from September 4, 2020, through December 31, 2020. Residential evictions do not include foreclosure on a home mortgage.

Under this order, a landlord may initiate a proceeding for nonpayment of rent so long as the actual eviction does not occur while the order is in effect. The order requires a tenant to provide to their landlord a declaration under penalty of perjury indicating that (1) the tenant used best efforts to obtain government assistance for rent or housing; (2) the tenant will earn no more than

$99,000/$198,000 (single/joint filer) in annual income in calendar 2020, was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received a stimulus check as part of the CARES Act; (3) the tenant is unable to pay rent due to substantial loss of income, loss of compensable work hours or wages, a layoff, or extraordinary out-of-pocket medical expenses; (4) the tenant is using best efforts to make timely partial payments; and (5) eviction would likely render the tenant homeless or force the tenant into a shared living setting. The burden is on the tenant to invoke the protections under the order. If the tenant is successful, the court must reserve judgment through December 31, 2020.

The order does not relieve a tenant of any obligation to pay rent and does not protect a tenant from being evicted for reasons other than a failure to pay rent. Once the CDC's order expires, the tenant will owe the landlord any unpaid rent and any fees, penalties, or interest as a result of the failure to make timely payments.

State Response to Evictions and Foreclosures

On October 16, 2020, Governor Lawrence J. Hogan, Jr. signed Executive Order 20-10-16-01, amending and extending the previous executive orders signed on March 16, 2020, and April 3, 2020. The order provides housing protections for Marylanders, including (1) prohibiting a residential eviction if the tenant can demonstrate substantial loss of income due to COVID-19 or the state of emergency; (2) prohibiting the initiation of residential foreclosures until January 4, 2021; (3) prohibiting a foreclosure on a property from proceeding unless the loan servicer provided specified types of notice to the borrower of the borrower's right to request forbearance, which varies depending on whether the mortgage is federally backed, and if applicable, the servicer's compliance with the CARES Act; and (4) prohibiting creditors from repossessing personal property used as a residence, including mobile homes, trailers, and live-aboard boats, until further notice or the state of emergency is lifted. Payments, including rental payments and mortgage payments, are not excused under the order.

The Judiciary also took steps to protect the health and safety of Marylanders by imposing a temporary administrative moratorium on evictions and foreclosures. On March 25, 2020, the Judiciary issued the *Administrative Order on Suspension During the COVID-19 Emergency of Foreclosures, Evictions, and Other Ejectments Involving Residences* that provided that (1) foreclosures of residential property, foreclosures of the right to redeem residential property sold in a tax sale, residential evictions, and executions on residential real property under levy or lien are stayed and (2) new or pending types of these actions would be accepted but would not proceed while the administrative order remained in effect. The *Amended Administrative Order on the Progressive Resumption of Full Function of Judiciary Operations* outlined how courts across the State would gradually return to full operations through a five-phase approach. In relevant part, Phase III, which began on July 20, 2020, included (1) rent escrow actions, provided local inspection practices could be conducted; (2) tenant holding over actions and any associated warrants of restitution; (3) any breach of lease action and any associated warrants of restitution; (4) any wrongful detainer actions and any associated warrants of restitution; and (5) processing of warrants of restitution for failure to pay rent actions to begin after July 25, 2020. The administrative order also specified that Phase IV, which began August 31, 2020, included failure to pay rent cases.

As of July 31, 2020, there were a total of 49,014 failure to pay rent cases pending within the District Court of Maryland with the majority of cases pending in Baltimore and Prince George's counties. On August 31, 2020, the District Court of Maryland resumed hearing all landlord and tenant case types. However, on November 12, 2020, in response to the rapid increase of COVID-19 infection rates throughout Maryland, the Judiciary issued the *Fifth Administrative Order Restricting Statewide Judiciary Operations Due to the COVID-19 Emergency*. This administrative order ordered courts to operate under Phase III, effective November 16, 2020, through December 31, 2020. Because they are classified as Phase IV operations, the District Court will not hear failure to pay rent cases during this time.

Local Rental Assistance

Local governments have established rental assistance programs to provide direct relief to tenants. Eligibility requirements and the types and amounts of assistance offered vary among the programs. For example, Prince George's County's program, which was relaunched on October 27, 2020 with an application deadline of November 10, 2020, provides a maximum of $1,800 per month in rent assistance for up to six months of delinquent rent. Landlords must apply for assistance on behalf of tenants who have experienced a COVID–19 triggering event (*e.g.,* job loss, layoff, etc.) and meet specified eligibility requirements, including income limits. Baltimore City launched a multi-phase, four-pronged program that provides up to six months of back rent, relocation assistance, case management to connect residents with additional resources, and legal services to assist residents with eviction proceedings.

Requests for rental assistance have surpassed allocated funding. For example, Baltimore County allocated $1 million to Phase 1 of its rental assistance program, which was projected to provide rental assistance to approximately 300 households. During the acceptance window for Phase I, Baltimore County received approximately 1,500 requests, which the county equated to $6 million in requested rental relief. In response to the need for additional funding, the Governor has dedicated $30 million in CARES Act funds to eviction prevention efforts. The Department of Housing and Community Development's (DHCD) Assisted Housing Relief Program, which provides rebate vouchers for renters living in DHCD-financed properties who have been affected by the COVID-19 pandemic, was allocated $10 million. The Maryland Eviction Prevention Partnership, which provides grants to help support local rental assistance programs across the State, was allocated $20 million. As of September 9, 2020, DHCD had distributed $2.2 million in Eviction Prevention Partnership grants to eight counties in the State. Applications from local jurisdictions for the next $16 million of Maryland Eviction Prevention Partnership grants were due October 2, 2020.

COVID-19 Access to Justice Task Force and Legal Assistance

The Attorney General formed the COVID-19 Access to Justice Task Force in partnership with the Maryland Access to Justice Commission in June 2020 to develop strategies and solutions to address the significant civil legal challenges facing Marylanders because of COVID-19. On September 1, 2020, the Attorney General, on behalf of the task force, sent a letter to the Governor requesting pandemic relief (including allocating an additional $135 million in CARES Act funds to rental assistance), additional funding for legal services in housing matters, and an extension of the State moratorium on evictions and foreclosures. The Attorney General also independently requested that $8 million in anticipated settlement recoveries be used for rental assistance and legal assistance for families facing eviction.

As a result of these efforts, the Attorney General and the Governor announced on October 8, 2020, that $11.7 million in State general funds will be directed to the Maryland Legal Services Corporation to provide legal services for low-income Marylanders facing eviction or other housing security issues.

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COVID-19

Impact of COVID-19 on the State's Agricultural, Environmental, and Natural Resources Sectors

The COVID-19 pandemic has had significant and ongoing impacts on the agricultural, environmental, and natural resources sectors in Maryland. The agricultural and natural resources sectors experienced an uncertain food supply chain, resulting in market disruptions and labor shortages. State parks saw record-breaking visitation levels. Through temporary changes to enforcement, licensing, permitting, and inspection activities, State and federal agencies have attempted to lessen the burden of pandemic-related restrictions on regulated entities across all three sectors.

Agriculture

Food Supply Chain Interruptions

Decreased product demand, supply chain interruptions, and staffing shortages brought about by the COVID-19 pandemic impacted agricultural suppliers. Despite agricultural and food-related businesses being considered essential under Governor Lawrence J. Hogan Jr.'s state of emergency, the Maryland Department of Agriculture (MDA) reported increased requests for assistance by commercial poultry and table eggs processors to address sudden market shifts. A COVID-19 outbreak in Salisbury impacted the poultry processing and crabmeat picking industries. While some suppliers failed to meet harvesting targets, overproduction by other suppliers led to the depopulation of nearly 2 million chickens across the State.

Inspections

The ongoing state of emergency interrupted many required and routine inspections, as MDA had to adapt their practices to comply with business closures and social distancing guidelines. Inspections of nurseries (suspended for six weeks beginning on March 16, 2020), licensed horse stables (suspended between March 8 and July 1), and licensed veterinary hospitals (suspended between March and June) were all impacted. State Chemist inspections were affected as well, seeing a 50% reduction in routine inspections and a two-thirds reduction of total sampling.

Licensing and Permitting

Governor Hogan's March 12, 2020 executive order extended the expiration dates for licenses, permits, registrations, and other authorizations. MDA has since made adaptations for several licenses and programs. Processing certifications for poultry and rabbit were offered virtually, and the Office of Pesticide Regulation canceled testing and examinations for April and June. License renewal deadlines for horse stables, veterinarians, registered veterinary technicians, veterinary hospitals, and animal control centers were extended until September 30, 2020. Poultry tester certification was temporarily suspended but has since resumed.

COVID-19-related Assistance

The Coronavirus Aid, Relief, and Economic Security (CARES) Act includes roughly $49 billion in relief funding for crop and livestock producers, nutrition assistance, and support for local producers. In addition, the U.S. Department of Agriculture (USDA) created the Coronavirus Food Assistance Program (CFAP) in April 2020 to provide $19 billion in relief. While not all farmers qualified for these initial CFAP payments, USDA opened eligibility in July 2020 for producers of 40 additional fruits and vegetables.

Environment

Federal Action

On March 26, 2020, the U.S. Environmental Protection Agency (EPA) announced a temporary enforcement discretion policy in response to the pandemic. Under the policy, facilities were expected to comply with regulatory requirements where reasonably practicable and return to compliance as quickly as possible. EPA applied the policy retroactively beginning on March 13; this policy expired on August 31. The policy authorized states or tribes to take a different approach under their own authorities.

State Action

Adapting Agency Requirements and Protocols

Beginning in March 2020, the Maryland Department of the Environment (MDE) has transitioned to a majority-remote office. Additionally, the agency exercised discretion in administering or adapting various deadlines and requirements. In collaboration with EPA and the Maryland Department of Transportation, MDE repurposed several Vehicle Emission Inspection Program stations as COVID-19 testing sites. MDE also extended the deadline by which schools and food service businesses must discontinue the sale or provision of food or beverages in expanded polystyrene food service products, as required by Chapters 579 and 580 of 2019. However, MDE issued a public notice retaining the deadline for rental registration renewals for certain properties affected by the presence of lead paint, citing persisting public health concerns.

Enforcement Policy during the Pandemic

In response to the state of emergency, MDE released a statement that discretionary enforcement may be necessary but would be conducted on a case-by-case basis. Under this policy, MDE expected regulated entities to make every effort to comply with environmental responsibilities, including monitoring and reporting requirements. Accordingly, the number of Maryland entities seeking delays or waivers has been relatively low. From March to September 2020, MDE received approximately 68 requests for enforcement discretion. The majority of requests are for flexibility on the timing of submitting monitoring reports due to the closure of facilities and a reduction in staffing.

MDE's processing of significant enforcement actions, those brought to a resolution with a financial penalty of $10,000 or more, has decreased. Between 2016 and 2019, for the January through March quarter, MDE resolved an average of 6.5 significant enforcement actions compared with 2 significant enforcement actions being resolved for that same quarter in 2020. Similarly, between 2016 and 2019, for the April through June quarter, MDE resolved an average of 7.5 significant enforcement actions but resolved only 3 significant enforcement actions for the same quarter in 2020.

Licensing and Permitting

Coinciding with the state of emergency, beginning in mid-March, applications received and permits and licenses issued were down to about half of 2019 levels. In the June reporting period, only 40 applications were received and 14 permits and licenses issued, compared with 85 applications received and 107 permits and licenses issued during the same period in 2019. While applications received during the July reporting period were at a level consistent with 2019 numbers, the number of permits and licenses issued during that period remained at about half of 2019 levels. This data is preliminary, but a continued imbalance between the number of applications received and permits and licenses issued could lead to a backlog.

Air and Water Quality Monitoring

MDE has maintained its field presence at facilities that it considers the most critical in terms of public health and the environment by continuing with certain inspections, testing, and enforcement activities. These activities include monitoring for contaminants at water treatment plants, maintaining safe conditions at dams, and managing capacity issues at incinerators and landfills. The agency adheres to Center for Disease Control and Prevention guidance for personal protective equipment for all in-person inspections and emergency responses.

Climate Change

Since March 2020, MDE and the University of Maryland have been analyzing the impacts of COVID-19 on air quality and climate change in the State, looking at traffic, satellite imagery, air quality, and greenhouse gases. MDE released information in April, which outlined a massive drop in traffic, suggesting greenhouse gas emissions would be reduced. The National Aeronautics and Space Administration also analyzed satellite data, finding a dramatic reduction in pollution related to fossil fuel combustion in March. A second update by MDE, released in May 2020, found that while traffic was still down compared to pre-COVID-19 figures, there has been a slow increase since mid-April. The study also suggested that the low levels of air pollutants and the downward trend in power plant emissions had more to do with preexisting regulations and historical declines than with COVID-19.

Natural Resources

Seafood Industry: Market Disruptions and Labor Shortages

Pandemic-related restaurant closures significantly disrupted demand for Maryland's seafood. According to the National Oceanic and Atmospheric Administration (NOAA), approximately 70% of the seafood consumed in the United States is typically consumed at restaurants. MDA's Maryland's Best Program helped to facilitate a shift to direct-to-consumer sales by developing an interactive map of locations where local produce and seafood could be purchased directly from producers and at special distribution events held by local nonprofits. Labor shortages compounded disruptions to the seafood industry. Many seafood processors in the region rely on foreign guest workers employed through the H-2B Visa Program to fill seasonal positions at their facilities. In 2020, a combination of caps on the number of H-2B visas and COVID-19-related immigration restrictions significantly decreased the number of guest workers employed by local processors.

Bay Restoration and Modeling

Some Chesapeake Bay restoration and monitoring activities were canceled, delayed, or scaled back as a result of the pandemic. For example, activities at the Horn Point oyster hatchery, which supplies oyster spat for State restoration projects, were suspended in the spring but resumed later in the summer. Scientific field research and surveys were also halted in much of the region. While some of these activities have resumed following the easing of pandemic-related restrictions, there are concerns about the pandemic's long-term effects on both public and private funding for bay restoration and monitoring. For a more detailed discussion of this issue, see the section "The Status of Chesapeake Bay Restoration" within Environment and Natural Resources of this *Issue Papers of the 2021 Legislative Session*.

Licensing and Permitting

Following Governor Hogan's March 12, 2020 executive order extending grace periods and expiration dates for several authorizations, the Department of Natural Resources (DNR) encouraged customers to take advantage of the grace period for licenses, permits, and registrations that would typically be processed in-person, and also encouraged people to use its online COMPASS portal to purchase recreational licenses, permits, and stamps.

Parks and Recreation

State and local parks logged record levels of attendance during the spring and summer. *The Washington Post* reported that the 53 parks managed by DNR recorded 258,576 visits in March 2020, compared with 64,101 visits in March 2019 and 46,153 visits in March 2018. The trend continued into April with 182,657 visits logged in 2020, up from 113,340 in April 2019 and 95,117 in April 2018. DNR has taken steps to mitigate the risk of disease spread at parks, including implementing enhanced cleaning protocols, canceling events and gatherings of groups larger than 10 people, and restricting access to certain park facilities. DNR also suspended spring trout stocking in an effort to protect the health and safety of its employees and discourage anglers from gathering near stocked waterways.

COVID-19-related Assistance

The CARES Act includes $300 million in fisheries assistance. Of this total, $4,125,118 has been allocated to Maryland to be administered by NOAA in coordination with the Atlantic States Marine Fisheries Commission. Fishery participants that may ultimately be eligible for funding include commercial fishing businesses, charter fishing businesses, qualified aquaculture operations, seafood processors, and other fishery-related businesses. However, businesses farther down the supply chain, such as vessel repair businesses, restaurants, or seafood retailers, are not considered fishery-related businesses for purposes of CARES Act fisheries assistance.

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COVID-19

Impact of COVID-19 on Election Administration Costs

The COVID-19 pandemic has resulted in changes in 2020 election administration. Some of the resultant unanticipated costs have been paid for by federal funds, and a budget amendment prior to the general election addressed the remaining needed funding to an extent. However, in the lead up to the presidential general election, the full impact of the election administration changes on the State budget was not known due to a lack of clarity regarding cost-sharing with the local boards of elections, the extent to which federal funds might cover costs, and the total amount of costs that were not funded by the budget amendment.

Unanticipated Costs

In response to challenges presented by the COVID-19 pandemic, the Administration and the State Board of Elections (SBE) implemented changes in election administration for the Seventh Congressional District of Maryland special general election, the presidential primary election, and the presidential general election. These changes generated costs that were not anticipated in the fiscal 2020 and 2021 budgets.

Unanticipated special general and presidential primary election costs were mostly paid for with federal Coronavirus Aid, Relief, and Economic Security Act funds that are subject to Help America Vote Act (HAVA) requirements. Anecdotally, at least some local boards of elections (LBE) saw savings in the presidential primary election from the use of federal funds. However, these savings may be more than offset by higher than expected presidential general election costs. Leading up to the presidential general election, LBEs were preparing for significant increases in certain costs, including temporary staffing, overtime, printing, postage, and transportation costs. While SBE's special funds come from LBEs, some local cost increases are not reflected in SBE's budget because they are incurred at the local level.

HAVA funds require a 20% nonfederal match, requiring the State to contribute $1.5 million in matching funds within two years after receiving the funds. Maryland will more than meet the required match, as Budget Amendment 004-21 increased SBE's appropriation to support unexpected 2020 presidential general election costs and is anticipated to create an $11.7 million general fund impact alone.

Exhibit 1 provides the fund split anticipated for Budget Amendment 004-21. Although the amendment was processed with 100% special funds, SBE plans to request a general fund deficiency to swap 71% ($11.7 million) of these special funds during the 2021 legislative session. SBE will equally share all general election costs with LBEs, except for costs related to ballot applications and mailings to inactive or eligible but unregistered voters, which are anticipated to be 100% general funded, and polling place accommodations, such as cleaning supplies and personal protective equipment, which may be paid for with federal coronavirus relief funds (CRF). However, the plan to use CRFs for this purpose has not been approved as of this writing.

Exhibit 1
Anticipated General Fund Deficiency Request to Swap Special Funds

Expense	General	Special	Total
Print and Mail Forms to Request a Mail-in Ballot	$5,600,000	$0	$5,600,000
Print and Mail Vote-by-mail Packets to Requesting Voters	2,750,000	2,750,000	5,500,000
Statewide Voter Education Campaign	688,500	688,500	1,377,000
Cleaning Supplies, PPE, Stanchions, and Social Distancing Decals	1,067,045	0	1,067,045
Temporary Staff and SBE Resources for Election Judges and Election Judge Recruitment	510,299	510,299	1,020,597
Expand the Call Center and Support Remote Viewing of Canvasses	401,250	401,250	802,500
Privacy Sleeves	170,820	170,820	341,640
Additional Ballot Drop Boxes	167,278	167,278	334,556
Mailings to Inactive Voters and Eligible but Unregistered Voters	301,728	0	301,728
Additional SBE Resources to Support Mailings and Related Contracts	29,276	29,276	58,552
Total Additional Presidential General Election Expenses	**$11,686,196**	**$4,717,423**	**$16,403,618**

PPE: personal protective equipment

SBE: State Board of Elections

Notes: Numbers may not sum due to rounding. When Budget Amendment 004-21 was submitted, SBE anticipated a number of voting centers that has since changed. While the category of costs including PPE was first funded at $1,315,941 in the amendment, SBE revised this estimate to $1,067,045. The $248,896 difference will be used to support additional ballot drop boxes, as reflected in the exhibit. The amendment suggests general funds for PPE may be swapped for federal CRF, but this plan has not been approved as of this writing.

Source: Department of Budget and Management; State Board of Elections; United States Election Assistance Commission; Department of Legislative Services

State and Local Fiscal Impact of 2020 Elections

The allocation of costs among SBE and LBEs is not always clearly defined and can be subject to the discretion of the State. While there are provisions in State law that establish the balance of funding for certain costs, the extent to which other costs are the responsibility of LBEs, SBE, or shared by SBE and LBEs is less predictable.

Counties are given relatively broad responsibility under State law for appropriating funds for LBEs to fulfill their statutory duties. LBEs generally bear the cost of administering voter registration in the State, administering mail-in voting (although that cost has been significantly higher and covered in part by federal and State funding in the 2020 elections), operating in-person voting locations, and canvassing mail-in and provisional ballots, among other things.

Costs for the State's voting system (including the cost of paper ballots) are equally shared by SBE and LBEs pursuant to uncodified language in Chapter 564 of 2001, which requires the State to acquire a uniform statewide voting system. In some cases, responsibility for additional specific costs is established in statute. Chapters 36 and 37 of 2020, for example, require prepaid return postage to be provided for voters who vote by mail and require the cost of the return postage to be shared equally by SBE and LBEs. However, the extent to which the State may partially or entirely fund other costs, including those that may be unexpected or initiated by the State, is not as clearly defined in law.

Although Budget Amendment 004-21 has already been approved, the allocation of these $16.4 million in costs is still subject to change, which is allowable with the flexibility provided in the law. The amendment was submitted with 100% special funds (SBE's special funds are provided by LBEs) but with a plan to later replace 47% ($7.7 million) of that LBE funding with State general funds. However, SBE now plans for the general fund impact to increase to 71% ($11.7 million), reflecting the use of State general funds to completely cover the cost of mail-in ballot applications, as the five members of the State board requested. As of this writing, the board's proposal has not been approved.

Unfunded Costs

Several significant categories of costs were not included in Budget Amendment 004-21. For example, an estimated $1.8 million for prepaid return postage was not included. This cost may be higher, however, as the $1.8 million represents the general fund share of return postage costs when accounting for an equal cost share with LBEs as was anticipated when the cost estimate was provided. As mentioned earlier, the five-member State board has voted to completely support the cost of ballot applications, which would include the cost of return postage for ballot applications, with general funds.

Additionally, on October 2, 2020, SBE informed the Joint Committee on Administrative, Executive, and Legislative Review (AELR) that it planned to procure approximately 20 million ballot sheets for voting centers to provide voters the ability to vote at any voting center in their county. This ability required every precinct-level ballot style in a county to be available at every voting center in that county. SBE also informed AELR that this will likely require a deficiency appropriation. The deficiency is expected to be equally cost shared between the State and LBEs. At the time of this writing, SBE could not provide an estimate for these costs.

The budget amendment also does not include funding for a ballot application processing center that was used to process the large volume of requests for mailed ballots. At the time of this writing, a cost estimate was also not available.

Operating Budget

Economic and Revenue Outlook

The outbreak of the COVID-19 pandemic brought an abrupt end to the economic expansion. Employment, both nationally and in Maryland, fell sharply, and by fall 2020, only about half of the lost jobs had been recovered. General fund revenues were below expectations in fiscal 2020 by $102 million, and the estimate for fiscal 2021 was revised down by $673 million.

Economic Outlook

In July 2019, the U.S. economic expansion became the longest in post-World War II history, exceeding the 120 months of the 1990s expansion. The expansion ended abruptly in February 2020 with the outbreak of the COVID-19 pandemic. With businesses and consumers sharply cutting spending as most states around the country imposed some level of closures to slow the virus spread, employment contracted sharply. In just two months, U.S. employment fell 22 million, or 14.5%. The unemployment rate increased from 3.5% in February to 14.7% in April. Not surprisingly, wage income fell by almost 11%, but total personal income increased by 10.2% between February and April, as fiscal support in the form of expanded unemployment insurance benefits, one-time stimulus checks, and aid for small businesses cushioned total income. Starting in May, as many states lifted restrictions, economic activity slowly began to pick up. Between April and September, U.S. employment increased by 11.4 million, and the unemployment rate fell to 7.9%. Nevertheless, employment remains below the February peak by 10.7 million jobs. As of August, wage income was still 3.9% below the February level, and total personal income was up just 2.0% as some of the fiscal support expired. Overall, wage income in 2020 over the period of January through August was 0.8% below the same period in 2019.

The economic forecasts expect average employment in calendar 2020 to be down 5.6% compared to 2019 with wage income down 0.3%. Personal income is projected to grow 6.9% for all of 2020, driven by government fiscal support. In 2021, employment is expected to rebound, growing 3.3% over 2020 with the unemployment rate falling to 6.0% by the end of the year. But employment is not expected to reach the peak level of February 2020 until the fourth quarter of 2022, and the unemployment rate is not projected to fall below 4.0% until the first quarter of 2024. The economic outlook assumes that an effective COVID-19 vaccine will be broadly available by the middle of 2021 and that additional fiscal support will be provided to the unemployed and small businesses.

In Maryland, the impact of the pandemic-induced recession has been similar to the country as a whole. Between February and April, the State saw employment fall by 388,000 jobs, or almost 14%, while the unemployment rate jumped from 3.3% to 10.1%. In the second quarter (April to June), Maryland wage income was 3.8% below 2019, while total personal income was up 7.7%, due to the federal fiscal support. Between April and August, the State added 183,000 jobs, and the unemployment rate fell to 6.9%. However, similar to the national forecast, Maryland is not projected to reach the February peak employment level until the fourth quarter of 2022.

In September 2020, the Board of Revenue Estimates (BRE) issued a revised economic forecast for Maryland, which was its first since March (**Exhibit 1**). The State contracts with several private economic forecasting companies that provide estimates nationally and for Maryland. BRE's September economic outlook was based on the forecasts from the company IHS Markit.

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

	Employment		Wage and Salary Income	
Calendar Year	**Mar. 2020**	**Sep. 2020**	**Mar. 2020**	**Sep. 2020**
2017	1.1%	1.1%	3.6%	3.6%
2018	0.9%	0.9%	3.7%	3.6%
2019	0.8%	0.6%	3.8%	3.6%
2020 Est.	0.6%	-5.3%	3.5%	-0.7%
2021 Est.	0.5%	3.8%	3.4%	6.2%
2022 Est.	0.5%	1.9%	3.4%	5.1%
2023 Est.	0.5%	1.1%	3.6%	4.2%

Note: The figure for 2019 wage growth under the Mar. 2020 column is an estimate. Wage growth for 2017 through 2019 under the Sep. 2020 column reflects data from the U.S. Bureau of Economic Analysis released on September 24, 2020.

Source: Board of Revenue Estimates

Revenue Outlook

Fiscal 2020 general fund revenues were below the estimate by $102 million, or 0.5%. Ongoing general fund revenues were under the estimate by $144 million, or 0.8%. General fund revenues totaled $18.6 billion in fiscal 2020, which is an increase of 2.4% over fiscal 2019, while ongoing revenues grew just 1.3% in fiscal 2020.

The under attainment was driven primarily by the sales tax, which was under the estimate by $317 million (6.4%) and fell 3.7% from fiscal 2019. Retail sales, especially at restaurants and bars, were most directly impacted by the pandemic. Between State-imposed closures on certain establishments and the general reluctance of consumers to spend time in enclosed spaces, sales dropped. In addition, consumer spending was directed toward essential goods such as groceries, the bulk of which are not subject to the sales tax. Spending also increasingly shifted to online establishments, and, while some of the revenue from those sales goes to the General Fund, a significant portion is distributed to the Blueprint Fund for education.

Revenues for both the personal and corporate income taxes exceeded the estimate, partially offsetting the sales tax underattainment. The primary driver of the income tax overattainment was payments related to tax year 2019, as individuals and businesses filed their annual tax returns. The personal income tax exceeded the estimate by $111.5 million and grew 4.2% over fiscal 2019, while the corporate income tax overattained by $40.5 million and grew 1.8%.

Fiscal 2021 general fund revenue collections through September 2020 were up 0.6% from the prior year. Personal income tax revenues grew 1.6% in the first quarter of fiscal 2021, driven primarily by withholding. General fund sales tax collections grew 2.6%; however, excluding receipts from remote sellers and online marketplace facilitators, revenues fell 5.0%. Revenues from the lottery were up 17.9% in the first three months of fiscal 2021, despite the absence of any large jackpots.

In September 2020, BRE reduced its estimate for fiscal 2021 general fund revenues by $672.6 million, or 3.5% (see **Exhibit 2**). The personal income tax estimate was revised down by $252.6 million, or 2.3%, and revenues are expected to grow just 0.8% over fiscal 2020. General fund sales tax revenues were revised down by $416.2 million, or 8.3%. Sales tax revenues are projected to fall 0.2%, after also declining in fiscal 2020. This would mark the first back-to-back declines in the sales tax since the Great Recession in 2009 and 2010. General fund revenues are projected to rebound in fiscal 2022, as the pandemic fades and economic growth continues to accelerate.

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

	Fiscal 2021				Fiscal 2022	
	BRE Mar. 2020	BRE Sep. 2020	$ Diff.	% Change 2021/2020	BRE Sep. 2020	% Change 2022/2021
Personal Income Tax	$11,037	$10,784	-$253	0.8%	$11,200	3.9%
Sales and Use Tax	5,041	4,624	-416	-0.2%	4,938	6.8%
Corporate Income Tax	1,097	1,095	-2	4.1%	1,139	4.0%
Lottery	565	572	7	4.3%	584	2.2%
Other	1,642	1,634	-8	-3.9%	1,804	10.4%
Total	**$19,382**	**$18,710**	**-$673**	**0.4%**	**$19,666**	**5.1%**

BRE: Board of Revenue Estimates

Source: Board of Revenue Estimates

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Operating Budget

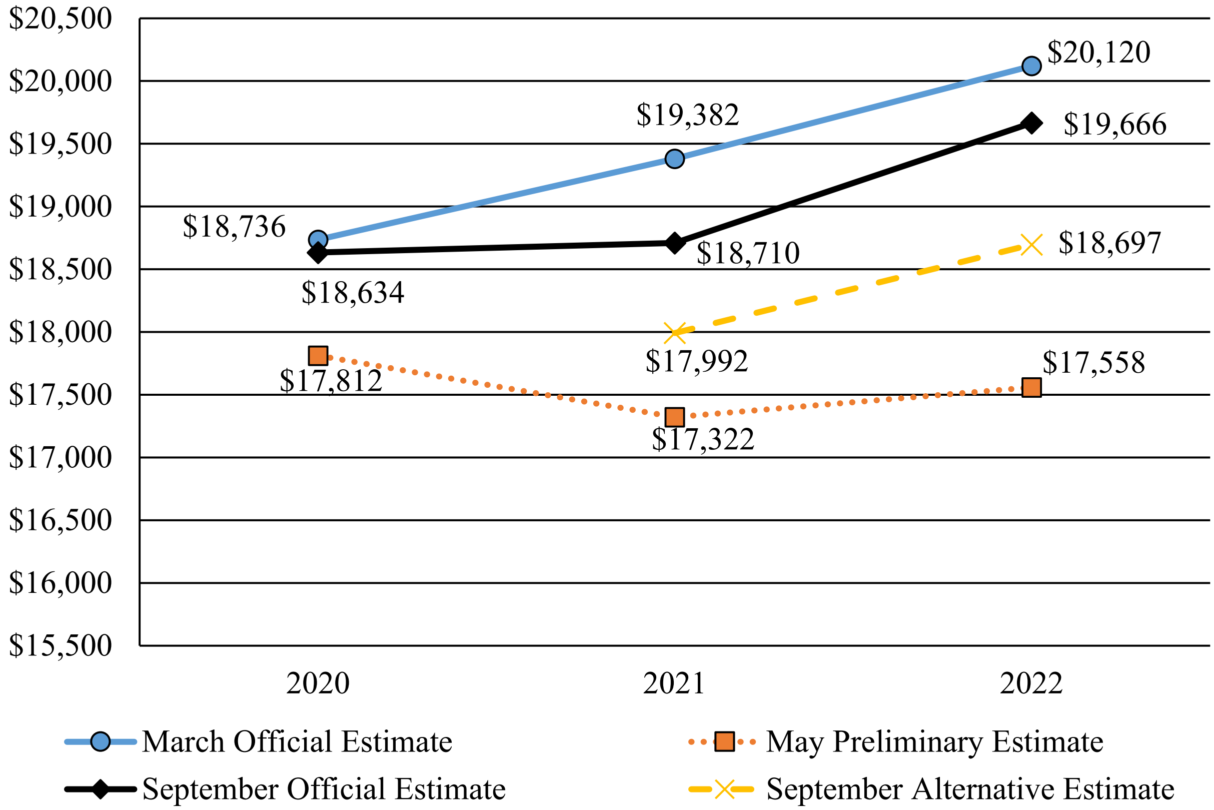
Budget Outlook: COVID-19 Pandemic Creates Near-term Fiscal Uncertainty

The COVID-19 pandemic has created an unprecedented public health and economic crisis. Early in the pandemic, the Board of Revenue Estimates (BRE) estimated that revenue could underperform by $925 million in fiscal 2020 and by at least $2 billion in fiscal 2021. In response to the pandemic, the federal government enacted fiscal stimuli that provided relief for businesses and increased unemployment benefits and funds for State and local governments to address the pandemic, but there were no funds to offset revenue losses. The federal legislation offset some general fund needs and boosted the economy. Fiscal 2020 closed with a $704 million general fund balance. In September 2020, BRE updated its revenue forecast, providing an official and alternate forecast. Under the official forecast, fiscal 2021 is expected to close with a $547 million fund balance and fiscal 2022 with a deficit of $855 million. Structural deficits are forecast through fiscal 2026.

Background

The COVID-19 pandemic has created an unprecedented public health and economic crisis, which has generated a degree of uncertainty when considering Maryland's current and future budget outlook. With the premature conclusion of the 2020 legislative session on March 18, 2020, the General Assembly recognized the potential severity of the situation and enacted a fiscal 2021 budget that established an estimated general fund balance of $324 million, along with authorizing the use of $150 million from the Revenue Stabilization Account (Rainy Day Fund) to provide the resources necessary to combat the difficulties that lay ahead. After nearly eight weeks of a statewide stay-at-home order, which began on March 23, 2020, the Board of Revenue Estimates (BRE) issued a preliminary estimate of the impact that the pandemic would have on general fund revenues. The BRE projection indicated that fiscal 2020 revenues were expected to fall short of the March 2020 estimate by at least $925 million. Similarly, fiscal 2021 revenues were expected to be down by at least $2.0 billion, and fiscal 2022 revenues were projected to be $2.6 billion less than estimated. **Exhibit 1** provides a comparison of general fund revenue estimates for fiscal 2020 through 2022, including the most recent estimate provided in September 2020.

Exhibit 1
General Fund Revenue Estimates
Board of Revenue Estimates
Fiscal 2020-2022
($ in Millions)



Source: Department of Legislative Services

On the spending side of the equation, the State was experiencing historic unemployment claims, rapidly increasing caseloads across nearly all entitlement programs, and anticipation of significant job losses and business closures. In response to the fiscal crisis, the Administration implemented a spending and hiring freeze in April 2020 and enacted $120.7 million in general fund reductions through the Board of Public Works (BPW) on May 18, 2020. On July 1, 2020, the Administration returned to BPW with an additional $413.2 million ($394.9 million general funds) in reductions for fiscal 2021. Reduced funding to higher education accounted for nearly half of the general fund actions taken by BPW.

As **Exhibit 2** shows, the State closed the fiscal 2020 budget in a far better position than anticipated in May, ending the year with a general fund surplus of $704 million, which is approximately $358 million higher than expected. Although general fund revenues underattained the March estimate by roughly $105 million, they outperformed the May preliminary COVID-19 impact estimate by more than $820 million. The biggest contributor to the higher fund balance was $342 million in excess general fund reversions; of this amount, $184 million was made available due to the use of Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to offset salary expenses. The availability of nearly $5.7 billion in federal stimulus funding provided to the State, local jurisdictions, and higher education institutions has helped to significantly lessen the impact of the fiscal situation.

For a more detailed discussion of federal CARES Act funds in the State budget, see the section "Federal Funds Outlook" within Operating Budget of this *Issue Papers of the 2021 Session*.

Exhibit 2
Evolution of the General Fund Balance
Fiscal 2020-2021
($ in Millions)

	2020	2021
Estimated Closing Balance (July 2020)	**$346**	**$324**
Revenue and Transfers		
Adjustment to Revenues	-$105	-$762
Higher Than Anticipated Fiscal 2020 Fund Balance		358
Spending		
Board of Public Works Actions	$121	$395
Fiscal 2020 Closeout Reversions Above Estimate	158	
General Fund Savings Due to CARES Funding Offset	184	178
Other DLS Estimated Fiscal 2021 Withdrawn Appropriations		54
Revised Closing Balance (November 2020)	**$704**	**$547**

CARES: Coronavirus Aid, Relief, and Economic Security Act
DLS: Department of Legislative Services

Source: Department of Legislative Services

Fiscal 2021 to 2026 Forecast: Uncertainty Lies Ahead

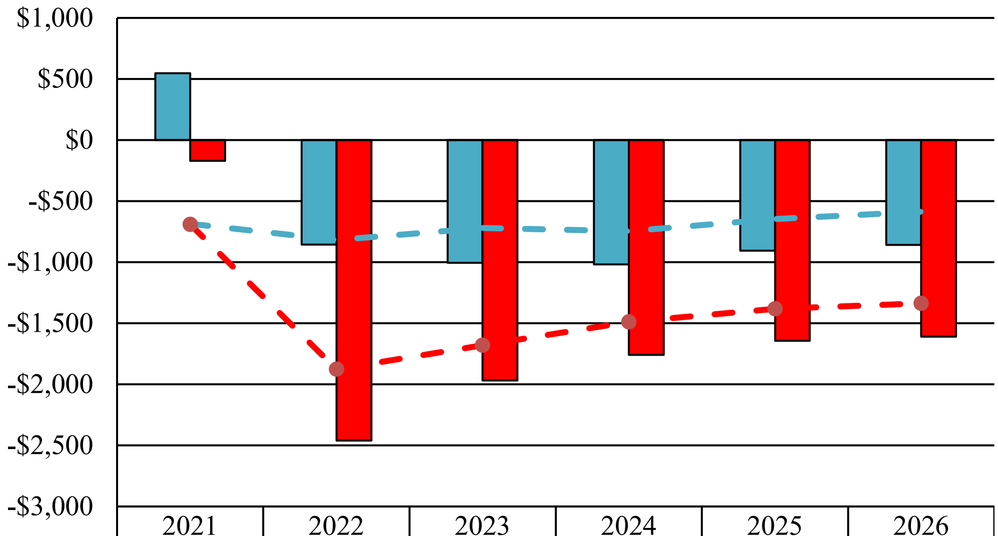
Exhibit 3 illustrates the Department of Legislative Services' projected cash and structural balance for the General Fund through fiscal 2026, using both the BRE official September estimate, which assumes no additional economic shutdown, future widespread availability of a vaccine, and a second round of federal stimulus funding, and BRE's alternate, more dire scenario, which assumes continuing high rates of unemployment and a more sluggish economic recovery. Having two scenarios is reflective of the unprecedented and unique nature of the current recession and fiscal environment and the uncertainty that goes along with making the necessary assumptions. Assumptions that have a significant fiscal impact in the near term were also made on the spending side when developing the forecast, including the timing and availability of enhanced Medicaid funding, alignment of health and entitlement funding with the BRE assumptions, and accounting for how and when other populations that have notably declined (K-12 and higher education enrollment, criminal justice cases and prison populations, etc.) might return to normal growth.

Exhibit 3

General Fund Cash and Structural Outlook

Fiscal 2021-2026

($ in Millions)



	2021	2022	2023	2024	2025	2026
Baseline w/ BRE Official Estimate (Cash)	$547	-$855	-$1,006	-$1,017	-$905	-$859
Baseline w/ BRE Alternate (Cash)	-170	-2,461	-1,968	-1,760	-1,643	-1,609
Baseline w/ BRE Official Estimate (Structural)	-685	-818	-719	-747	-646	-587
Baseline w/ BRE Alternate (Structural)	-690	-1,877	-1,681	-1,490	-1,383	-1,338

BRE: Board of Revenue Estimates

Source: Department of Legislative Services

The official forecast shows a projected cash surplus of $547 million in fiscal 2021 largely due to the better than anticipated fiscal 2020 closeout, cost containment actions already adopted by the Administration, and the continued availability of federal stimulus funds to offset general fund expenses. The surplus is temporary with an $855 million shortfall forecast in fiscal 2022 before growing to a cash deficit of over $1 billion in fiscal 2023 and 2024 and improving slightly in the out-years. Despite the positive cash balance in fiscal 2021, the structural budget remains imbalanced, with a projected shortfall of $685 million, due to the one-time nature of the federal assistance that results in general fund savings. The structural deficit increases to approximately $818 million in fiscal 2022 before declining each year to a negative gap of $587 million in fiscal 2026. As **Exhibit 4** shows, the $231 million decline in the structural deficit over the forecast period is reflective of ongoing revenues outpacing spending by 0.3% on average each year. The modest expenditure growth of 3.3% is due to less growth in spending mandates than in recent years and improving economic conditions that reduce entitlement caseloads.

Exhibit 4

General Fund Spending Change by Component

($ in Millions)

	Fiscal 2022 Baseline	Fiscal 2026 Estimate	$ Change	Average Annual % Change
Mandates (Local Aid, Sellinger, Legislation)	$7,784	$8,642	$858	2.6%
Employee Salaries, COLA, Merits, Health Benefits	2,622	2,963	341	3.1%
Debt Service	234	590	356	26.0%
Employee Retirement	473	513	40	2.1%
Agencies and Higher Education	3,798	4,209	411	2.6%
Developmental Disabilities Administration	744	932	188	5.8%
Entitlements	4,875	5,485	610	3.0%
Ongoing Spending	$20,530	$23,335	$2,805	3.3%
Ongoing Revenues	19,712	22,747	3,035	3.6%
Structural Gap	**-$818**	**-$587**	**$231**	**-7.9%**

COLA: cost-of-living adjustment

Source: Department of Legislative Services

The budget outlook presented in Exhibit 3 does not reflect any potential impacts resulting from overriding the vetoes of legislation with a significant fiscal impact, such as House Bill 1300 (Blueprint for Maryland's Future – Implementation), which would also result in House Bill 1 (Built to Learn Act) becoming law, or House Bill 932 (sales tax on digital goods), which dedicates additional revenue to The Blueprint for Maryland's Future Fund. Determining State aid for public education will be a significant decision point in the fiscal 2022 budget as the K-12 baseline funding formulas are calculated using a 3.8% decline in enrollment based on preliminary estimates from local education agencies. The veto of HB 1300 also leaves nearly $1.0 billion in unspent special funds dedicated to education in fiscal 2022, which increases to $4.8 billion in unallocated resources by fiscal 2026.

For a more detailed discussion of State education aid and the impact of the Governor's veto of the 2020 Blueprint legislation, see the Education category of this *Issue Papers of the 2021 Session*.

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Operating Budget

Transportation Trust Fund Overview

The Transportation Trust Fund is anticipated to close fiscal 2020 with a $114 million fund balance, which is $36 million less than assumed during the 2020 legislative session. Tax and fee revenues assumed in the transportation forecast for fiscal 2021 through 2026 are approximately $900 million less than the estimate in last year's forecast. Lower projected revenues result in programmed capital funding in the six-year forecast declining by $2.2 billion compared to last year's forecast.

Fiscal 2020 Closeout

Based on preliminary numbers from the draft Transportation Trust Fund (TTF) forecast released on September 1, 2020, the TTF ended fiscal 2020 with a fund balance of $114 million, which is $36 million lower than the target closing balance of $150 million.

State-source revenues closed out $454 million lower than projected due to the COVID-19 pandemic. The four largest areas of underattainment were the motor fuel tax (-$116 million, or -14.1%); titling tax (-$90 million, or -9.6%); operating revenues collectively for the port, airport, and transit (-$90 million, or -18.9%); and the corporate income tax (-$43 million, or -23.1%).

Expenditures were only $82 million less than projected due to the use of $336 million of federal Coronavirus Aid, Recovery, and Economic Security Act funding to support operations for transit and the airport.

Fiscal 2021 to 2026 Transportation Trust Fund Forecast

Exhibit 1 shows the fiscal 2021 to 2026 TTF forecast by the Department of Legislative Services (DLS). The forecast details the expected trends in revenue attainment, debt issuance, and expenditures. The DLS forecast does not differ materially from the draft forecast issued by the Maryland Department of Transportation (MDOT) on September 1, 2020. Compared to the MDOT forecast, DLS assumes total revenues from taxes and fees that are $59 million lower. This decrease is more than offset by the $61 million in higher bond premiums assumed in the DLS forecast, which includes the actual premium received by MDOT from its October 2020 bond sale.

Exhibit 1
Transportation Trust Fund Forecast
Fiscal 2021-2026
($ in Millions)

	2021	2022	2023	2024	2025	2026	Total 2021-2026
Opening Fund Balance	**$114**	**$125**	**$150**	**$150**	**$175**	**$175**	
Closing Fund Balance	**$125**	**$150**	**$150**	**$175**	**$175**	**$175**	
Net Revenues							
Taxes and Fees	$2,661	$2,768	$2,921	$3,035	$3,094	$3,134	$17,613
Operating and Miscellaneous	612	527	634	680	692	678	3,823
Subtotal	***$3,273***	***$3,295***	***$3,555***	***$3,715***	***$3,786***	***$3,812***	***$21,436***
Bond Proceeds/Premiums	$390	$135	$210	$240	$195	$195	$1,365
Fund Balance (Increase)/Use	-11	-25	0	-25	0	0	-61
Total Net Revenues	**$3,652**	**$3,405**	**$3,765**	**$3,930**	**$3,981**	**$4,007**	**$22,740**
Expenditures							
Debt Service	$412	$448	$478	$437	$440	$440	$2,655
Operating Budget	2,176	2,229	2,405	2,498	2,555	2,618	14,481
State Capital (incl. State Aid)	1,065	727	882	995	986	949	5,604
Total Expenditures	**$3,652**	**$3,405**	**$3,765**	**$3,930**	**$3,981**	**$4,007**	**$22,740**
Debt							
Debt Outstanding	$3,672	$3,511	$3,387	$3,327	$3,214	$3,093	
Debt Coverage – Net Income	2.6	2.2	2.1	2.6	2.8	2.8	
Capital Summary							
State Capital (Excl. Local Aid)	$830	$480	$624	$733	$797	$759	$4,223
Mandated Local Aid Capital Grants	234	247	258	262	189	190	1,381
Other Funds (Nonbudgeted)	286	293	233	171	122	100	1,205
Net Federal Capital (Cash Flow)	1,319	1,111	915	787	811	786	5,729
Total Capital Expenditures	**$2,670**	**$2,131**	**$2,030**	**$1,953**	**$1,919**	**$1,835**	**$12,538**
Dedicated Purpose Account GF – WMATA Dedicated Grant	$97	$125	$167	$167	$167	$167	$890

GF: general funds
WMATA: Washington Metropolitan Area Transit Authority

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

Source: Department of Legislative Services

Revenues

Over the six-year forecast, DLS estimates that tax and fee revenue, including revenue going to other State agencies to cover transportation-related activities, will total $18.1 billion, with an average annual growth rate of 3.3%. Much of the growth in revenues, however, is recovering from the declines due to the COVID-19 pandemic. The six-year total for tax and fee revenues is approximately $900 million less than the estimate contained in last year's forecast.

Operating and Debt Service Expenditures

Operating and debt service expenditures are the first draw on TTF revenues. Over the six-year period, operating expenses are estimated to total nearly $14.5 billion, and debt service expenditures are estimated to total just over $2.6 billion. Compared to the prior year forecast, operating expenses are $500 million lower and debt service is essentially flat.

Debt Financing

Debt issued by MDOT supports the capital program. Debt issuances are limited by a total debt outstanding cap of $4.5 billion and two coverage tests that require the prior year's pledged taxes and net income to be at least 2.0 times greater than the maximum debt service for all bonds outstanding in the current fiscal year. MDOT has an administrative goal of maintaining a minimum 2.5 times pledged taxes and net income to maximum debt service ratio. The decreased revenue attainment caused by the pandemic has reduced MDOT's ability to issue debt. The current forecast assumes debt issuances will be approximately $963 million less than were assumed in last year's forecast. The net income debt ratio remains above the 2.0 times debt service minimum requirement for the entire forecast but drops below MDOT's administrative goal of 2.5 times debt service for two years, falling to 2.2 times and 2.1 times in fiscal 2022 and 2023, respectively.

Capital Expenditures

Having the last call on TTF revenues, the State-funded capital program experiences a significant decrease in the forecast compared to the prior year's forecast due to the COVID-19 pandemic. The reduced revenue attainment, in combination with the decreased ability to issue debt, lower the expected capital spending over the six-year forecast by nearly $2.2 billion. The State capital program decreases by nearly $2 billion, and capital transportation aid to local jurisdictions declines by $158 million.

Local Transportation Aid

Local transportation aid in the form of mandated capital grants totals nearly $1.4 billion over the six-year period. Chapters 330 and 331 of 2018 increased the amount of transportation aid going to local governments to the equivalent of 13.5% of the Gasoline and Motor Vehicle Revenue Account for fiscal 2020 through 2024. After fiscal 2024, the local share returns to the 9.6% level in effect prior to enactment of this legislation.

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Operating Budget

Federal Funds Outlook

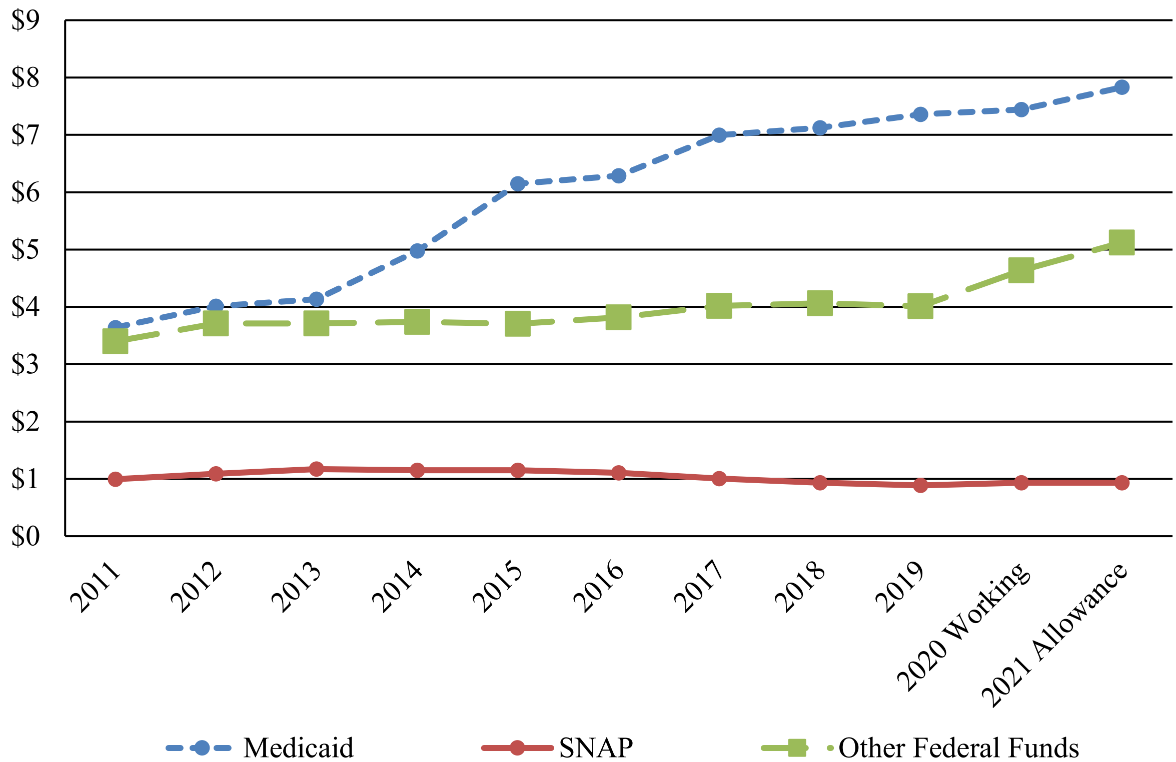
In fiscal 2021, the State of Maryland anticipates receiving $13.9 billion in federal funds, excluding funds provided in response to COVID-19, which will provide an additional $5.2 billion across fiscal 2020 and 2021. The federal fiscal 2021 budget is funded with a continuing resolution that expires on December 11, 2020.

Federal Funds to the State of Maryland

Federal funds (excluding COVID-19 relief funds) to the State have grown 5.6% annually from fiscal 2011 to 2021; the fiscal 2021 federal fund allowance totals $13.9 billion.[1] As shown in **Exhibit 1**, Medicaid accounts for $7.8 billion in fiscal 2021, or 56.4% of total federal funds. Increases in Medicaid funding since fiscal 2011 are primarily due to the Affordable Care Act (ACA) expansion, which began in fiscal 2014. The category Other Federal Funds grows by more than 25% from fiscal 2019 to 2021 due to increased transportation funding and the approval of a reinsurance waiver to stabilize rates in the individual health insurance market.

[1] Excludes stimulus funding provided by the American Recovery and Reinvestment Act of 2009, which was provided from fiscal 2009 to 2017; the Coronavirus Aid, Relief, and Economic Security Act of 2020, which provided funding in fiscal 2020 and 2021; and the Families First Coronavirus Response Act of 2020, which provided funding in fiscal 2020 and 2021.

Exhibit 1
Medicaid, SNAP, and Other Federal Funds
Fiscal 2011-2021 Allowance
($ in Billions)



SNAP: Supplemental Nutrition Assistance Program

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

Coronavirus Aid, Relief, and Economic Security Act of 2020

The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 and the Families First Coronavirus Response Act of 2020 provided the State with a significant amount of federal aid, as shown in **Exhibit 2**. Nearly $5.2 billion in assistance has been made available to the State and local governments. Approximately $781 million was directly provided to local governments.

Exhibit 2
CARES Act Funding
($ in Millions)

Purpose	Available
Coronavirus Relief Fund	$2,344
Disaster Relief Fund	800
Transit Grants	696
Enhanced Medicaid Matching Rate (through December)	575
Grants from Centers for Disease Control and Prevention	239
Airport Grants	108
Discretionary Grants to Local Education Agencies and Higher Education Institutions	46
Child Care and Development Block Grant	46
Public Housing and Rental Assistance Grants	36
Community Development Block Grant	74
Community Health Centers	24
Energy Assistance	19
Justice Assistance Grants	18
Senior Nutrition and Meals and Other Programs for Elderly	20
Homeless Assistance	50
Community Services Block Grant	14
Emergency Food Assistance	13
Administration of Unemployment Insurance Program	17
Head Start	8
Women, Infants, and Children	8
Election Security	7
Total	**$5,162**

CARES: Coronavirus Aid, Relief, and Economic Security

Note: Totals may not sum due to rounding.

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

Coronavirus Relief Fund

The largest and most flexible portion of CARES Act funding is the Coronavirus Relief Fund, which totals $2.3 billion, $691 million of which was allocated directly to Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties. **Exhibit 3** details the purposes for which the funds will be used.

Exhibit 3
Coronavirus Relief Fund
Fiscal 2020 and 2021
($ in Millions)

Purpose	Total	State Budget 2020	State Budget 2021	Direct Federal Allocation
Allocations to Local Governments	1053	246	116	691
General Fund Relief	281	115	166	0
Disaster Relief Match	249	166	83	0
K-12 Tutoring/Remote Learning	200	0	200	0
Business Assistance	180	97	83	0
Public Higher Education	90	31	59	0
Premium and Response Pay for Essential Workers	85	62	23	0
Nonprofit Relief	50	0	50	0
Fiscal 2020 Fund Swaps (Transportation Trust Fund)	20	10	10	0
Other Agency Operating Costs	19	12	7	0
Expedite Unemployment Claims	15	0	15	0
Vaccine Distribution	10	0	10	0
Rural Broadband	10	0	10	0
Eviction Prevention and Rent Relief	20	0	20	0
Foster Care	12	5	7	0
Food Bank – Department of Human Services	12	2	10	0
Farmers	10	0	10	0
Layoff Aversion	7	7	0	0
Nursing Home Testing Costs	6	0	6	0
Other	6	3	3	0
Enhance Telework Capabilities	5	4	1	0
Department of Juvenile Services	3	2	2	0
Legal Services	3	0	3	0
Extended Application Hours for SNAP and Energy Assistance	2	0	2	0
Wastewater Monitoring	1	0	1	0
Total	**$2,348**	**$762**	**$896**	**$691**

SNAP: Supplemental Nutrition Assistance Program

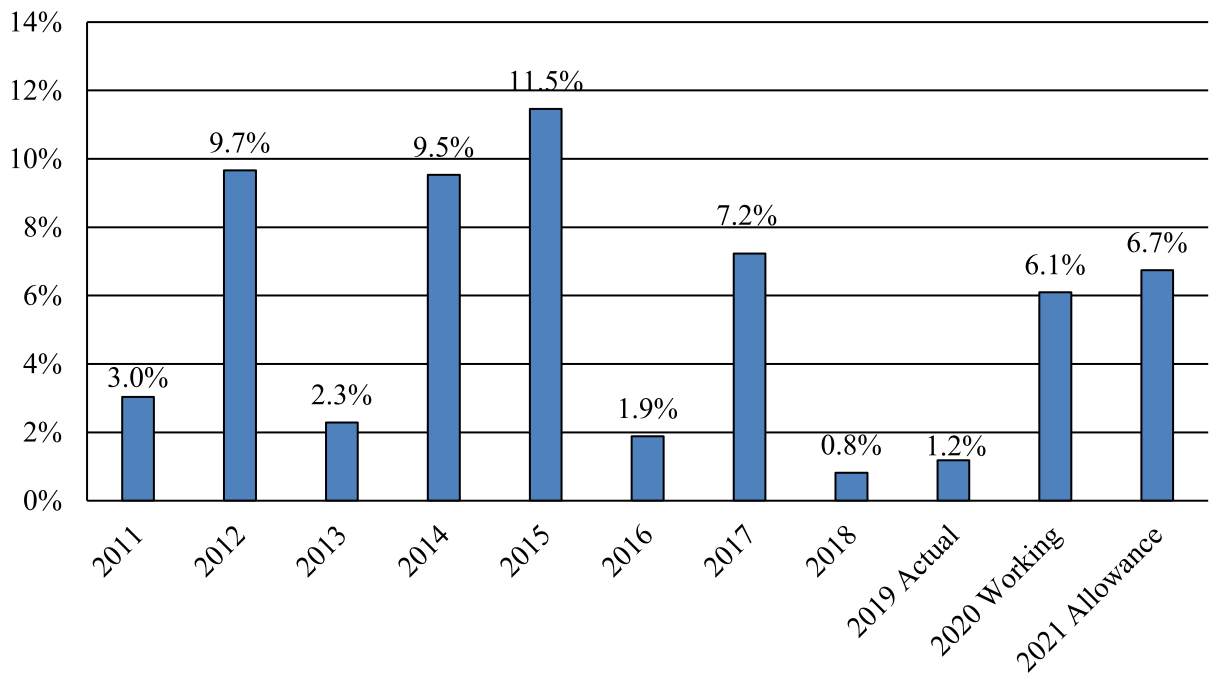
Note: Totals may not sum due to rounding.

Source: Department of Legislative Services

Growth Rate of Federal Funds

Over the last 10 years, federal funds have grown at varying rates primarily due to changes in Medicaid enrollment and federal policy, as shown in **Exhibit 4**. Modest growth in fiscal 2013 reflects the start of sequestration and minimal growth in Medicaid. Increases in fiscal 2014 and 2015 are primarily due to Medicaid, reflecting increased funding as a result of the ACA expansion of Medicaid eligibility to all persons under 138% of the federal poverty level. Growth of Medicaid funding slows in fiscal 2016 due to transition of the enrollment eligibility system that required all income-based enrollees to reenroll and resulted in a significant drop in enrollment. Funding increases in fiscal 2020 are driven by growth in Supplemental Nutrition Assistance Program (SNAP) spending (5.2%) and other federally funded spending, as Medicaid growth is only 1.1%. In fiscal 2021, Medicaid growth increases to 5.2%, and SNAP is flat with 0% growth.

Exhibit 4
Growth Rate of Federal Funds to the State
Fiscal 2011-2021 Allowance



Note: Excludes stimulus funding provided by the American Recovery and Reinvestment Act of 2009, which was provided from fiscal 2009 to 2017; the Coronavirus Aid, Relief, and Economic Security Act of 2020, which provided funding in fiscal 2020 and 2021; and the Families First Coronavirus Response Act of 2020, which provided funding in fiscal 2020 and 2021.

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

Fiscal 2021 Federal Fund Appropriation

The fiscal 2021 federal fund allowance totals $13.9 billion. **Exhibit 5** shows the distribution of federal funds by department/service area. The areas with the most federal funding are (1) health, primarily due to Medicaid funding; (2) human services, primarily due to SNAP and other social service grants; (3) transportation; and (4) public education. These four areas receive 91% of federal funding to the State.

Exhibit 5
Federal Funds in Fiscal 2021 Allowance
($ in Millions)

Department/Service Area	2021 Allowance
Health	$8,261.9
Human Services	1,743.2
Transportation	1,332.1
Public Education	1,291.2
Executive and Administrative Control	589.4
Housing and Community Development	307.1
Labor, Licensing, and Regulation	159.9
Environment	85.3
Natural Resources	37.2
Public Safety and Correctional Services	26.6
Public Debt	11.0
Budgetary and Personnel Administration	9.5
Agriculture	7.4
State Police	6.9
Judicial and Legal Review	6.9
Juvenile Services	4.3
Commerce	3.7
General Services	1.5
Total Federal Funds	**$13,885.0**

Note: Excludes funding provided by the Coronavirus Aid, Relief, and Economic Security Act of 2020 and the Families First Coronavirus Response Act of 2020, which provided funding in fiscal 2020 and 2021. Numbers may not sum due to rounding.

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

Federal Fiscal 2021 Budget Update

While none of the 12 annual appropriations bills for federal fiscal 2021 have passed the U.S. Congress, a continuing resolution (CR) ensures federal spending authorization through December 11, 2020, or until enactment of final appropriations. The U.S. Congress will need to either pass appropriations bills or another CR to ensure continued government operations.

Under caps set by the Budget Control Act (BCA) of 2011, discretionary spending levels were set for an approximately 10% cut in fiscal 2020 due to sequestration. However, the U.S. Congress passed the Bipartisan Budget Act of 2019 in August. The legislation raised discretionary spending caps for federal fiscal 2020 and 2021 for both defense and nondefense spending and suspended the debt limit. The bill also required federal fiscal 2020 discretionary spending limits to be increased to account for 2020 census costs. Federal fiscal 2021 will be the final year subject to the discretionary spending caps enacted by the BCA and subsequently modified several times since. Unlike discretionary spending caps, which expire after 2021, sequestration of mandatory spending has been extended on several occasions and now continues through 2030.

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Capital Budget

Debt Affordability

The Capital Debt Affordability Committee recommended a general obligation bond debt limit totaling $1.095 billion for fiscal 2022. This level of capital spending keeps debt service payments below 8% of revenues and debt outstanding below 4% of personal income through the capital planning period that ends in fiscal 2026. The Treasurer's Office estimates that total tax-supported outstanding debt will be $14.0 billion at the end of fiscal 2022, while debt service will be $1.9 billion in fiscal 2022.

Capital Debt Affordability Process

State law requires the Capital Debt Affordability Committee (CDAC) to review the size and condition of all tax-supported debt to ensure that the State's tax-supported debt burden remains affordable. The committee is chaired by the State Treasurer and includes the State Comptroller, the Secretary of Transportation, the Secretary of Budget and Management, and a public member. The chairs of the Capital Budget subcommittees for the Senate Budget and Taxation Committee and the House Appropriations Committee are nonvoting members.

Tax-supported debt outstanding consists of tax-exempt and taxable general obligation (GO) debt, transportation debt, bay restoration bonds, capital leases, certain Maryland Stadium Authority (MSA) debt, and bond or revenue anticipation notes. The committee makes annual, nonbinding recommendations to the Governor and the General Assembly on the appropriate level of new GO and academic revenue debt for each fiscal year.

CDAC began evaluating State debt in 1979. In consultation with rating agencies, investment bankers, and its financial advisor, CDAC has adopted policies to limit State debt outstanding to 4% of personal income and State debt service to 8% of State revenues

Affordability Ratios

Exhibit 1 shows CDAC's State debt affordability analysis. Debt service to revenues peaks in fiscal 2022 and 2023 at 7.7%. Debt outstanding to personal income peaks in fiscal 2021 at 3.4% and declines steadily throughout the period. This decline is, in part, attributable to State debt's short amortization period. The Constitution of Maryland limits State debt maturities to 15 years. Consequently, State debt is retired quickly.

Exhibit 1
Affordability Ratios Using Official Estimates from Board of Revenue Estimates
Fiscal 2021-2026

Year	Projected Debt Outstanding As a Percent of Personal Income	Projected Debt Service As a Percent of Revenues
2021	3.4%	7.4%
2022	3.3%	7.7%
2023	3.2%	7.7%
2024	3.1%	7.3%
2025	2.9%	7.1%
2026	2.8%	6.9%

Source: Department of Legislative Services

The global COVID-19 pandemic continues to affect Maryland. This adds considerable uncertainty to State revenue forecasts. In addition to the official revenue forecast, the Board of Revenue Estimates has prepared an alternative revenue forecast that assumes less economic activity. Both forecasts have similar assumptions about the pandemic and when a vaccine will be available but result in different revenue estimates. This is attributable to the high level of uncertainty associated with economic forecasts. Since the alternative forecast's revenues are less than the official forecast's revenues, the debt service to revenues ratio is higher under the alternative forecast. The State Treasurer's Office (STO) advises that debt service to revenues under the alternative forecast is at the 8% affordability limit in fiscal 2022 and 2023.

State Debt

GO bonds finance the State's capital program, which supports local public school construction, higher education, State facilities, and other capital projects. CDAC recommended that fiscal 2022 GO bond authorizations be limited to $1.095 billion. This is the same level as the fiscal 2021 recommendation. Total GO debt is projected to be $10.1 billion at the end of fiscal 2022. The Department of Legislative Services projects that GO bond debt service payments will total $1.4 billion in fiscal 2022.

Transportation bonds are limited obligation instruments, the proceeds of which fund highway and other transportation-related projects. Debt service on these bonds is funded from the Transportation Trust Fund, which is supported by motor vehicle fuel taxes, titling and registration fees, a portion of the corporate income tax, and other Maryland Department of Transportation (MDOT) revenues. State law limits consolidated transportation bonds outstanding to $4.5 billion.

MDOT projects that total outstanding transportation debt will be $3.5 billion in fiscal 2022. Transportation bond debt service is projected to be $448 million in fiscal 2022.

The Bay Restoration Fund was created by Chapter 428 of 2004 to provide grants for enhanced nutrient removal pollution reduction upgrades at the State's major wastewater treatment plants. The fund has several revenue sources and expends funds for both operating and capital program purposes. To date, $330 million has been issued. The Maryland Department of the Environment (MDE) indicates that the final $100 million will be issued in fiscal 2022. MDE estimates that $286 million in bonds will be outstanding at the end of fiscal 2022. Debt service costs are projected to be $32 million in fiscal 2022 and $47 million in fiscal 2023.

Capital leases for real property and equipment are also considered State debt if the revenues supporting the debt are State tax revenues. Examples of capital leases include the MDOT Headquarters Office Building and the Prince George's County Justice Center. MSA's capital leases are excluded from these leases and are instead included with MSA debt. STO estimates that debt outstanding for leases is expected to be $202 million at the end of fiscal 2021. Capital lease payments are estimated to be $30 million in fiscal 2021.

The final category of State debt is MSA debt. Some MSA debt is also limited obligation debt and represents bonds sold for the construction of the Camden Yards baseball and football stadiums, the Baltimore and Ocean City convention centers, the Hippodrome Theater, and the Montgomery County Conference Center. The facilities' debt service is supported by lottery revenues and other general fund sources. MSA debt includes its capital leases. MSA debt outstanding is expected to be $96 million at the end of fiscal 2022. STO advises that debt service payments are projected to be $16 million in fiscal 2022.

The University System of Maryland (USM), Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC) have the authority to issue debt for academic facilities as well as auxiliary facilities. Unlike the other authorizations, academic revenue bonds are not considered to be State debt; instead, they are a debt of the institutions. Proceeds from academic debt issued are used for facilities that have an education-related function, such as classrooms. Debt service for these bonds is paid with tuition and fee revenues. For fiscal 2022, CDAC recommends $30 million for academic facilities on USM campuses. No issuances are anticipated for MSU, SMCM, or BCCC.

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Capital Budget

Capital Funding Requests

On October 19, 2020, the Capital Debt Affordability Committee recommended holding new general obligation bond authorizations at $1.095 billion for the 2021 session, which is the same amount authorized in the 2020 session. While the committee's long-range plan does continue the policy of increasing authorizations 1% annually on a year-over-year basis, the recommendation is $60 million less than what is currently programmed in the State's *Capital Improvement Program* for fiscal 2022 and $300 million less through the five-year planning period. The current revenue picture will make it difficult to apply general funds to the capital program. One possible short-term solution could be the application of bond premium proceeds to supplement the capital program.

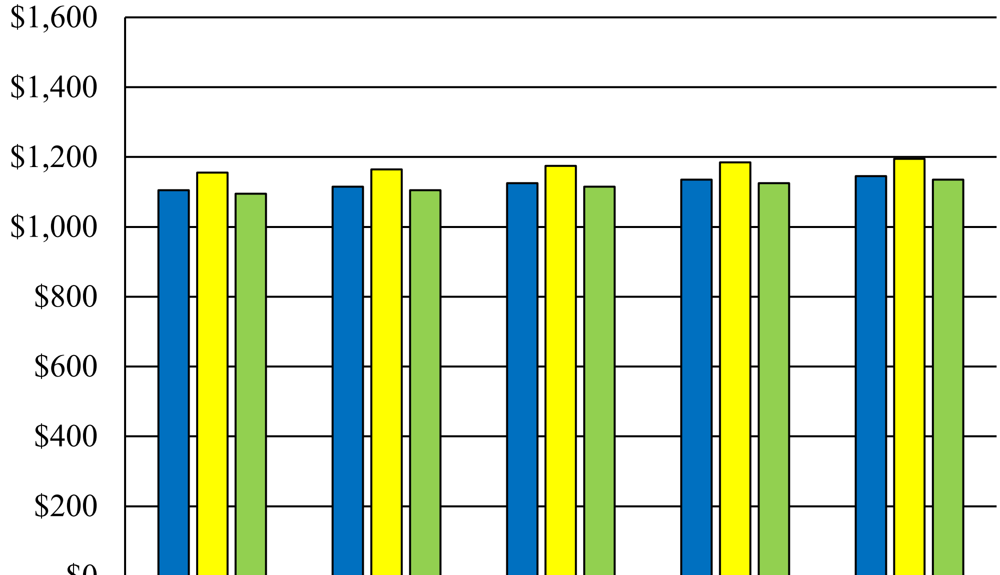
Capital Debt Affordability Committee Recommends Reduced General Bond Authorization Levels

As shown in **Exhibit 1**, the Capital Debt Affordability Committee (CDAC) recommended a level of general obligation (GO) bond authorizations for the five-year forecast period beginning in fiscal 2022 below both the level recommended by the Spending Affordability Committee (SAC) in December 2019 and the amount currently programmed in the 2020 *Capital Improvement Program* (CIP). The CDAC recommendation holds the fiscal 2022 authorization level at $1.095 million, which is the same amount authorized for fiscal 2021, while maintaining an annual 1% increase through the planning period. This results in an annual authorization level:

- $10 million annually below the SAC recommendation, or $50 million through the five-year planning period; and

- $60 million annually below the amount currently programed in the 2020 CIP, or $300 million through the planning period.

Exhibit 1
CDAC Recommended, CIP Planned, and SAC Recommended Authorization Levels
Fiscal 2022-2026
($ in Millions)



	2022	2023	2024	2025	2026
SAC 1% Policy	$1,105	$1,115	$1,125	$1,135	$1,145
2020 Session CIP	1,155	1,165	1,175	1,185	1,195
CDAC Recommendation	1,095	1,105	1,115	1,125	1,135

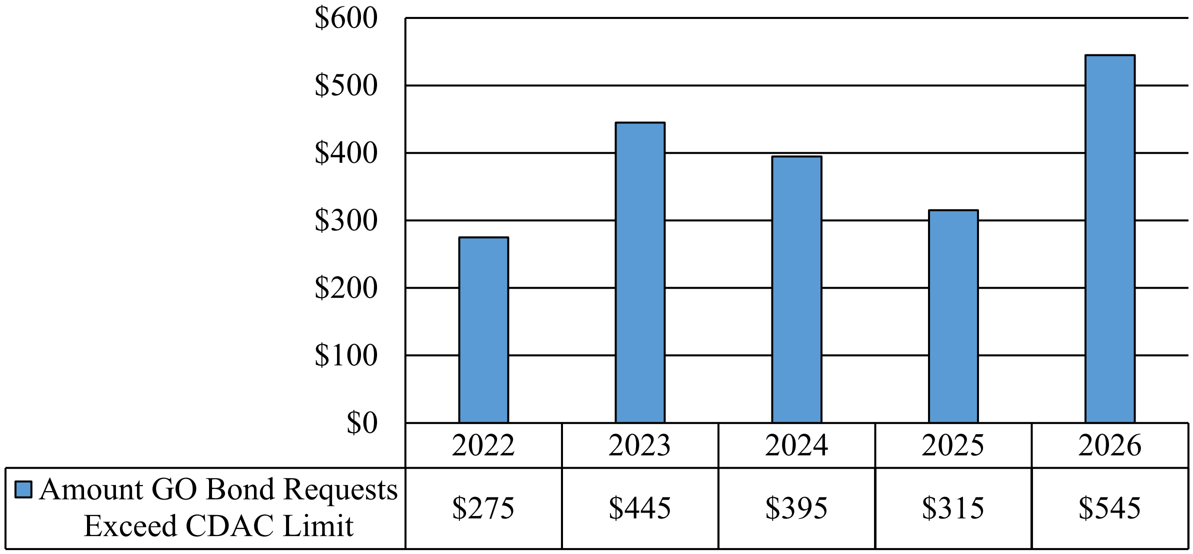
CDAC: Capital Debt Affordability Committee
CIP: *Capital Improvement Program*
SAC: Spending Affordability Committee

Source: 2020 *Capital Improvement Program*; Department of Budget and Management

Commitments Exceed Programmed and Recommended Authorization Levels

The amount of annual GO bond authorization currently programmed in the State's five-year CIP is already insufficient to accommodate all agency requests, and the lower authorization level recommended by CDAC would increase this disparity. **Exhibit 2** illustrates the variance between agency GO bond requests and the level of authorization recommended by CDAC. At the lower authorization level, the disparity is $275 million for fiscal 2022 and an aggregate of $1.975 billion through fiscal 2026 of which 80% is comprised of public school construction and higher education requests.

Exhibit 2
GO Bond Requests Exceed Recommended Authorization Levels
Fiscal 2022-2026
($ in Millions)

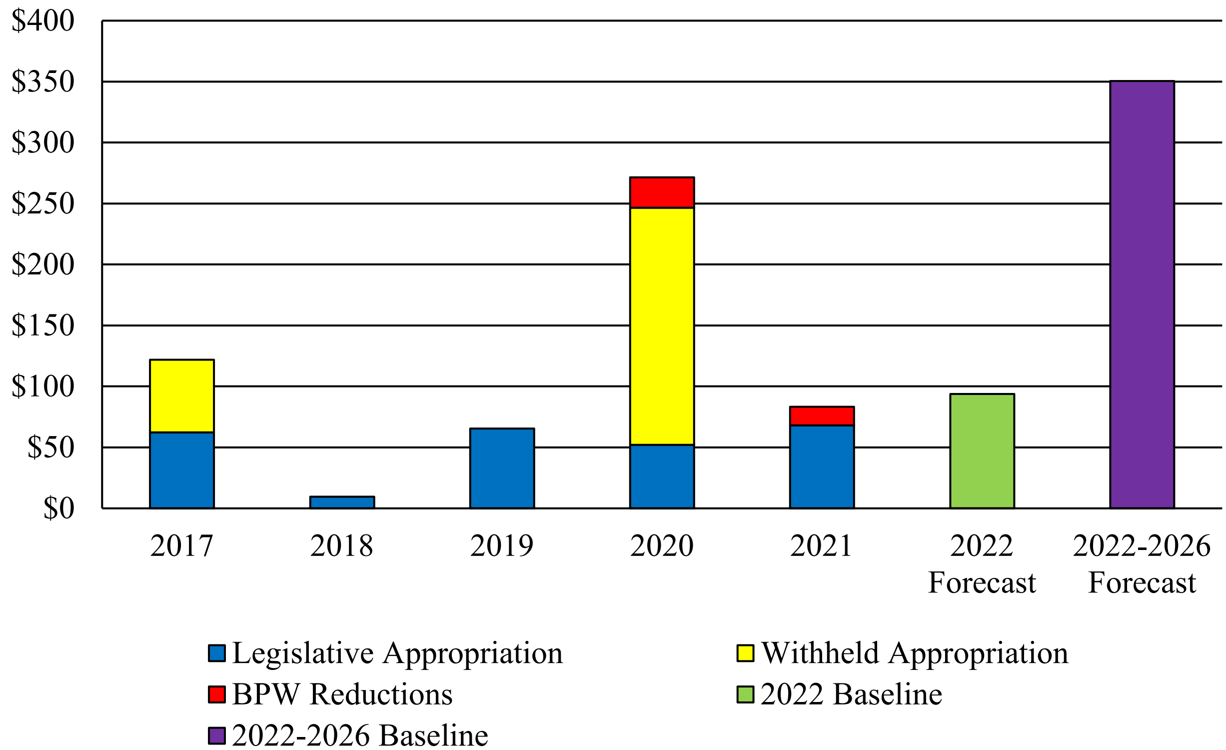


CDAC: Capital Debt Affordability Committee
GO: general obligation

Source: Department of Legislative Services

The State does make limited use of general funds to support the capital program, which can help bridge the disparity between requests and available funding. However, more recently, as shown in **Exhibit 3**, the use of general funds has been constrained and made subject to both the withholding of legislative appropriations by the Governor and reductions in both fiscal 2020 and 2021 brought about by the recession resulting from the COVID-19 pandemic. The current revenue picture will likely make it difficult to apply general funds to the capital program in the near term and put additional pressure on the GO bond program; the general fund forecast includes $93.7 million of general funds for capital programs in fiscal 2022 and $350 million in the five-year forecast period through fiscal 2026.

Exhibit 3
General Fund Capital Appropriations and Five-year Forecast
Fiscal 2017-2026 Forecast
($ in Millions)



BPW: Board of Public Works

Source: Department of Legislative Services

The State has also made limited use of bond premium proceeds to supplement the capital program in recent years: $47 million in fiscal 2016; $68 million in fiscal 2019; and $102 million in fiscal 2021. Based on bond counsel's advice, the State Treasurer's Office reports that $31 million of bond premium proceeds from the most recent July 2020 bond sale needs to be applied to capital projects. In addition, notwithstanding any changes to the way in which the State issues debt, bond premium proceeds from the next three bond sales scheduled to take place before the end of fiscal 2022 could also be available to supplement the capital program in fiscal 2022.

Revenues and Taxes

Impact of the CARES Act on the Maryland Income Tax

The Comptroller has determined that several provisions of the federal Coronavirus Aid, Relief, and Economic Security Act will significantly reduce State income tax revenue. The General Assembly may wish to consider legislation to decouple from these changes.

Overview of the CARES Act and State Conformity with the Internal Revenue Code

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act made temporary changes to several federal income tax provisions relating to business income, which are intended to increase cash flow and reduce the income tax burden on corporations, partnerships, and individuals for tax years 2018, 2019, and 2020. As a conformity state, Maryland generally conforms to federal income tax laws except where the General Assembly has enacted decoupling legislation.

Maryland law provides for automatic decoupling from federal income tax changes in certain circumstances. If the revenue impact of a change to federal income tax law for a taxable year that begins in the calendar year in which the change is enacted is greater than $5 million, then Maryland automatically decouples from that change for that taxable year. Based on the estimated State revenue impact of certain CARES Act changes, Maryland is automatically decoupled from the provisions with a revenue impact greater than $5 million for tax year 2020. However, since the automatic decoupling statute only applies to a single taxable year, Maryland is not decoupled from the provisions affecting tax years 2018 and 2019.

On June 12, 2020, the Comptroller published a report identifying three alterations by the CARES Act that have a significant impact on income tax revenue: (1) temporarily and retroactively expanding the net operating loss (NOL) lookback provisions for tax years 2018, 2019, and 2020 previously enacted under the Tax Cuts and Jobs Act (TCJA) in § 172 of the Internal Revenue Code (IRC); (2) decreasing the TCJA limitation on business interest expenses subject to deduction in tax years 2019 and 2020 under § 163(j) of the IRC; and (3) eliminating loss limitations imposed on noncorporate taxpayers by the TCJA under § 461(l) of the IRC for tax years 2018, 2019, and 2020. In its June report, the Comptroller's Office initially estimated the State revenue loss related to these provisions to be $51.4 million for fiscal 2020 and $257.5 million for fiscal 2021; however, it subsequently revised those estimates to project the losses to be $16.0 million for fiscal 2020 and $81.5 million for fiscal 2021.

The Comptroller's Office advised the Department of Legislative Services that it has already begun processing returns for tax years 2018 and 2019, which are being filed in response to the

CARES Act changes. According to the Comptroller's Office, absent a change in the law that decouples Maryland from the tax year 2018 and/or 2019 changes, the office is required to continue to process the tax returns as they are received.

Actions Taken by Other States

Several states have adopted legislation or issued guidance regarding the application of the CARES Act. These actions have varied, with some states decoupling from the CARES Act provisions entirely and some decoupling from only certain provisions. For example, New York has decoupled from CARES Act provisions that do not apply to individual income tax returns. California has not conformed to the CARES Act NOL provisions for franchise or income tax purposes. Georgia, Massachusetts, and New Mexico have similarly decoupled from the revised NOL provisions. North Carolina has decoupled from the NOL and interest expense provisions of the CARES Act. Iowa has declined to adopt provisions of the CARES Act as they apply to tax years before 2020.

Options for Consideration by the Maryland General Assembly

The General Assembly may wish to consider legislation decoupling the State from the CARES Act changes for tax years 2018 and/or 2019. While decoupling would reduce the estimated revenue losses, it would create significant complexities for taxpayers, tax professionals, and the Comptroller's Office, since impacted tax returns are already being processed. If decoupling legislation is enacted into law, the Comptroller's Office would stop processing amended returns for the prior tax years and issue assessments to any taxpayers who were previously issued refunds. The Comptroller's Office notes that challenges to these assessments as well as litigation could result in the State failing to realize the revenues sought to be recovered.

Going forward, the General Assembly may also wish to review the language of the State's decoupling statute. The intent of the language is to prevent a change to the federal tax code from significantly impacting State revenues until the General Assembly has the opportunity to either accept or reject the change. However, the current statute does not contemplate the passage of federal legislation that, in its year of enactment, would alter the computation of taxable income for previous taxable years. A change in the wording of the decoupling statute could better effectuate the intent of the statute to allow the General Assembly the opportunity to accept or reject changes to the federal income tax code that impact prior years.

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Revenues and Taxes

Casino Gaming Revenue

On March 16, 2020, as part of the State's effort to stop the spread of COVID-19, all six of the State's casinos closed and did not begin to reopen until mid-June. In fiscal 2020, casinos generated $1.28 billion in gaming revenue, which is $480.4 million less than the $1.76 billion generated during fiscal 2019. While COVID-19 restrictions continue to limit casinos to 50% of their capacity, gaming revenues totaled $143.7 million in September 2020 compared with $142.2 million in September 2019, which is a 1% increase.

Video Lottery Terminals and Table Games in Maryland

There are six casinos operating in Baltimore City and Allegany, Anne Arundel, Cecil, Prince George's, and Worcester counties, with the facility in Prince George's County being the newest casino in Maryland, which opened in December 2016. **Exhibit 1** shows the number of video lottery terminals (VLT) and table games in operation at each facility as of September 30, 2020.

Exhibit 1

VLTs and Table Games in Operation by Facility

As of September 30, 2020

Facility	VLTs	Table Games
Allegany	414	16
Anne Arundel	2,373	184
Baltimore City	1,024	152
Cecil	463	15
Prince George's	1,653	190
Worcester	603	18
Total	**6,530**	**575**

VLT: video lottery terminal

Source: State Lottery and Gaming Control Commission

Effect of COVID-19 on Casinos

On March 15, 2020, as part of the State's effort to stop the spread of COVID-19, Governor Lawrence J. Hogan, Jr. issued an executive order requiring the closure of all six casinos. The casinos temporarily suspended their operations on March 16 and did not begin reopening until mid-June. The casinos in Allegany, Cecil, and Worcester counties reopened to the public on June 19. The casino in Anne Arundel County reopened to invited guests on June 19 and to the general public on June 28. The casinos in Baltimore City and Prince George's County reopened to invited guests on June 26 and to the general public on June 28 and June 29, respectively.

The casinos have implemented robust social distancing and sanitation guidelines that include 50% capacity limits, reduced numbers of VLTs in operation, reduced seating at table games, temperature screenings, and a requirement that all employees and patrons wear facemasks. The number of VLTs in operation is down by over 40% from a year ago when there were 11,414 VLTs in operation on September 30, 2019. However, revenues from VLTs increased from $93.5 million in September 2019 to $94.3 million in September 2020. The number of table games is only slightly down from a year ago, when there were 599 table games in operation on September 30, 2019. Revenues from table games increased from $48.7 million in September 2019 to $49.4 million in September 2020.

Casino revenues were down 27.3% in fiscal 2020 from the previous year. In fiscal 2020, Maryland's casinos generated $1.28 billion in gaming revenue, which is $480.4 million less than the $1.76 billion generated during fiscal 2019. Casino contributions to the Education Trust Fund (ETF) for fiscal 2020 were $396.8 million, a decrease of $145.9 million (-26.9%) compared to the $542.7 million in ETF contributions during fiscal 2019. However, casino revenues are beginning to rebound. While COVID-19 restrictions continue to limit casinos to 50% of their capacity, gaming revenues totaled $143.7 million in September 2020 compared with $142.2 million in September 2019, which is a 1% increase.

VLT and Table Game Revenues

Exhibit 2 shows actual and anticipated gross VLT and table game revenues in Maryland for fiscal 2014 through 2022, not including one-time initial license fees, by facility. **Exhibit 3** shows the same revenues, not including one-time initial license fees, by fund.

Exhibit 2
Gross Gaming Revenues Generated by Facility
Fiscal 2014-2022 Est.
($ in Millions)

	2014	2015	2016	2017	2018	2019	2020	Est. 2021	Est. 2022
VLTs									
Allegany	$35.3	$38.0	$41.3	$45.1	$46.5	$48.9	$36.8	$53.4	$53.8
Anne Arundel	419.0	391.8	408.8	371.9	369.5	411.8	315.8	414.7	435.4
Baltimore City		131.9	168.3	168.7	156.3	144.6	96.4	135.5	134.1
Cecil	72.1	66.1	65.7	63.1	64.9	65.2	48.2	67.1	67.5
Prince George's				177.5	345.3	384.8	279.4	370.8	409.3
Worcester	52.0	53.1	57.6	59.6	64.1	69.8	52.6	67.6	73.3
Total VLTs	**$578.4**	**$681.0**	**$741.7**	**$885.9**	**$1,046.7**	**$1,125.1**	**$829.3**	**$1,109.0**	**$1,173.4**
Table Games									
Allegany	$5.9	$6.6	$6.6	$7.6	$7.6	$7.2	$5.6	$7.6	$7.7
Anne Arundel	235.4	233.8	242	219.8	190.1	177.6	133.7	186.6	189.4
Baltimore City		104.1	142.1	135.3	110.8	105.6	65.8	79.2	86.4
Cecil	13.6	11.9	11.6	11.3	10.4	9.6	7.6	10.2	10.3
Prince George's				160.9	310	326.6	231.5	321.1	329.1
Worcester					3.3	8.6	6.5	9.0	9.3
Total Table Games	**$254.9**	**$356.4**	**$402.3**	**$535.1**	**$632.3**	**$635.2**	**$450.7**	**$613.8**	**$632.2**
Total VLT and Table Games	**$833.3**	**$1,037.4**	**$1,144.0**	**$1,420.9**	**$1,679.0**	**$1,760.4**	**$1,280.0**	**$1,722.8**	**$1,805.7**

VLT: video lottery terminal

Note: Figures may not sum due to rounding.

Source: Department of Legislative Services

Exhibit 3
Gross Gaming Revenues Generated by Fund
Fiscal 2014-2022 Est.
($ in Millions)

	2014	2015	2016	2017	2018	2019	2020	Est. 2021	Est. 2022
VLTs									
Education Trust Fund	$277.1	$316.1	$322.0	$361.7	$401.8	$447.4	$329.2	$423.7	$448.6
Lottery Operations	11.6	11.9	7.8	9.3	10.5	11.2	8.3	11.1	11.7
Purse Dedication Account	38.9	46	50.1	54.6	61.2	65.9	48.5	64.7	68.5
Racetrack Renewal Account	9.5	7.1	7	8.4	10	10.8	7.9	10.6	11.2
Local Impact Grants	30.8	36.4	39.7	47.5	56.8	61.1	45.0	60.1	63.6
Business Investment	8.4	9.9	10.8	12.9	0	0	0.0	16.2	17.2
General Fund	0	0	0	0	15.3	0	0.0	0.0	0.0
Licensees	202.1	253.6	304.3	391.3	491	528.8	390.3	522.7	552.6
Total VLTs	**$578.4**	**$681.0**	**$741.7**	**$885.9**	**$1,046.7**	**$1,125.2**	**$829.3**	**$1,109.0**	**$1,173.4**
Table Games									
Education Trust Fund	$51.0	$71.3	$80.5	$89.5	$94.8	$95.3	$67.6	$92.1	$94.8
Local Impact Grants	0	0	0	17.6	31.6	31.8	22.5	30.7	31.6
Licensees	203.9	285.1	321.8	428.1	505.8	508.2	360.6	491.1	505.8
Total Table Games	**$254.9**	**$356.4**	**$402.3**	**$535.1**	**$632.3**	**$635.2**	**$450.7**	**$613.8**	**$632.2**
Total VLT and Table Games	**$833.3**	**$1,037.4**	**$1,144.0**	**$1,420.9**	**$1,679.0**	**$1,760.4**	**$1,280.0**	**$1,722.8**	**$1,805.7**
Education Trust Fund	**$328.1**	**$387.4**	**$402.5**	**$451.2**	**$496.7**	**$542.7**	**$396.8**	**$515.8**	**$543.4**

VLT: video lottery terminal

Note: Figures may not sum due to rounding.

Source: Department of Legislative Services

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Revenues and Taxes

Sports Betting

Sports betting operations are now underway in 19 states and the District of Columbia. In the coming year, North Carolina, Virginia, and Washington are expected to launch sports betting operations. Maryland voters approved a referendum to authorize sports and event wagering in the November 2020 general election. However, the General Assembly must follow this approval by passing implementation legislation before sports betting may move forward in the State.

Legalized Sports Betting

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

Post-PASPA Sports Betting Operations

On June 5, 2018, less than one month after the PASPA was struck down by the U.S. Supreme Court, Delaware became the first state outside of Nevada to offer single-game sports betting. New Jersey launched single-game sports betting just nine days later. Since then, there has been a rush of legislative activity in states hoping to capture a new source of gaming tax revenue. Sports betting operations are now underway in 18 of those states and the District of Columbia. **Exhibit 1** shows how these states have structured their sports betting operations and the revenues generated since going live.

In the coming year, North Carolina, Virginia, and Washington are expected to launch sports betting operations. Connecticut, Louisiana, and South Dakota are positioned to move forward once lawmakers and regulators make necessary implementation decisions.

Exhibit 1
Post-PASPA Sports Betting − States and Revenues

State	First Bet Placed	Tax Rate	Authorized Retail Betting Locations	Mobile Betting	Sportsbook Data (Launch Date through September 2020)[1]
Delaware	6/5/18	59.8% – 60.2% (includes % for race purses)	Racetracks	No	Handle[2] – $220,097,070 Revenue[3] – $24,939,774 State Share – $12,469,909
New Jersey	6/14/18	8.5% retail / 13% mobile	Casinos and racetracks	Yes	Handle – $9,123,193,004 Revenue – $616,629,274 State Share – $74,883,688
Mississippi	8/1/18	12% (includes a 4% local share)	Casinos	No	Handle – $719,154,291 Revenue – $78,728,324 State Share – $9,454,867
West Virginia	8/30/18	10%	Racetracks and the private club at Greenbriar	Yes	Handle – $506,021,984 Revenue – $38,750,170 State Share – $3,891,943
New Mexico[4]	10/16/18	Not available	Tribal casinos	No	Not available
Pennsylvania	11/17/18	36% (includes a 2% local share)	Casinos and racetracks	Yes	Handle – $3,521,543,206 Revenue – $169,948,997 State Share – $61,226,621
Rhode Island	11/26/18	51%	Casinos	Yes	Handle – $388,992,888 Revenue – $29,985,566 State Share – $16,180,118
Arkansas	7/1/19	13% / revenues above $150 million at 20%	Casinos and racetracks	No	Handle – $24,894,268 Revenue – $2,671,412 State Share – $383,075
New York	7/16/19	10%	Casinos	No	Handle – Not available Revenue – $11,050,241 State Share – $1,122,983
Iowa	8/15/19	6.75%	Casinos and racetracks	Yes	Handle – $513,571,354 Revenue – $36,132,754 State Share – $2,488,765
Oregon	8/27/19	Not available	Tribal casinos	Yes	Handle – $182,036,055 Revenue – $13,078,462 State Share – Not available
Indiana	9/1/19	9.5%	Casinos, racetracks, and OTBs	Yes	Handle – $1,409,584,535 Revenue – $109,274,383 State Share – $10,381,065

State	First Bet Placed	Tax Rate	Authorized Retail Betting Locations	Mobile Betting	Sportsbook Data (Launch Date through September 2020)[1]
New Hampshire	12/30/19	Per agreement with operator	Voter approved locations and lottery retailers	Yes	Handle – $147,725,984 Revenue – $10,170,385 State Share – $4,557,372
Illinois	3/9/20	15%	Casinos, racetracks, OTBs, sports facilities, and lottery retailers	Yes	Handle – $201,870,011 Revenue – $11,298,024 State Share – $2,491,376
Michigan	3/11/20	8.4%	Casinos	Yes	Handle – $49,842,141 Revenue – $6,459,007 State Share – $542,556
Montana	3/12/20	Per agreement with operator	Lottery retailers w/alcohol license	No	Not available
Colorado	5/1/20	10%	Casinos	Yes	Handle – $459,244,482 Revenue – $7,806,098 State Share – $812,855
Washington, DC	5/8/20	10%	Licensed businesses, lottery retailers, and sports facilities	Yes	Handle – $27,694,384 Revenue – $3,688,479 State Share – $273,242
Tennessee	11/1/20	20%	Online only	Yes	Not available

OTB: off-track betting parlor

[1] Sportsbook data for September is not currently available in Illinois.
[2] Handle is the total amount of all wagers.
[3] Revenue is gross gaming revenue (handle minus total win) minus various payouts (*e.g.*, promotional credits, excise taxes, vendor fees) to arrive at “taxable” revenue.
[4] In New Mexico, five of that state’s nine tribal casinos offer sports betting under the existing tribal gaming compact, although the activity remains unsanctioned under state law.

Source: Department of Legislative Services

Sports Betting Legislation

In 2020, 12 states considered sports betting legislation that ultimately failed to pass during their respective legislative sessions. In Ohio, which has a year-round legislature, a sports betting bill passed the House and is currently pending in the Senate. Finally, federal legislation to establish a federal sports betting framework was introduced in 2018 and 2019 but has not been reintroduced under the current Congress.

Sports Betting Revenue Potential

Although sports betting is generally understood to be a low-margin, high-volatility business, proponents in the gaming industry tout the ancillary benefits of retail sportsbooks – specifically, bringing in younger, net new customers to a gaming facility with an aging customer base; increasing table games and slots revenue; and boosting onsite food, beverage, and hospitality business. Further, authorizing mobile sports betting could significantly increase revenues. New Jersey reported $9.1 billion in total wagers since June 2018, 83% of which ($7.6 billion) was generated from online and mobile betting. Without mobile betting, New Jersey's gaming revenues would have been reduced by $65.1 million. In Indiana, a state with roughly the same population as Maryland, mobile betting handle made up 75% ($1 billion) of that state's $1.4 billion in total handle since September 2019.

Sports Betting in Maryland

In Maryland, legalized sports betting is considered an expansion of commercial gaming. Chapter 5 of the 2007 special session amended the Maryland Constitution so that after November 15, 2008, the General Assembly may only authorize additional forms or an expansion of commercial gaming if approved through a referendum by a majority of the voters in a general election. Legislation authorizing a referendum on sports betting was introduced in both houses during the 2018 and 2019 sessions, but these bills failed to pass. In 2020, Chapter 492 authorized sports and events betting generally, subject to voter referendum, and Maryland voters approved the question in the November 2020 general election. However, before sports betting operations can begin, the General Assembly must pass implementation legislation, including the criteria for eligible applications for a licensee and specifications of the permissible forms, means of conduct, and premises of wagering.

Maryland Sports Betting Revenue Estimates

The Department of Legislative Services (DLS) noted during the 2020 session that retail sports betting revenues in Delaware, New Jersey, Pennsylvania, and West Virginia average approximately 2% of those states' total gaming revenues from video lottery terminals and table games. Thus, if sports betting revenues in Maryland total 2% of Maryland's gaming revenues, gross revenues after payouts to bettors could increase by $36.5 million in fiscal 2022. Assuming that the current table games tax rate of 20% is applied, the State share of gross revenues in fiscal 2022 would be $7.3 million. DLS further estimated that gross revenues could increase up to $91.1 million in fiscal 2022, totaling 5% of Maryland's gaming revenues if sports betting is authorized both online and at Maryland casinos and racetracks. Assuming a 20% tax rate, the State share of revenues would be $18.2 million.

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Revenues and Taxes

Online Gaming and iLottery

During the COVID-19 pandemic, many states were forced to close their casinos. In states with online gaming and Internet lottery, revenues from those activities increased significantly during this period. Industry experts have estimated that Maryland could realize $71 million and $51 million in gross gaming revenue from iLottery and online gaming, respectively.

Online Gaming and Internet Lottery

The COVID-19 pandemic, which has largely contributed to the current economic downturn, has highlighted a rapidly growing trend in consumer spending – online entertainment. When casinos were forced to shut down during the pandemic, revenues from online gaming and Internet lottery (iLottery) skyrocketed in the states where either activity was operating. With many states facing declining revenues, state lawmakers continue to pursue legalization of online gaming or iLottery in an effort to boost struggling state budgets. Also, the recent legalization of mobile sports betting in 14 states and the District of Columbia may be encouraging states to consider broadening residents' access to other online gambling activities. In a 2020 presentation to the National Council of Legislators from Gaming States, industry experts predicted that Maryland could realize $71 million and $51 million in gross gaming revenue from iLottery and online gaming, respectively.

Online Gaming

Since 2012, six states have legalized online gaming. Delaware was the first, followed by Nevada, New Jersey, Pennsylvania, West Virginia, and Michigan. Michigan has yet to launch its online gaming operations. In the five states where online gaming is underway, gross gaming revenue from those operations reached an estimated $402.7 million during the second quarter of 2020, a 253% year-over-year increase according to the American Gaming Association. In fiscal 2020, New Jersey collected $103 million in taxes from online gaming operators in that state.

Generally, online gaming in each state is limited to residents and visitors physically located in the state. In February 2014, in order to create a larger pool of poker players, Delaware and Nevada entered into a Multi-State Internet Gaming Agreement. New Jersey joined the compact in 2017. The agreement, which is the country's first gaming compact, allows bettors in the three states to compete for the same winnings. Each state receives a percentage of the rake, or commission, attributable to the players from that state.

In 2020, four states considered online gaming legislation that ultimately failed to pass during their respective sessions. In Maryland, legislation was introduced in the 2020 session that would have established a task force to study and make recommendations on online gaming in the State, but the legislation did not pass.

The Maryland General Assembly (MGA) has not yet considered legislation that would authorize online gaming in the State. In addition, it is unclear if online gaming would be considered an additional form or expansion of commercial gaming that would require voter approval by referendum under Section 1 of Article XIX of the Maryland Constitution. In 2020, Chapter 492 authorized sports and event betting in the State, subject to voter approval in the 2020 general election; however, online gaming was not authorized by the Act. If online gaming legislation is introduced and passed during the 2021 session, Maryland voters may have to consider the issue as a referendum question in the 2022 general election.

iLottery

Of the 45 states with a state lottery, only 7 – Georgia, Illinois, Kentucky, Michigan, New Hampshire, Pennsylvania, and Virginia – offer the direct sale of lottery tickets over the Internet. The Minnesota Lottery launched online lottery sales in 2014; but in 2015, lawmakers in that state voted to make online lottery sales illegal, and the games were ultimately pulled.

In a September 2012 report required by MGA, the State Lottery and Gaming Control Agency (SLGCA) outlined its objective to develop an iLottery program. However, after reviewing the report, the MGA budget committees declined to authorize the release of funds that would allow SLGCA to proceed with the development of the program. Budget language was adopted during the 2013 legislative session restricting the use of funds designated for iLottery development purposes until the Legislative Policy Committee had an opportunity to review and comment on the plan. Finally, Chapter 293 of 2014 stated the legislature's intent that iLottery be prohibited for a one-year period, and Chapters 447 and 448 of 2017 codified the prohibition on an ongoing basis. Currently, the prohibition enacted by Chapters 447 and 448 is the only statutory provision that prevents SLGCA from implementing an iLottery platform.

Federal Laws and State Regulatory Authority

In 2006, the U.S. Congress adopted the Unlawful Internet Gambling Enforcement Act (UIGEA), which prohibits financial transactions in support of illegal online gaming. The UIGEA contains an exclusion for online gaming conducted solely within the boundaries of a state. This exclusion implies that states have the power to authorize online gaming.

The federal Interstate Wire Act (Wire Act) of 1961 prohibits any telecommunicated wager placed or received by a person located in the United States. However, in a September 2011 memorandum opinion, the U.S. Department of Justice (DOJ) determined that the Wire Act only applies to sports betting in interstate commerce. This interpretation effectively paved the way for states to begin to consider online lottery sales and ultimately online gaming. In early 2019, however, DOJ reversed its 2011 Wire Act opinion. The impact of that reversal on legal online gaming remains unclear, particularly with respect to the multistate online poker compact. The New Hampshire Lottery Commission filed suit against DOJ in summer 2019, fearing that the new opinion would make multistate lotteries illegal. The U.S. District Court for the District of New Hampshire ruled in favor of the Lottery Commission, and the DOJ opinion was vacated. DOJ has appealed that ruling and the case is ongoing.

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State and Retiree Health Plan

Favorable trends in medical and prescription drug costs have helped reduce the pressure on employee contributions despite continuation of State coverage for Medicare-eligible retirees' prescription drugs. The COVID-19 pandemic has slowed medical and dental spending in the short term, but spending is expected to bounce back. Legislation transitioning prescription drug coverage for Medicare-eligible retirees was passed in 2011. A lawsuit challenging this transition was filed by retirees, and a federal judge granted a temporary restraining order and preliminary injunction delaying the transition pending a decision on the case. Chapter 767 of 2019 was enacted to provide benefits to certain Medicare-eligible retirees with high out-of-pocket costs, with implementation delayed while the injunction is pending.

Plan Offerings

The State offers an array of health benefits, including medical, behavioral, vision, prescription drug, dental, life, and accidental death and dismemberment insurance. State employees may choose among three types of medical plans: a Preferred Provider Organization (PPO) that utilizes a national network and provides both in- and out-of-network benefits; an Exclusive Provider Organization (EPO) that also utilizes a national network and provides in-network benefits only; and an Integrated Health Model that utilizes a regional network.

EPO plans have the most members as of June 2020 with 69,508 members, or 55.6% of plan membership. Migration to EPO plans started when the State introduced coinsurance payments for PPO and point-of-service (POS) plans in 2012, requiring those members to pay a percentage of out-of-network costs and certain in-network costs.[1] EPO membership includes predominately active State employees (64% of membership), while PPO plan membership consists primarily of retirees (53% of membership). One reason active State employees may choose EPO plans is the attractiveness of lower premiums; the State's cost-share ratio for an EPO plan is 85/15, with the member paying 15% of the premium cost, while the cost-share ratio for a PPO plan is 80/20, reflecting the fact that EPO plans are less expensive due to the State not having to pay out-of-network claims. PPO plans may be more attractive to State retirees, who often have more health care needs and appreciate the flexibility of PPO plans for out-of-network services.

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

COVID-19 Disrupts Medical and Dental Spending

The State closed fiscal 2020 with a $142.4 million surplus in the health insurance account, primarily due to starting the year with a significant fund balance as well as a significant decrease in medical and dental spending in the fourth quarter of the fiscal year due to the impact of COVID-19 on health care providers. Overall, fiscal 2020 medical spending grew by only 0.7%. The onboarding of a new pharmacy benefits manager on January 1, 2018, has resulted in savings through reduced costs and enhanced rebates. In fiscal 2020, prescription drug costs (including rebate revenue) increased by 3.3%, which is lower than historic levels. Dental spending declined by 8.1% in fiscal 2020 due to a steep decline in spending in the fourth quarter due to COVID-19.

Spending Outlook

While the COVID-19 pandemic slowed medical and dental spending in the last quarter of fiscal 2020, with prescription drug spending staying normal, the Department of Legislative Services (DLS) expects a modest increase in health care spending beginning in the second half of calendar 2020. Since some costs have been avoided (such as physical examinations) and the capacity to provide health care is limited, DLS does not expect extraordinarily large increases in health care spending to make up for services that were not provided. Nonetheless, a fairly large increase in State agency and employee/retiree contributions is expected in fiscal 2022.

Continued Delay in Transition of State Retiree Prescription Drug Coverage to Medicare Part D

Chapter 397 of 2011 eliminated State prescription drug coverage for Medicare-eligible retirees beginning in fiscal 2020 with the intent of reducing the State's significant financial liabilities associated with Other Post Employment Benefits (OPEB). At the time, the State's OPEB liability decreased from $16.1 billion to $9.7 billion.

In response to the federal Bipartisan Budget Act of 2018 that accelerated the closing of the Medicare Part D coverage gap (also known as the "donut hole") to January 1, 2019, the General Assembly passed legislation (Chapter 10 of 2018) to realign the transition of retirees to Medicare Part D to the new date with the additional clarification of continuing coverage to non-Medicare-eligible spouses and dependents of Medicare-eligible retirees.

In September 2018, a lawsuit was filed in the Baltimore City Circuit Court to challenge the planned transition beginning in January 2019. In October 2018, a federal judge granted a temporary restraining order and preliminary injunction to delay the transition to Medicare Part D, pending a decision on the lawsuit. During the 2019 session, Chapter 767 was passed to establish prescription drug out-of-pocket (OOP) reimbursement or catastrophic coverage programs for specified Medicare-eligible State retirees or dependents. Depending on certain eligibility requirements, the programs would cover OOP costs that exceed limits in the existing State plan, reimburse OOP costs after the participant enters catastrophic coverage under Medicare, or reimburse OOP costs for a life-sustaining drug covered under the State plan but not under the participant's Medicare prescription plan. However, Chapter 767 delays implementation of the three plans while the injunction is pending and requires that there be at least nine months before open enrollment before Chapter 767 is implemented. These provisions mean that the earliest date on which Chapter 767 would be implemented is January 1, 2022.

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State Retirement and Pension System Investment Performance and Contribution Rates

The pension fund's fiscal 2020 return on investments was 3.57%, failing to exceed the assumed rate of return of 7.40%. The plan's funded status increased to 73.6%, compared to 72.3% at the end of fiscal 2019. State law requires that supplemental contributions of $75 million continue until the system is 85% funded and includes a pension sweeper provision that will direct a portion of unspent State general fund balances to the system.

Fiscal 2020 Investment Performance

The State Retirement and Pension System's (SRPS) investment return for the fiscal year that ended on June 30, 2020, was 3.57%, failing to exceed the assumed rate of return of 7.40%. System assets grew to a market value of $54.8 billion as of June 30, 2020. Investment returns were below the assumed rate of investment return for the second consecutive year, with returns exceeding the assumed rate of return in two of the last five years. The system as a whole outperformed its policy benchmark by 0.43% (43 basis points). Total system return for fiscal 2016 through 2020 is 5.80%, which is 0.03% (3 basis points) below the plan return benchmark for that period. Total system return for the past 10 years is 7.57%, which is 0.40% (40 basis points) above its benchmark for that period.

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

From fiscal 2019 to 2020, SRPS's funded status (the ratio of projected actuarial assets to projected actuarial liabilities) improved from 72.3% at the end of fiscal 2019 to 73.6% at the end of fiscal 2020 (these figures exclude funding for local governments that participate in the State plan). Several combined factors set the system up for continued improvement in its funding status, including the increasing number of new members entering the system under the reformed benefit structure enacted in 2011, the elimination of the corridor funding method, and continued supplemental contributions. From fiscal 2019 to 2020, the total State unfunded liability increased from $19.053 billion to $19.104 billion.

Fiscal 2021 Contribution Rates

Exhibit 1 shows that the employer contribution rate with reinvestment savings for the Teachers' Combined Systems (TCS) will decrease from 15.65% in fiscal 2021 to 15.33% in fiscal 2022, and the contribution rate for the Employees' Combined Systems (ECS) will decrease from 21.36% in fiscal 2021 to 21.12% in fiscal 2022. The aggregate contribution rate, including contributions for public safety employees and judges, decreases from 18.46% in fiscal 2021 to 18.18% in fiscal 2022. Based on projected payroll growth and other factors, the SRPS actuary estimates that total employer pension contributions will increase from $2.038 billion in fiscal 2021 to $2.106 billion in fiscal 2022. The fiscal 2022 contribution rates are the actuarially determined contribution rates and reflect an investment return assumption of 7.40%. The funding rates and contribution amounts are inclusive of the $75 million supplemental contribution required by Chapter 489 of 2015.

Exhibit 1
State Pension Contributions
Fiscal 2021 and 2022
($ in Millions)

	2021		2022	
Plan	**Rate**	**Contribution**	**Rate**	**Contribution**
Teachers' Combined	15.65%	$1,154.1	15.33%	$1,184.0
Employees' Combined	21.36%	722.7	21.12%	751.6
State Police	79.03%	88.6	76.16%	92.8
Judges	40.27%	20.6	41.93%	22.8
Law Enforcement Officers	43.93%	52.5	43.18%	55.3
Aggregate	**18.46%**	**$2,038.4**	**18.18%**	**$2,106.4**

Note: Except for the Teachers' Combined System (TCS), contribution rates and dollar amounts reflect State funds only, excluding municipal contributions. For TCS, it reflects the combined total of State and local contributions. Figures also reflect the $75 million supplemental contribution required by Chapter 489 of 2015.

Source: Gabriel, Roeder, Smith, & Co., Preliminary Results of the June 30, 2020 Actuarial Valuation for Fiscal Year 2022

Employer contribution rates were subject to multiple influences this year, some exerting upward pressure, and others exerting downward pressure. Investment returns over the five-year smoothing period exert upward pressure on the fiscal 2022 contribution rates. Increased membership under the reformed benefit structure exerts downward pressure on the rates. Chapter 489 eliminated the corridor funding method, which restricted the growth of contribution rates for TCS and ECS, which are the two largest plans within SRPS. This ensures that the budgeted contribution rate is the actuarially determined rate necessary to fully fund the system.

In addition to eliminating the corridor method and returning the system to full actuarially determined funding, Chapter 489 also provides for a supplemental contribution of $75 million each year until the system is 85% funded. Additionally, Chapter 557 of 2017 altered a sweeper provision that directs a portion of unspent general funds to the system as an additional supplemental payment in fiscal 2021 and subsequent years. This sweeper provision requires the Administration to include up to $25 million of unspent funds as an additional appropriation for State pension contributions in fiscal 2022.

Under State law, employer contributions to the several systems provide for full funding of the actuarially determined contribution, pay the actuarially determined contribution in full, and additionally provide for regular supplemental payments.

Local School Board Contributions to the Teachers' Pension System

Local school boards are required to make contributions for members of the Teachers' Retirement and Pension systems (TRS/TPS). The contribution amounts are the amounts associated with the normal cost for local employees in TRS/TPS. The normal cost is the portion of the yearly contribution rate, which reflects the amounts needed to fund liabilities that will be accrued in the upcoming year. The normal cost rate for fiscal 2022 is 4.17%, and the system's actuary projects the local school board normal cost share for fiscal 2022 to be $296.5 million. The system's actuary projects the total State contribution to TCS will be $887.5 million, which consists of $25.6 million of the normal cost,[2] $811.1 million for unfunded liabilities, and $50.8 million in supplemental contributions.

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[2] The State continues to be responsible for paying the normal cost for certain TRS/TPS covered employees, such as library employees and employees of an educational institution supported and operated by the State.

Personnel

Pension Fund Risk-sharing

Maryland offers employees defined benefit pension plans. Under these plans, the retiree receives a benefit that is a function of the employee's salary, years of service, and a multiplier. The State and employee contribute to the plan, and the State invests the funds. Investment earnings are anticipated, and all risks are borne by the State. Public and private employers also offer defined contribution plans, whereby the investment risk is borne by the employee. Due to the volatility of asset markets, defined benefit plans can be expensive for the State. Conversely, market volatility can result in underfunded pensions for retirees with defined contribution plans. To limit employer costs and provide protections against asset market volatility for retirees, some employers offer hybrid plans that offer to share this risk between the employer and the retiree. This issue paper examines two approaches.

Volatility in Financial Markets Threatens Public Pensions

When the COVID-19 pandemic caused public equity markets to lose more than 20% of their value in March 2020, it marked the third time in 20 years that financial markets dropped precipitously (the other two times occurring in 2001 during the dot-com bust and from 2007 to 2008 during the global financial crisis). Each of these financial market crashes erased billions of dollars in asset values for public pension plans, which rely increasingly on investment returns to cover cash flow deficits. For instance, in fiscal 2020, the Maryland State Retirement and Pension System (SRPS) collected $2.1 billion in employer contributions and $850 million in member contributions for a total of $3.0 billion in contributions. However, benefit payments to retirees and beneficiaries in fiscal 2020 totaled $4.2 billion, resulting in a negative cash flow of $1.2 billion; the gap was filled with pension fund assets generated by investment returns. Fortunately, financial markets recovered quickly following the March collapse, so the net effect on the SRPS investment performance was not as dire as it originally appeared. However, the March collapse was a reminder of the vulnerability of public pension plans to financial market volatility.

In recent years, largely in response to the global financial crisis of 2007 and 2008, a new approach to designing defined benefit plans has emerged that seeks to more effectively insulate these plans from external financial market shocks. These plans manage investment risk (*i.e.*, the risk of dramatic fluctuations in investment performance) by calculating a variable benefit that automatically adjusts based on a plan's actual investment performance or other variables. Promised benefits decrease when investment returns or other target indicators fail to meet a predetermined threshold and grow when they meet or exceed that threshold. In their purest forms, these plan designs can help stabilize employer contributions over time by matching liabilities to the assets available to pay for them. In the aftermath of the most recent shock from financial markets, this paper examines some of the risk-sharing approaches taken by other plans as possible models for mitigating the vulnerability of SRPS to external financial market shocks.

Risk-sharing Can Mitigate the Effects of External Financial Shocks

There are many variations of the variable benefit approach to plan design, but this summary focuses on two distinct approaches that have been implemented in public- and private-sector environments. The first is the multiemployer plan model, which has been used in several private-sector multiemployer plans and has met all requirements of the Employee Retirement Income Security Act (ERISA). As a public-sector plan, SRPS is not subject to the ERISA, but much of its structure is modelled on ERISA requirements. The second is the Tennessee model, which is based on the pension reforms enacted for the Tennessee Consolidated Retirement System in 2014.

Multiemployer Plan Model

To comply with ERISA requirements, the key feature of the multiemployer plan model is that benefits accrue as “units” rather than as a percentage of income. The value of a unit adjusts each year in proportion to the gap between actual investment performance and the “hurdle” or target investment return rate. In a year in which investment returns far exceed the hurdle rate, the value of a unit grows proportionately to the overperformance. In a year in which investment returns lag the hurdle rate, the value of a unit similarly declines. At the time of retirement, the annual benefit is the product of the number of units and the value of a single unit.

Exhibit 1 provides an example of how the variable benefit adjusts each year. It is based on an assumed starting salary of $40,000 that increases by 2% annually. It also assumes a 5% hurdle rate. The returns used for this example are actual SRPS returns for the 15-year period from fiscal 2000 through 2014.

Exhibit 1
Multiemployer Plan Example

	Salary	Hurdle	Returns	Return Difference	Unit Value	Annual Units Earned	Accrued Units Earned	Accrued Variable Benefit
Year 1	$40,000	5.0%	11.9%	6.9%	$10.7	56.1	56.1	$600.0
Year 2	40,800	5.0%	-9.4%	-14.4%	9.2	66.9	123.0	1,125.6
Year 3	41,616	5.0%	-7.6%	-12.6%	8.0	78.1	201.1	1,608.0
Year 4	42,448	5.0%	3.2%	-1.8%	7.9	81.1	282.1	2,215.8
Year 5	43,297	5.0%	16.2%	11.2%	8.7	74.4	356.5	3,113.4
Year 6	44,163	5.0%	9.5%	4.5%	9.1	72.6	429.1	3,916.0
Year 7	45,046	5.0%	10.4%	5.4%	9.6	70.2	499.3	4,803.1
Year 8	45,947	5.0%	17.6%	12.6%	10.8	63.6	563.0	6,097.5
Year 9	46,866	5.0%	-5.4%	-10.4%	9.7	72.4	635.4	6,166.4
Year 10	47,804	5.0%	-20.0%	-25.0%	7.3	98.5	733.9	5,341.9
Year 11	48,760	5.0%	14.0%	9.0%	7.9	92.2	826.1	6,554.0
Year 12	49,735	5.0%	20.0%	15.0%	9.1	81.8	907.9	8,283.1
Year 13	50,730	5.0%	0.4%	-4.6%	8.7	87.4	995.3	8,663.1
Year 14	51,744	5.0%	10.6%	5.6%	9.2	84.4	1,079.7	9,924.4
Year 15	52,779	5.0%	14.4%	9.4%	10.1	78.7	1,158.5	11,648.9

Source: Department of Legislative Services

In this example, the unit value decreases multiple times (in years 2 through 4, years 9 through 10, and finally in year 13) based on investment underperformance, but the accrued variable benefit grows in most years (except in year 10). This reflects the linkage that exists between salary, which grows 2% annually, and the benefit calculation. In some multiemployer plan models, benefit levels are set independently of salary, and the fluctuations in the accrued variable would more often be negative. Some variations of the multiemployer plan model include a minimum guaranteed benefit to protect members from the full effect of prolonged downturns in financial markets.

Tennessee Model

Tennessee adopted a defined benefit/defined contribution hybrid model for members hired after June 30, 2014; the defined benefit portion includes some aspects of a variable benefit model. However, rather than using investment returns as the trigger for adjusting benefits, the Tennessee model uses employer contributions or unfunded liabilities as the trigger. The model has helped Tennessee maintain a funded ratio above 90% for its defined benefit plans.

The Tennessee model establishes a benefit multiplier of 1.0%, a fixed employer contribution of 4% of payroll, and an employee contribution of 5% of salary. There are also employer and employee contributions to the defined contribution portion of the hybrid plan (5% and 2%, respectively). If the employer's actuarially defined contribution (ADC) in a given year is less than the 4% fixed contribution, the excess contribution is deposited into a stabilization reserve fund for future use.

If the ADC exceeds 4% in a given year or if the actuarial unfunded liability exceeds statutory limits, automatic funding control mechanisms take effect with the first one being a draw down from the stabilization reserve fund. If the fund does not have sufficient resources to cover the excess contribution, additional control measures take effect automatically, including (in order of implementation) reducing future retiree cost-of-living increases, shifting a portion of the employer contribution from the defined contribution plan to the defined benefit plan, increasing the employee contribution by 1%, and reducing the benefit multiplier below 1.0%.

Applicability of Models to Maryland

In designing its model, Tennessee was able to take advantage of the fact that it was already a well-funded pension plan with a low employer contribution rate. Lowering the benefit multiplier to 1.0% also generated an even lower employer contribution, hence the 4.0% fixed employer contribution (compared with roughly 17% for Maryland's plans). Even if Maryland adopted this model, combining the new plan design with existing plan liabilities would generate employer contribution rates in excess of Tennessee's 4.0% rate. However, the model could be adjusted to establish a fixed employer contribution rate consistent with Maryland's funding status.

Following the global financial crisis, the Maryland General Assembly reaffirmed its commitment to maintaining a defined benefit pension plan for State employees and teachers. As recent history has shown, however, defined benefit plans can be vulnerable to external financial market shocks that erode their asset base. Through risk-sharing design features, other public and private plans have shown that they can mitigate the effects of those shocks in ways that maintain the financial viability of the plans while still providing meaningful benefits for their members. Should the General Assembly wish to incorporate risk-sharing design features into defined benefit retirement plans, the previously discussed approaches could provide a possible framework or roadmap that could be tailored to Maryland's unique conditions.

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Education

State Education Aid

State education aid is projected to increase modestly in fiscal 2022. The small growth is due to a combination of low inflation, which drives per pupil funding amounts, and preliminary enrollment figures showing a sharp decline in most programs. These decreases are offset by a mandated increase in funding for the Blueprint for Maryland's Future Fund. As a result of the Governor's veto of House Bill 1300 of 2020, several Blueprint programs that were funded in fiscal 2020 and 2021 are no longer required to be funded in fiscal 2022. However, sufficient funding is available in the Blueprint for Maryland's Future Fund to more than cover the costs to continue the programs.

Aid for State Public Schools Projected to Increase by $103 Million

Public schools are expected to receive an estimated $7.3 billion in fiscal 2022, representing a $102.8 million (1.4%) increase over the prior fiscal year. The increase is comprised of aid that flows directly to local school boards, which is projected to increase by $96.2 million (1.5%), and of retirement aid, which is projected to increase by $6.6 million (0.9%). The modest increase in direct aid is largely driven by a slight expected rise in the per pupil foundation amount coupled with decreasing total enrollment related to COVID-19, more than offset by a $205.3 million increase in spending from the Blueprint for Maryland's Future Fund. However, an October 26, 2020 waiver decision by the State Board of Education to allow for the count of nonimmunized students when determining full-time equivalent enrollment used for major direct education formulas will likely result in the addition of an estimated $109 million in direct aid as compared to figures otherwise presented and discussed in this issue paper.

Direct Aid Programs Increase Modestly

The foundation program is the major State aid program for public schools, accounting for nearly half of State education aid. For each school system, a formula determines the State and local shares of a minimum per pupil funding level, or "foundation." In fiscal 2022, the foundation program is estimated to decrease by $98.5 million (3.1%), from $3.2 billion to $3.1 billion. This decrease is primarily attributable to a projected decrease of 3.8% in full-time student enrollment in 2020 to 2021, from 874,268 to 841,087. The unanticipated enrollment decline is related to the impact of the COVID-19 pandemic on in-person schooling; the continuation of remote learning by most school systems has led to significant decreases, particularly in prekindergarten and kindergarten enrollments, as well as an increase in home schooling applications. In addition, over 26,000 students statewide did not meet the immunization requirement to be counted in the foundation enrollment, which is considerably higher than prior years. In fiscal 2022, the per pupil foundation grant amount increases by $59, from $7,331 to $7,390, an increase of 0.8% that reflects the low rate of inflation.

As shown in **Exhibit 1**, formula funding for special education and for English language learners also decreases in fiscal 2022. As with the foundation program, the decrease in funding for these programs results from significant enrollment decreases that are likely related to the COVID-19 pandemic. Eligible enrollment for special education and English language learners decrease by 8.9% and 6.3%, respectively. Conversely, yet also likely related to conditions resulting from the COVID-19 pandemic, the count of students used to determine compensatory aid (those students who are eligible for free or reduced-price meals (FRPM)) increases by about 6.8%. As a result, compensatory aid is estimated to increase by $107.2 million (7.9%) in fiscal 2022, from $1.4 billion to $1.5 billion.

Exhibit 1
Estimated State Aid for Education
Fiscal 2021 and 2022
($ in Millions)

Program	2021	2022	$ Change	% Change
Foundation Program	$3,218.4	$3,119.9	-$98.5	-3.1%
Geographic Cost of Education Index	149.5	145.0	-4.6	-3.1%
Net Taxable Income Grant	69.7	62.8	-7.0	-10.0%
Declining Enrollment Grant	7.6	0.0	-7.6	-100.0%
Hold Harmless Grants	9.5	0.0	-9.5	-100.0%
Kirwan Blueprint Funding	294.7	500.0	205.3	69.7%
Compensatory Education Program	1,364.7	1,472.0	107.2	7.9%
Special Education Formula	314.9	289.4	-25.5	-8.1%
Nonpublic Special Education	123.9	124.5	0.6	0.5%
Limited English Proficiency	348.2	328.5	-19.7	-5.7%
Guaranteed Tax Base	41.2	54.7	13.5	32.8%
Student Transportation	310.2	296.4	-13.7	-4.4%
Head Start/Prekindergarten	75.2	29.6	-45.6	-60.6%
Other Education Programs	138.6	139.8	1.2	0.9%
Direct Aid Subtotal	***$6,466.4***	***$6,562.6***	***$96.2***	***1.5%***
Teachers' Retirement	**$750.3**	**$756.9**	**$6.6**	**0.9%**
Grand Total	**$7,216.7**	**$7,319.5**	**$102.8**	**1.4%**

Kirwan: Commission on Innovation and Excellence in Education

Note: Does not reflect additional direct aid of approximately $109 million that will likely result from an October 26, 2020 State Board of Education decision to waive the requirement that nonimmunized students must be excluded from the enrollment count used to determine major direct education formula results.

Source: Department of Legislative Services

Though $72.2 million was provided for prekindergarten expansion and other early education programs in fiscal 2021, only $26.6 million required by statute for prekindergarten expansion is assumed for fiscal 2022, resulting in a $45.6 million decrease. Also, a decrease of

$9.5 million is projected due to no funding being included in fiscal 2022 for hold harmless grants. Though grants in both fiscal 2019 and 2020 were provided to mitigate against decreases in direct aid for local education agencies, such grants are not required by statute, and thus not assumed for the fiscal 2022 budget.

Funding for the Blueprint for Maryland's Future

The Blueprint for Maryland's Future (Chapter 771 of 2019) established multiple programs and funding for schools and school districts in fiscal 2020 and 2021 to begin implementing the 2019 interim recommendations of the Commission on Innovation and Excellence in Education chaired by Dr. William "Brit" Kirwan. In fiscal 2020, these programs included (1) a Concentration of Poverty School Grant Program; (2) a Teacher Collaborative Grant Program; (3) a Teacher Salary Incentive Grant Program; and (4) Transitional Supplemental Instruction for struggling learners. Additionally, school systems received $65.5 million for special education, which included targeted allocations for implementation of student Individualized Education Programs (IEPs) and 504 plans. In fiscal 2021, these programs included an extension and expansion of declining enrollment grants and supplemental prekindergarten grants first established under Chapters 6 and 607 of 2017. Additionally, Chapter 771 extended through fiscal 2025 the FRPM student count methodology for the compensatory aid program, which supplies funds for schools and school systems that participate in the Community Eligibility Provision. In fiscal 2021, funding for Blueprint programs totaled $350.8 million, which in addition to the programs cited previously, included additional grants for early childhood education, schools with a high concentration of poverty, mental health services coordinators, and Blueprint outreach.

In fiscal 2020 and 2021, Blueprint programs were funded by a combination of gaming revenues deposited in the Education Trust Fund ($125 million in fiscal 2020 and $250 million in fiscal 2021); a portion of corporate filing fee revenue (in fiscal 2021); general funds repurposed from the Teacher, Induction, Retention and Advancement Pilot Program (in fiscal 2020); and $200 million available from the Blueprint for Maryland's Future Fund as a result of the federal Tax Cuts and Jobs Act of 2017. Beginning in fiscal 2021, sales tax revenues from marketplace facilitators and out-of-state vendors that exceed $100 million are also dedicated to the Blueprint Fund.

Due to the Governor's veto of House Bill 1300 of 2020, Blueprint for Maryland's Future – Implementation, fiscal 2022 does not include funds for the implementation of the new funding formulas and programs. However, $500 million is required by Chapter 771 to be appropriated to the Blueprint Fund in fiscal 2022, and it is assumed those funds are also spent in fiscal 2022. For a more detailed discussion of issues related to the Blueprint for Maryland's Future, see the section "Blueprint for Maryland's Future" within Education of this *Issue Papers of the 2021 Session*.

State Retirement Costs Increase; Local Costs Virtually Flat

State retirement costs for public school teachers and other professional personnel will total an estimated $756.9 million in fiscal 2022, representing a $6.6 million (0.9%) increase. This increase is attributed to a decrease in the State contribution rate, which is more than offset by salary base growth. In addition to the State's share of teacher pension costs, local governments will contribute approximately $305.4 million in fiscal 2022 (nearly level with the fiscal 2021 local total) – $290.2 million for the local share of pension contributions, which is the employer "normal cost" for active members of the State Teachers' Pension or Retirement Systems, as well as $15.5 million toward State Retirement Agency administrative costs. The normal cost for fiscal 2022 is 4.17% of salary base as compared to 4.33% in fiscal 2021; however, this rate decline is expected to be somewhat offset by a statewide increase in the local salary base.

Maintenance of Effort

The Maintenance of Effort (MOE) law requires each county government, including Baltimore City, to provide as much per pupil funding for the local school board as was provided in the prior fiscal year. In addition, Chapter 6 of 2012 requires some county governments to increase per pupil funding. As of October 2020, the Maryland State Department of Education has certified that the school appropriations of all 24 counties (including Baltimore City) have met or exceeded the fiscal 2021 MOE requirement. In total, 5 counties (Calvert, Cecil, Frederick, Harford, and St. Mary's) exceeded MOE by 1.0% or more. Twelve jurisdictions that are below the statewide five-year moving average education effort level may be required to increase their MOE appropriations in fiscal 2022, as required by Chapter 6 of 2012. The required increase is the lesser of the increase in a county's per pupil wealth, the average statewide increase in per pupil local wealth, or 2.5%. Preliminary estimates suggest that statewide per pupil local wealth will increase from fiscal 2021 to 2022. In fiscal 2021, 12 jurisdictions were required to increase their appropriations, each at the maximum 2.5% increase under Chapter 6.

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Education

Blueprint for Maryland's Future

As a result of the Governor's veto of House Bill 1300, Blueprint for Maryland's Future – Implementation, new funding formulas scheduled to begin in fiscal 2022 as well as the continuation of programs and funding enacted by Chapter 771 of 2019, which established the Blueprint for Maryland's Future, are not required to be funded by the Governor in fiscal 2022. Even if the veto is overridden during the 2021 session, funding cannot be mandated until fiscal 2023. Based on current revenue estimates, there will be sufficient dedicated funding to pay for Blueprint implementation from fiscal 2023 through 2025 before general funds are required beginning in fiscal 2026 to fully fund the proposed formulas and programs.

Blueprint for Maryland's Future

After more than three years of study and consideration, the Commission on Innovation and Excellence in Education adopted its final policy and funding recommendations in November 2019. The Kirwan Commission – as it is known for its chair, former University System of Maryland Chancellor Dr. William "Brit" Kirwan – adopted interim policy recommendations in January 2019, which formed the basis of Chapter 771 of 2019, The Blueprint for Maryland's Future. Chapter 771 established an array of programs and funding relating to the State's education system over the fiscal 2020 and 2021 period. Based on the final policy and funding formula recommendations of the Kirwan Commission, the General Assembly passed House Bill 1300, Blueprint for Maryland's Future – Implementation, during the shortened 2020 legislative session. The bill was vetoed by the Governor due to the uncertain economic situation resulting from the COVID-19 pandemic.

Education Policy Provisions

House Bill 1300 implements commission recommendations in the policy areas of (1) early childhood education; (2) high-quality and diverse teachers and leaders; (3) college and career readiness pathways; (4) resources to ensure all students are successful; and (5) governance and accountability.

Early Childhood Education

Beginning in the 2022-2023 school year, House Bill 1300 expands the availability of prekindergarten by establishing voluntary full-day prekindergarten for three- and four-year-olds. Funding for the program is split between State, county, and family shares of the cost. Public and private providers must meet specified staffing, quality, and nondiscrimination requirements to be eligible to participate in the publicly funded full-day program.

The bill also mandates increased funding for several early childhood accreditation and capacity building programs. Additionally, funding is provided for the Maryland Infant and Toddlers Program, for additional Judy Centers, and for additional Family Support Centers (which will be known as Patty Centers after Patricia H. Kirwan). Finally, to transition to the new publicly funded prekindergarten program, the bill modifies the existing Prekindergarten Expansion Grant Program by expanding to three-year-olds through fiscal 2025 and expiring thereafter.

High-quality and Diverse Teachers and Leaders

The bill establishes a professionalized career framework for teachers and school leaders through a career ladder. The career ladder incorporates additional time for team collaboration, professional development, additional professional responsibilities, career advancement opportunities, and financial incentives not tied to seniority. Teachers are incentivized to obtain certification from the National Board for Professional Teaching Standards through financial incentives and other resources and supports beginning in fiscal 2022.

The bill also provides for the recruitment, preparation, and induction of teachers including a school leadership training program and provides funding for various related scholarship and loan programs. The bill also establishes requirements for teacher preparation programs at institutions of higher education and alternative teacher preparation programs. Teacher training practicums must be of a specified duration, set to increase within five years from enactment, and developed in collaboration with partner schools. The Maryland State Department of Education (MSDE) must adopt or develop challenging subject-specific exams as well as exams for teaching ability and reading instruction among other skills. Beginning in 2025, teachers must pass these exams to be certified in Maryland.

College and Career Readiness Pathways

The bill requires the State Board of Education (SBE) to adopt a College and Career Ready (CCR) standard as specified in English language arts, mathematics, and, when practicable, science. Beginning with the 2020-2021 school year, each student must be assessed no later than grade 10 by a method adopted by SBE to determine whether the student meets the CCR standard. This standard is subject to independent analysis and required to be updated based on those findings. Each local board must provide all students who meet the CCR standard with access to specified post-CCR pathways, at no cost to the student or the student's parents, and students who have not met the CCR standard by the end of grade 10 must receive an individualized plan to meet the standard.

The bill also creates a Career and Technology Education (CTE) Committee within the Governor's Workforce Development Board to build an integrated, globally competitive framework for providing CTE to Maryland students in public schools, institutions of postsecondary education, and the workforce. Also established is a Skills Standards Advisory Committee to make recommendations to the CTE Committee on the CTE courses to be offered.

Resources to Ensure All Students Are Successful

In addition to other funding formula changes related to compensatory education, English learners, and special education, and similar to the grants provided in fiscal 2020 and 2021, House Bill 1300 provides concentration of poverty grants in fiscal 2022 and each subsequent year to qualifying schools. The percentage of poverty needed to qualify for a grant is phased down from 75% to 55% by fiscal 2025 for the personnel grant and by fiscal 2027 for the per pupil grant. Transitional Supplemental Instruction (TSI) grants are provided to fund TSI, such as tutoring, for students in kindergarten through grade 3 who are identified as struggling learners. TSI funding phases up by fiscal 2024 and then phases down after fiscal 2026 to account for other provisions of the bill being implemented that serve the same purpose as TSI.

Also established is the Maryland Consortium of Coordinated Community Supports in the Maryland Community Health Resources Commission. The consortium is tasked with (1) supporting the development of coordinated community supports partnerships to meet student behavioral health needs and other related challenges in a holistic, nonstigmatized, and coordinated manner and (2) providing expertise for the development of best practices in the delivery of student behavioral health services, supports, and wraparound services. The bill mandates funding for the consortium beginning with $25 million in fiscal 2022 and phasing up to $125 million annually in fiscal 2026.

Governance and Accountability

To ensure consistent implementation of the recommendations of the commission, the bill establishes an Accountability and Implementation Board (AIB) designed to hold other units of government accountable for implementing the Blueprint and evaluating the outcomes of the Blueprint during the implementation period. The bill establishes AIB's powers, duties, roles, and responsibilities, which center on the development, approval, implementation, and monitoring of plans, and progress made under the plans, to implement the Blueprint. AIB is required to work with the Maryland Longitudinal Data System Center to collect and analyze specified data in order to determine if the Blueprint is working as intended.

Each November 1, the board must report on the progress made on the implementation of the Blueprint. In addition, the board must contract with an entity to conduct an independent evaluation of the State's progress toward implementing the Blueprint and the entity must submit periodic reports as to whether the Blueprint is being implemented as intended and whether any legislative or structural corrections are necessary to fully implement the Blueprint. Various financial consequences are tied to the findings of these reports.

The bill also establishes two types of expert review teams – one administered by MSDE and the other by the CTE Committee. These teams of teachers and other experts are deployed to certain schools to determine whether the Blueprint is being successfully implemented. MSDE-supervised teams will be sent to a mix of high- and low-performing schools, with a specified minimum percentage of schools to be visited annually. CTE teams will review CTE programs only.

Education Funding

The bill also contains numerous provisions relating to education funding and funding formulas. New and modified funding formulas apply beginning in fiscal 2022, with total State education aid increasing by $761 million in fiscal 2022 and $1.3 billion in fiscal 2025 over current law. The bill's new funding formulas and programs are fully implemented by fiscal 2033.

The per pupil maintenance of effort (MOE) level that must be met by county government (including Baltimore City) each year is altered under the bill. MOE is based upon the greater of (1) the prior year full-time equivalent (FTE) enrollment and (2) the three-year moving average of FTE enrollment. The bill repeals, beginning in fiscal 2024, the requirement that a county that is below the statewide five-year moving average education effort level must increase its per pupil MOE amount by the lesser of (1) the increase in local wealth per pupil; (2) the statewide average increase in local wealth per pupil; or (3) 2.5%. MSDE must report by November 1, 2021, on the impact on school funding of repealing this requirement.

In addition to MOE, beginning in fiscal 2022, the local share requirement continues to include the local share of the foundation formula but also includes the local share of the compensatory education, English learner, special education, comparable wage index (beginning in fiscal 2024), full-day prekindergarten (beginning in fiscal 2023), CCR, TSI (through fiscal 2026), and career ladder grant programs. Also, counties that benefit from the compensatory education State funding floor are required to fund the local share of the concentration of poverty grant program. However, for some counties, the combined local share across these several programs is subject to adjustments. Despite relief under the bill, by fiscal 2025, as many as seven counties will be required under the bill to increase education appropriations beyond their estimated expenditures under current law, amounting to approximately $160 million in additional local expenditures statewide. The majority of this additional local spending is projected to be borne by Baltimore City and Prince George's County.

Impact of the Governor's Veto

House Bill 1300 included new funding formulas beginning in fiscal 2022 that incorporated Chapter 771 spending in fiscal 2020 and 2021. As a result of the veto, fiscal 2022 provisions under the bill are not required to be funded by the Governor. Thus, for fiscal 2022, under current law, no funding is assumed for declining enrollment grants, supplemental prekindergarten grants, or new programs established by Chapter 771. However, it is assumed that the required $500 million appropriation to the Blueprint Fund is spent on P12 education in fiscal 2022. Even if the General Assembly overrides the veto of House Bill 1300 during the 2021 session, funding will not be mandated under the bill until fiscal 2023.

Under current law, with the veto of House Bill 1300, revenues dedicated to implementing the Blueprint for Maryland's Future in the Blueprint Fund and the Education Trust Fund Lockbox accumulate and grow from $952 million at the end of fiscal 2022 to $4.8 billion by the end of fiscal 2026. If the veto is overridden, as well as the veto of House Bill 932 (sales tax on digital goods dedicated to Blueprint Fund), sufficient dedicated funds will be available to implement House Bill 1300 in fiscal 2023 through 2025 based on current revenue estimates. Beginning in fiscal 2026, additional general funds will be needed to fully fund the bill.

Education

School Construction

The Built to Learn Act, which invests over $2.2 billion in public school facilities, was passed by the General Assembly and enacted into law without the Governor's signature as Chapter 20 of 2020. However, the bill has not taken effect due to its contingency on House Bill 1300, Blueprint for Maryland's Future – Implementation, which was vetoed by the Governor. If the General Assembly overrides House Bill 1300, Chapter 20 will take effect. The bill's provisions and interactions with the 21st Century Schools Program in Baltimore City and the 21st Century Public School Facilities Act of 2018 are discussed.

Built to Learn Act

Although the Built to Learn Act (Chapter 20 of 2020) passed both houses during the 2020 session and was enacted into law without the Governor's signature, the law has not taken effect. The law did not take effect because its taking effect was contingent on the enactment of the Blueprint for Maryland's Future – Implementation (House Bill 1300 of 2020), which was vetoed by the Governor. The Built to Learn Act will take effect only if the General Assembly overrides the Governor's veto of the Blueprint bill. This paper describes provisions of the Built to Learn Act as enacted; however, since the law has not taken effect, the Governor is not required to include funding in the fiscal 2022 budget to satisfy the mandates.

The Built to Learn Act of 2020 authorizes the Maryland Stadium Authority (MSA) to issue up to $2.2 billion in revenue bonds, backed by annual payments from the Education Trust Fund (ETF), for public school construction projects in the State, including to support a possible public-private partnership (P3) in Prince George's County. It also increases or establishes new mandated State funding for other public school construction programs. The law is modeled on the 21st Century Schools Program in Baltimore City and builds on the changes to school construction policies that were enacted in the 21st Century School Facilities Act, both of which are also discussed in this paper.

MSA Revenue Bonds

The Act requires proceeds of MSA's sale of revenue bonds (including bond premiums) to be allocated to the local school systems, as shown in **Exhibit 1**. The principal and interest on the MSA revenue bonds is repaid from mandated allocations from ETF ($30 million in fiscal 2022, $60 million in fiscal 2023, and $125 million annually beginning in fiscal 2024 until the bonds are paid off).

Exhibit 1
Allocation of Bond Sale Proceeds Under Built to Learn Act
($ in Millions)

	Percent of Total	Proceeds
Anne Arundel	12.5%	$250.0
Baltimore City	21.0%	420.0
Baltimore	21.0%	420.0
Frederick	5.1%	102.0
Howard	6.6%	132.0
Montgomery	21.0%	420.0
Prince George's	*	*
All Other Counties	11.5%	230.0
Unallocated/MSA	1.3%	26.0
Total	**100.0%**	**$2,000.0**

MSA: Maryland Stadium Authority

*Under the bill, Prince George's County receives $25.0 million annually for up to 30 years to supplement local funds for an availability payment if it enters into a public-private partnership agreement, subject to other provisions in the bill.

Source: Department of Legislative Services

For Prince George's County, $25 million from the ETF allocation is reserved beginning in fiscal 2024 for annual availability payments under a P3 agreement to build/renovate and maintain at least six schools in the county. In October 2020, the Prince George's County Board of Education and the county council both approved a P3 agreement with a team of developers.

Other School Construction Programs

Public School Construction Program

The Act requires the Interagency Commission on School Construction (IAC) to adopt regulations that make architectural, engineering, consulting, and other planning costs eligible for State funding. The regulations must also define eligibility criteria for State funding for furniture, fixtures, and equipment with a median life of at least 15 years.

Enrollment Growth and Relocatable Classrooms Program

The Act mandates that funding for the program increase from $40 million to $80 million beginning in fiscal 2027. Funding above $40 million must be allocated to eligible school systems based on their proportionate share of the enrollment growth above the State average. School systems with a five-year average of at least 250 relocatable classrooms (instead of 300) are eligible for program funding beginning June 1, 2020.

Healthy School Facility Fund

The Act mandates that funding to the Healthy School Facility fund be extended for three years through fiscal 2024 with at least $30 million mandated in fiscal 2022 and at least $40 million mandated in each of fiscal 2023 and 2024. Half of the annual allocation to the fund is reserved for Baltimore City each year.

Priority Fund

The Act creates the new Public School Facilities Priority Fund to provide State funds to address the facility needs of the highest priority schools identified by the statewide facilities assessment required under current law. Mandated funding levels are at least $40 million in fiscal 2025 and 2026 and at least $80 million annually beginning in fiscal 2027. The Act expresses intent that the Aging Schools Program and School Safety Grant Program be terminated beginning in fiscal 2027 and that funding for those programs be consolidated into the priority fund.

Statewide School Facilities Assessment

Chapter 14 of 2018, the 21st Century School Facilities Act, made comprehensive changes to the approval process for school construction projects in the State and, among other things, required the completion of a statewide school facilities assessment every four years. Although IAC was required by the Act to complete the initial statewide facilities assessment by July 1, 2019, delays in the procurement process led to IAC only recently (in September 2020) entering into a contract with a third-party vendor to conduct the assessment using the new educational facility sufficiency standards developed by IAC in consultation with school systems. This has pushed back the completion date for the initial assessment, which is now expected to be completed in summer 2021. Chapter 14 also established a Workgroup on the Assessment and Funding of School Facilities that was specifically charged with reviewing the results of the initial assessment and making recommendations for how/whether the facilities assessment results should be incorporated into State funding for public school construction. The workgroup met during the 2019 interim but was unable to complete its work by the December 1, 2019 statutory deadline since the facilities assessment had not yet begun. The Built to Learn Act extends the workgroup's deadline to December 1, 2021.

Baltimore City 21st Century School Buildings Program

The Built to Learn Act was modeled in part on Chapter 647 of 2013, which established a new partnership among the State, Baltimore City, and Baltimore City Public Schools to fund up to $1.1 billion in public school facility improvements in Baltimore City through revenue bonds to be issued by MSA. Of the 28 Baltimore City schools slated to be renovated or replaced under the 21st Century School Buildings program, 15 have been completed and occupied (or available to be occupied), including 10 of the 11 Year 1 schools and 5 of the 17 Year 2 schools. Completion of the final Year 1 school (Patterson/Claremont) is scheduled for summer 2021. The remaining 12 Year 2 schools are in various stages of planning and construction; most are scheduled to be completed during summer 2021 with 2 scheduled for completion during summer 2022. MSA advises that the COVID-19 pandemic has not substantially disrupted the construction schedule.

In September 2020, Governor Lawrence J. Hogan, Jr., announced that favorable bond market conditions and efficient management of program resources by MSA resulted in an additional $60 million being available for school construction projects in Baltimore City under the program. Allocation of the additional funding has not been determined.

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Higher Education

College Affordability

The median student loan debt of Maryland students at graduation is up to $15,000 for community colleges and $30,000 for public four-year institutions. Students who withdraw before graduating or have not yet graduated also incur debt that is not counted in those figures. Maryland has a number of programs designed to make college more affordable and ensure students have an opportunity to attend college. Utilization of these programs, including the student loan debt tax credit, Save4College 529 matching contribution, and several need-based financial aid programs, including the newest scholarship for community college students, has increased as residents have become more aware of their availability and barriers to their usage have been reduced.

Student Loan Debt for Graduates of Maryland Public Colleges

According to the U.S. Department of Education College Scorecard data, the median student loan debt at graduation for the most recent reported class of Maryland community college graduates ranges from $8,500 to $14,813 and from $3,500 to $7,000 for students that withdrew prior to earning a degree. For graduates of public four-year institutions, debt ranges from $15,000 to $30,500 and from $6,500 to $12,500 for students that withdrew. The median debt load depends on the institution, and not all institutions have fully reported. Private loans are excluded from the dataset. The data also does not include students who continue to be enrolled and have incurred student debt but have not yet graduated from a community college or university. The State funds a number of programs aimed at making college more affordable and reducing student loan debt. This issue paper includes a discussion of several of those programs and recent operational issues associated with the programs.

To reduce student loan debt, the Student Loan Debt Relief Tax Credit (Chapters 689 and 690 of 2016) established a refundable tax credit of up to $5,000 for qualified student loans to Maryland residents beginning in tax year 2017. Qualifying taxpayers must have at least $20,000 in total undergraduate student loan debt and a remaining balance of at least $5,000. Recipients must use the credit within two years to pay down the student loan. The Maryland Higher Education Commission (MHEC) was initially authorized to approve $5.0 million of tax credits annually. Chapter 382 of 2018 expanded the types of qualifying debt to include debt incurred for graduate school, and Chapter 419 of 2018 increased the total amount of credits that can be awarded to $9.0 million annually. Tax credit recipients and the amount that they receive are prioritized by MHEC based on (1) a higher debt burden to income ratio; (2) graduation from an institution of higher education located in Maryland; (3) not receiving a tax credit in the prior year; and (4) eligibility for in-state tuition. The number of applications and awards for the tax credit more than doubled for the 2018 tax year, increasing from 4,988 applications and 4,426 awards in 2017 to 10,831 applications and 9,484 awards in 2018. For tax year 2019, applications further increased to 16,929, while awards (and available funding) leveled off at 9,600. For tax year 2020, MHEC reports that 12,202 applications were received by the September 15, 2020 filing deadline, with awards to be made by December 15, 2020.

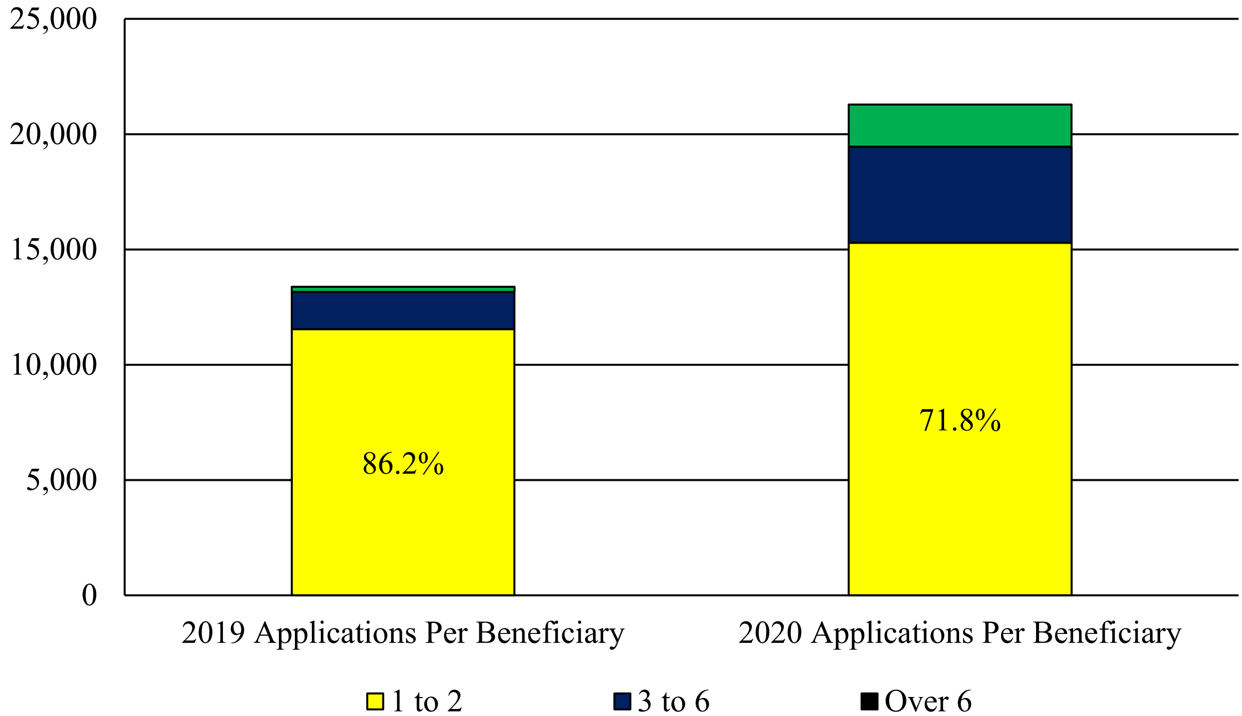
Maryland 529 Save4College State Contribution Program

To help students and families before and during college, Maryland 529 manages the Save4College State Contribution Program and provides flexible and affordable 529 plans to help Maryland families save for future education expenses and reduce dependence on student loans. The program, first established by the College Affordability Act of 2016 (Chapters 689 and 690), provides applicants with certain income limitations a matching contribution of up to $500 to a college savings investment account if funds are available. In addition to higher education expenses, the federal Tax Cuts and Jobs Act of 2017 permitted 529 plan funds to be spent on K-12 expenses, which was a change from the intent for the State match program.

In fiscal 2018, the Governor was mandated to appropriate $5.0 million for the State matching program; however, only $475,250 was needed to ensure that the 1,901 eligible applications were fully funded. As a result of low utilization of the match during the first year of the program, the mandated funding amount was decreased to $3.0 million annually with the balance added to the Student Loan Tax Credit Program, beginning in fiscal 2019. As advertising for the State match increased, popularity of the program has increased. In fiscal 2019, $6.3 million was needed to ensure that the 13,380 eligible applications were fully funded. A total of $10.1 million was needed to ensure that the 21,284 eligible applications were fully funded in fiscal 2020. In fiscal 2019 and 2020, the Governor provided a deficiency appropriation to fully fund the program. In fiscal 2021, the current year's pool had over 30,000 applications with an estimated appropriation of $14.0 million needed to ensure that eligible applications are fully funded, which is approximately $3.5 million more than provided in the fiscal 2021 budget.

The Budget Reconciliation and Financing Act of 2020 prohibits a qualified beneficiary from receiving more than two State matching contributions per year through the Save4College State Contribution Program beginning with the January 1, 2021 application period. Prior to this change, an individual could have multiple accounts established for a single unique beneficiary and have all of those accounts potentially eligible for the State matching contribution. With multiple match awards allowed for a single beneficiary, the State matching contributions for beneficiaries with greater than two applications increased from 13.8% in fiscal 2019 to 28.2% in fiscal 2020, meaning that in fiscal 2020 over a quarter of State matching contributions were distributed to beneficiaries with more than two accounts. Overall, 86.2% of eligible applications would have met the new matching contribution limitation in fiscal 2019, decreasing to 71.8% of eligible applications in fiscal 2020, as shown in **Exhibit 1**. The new limitation on the State matching contributions will likely reduce the number of accounts per beneficiary.

Exhibit 1
Applications Per Beneficiary
Fiscal 2019 and 2020



Source: Maryland 529; Department of Legislative Services

A workgroup consisting of legislators and representatives from Maryland 529 and CASH Campaign of Maryland has been meeting during the 2020 interim to review the 2019 Financial Education and Capability Commission's findings on ways to improve the Save4College State Contribution Program. The workgroup plans to make legislative recommendations to ensure the original intent of the program is achieved prior to the 2021 legislative session.

Need-based State Financial Aid

MHEC received 139,618 on-time Free Applications for Federal Student Aid for the 2020-2021 award year, which is a decrease of 8.25% from the 2019-2020 award year. This decrease may be due to the ongoing COVID-19 pandemic. Of those filers, 47,961 had an expected family contribution (EFC) of $0 and 33,134 had EFCs from $1 to $6,345. A low EFC is an indication that a student needs financial help to afford college.

Educational Excellence Awards

The Delegate Howard P. Rawlings Educational Excellence Awards (EEA) Program is the State's largest need-based scholarship program. In the fiscal 2021 State budget, $88.1 million was allocated for the EEA Program. The EEA Program consists of two different types of awards: (1) Guaranteed Access (GA) grants that are awarded to the neediest students to ensure that 100% of educational costs are paid; and (2) Educational Assistance (EA) grants of up to $3,000 that are awarded to low- and moderate-income students to assist in paying educational costs. All applicants are ranked by EFC with awards made first to those with the lowest EFC. After the GA grants are made, the remaining funds are used to support the EA grants.

As of October 2020, MHEC has made 1,907 initial GA grants for the 2020-2021 academic year, which is a 39% increase over the 1,367 initial grants made the previous year. This is an indication that more of the neediest students, those with family income of 130% or more below the federal poverty level for initial grants, applied for assistance. MHEC also reported that the number of initial and renewal applications that failed to submit all required documentation by the deadline (which was extended from April 1 to June 1 due to the COVID-19 pandemic) decreased 47% in comparison to the 2019-2020 academic year.

A total of 53,513 awards were made in the EA grant program for the 2020-2021 academic year as of October 2020. Of these awards, a total of 30,412 awards have been accepted by students, which includes 11,081 initial awards and 19,061 renewal awards. For fiscal 2020, the EFC cutoff for an initial EA grant was $6,195, and 7,038 students were waitlisted due to the limited availability of funding. As of October 2020, the EFC cutoff for fiscal 2021 is slightly higher at $6,345, and there are 9,604 students on the waitlist.

Next Generation Scholars Program

The Next Generation Scholars Program is a State grant program that provides funding for college access through nonprofit organizations to enhance college and career awareness and college completion for low-income Maryland students in grades 7, 8, and 9. Grant funds are provided to nonprofits to administer a program that provides guidance and services to students prequalifying for the GA grant in eligible school systems. The Governor is required to appropriate at least $5 million in general funds annually from fiscal 2018 through 2023 for the program.

Research suggests that low-income middle and high school students may opt out of preparing for college because they believe a postsecondary education is more than they or their parents can afford. The Next Generation Scholars Program is an early commitment financial aid program designed to provide the promise of financial aid to students from low-income families who are less likely to pursue higher education and complete a degree program. Students who have participated in early commitment programs typically have higher high school graduation rates and higher college matriculation rates than low-income students who do not participate in the programs.

By December 1, 2020, MHEC and the Maryland State Department of Education must report to the Governor and the General Assembly on the implementation of the program. The outcomes provided from this report will be discussed in the 2021 legislative session's MHEC Student Financial Assistance operating budget analysis.

Maryland Community College Promise Scholarship

The Maryland Community College Promise Scholarship is a last dollar award, available to students who plan to enroll in credit-bearing coursework leading to a vocational certificate, certificate, or an associate degree; a sequence of credit or noncredit courses that leads to licensure or certification; or a registered apprenticeship program at a Maryland community college. During the 2020 legislative session, the service obligation and the time of graduation or earning of a GED requirement were eliminated in an effort to offer more students the opportunity to be eligible for up to $5,000 annually to attend a community college. Further, MHEC and each community college must publicize the scholarship.

In the first year of the program, demand was low. A total of 966 awards were made to students for the 2019-2020 academic year, with no students being placed on a waitlist. While $15 million was mandated annually for the program, only $3 million was needed to fully fund the scholarships in fiscal 2020. Due to the lack of demand, funding for Promise Scholarships in fiscal 2021 was reduced to $11.5 million during the 2020 session and was further reduced to $8 million by the Board of Public Works due to the strained financial position of the State as a result of the COVID-19 pandemic. As of October 2020, 3,163 initial awards and 407 renewal awards were made by MHEC for the 2020-2021 academic year, which is an increase of over 200%. The working appropriation did not provide enough funding to make awards to every qualified applicant with 2,722 individuals being placed on the waitlist. MHEC advises that to fully fund students currently on the waitlist, an additional $9 million is needed in fiscal 2021.

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Higher Education

Maryland's Historically Black Colleges and Universities

In 2020, the General Assembly passed legislation mandating an additional $577 million for Maryland's historically black colleges and universities (HBCU) over a 10-year period if certain conditions are met. The Governor vetoed the legislation. The legislation was intended to bring about resolution of a 14-year lawsuit in which the State has been a defendant. The plaintiff, which represents current and former HBCU students, alleges that policies of the State's higher education system are in violation of federal law. To date, there has been no final decision or resolution of the lawsuit.

Litigation Continues

The Coalition for Equity and Excellence in Maryland Higher Education, et al. v. Maryland Higher Education Commission (MHEC)*, et al.* (06-CV-02773-CCB) is a lawsuit in the U.S. District Court for the District of Maryland in which the State of Maryland has been a defendant for the last 14 years. Former and current students of Maryland's historically black colleges and universities (HBCU), which include Bowie State University, Coppin State University, the University of Maryland Eastern Shore within the University System of Maryland, and Morgan State University (MSU), allege that the State, through ongoing policies and practices within the State's system of higher education, violated the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. The case is currently on appeal in the U.S. Court of Appeals for the Fourth Circuit. As discussed below, the parties have attempted to settle the case in lieu of further litigation.

De Jure Segregation and Unnecessary Program Duplication

The coalition's lawsuit identified three alleged policies of the Maryland system of higher education that the coalition argued were traceable to the prior *de jure* (as a matter of law) system of segregation that existed before 1969: (1) limited institutional missions; (2) operational funding deficiencies; and (3) unnecessary program duplication. The District Court rejected the first two claims raised by the coalition but found that the State failed to eliminate a traceable *de jure* era policy of unnecessary program duplication that has exacerbated the racial identifiability of Maryland's HBCUs.

The District Court, applying the law established by the U.S. Supreme Court in *United States v. Fordice*, defined unnecessary program duplication as the offering by two or more institutions of the same nonessential or noncore programs, nonbasic liberal arts and sciences course work at the bachelor's level, and all duplication at the master's level and above. The court cited MHEC's decision to approve a joint University of Baltimore (UB)/Towson University (TU) Master of Business Administration (MBA) program over the objections of MSU in 2005 as an example of how the State failed to prevent additional unnecessary duplication. Of note, TU and UB did not renew the memorandum of understanding regarding the MBA program when it expired in October 2015, resulting in the program reverting back to UB.

Settlement Attempts

The case remains unresolved after years of mediation, attempted negotiations, and a 2017 District Court Memorandum Opinion and Order on remedies. In February 2018, the Governor proposed a $100 million settlement to be allocated over a 10-year period beginning in fiscal 2020 that would supplement State appropriations to Maryland HBCUs. In fall 2019, the plaintiffs rejected this proposal and offered to settle the case for $577 million to be "spread over a reasonable time period." The coalition specified that these funds would be used to develop and launch new programs, hire faculty, and provide scholarships. The coalition's proposed settlement amount was based on the *Ayers* case, which was a 1975 class action lawsuit directed against the state of Mississippi and its university system for operating a dual system of universities that discriminated on the basis of race. In 2001, a settlement agreement was reached in which the state of Mississippi agreed to pay $397.1 million to the state's three HBCUs. It was unclear, however, based on the coalition's letter, exactly how the proposed $577 million settlement amount was determined.

In September 2019, the Governor proposed a "final offer" to settle the lawsuit for $200 million allotted over a 10-year period starting in fiscal 2021; however, this offer was also rejected.

Legislation Mandating Funding for HBCUs Vetoed by Governor

During the 2020 legislative session, the General Assembly passed House Bill 1260, which was intended to settle the lawsuit by mandating additional funding to HBCUs in addition to other initiatives. On May 7, 2020, the Governor vetoed the bill due to economic challenges resulting from the COVID-19 pandemic.

Specifically, the bill authorized an additional $577 million to support HBCUs, contingent on final settlement of the lawsuit by December 1, 2020. The bill provided a supplemental $58 million annually for HBCUs (based on a percentage share of full-time equivalent students enrolled during the immediately preceding academic year) from fiscal 2022 through 2031 to be distributed and used for specific purposes, including scholarships and financial aid support services, faculty recruitment and development, expanding and improving existing academic programs, development and implementation of new academic programs, academic support, and marketing. The bill also created a new academic program evaluation unit in MHEC and established other provisions relating to oversight and improvement of HBCUs.

Further, the bill authorized the Attorney General to execute a final settlement agreement on behalf of the State that resolves the lawsuit. Section 1 of the bill, which included all of the provisions discussed above, was contingent on (1) execution of the final settlement agreement by December 1, 2020, that satisfied the conditions specified in the bill; (2) receipt of notice of the settlement agreement by December 11, 2020; and (3) issuance of an order by December 11, 2020, by the U.S. District Court for the District of Maryland or the U.S. Court of Appeals for the Fourth Circuit that reversed or vacated the District Court's holding that the State failed to eliminate traceable *de jure* era policy of unnecessary program duplication or that held that any policy of unnecessary program duplication traceable to *de jure* segregation has been cured by the terms of the settlement agreement.

Current Status of Litigation

On July 24, 2020, the U.S. Court of Appeals requested a status report in the lawsuit regarding ongoing settlement efforts. On August 24, 2020, counsel for the plaintiffs responded that they continue to be committed to settling the case through the work of the Maryland legislature during the 2021 legislative session. Regardless of how the General Assembly proceeds, if the parties are unable to reach a settlement agreement, the case will continue to be litigated in federal appellate court.

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Higher Education

Transfer of College Credit

With the growing number of Maryland high school students earning community college credits while still in high school and starting their college careers at a community college, improving the college credit transfer process has become a critical policy issue. The failure of college credits earned by students to transfer and count toward a bachelor's degree is inefficient and costly to both students and the State. The lack of available data on transfer credit, including both credits that transfer and do not transfer, is an impediment to developing sound policy solutions. However, there are several potential policy and legislative solutions that the General Assembly may wish to consider.

Background

As more students start college careers at community colleges, through dual enrollment while still in high school or supported through Maryland's Promise Scholarship Program, it has become more evident that the college credit transfer process warrants attention. When course credit fails to transfer from a community college to a four-year institution or does not apply to a student's major or general education requirements when it does transfer, it increases both the cost to the student and the time it takes for the student to graduate. It also costs the State more when students remain in college longer, both for the State budget as well as lost workforce earnings. Further, according to research published in Educational Evaluation and Policy Analysis, a student who transfers almost all of the student's community college credits is 2.5 times more likely to complete a bachelor's degree than a student who transfers less than half of the student's credits.

Dual enrollment in Maryland, which has been increasing in recent years, is poised to increase even more if House Bill 1300 of 2020, Blueprint for Maryland's Future – Implementation (the Blueprint), which was vetoed by the Governor, is enacted. Under the Blueprint, college and career ready students will have access to postsecondary courses and training, at no additional cost to the student, in grades 11 and 12. Most of these credits will likely be from community colleges. The General Assembly has enacted several other major policy initiatives in recent years to address college readiness, college completion, and college affordability, including the College and Career Readiness and College Completion Act of 2013 (CCRCCA) and the College Affordability Act of 2016. The CCRCCA provided incentives for dual enrollment and also required community colleges and four-year institutions to work together to develop transfer agreements (also called articulation agreements) for college credit transfer in general education and other major academic areas, including a guarantee that students leaving community college with an associate degree would be able to transfer at least 60 credits toward a bachelor's degree.

In light of continuing legislative interest, the Department of Legislative Services (DLS) has reviewed national research findings and State laws, regulations, and policies regarding transferring college credit as well as the limited Maryland transfer data that is available. DLS will publish a comprehensive report on the college credit transfer process in Maryland, including recommended legislative and policy solutions, before the 2021 legislative session. A summary of the preliminary findings and recommendations follows.

College Credit Transfer Process Is Inefficient and Complicated

According to the Community College Research Center at Columbia University, about 80% of entering community college students nationwide indicate that they want to earn a bachelor's degree or higher. However, within six years of beginning community college, only 15.8% of students who start at a public two-year institution earn a bachelor's degree within that time period (7.7% first earn an associate degree), as reported by the National Student Clearinghouse Data. Of students who begin at a two-year institution in Maryland, 19.8% of students earn a bachelor's degree anywhere in the United States within six years (9.4% first earn an associate degree). One reason that students fail to earn a bachelor's degree is that the college credit transfer process is inefficient and complicated.

In Maryland, 28.7% of first-time, full-time students who entered community college in fall 2015 transferred to a four-year institution within four years. Of those students, slightly over half (53.3%) earned an associate degree or lower division certificate prior to transferring. Statewide, earning an associate degree before transferring to a four-year institution has become more popular, comprising only a little more than one-third (35.2%) of the 2006 cohort compared to more than half of the 2015 cohort. This is important because research by the University System of Maryland (USM) has shown that students who transfer at the sophomore or junior level have an increased chance of finishing a bachelor's degree within four years of transfer. Most Maryland community college students who transfer to a four-year institution transfer to a USM institution. The overall four-year graduation rate for students who transferred in fall 2014 was 56%, which is the most recent year data is available.

While the CCRCCA required the Maryland Higher Education Commission to collect and report college credit transfer data annually for Maryland students, DLS recently learned that this data is not being collected. DLS is further investigating why this transfer data is not being collected, the barriers to collecting and analyzing the data, and what can be done to eliminate the barriers. Thus, only national data is available on college credit transfer.

According to a July 2020 report by the National Center for Education Statistics, for students who begin their college career at a public two-year institution, 96.2% attempted to transfer credits. Of those students, 47.7% were not able to transfer some or all of their credits. Included in these statistics are dually enrolled high school students. Since the vast majority (94%) of dual enrollment in Maryland is at community colleges, Maryland's data likely tracks the national average. Nationwide, 46.3% of bachelor's degree recipients from the 2015-2016 academic year attempted to transfer academic credits between institutions. Over half, or 52.4%, of bachelor's degree recipients who attempted to transfer credits were not able to transfer some or all of their credits.

According to the Columbia University report, there are many reasons why credits fail to transfer and many types of credit transfer inefficiency. In general, institutions usually require all students, whether transfer or native (meaning enrolled at the institution as a first-time student), to retake previously taken courses that do not meet specific gateway requirements. It is at the discretion of the receiving institution to determine whether course credit will be counted toward graduation and, just as importantly, toward a student's major. Some reasons stated for rejecting or not applying a course to the major include that (1) the student received a low grade; (2) the course is a technical, repeated, or developmental course; (3) the level of the course is different; (4) the quality of the course is different; (5) the student's major had changed; and (6) there is no course equivalent. Additionally, some laboratory courses may only transfer with a satisfactory grade in a corresponding lecture course. Data on the prevalence of reasons why credits fail to transfer in Maryland is not available.

Interestingly, a recent nationwide survey indicated a discrepancy between the perceptions of administrators at community colleges and those at four-year institutions with administrators at community colleges much less likely to respond that the transfer process works effectively and quickly than their counterparts at four-year institutions.

Potential Policy and Legislative Solutions

DLS has developed several potential policy and legislative solutions to improve the college credit transfer in Maryland. Final recommendations will be included in the forthcoming report.

Improve Transfer System and Data Collection

Although the report presents nationwide data about student transfers, it does not present Maryland-specific data because that data is not published. Once planned upgrades to the State's Articulation System for Maryland Colleges and Universities (ARTSYS) are made, further research into Maryland-specific data should be done to focus improvements.

ARTSYS is managed by USM for all Maryland institutions and is supported by the institutions. The upgrade will address both the outdated technology and the common course competency requirements for credits to transfer. The upgrade has been presented as a collaborative process that will include faculty from both community colleges and four-year institutions in the State. The new system will also allow students to cross-register in transferable courses through the system. Some of the upgrades have already begun, but the State's fiscal crisis brought on by the COVID-19 pandemic has limited the institutional resources available to support these critical upgrades.

In addition, DLS will develop additional recommendations to improve the collection of transfer credit data at the student level and the analysis of longitudinal data.

Require Four-year Institutions to Report on Credit Transfer Denial

Specifically, four-year institutions should be required to report on (1) the number of students denied transfer credits; (2) the number of credits denied; (3) the reasons that transfer credits are denied; and (4) the percentage of credits denied for each reason. This would provide data to target the efforts of institutions or legislation addressing credit transfer issues.

Inform Students and Sending Institutions in a Timely Manner

A receiving institution is generally not required to inform a transfer student of a decision to deny transfer credit until the middle of the student's first semester, nor are they required to cooperate with the sending institution unless the student appeals the denial and affirmatively requests that the sending institution intercede on the student's behalf. Requiring receiving institutions to inform students of denials in a timelier manner could prevent lengthy appeals from impacting a student's graduation timeline. In addition, requiring receiving institutions that deny transfer credit to inform sending institutions could promote fairness in the appeal process by shifting that burden away from students who may not be aware of their ability to involve the sending institution.

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Health and Health Insurance

The Opioid Epidemic

Although overdose fatalities declined from 2018 to 2019, early reporting from the Opioid Operational Command Center (OOCC) shows that overdose fatalities in the first six months of 2020 have surpassed those in the first six months of 2019. Opioid-related fatalities continue to comprise about 90% of overdose deaths in the State with a substantial share attributable to the drug fentanyl. Additionally, trends in opioid-related fatalities within the State vary among jurisdictions. OOCC and Medicaid continue to dedicate significant funding to address the opioid crisis.

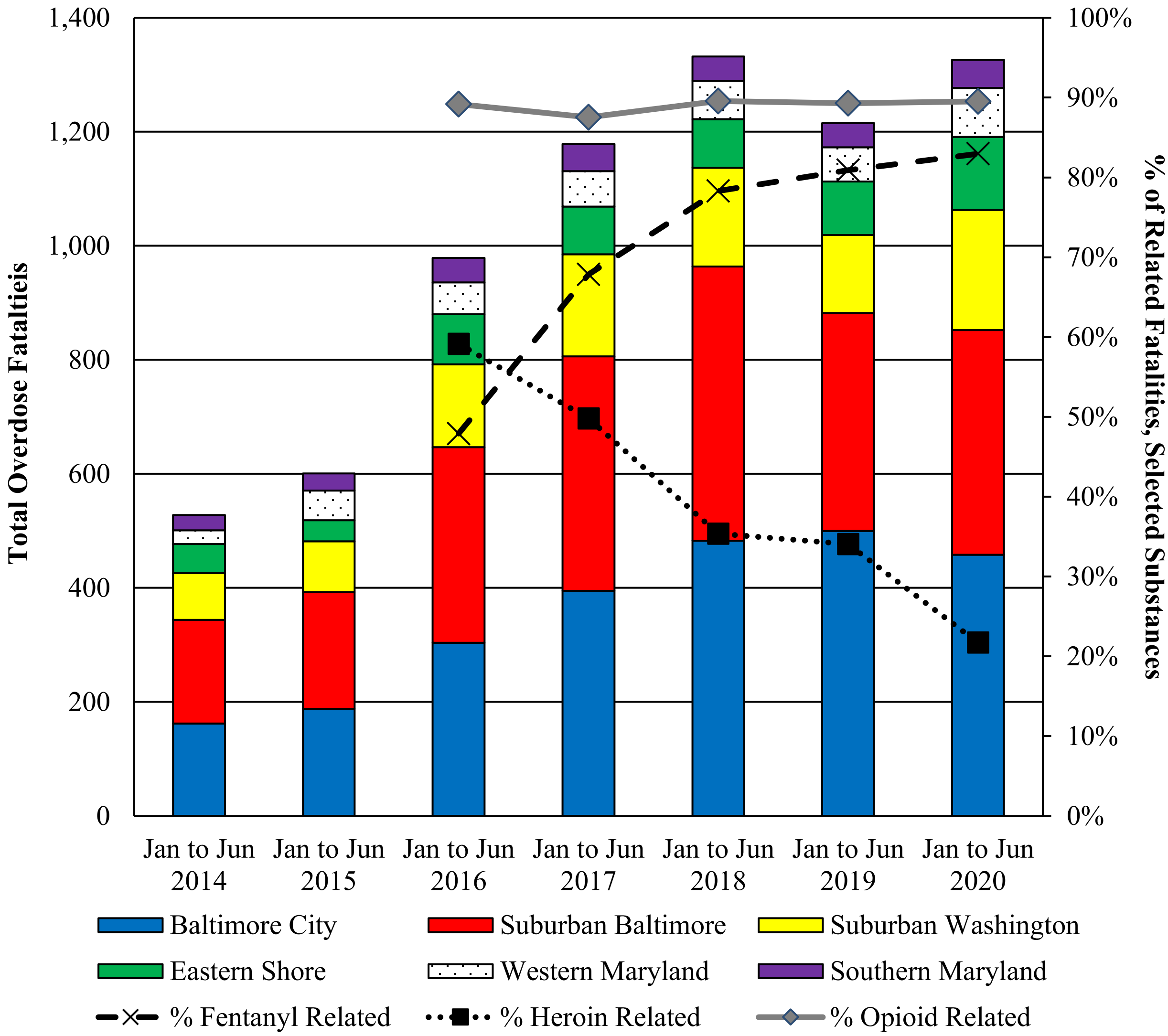
Opioid-related Deaths in Maryland

Maryland continues to be among the states hit hardest by the opioid epidemic with the third highest overdose death rate in the nation, according to the most recent federal data. The State showed signs of reversing this troubling trend in 2019 when overdose fatalities were lower than the previous year for the first-time since reporting became available in 2010. Nevertheless, 2019 was still the second highest year on record for overdose fatalities in the State. Early reporting from the first six months of calendar 2020 show another increase in year-over-year overdose fatalities. While the current number of fatalities have not surpassed the first six months of 2018 (the high watermark for fatalities in the State), as **Exhibit 1** shows, preliminary data from the Opioid Operational Command Center (OOCC) indicates that the first six months of 2020 have surpassed the first six months of 2019.

Exhibit 1 also shows the share of overdose fatalities that were opioid-, fentanyl-, and heroin-related. In each period examined, opioid-related fatalities comprised nearly 90% of all overdoses in the State. However, the opioids contributing to these fatalities have changed drastically in recent years. While the trend in total decline of overdose deaths has not continued in 2020, the prevalence of heroin in drug fatalities in the State has continued to decline. Conversely, fentanyl has continued to contribute to a substantial share of the deaths in the State. For the first six months of 2020, nearly 83% of overdose deaths were fentanyl-related, an increase of 3% over the already staggering share of such fatalities in 2019. While other opioids contribute to opioid-related fatalities in the State, fatalities that do not involve fentanyl are increasingly rare.

Further, Exhibit 1 shows overdose deaths in each region of the State. In 2018 and 2019, Baltimore City outpaced the total number of overdoses in the five surrounding counties combined, and the preliminary counts for 2020 show this trend is likely to continue. While Baltimore City still has the highest total fatalities in the State, it is one of seven jurisdictions where fatalities are decreasing from this point in 2019. **Exhibit 2** shows which jurisdictions are seeing a decline in opioid-related fatalities from the same period in 2019.

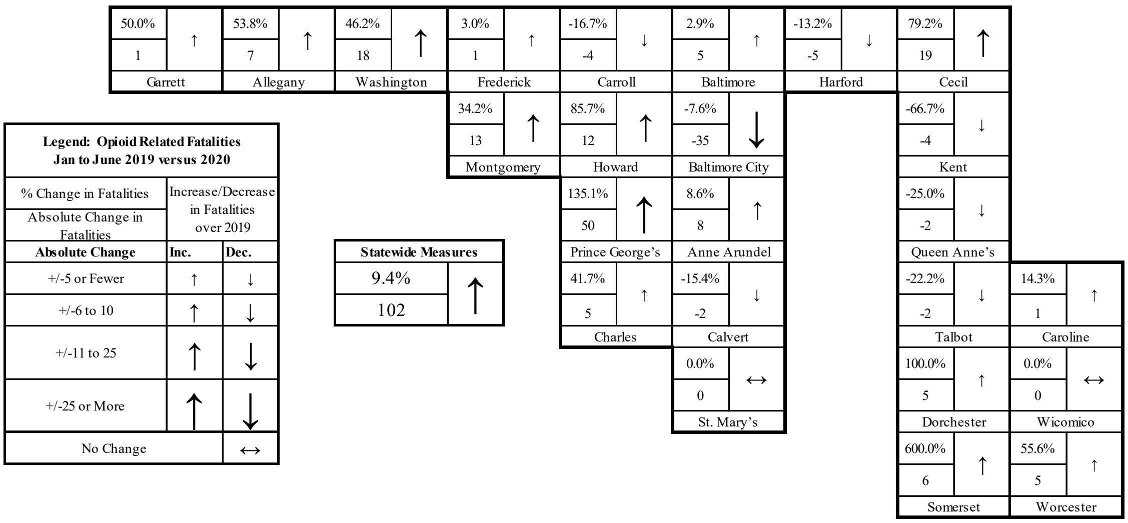
Exhibit 1
Overdose Fatalities in Maryland by Region and Related Substances
First Six Months, Calendar 2014 to 2020



Note: Eastern Shore (Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester counties); Southern Maryland (Calvert, Charles, and St. Mary's counties); Suburban Baltimore (Anne Arundel, Baltimore, Carroll, Harford, and Howard counties); Suburban Washington (Frederick, Montgomery, and Prince George's counties); Western Maryland (Allegany, Garrett, and Washington counties)

Source: Maryland Department of Health; Department of Legislative Services

Exhibit 2
Change in Opioid-related Fatalities by Jurisdiction
First Six Months, Calendar 2019 to 2020



Source: Maryland Department of Health; Department of Legislative Services

The decline in Baltimore City overdoses in calendar 2020 has been offset by an increase in Prince George's County, which saw the number of overdoses double over the previous period (an increase from 55 to 110 fatalities, 50 of which were opioid-related). Since many factors could lead to an increase in opioid-related fatalities, the cause of the disparate impact within the State is not clear.

Maryland's Response to the Opioid Crisis

Governor Lawrence J. Hogan, Jr.'s Administration has continued efforts to respond to the opioid epidemic through OOCC. OOCC will award nearly $10 million in grants for fiscal 2021 to assist in combating the opioid crisis, $5 million of which will be competitively awarded. OOCC also coordinates and provides funding to local Opioid Intervention Teams, which are multiagency bodies in each of the 24 jurisdictions that address the opioid crisis on the local level.

The State's largest source of funding targeting the opioid crisis continues to be treatment for substance use disorder (SUD) in the Medicaid program and other fee-for-service (FFS) expenditures with $608.5 million in total funds for fiscal 2021, $211.5 million of which are State dollars. Outside of FFS, the Maryland Department of Health (MDH) has $99.7 million budgeted for other treatment and prevention programs. Included within this total is federal funding available through the State Opioid Response (SOR) grant. On September 4, 2020, MDH announced a

$50.7 million award in the second round of SOR funding, portions of which will be expended in fiscal 2021 and 2022. This funding is important to continue programs started by MDH with the initial round of SOR funding from fiscal 2019 set to be fully expended in fiscal 2021. Aside from MDH, other support for the opioid crisis totals roughly $18.5 million in fiscal 2021, including $10.8 million in general fund expenditures for OOCC, $4.2 million for drug treatment in correctional facilities, and $3.5 million for various enforcement and treatment efforts.

During the 2020 session, the General Assembly passed legislation to expand access to care and improve treatment for those impacted by the opioid epidemic. Chapter 577 of 2020 requires the Maryland Transit Authority to provide transit passes to opioid treatment programs to allow their patients to qualify for reduced fares. Chapter 17 of 2020, among other telehealth expansion initiatives, required MDH to study the use of telehealth for the delivery of SUD treatment.

Impact of COVID-19 on the Opioid Epidemic

Several researchers and scholars have posited that increased social isolation, unemployment, and other hardships caused by the COVID-19 pandemic may have exacerbated the current opioid crisis. Additionally, providers have expressed concerns that the social distancing measures have added challenges in providing SUD treatment, particularly for residential facilities. While the full extent of the pandemic's impact on the opioid crisis is still unknown, recent trends and early research are concerning. For a more detailed discussion on how COVID-19 has impacted behavioral health, see the section "Impact of COVID-19 on Behavioral Health" within COVID-19 of this *Issue Papers of the 2021 Session*.

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Health and Health Insurance

Medical Cannabis Issues

After the 2019 license application review process drew complaints from some applicants, investigative findings on the process have allowed the Natalie M. LaPrade Maryland Medical Cannabis Commission to move forward in approving additional grower and processor licenses in 2020. From 2019 to 2020, there have been significant increases in patients and providers in the program and in retail sales at dispensaries. Legislation authorizing medical cannabis in schools was passed during the 2020 session and the commission proposed regulations enabling the sale of edible cannabis products in dispensaries.

Natalie M. LaPrade Maryland Medical Cannabis Commission

The Natalie M. LaPrade Maryland Medical Cannabis Commission is responsible for the implementation of programs to make medical cannabis available to qualifying patients in a safe and effective manner. The commission oversees licensing, registration, inspection, and testing related to the State's medical cannabis program and provides relevant program information to patients, providers, growers, dispensaries, processors, testing laboratories, and caregivers. Medical cannabis may only be obtained from a grower or dispensary licensed by the commission.

Controversy Over Geographic, Racial, and Ethnic Diversity

In 2016, significant controversy arose surrounding the absence of any minority-led grower among the initial 15 Stage One approved grower finalists. Consequently, Chapter 598 of 2018, an emergency bill, made a number of significant reforms related to promoting diversity and the participation of diverse groups within the medical cannabis industry, including requiring the completion of a disparity study. The resulting study concluded that the State has a compelling interest in implementing remedial measures to facilitate participation in the medical cannabis industry by minorities and women. Based on these findings, the commission adopted emergency regulations in 2018 altering the application review process to incorporate remedial measures to assist minorities and women. The regulations also altered the weighted criteria used to rank license applicants to include certain race-neutral and race-conscious provisions, accounting for 15% of the total points on the license application.

Additional Licenses Granted After Controversial Application Process

Chapter 598 also authorized the commission to award additional Stage One preapproval licenses for up to 4 grower applicants and 10 processor applicants. The application period for the new licenses was opened from March 25, 2019, until May 24, 2019. However, due to issues with the third-party-hosted online submission portal, the application period was reopened for two additional weeks in June 2019. All applicants were required to resubmit their application materials during this two-week period. The commission received a total of 213 applications, which were reviewed by Morgan State University (MSU). Over a six-week period, MSU evaluated, scored, and ranked each of the applications. On August 31, 2019, MSU submitted a comprehensive evaluation report, including the evaluation scorecard, score, and ranking of each application, which was then combined with the portion of the application evaluation completed by the commission. After review of the materials, the commission voted to approve the rankings as submitted by MSU. Approval of the rankings did not award a Stage One preapproval to any applicant but enabled the commission to begin investigating the highest ranking applicants to verify the information and materials as submitted.

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

After numerous media reports raised concerns about the application review process, the commission engaged two independent investigators to evaluate the review process for the new licenses. Verity, LLC was engaged to complete an investigation into the accuracy of material aspects of the highest ranking applications. During the investigation Verity, LLC looked at the top 6 highest ranked grower and the top 14 highest ranked processor applicants to insure that the diversity ownership interests in each of the applications were real, substantial, and continuing. Verity, LLC found that 3 of the six 6 for a grower license and 8 of the 14 applicants for a processor license had met this standard. Additionally, Zuckerman Spaeder LLP was engaged to investigate the impartiality of the application process and did not find any evidence of bias or undue influence. However, the investigation did reveal that officials and employees affiliated with MSU were also affiliated with applicants for medical cannabis licenses.

On October 1, 2020, the commission adopted the detailed factual findings from both investigations and voted to (1) prohibit two applicants from license awards due to applicant affiliation with MSU and (2) award Stage One preapprovals for licensure to three grower and eight processor applicants. The commission may still award up to one additional grower license and two additional processor licenses. The commission will continue to work with Verity, LLC to review the next highest ranking applicants to determine whether they meet the requisite criteria to receive a Stage One preapproval.

Status of Medical Cannabis Implementation in Maryland

Medical cannabis became available for sale in the State in December 2017. As of October 2020, the commission had issued 17 final and 4 preapproved grower licenses, 17 final and 9 preapproved processor licenses, and 91 final dispensary licenses. Additionally, the commission had registered four independent laboratories and approved one-year provisional registrations for two independent testing laboratories. As of October 13, 2020, the commission reported that there were approximately 115,953 certified patients, up from 85,000 in September 2019. During the same timeframe, the number of registered caregivers increased from 7,250 to 7,931, and the number of certifying providers increased from 1,500 to 1,985. Further, retail sales at medical cannabis dispensaries in the State increased by 92% from $181.1 million in fiscal 2019 to $347.4 million in fiscal 2020.

COVID-19 Emergency Measures

In response to the COVID-19 pandemic, the commission made significant programmatic changes to ensure patients received continued access to medical cannabis. These changes included: (1) authorizing dispensaries to dispense cannabis via drive through and curbside pickup; (2) expanding delivery of medical cannabis to facilities and residences where patients and caregivers reside; (3) allowing telehealth visits between certifying providers and patients; and (4) suspending patient and caregiver attestation and signature requirements.

2020 Legislative and Regulatory Changes

During the 2020 session, the General Assembly passed a number of bills related to medical cannabis. These bills address the use of medical cannabis in public schools (Chapters 624 and 625 of 2020), the administration and use of the Medical Cannabis Compassionate Use Fund (Chapter 352 of 2020), and the addition of physician assistants to the health care providers authorized to be certifying providers under the State's medical cannabis program (Chapter 187 of 2020).

Additionally, the commission took action in 2020 to implement provisions of an earlier bill (Chapter 456 of 2019) authorizing licensed medical cannabis dispensaries and processors to sell edible cannabis products. The commission developed proposed regulations, published in the Maryland Register on October 23, 2020, that allow for the manufacture and sale of edible cannabis products. The proposed regulations address (1) the definition of an "edible cannabis product"; (2) the issuance of permits for processors; (3) general premise requirements; (4) locations for receipt and storage of ingredients and edible cannabis products; (5) cleaning and sanitation procedures for premises and agents; (6) manufacturing procedures; (7) confidentiality of trade secrets; (8) edible cannabis product, packaging, labeling, and transporting requirements; (9) laboratory testing; and (10) dispensary responsibilities.

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Health and Health Insurance

Status of Health Care Reform and Maryland's Insurance Market

The State reinsurance program has helped reduce premiums and attract a third carrier to the individual market. Consumer out-of-pocket costs have stabilized but remain high. To address affordability, the Maryland Health Benefit Exchange has instituted value plans and is modeling the impact of a State subsidy for young adults. In 2020, the Maryland Easy Enrollment Program identified 53,000 uninsured individuals interested in coverage, while a COVID-19 special enrollment period enrolled more than 26,600 individuals. In November 2020, the Supreme Court will hear oral arguments regarding legal challenges to the federal Patient Protection and Affordable Care Act with potentially sweeping consequences for the health care system in Maryland.

The Impact of Health Care Reform on Coverage

Since passage of the federal Patient Protection and Affordable Care Act (ACA), the percentage of uninsured Marylanders has declined from 11.3% in 2010 to 6.0% in 2018 and 2019. The largest gains in coverage have occurred through the expansion of Medicaid with 347,788 individuals enrolled under the expansion as of September 30, 2020.

More than 158,000 individuals were enrolled in a qualified health plan through the Maryland Health Benefit Exchange (MHBE) as of September 30, 2020. Enrollees can generally select a plan from one of four metal levels (bronze, silver, gold, or platinum), each of which covers a different percentage of medical expenses. A majority of MHBE enrollees (82%) receive a federal advanced premium tax credit (APTC) to help pay their monthly premiums. APTC is available to individuals with incomes between 100% and 400% of federal poverty guidelines. For calendar 2020, the estimated value of APTC statewide is $674 million.

State Reinsurance Program

Chapters 6 and 7 of 2018 required MHBE to submit an application for a State Innovation Waiver to establish a State reinsurance program. In August 2018, the federal government approved the waiver, which is valid through 2023. Funding includes State special funds from a health insurance provider fee assessment and federal pass-through funding. The program, which began January 1, 2019, reimburses carriers for 80% of claims incurred between $20,000 and $250,000. Payments to carriers are made after the plan year ends, and all costs have been reconciled. Maryland's reinsurance program is the largest and most robust in the nation.

When the program was established, MHBE initially overestimated the amount of total funding required. Since that time, federal pass-through funding has been greater than anticipated and, based on updated actuarial assumptions and actual experience, program expenditures have been lower than forecast. For example, for calendar 2019, estimated costs were $462 million, but final actual costs were $353 million. Thus, even with the potential impact of COVID-19 on enrollment and expenditures, available funding from the assessment will likely last longer than anticipated or may be available to fund other activities to further stabilize the individual market.

As a result of the success of the reinsurance program, a third carrier, UnitedHealthcare, will join CareFirst BlueCross BlueShield and Kaiser Permanente in the individual exchange in calendar 2021. United Healthcare will offer a total of nine plans across the bronze, silver, and gold metal levels. United plans will be offered in 15 counties, including 5 counties in which Kaiser plans are not offered, resulting in 8 counties in which CareFirst plans are the only available option.

Individual Market Rates, Cost Sharing, and Affordability

For calendar 2019, individual market premium rates approved by the Maryland Insurance Administration, reflecting the anticipated impact of the reinsurance program, declined by 13.2% overall. For calendar 2020 and 2021, approved rates fell an additional 10.3% and 11.9%, respectively. Although premiums have decreased for the third year in a row, they remain high with average premiums costing 10% of the median income for a household of four. Deductibles and out-of-pocket (OOP) expenses for calendar 2021 remain the same as calendar 2020, but range from $4,000 to $7,900 for bronze plans, $2,250 to $6,000 for silver plans (the most commonly purchased plan), and $0 to $1,750 for gold plans. Affordability is particularly an issue for individuals who do not receive an APTC.

To address these issues, MHBE established an affordability workgroup to develop recommendations to reduce OOP costs and maximize affordability. The workgroup found that the reinsurance program has helped stabilize the individual market and provide insurance to individuals with chronic illnesses that would not otherwise be able to obtain insurance. The workgroup also found that young adults aged 19 to 34 represent the largest group of the remaining uninsured. Thus, the workgroup recommended continuing the reinsurance program and considering a young adult subsidy, which may require Maryland to apply for another federal waiver. Chapters 104 and 105 of 2020 required MHBE to study an individual subsidy program and report to the General Assembly by December 1, 2020. MHBE advises that the study will model the design and impact of potential State individual subsidies and take into account public input.

Additionally, MHBE required carriers to offer value plans in the individual exchange beginning in calendar 2020. Value plans cap deductibles at $2,500 for silver plans and $1,000 for gold plans and are designed to give consumers greater access to primary care, mental health care, and generic drugs before their deductibles apply. In calendar 2020, 48,280 individuals enrolled in six value plans, accounting for 31% of total enrollees. For calendar 2022, MHBE plans to expand requirements for value plans by (1) limiting cost-sharing for bronze plans and requiring plans to include access to all primary care visits and generic drugs before deductibles apply; (2) requiring silver and gold plans to include coverage of diabetic supplies before deductibles apply; and

(3) requiring all metal levels to include behavioral health disorder outpatient visits before deductibles apply.

Additional Factors Affecting Enrollment

Chapters 423 and 424 of 2019 established the Maryland Easy Enrollment Health Insurance Program. The program allows an uninsured individual to elect on their State income tax return to authorize the Comptroller to share information with MHBE in order to determine the individual's eligibility for insurance affordability programs. MHBE assists in enrolling these individuals in Medicaid or health insurance. The program began with the filing of State income tax returns for tax year 2019 and resulted in more than 53,000 individuals expressing interest in coverage. Of that number, more than 9,000 applied for coverage, and more than 4,000 enrolled, including 967 individuals in qualified health plans.

As part of the State's overall response to COVID-19 and in an effort to prioritize health and safety, MHBE offered a Coronavirus Emergency Special Enrollment Period (SEP) for all uninsured Marylanders to enroll in the exchange. SEP runs through December 15, 2020. As of October 24, 2020, more than 26,600 individuals enrolled under this SEP.

Legal Challenges Regarding the Affordable Care Act

In *Texas v. United States*, 20 states filed suit in the U.S. District Court, Northern District of Texas arguing that the ACA, as amended by the Tax Cuts and Jobs Act of 2017 (which eliminated the tax penalty of the individual mandate), is no longer constitutional without a tax penalty. In December 2018, Judge Reed C. O'Connor ruled in favor of the plaintiffs, concluding that the mandate is no longer permissible under Congress's taxing power and is thus unconstitutional. The judge found the individual mandate to be "essential" to and inseverable from the ACA and declared the entire law invalid. On appeal, the Fifth Circuit Court of Appeals affirmed the District Court opinion that Congress does not have constitutional authority to enforce the mandate. However, the circuit court did not affirm the District Court's determination that the individual mandate is not severable. Instead, the circuit court remanded the severability issue to the District Court. The Supreme Court heard oral arguments in the case, now known as *California v. Texas*, on November 10, 2020. Issues before the Supreme Court include (1) whether Texas and the individual plaintiffs have standing; (2) if so, whether the individual mandate is unconstitutional; (3) if unconstitutional, whether the rest of the ACA can survive; and (4) if the entire ACA is held invalid, whether the entire law should be unenforceable nationwide or whether it should be unenforceable only to the extent that provisions injure individual plaintiffs. The Supreme Court is expected to deliver its decision in spring 2021.

An October 2020 Urban Institute report estimated that, should the ACA be overturned, an additional 21.1 million people will become uninsured nationally. Medicaid and Children's Health Insurance Program coverage will decline by 15.5 million, 9.3 million people will lose income-related subsidies such as the APTC and cost-sharing reductions, the number of individuals with private nongroup insurance will decline by 27%, and federal spending on health care will fall by $152 billion per year in 2022. Furthermore, available private nongroup coverage will likely cover fewer benefits, require more OOP spending, and be less accessible to people with current or past health problems because of the elimination of guaranteed issue and modified community rating rules. In Maryland, an estimated 395,000 people will become uninsured (an increase of 95%), Maryland will lose an estimated $3.7 billion in federal funding for marketplace subsidies, Medicaid and the Maryland Children's Health Program, and health care spending by public and private insurers and households is estimated to decline by $3.3 billion.

To protect against the possibility that the ACA might be overturned, Chapters 620 and 621 of 2020 established nondiscrimination provisions and codified the consumer protection provisions of the ACA, including protections for individuals with preexisting conditions, which were previously only specified in Maryland law through cross-references. The Acts generally apply to any health benefit plan offered in the small group, individual, or large group markets with specified exceptions for grandfathered plans. Although the Acts will give Marylanders the option to retain coverage, without the substantial federal subsidies provided under the ACA, many Marylanders could find insurance unaffordable.

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Health and Health Insurance

Medicaid Population and Expenditure Trends

COVID-19 has spurred rapid enrollment growth in Medicaid since March 2020. Through September 2020, average monthly enrollment is up by almost 66,000 above the budgeted caseload, which will require additional expenditures. However, a variety of available, one-time funding more than offsets needed general funds. While enrollment is not expected to decline in fiscal 2022, growth is forecast to be limited. Expenditures are forecast to be significantly above fiscal 2020 actuals due to lower available special fund revenues and rate increases. Without one-time funding used to support ongoing program costs in fiscal 2021, additional general funds will be required.

Background

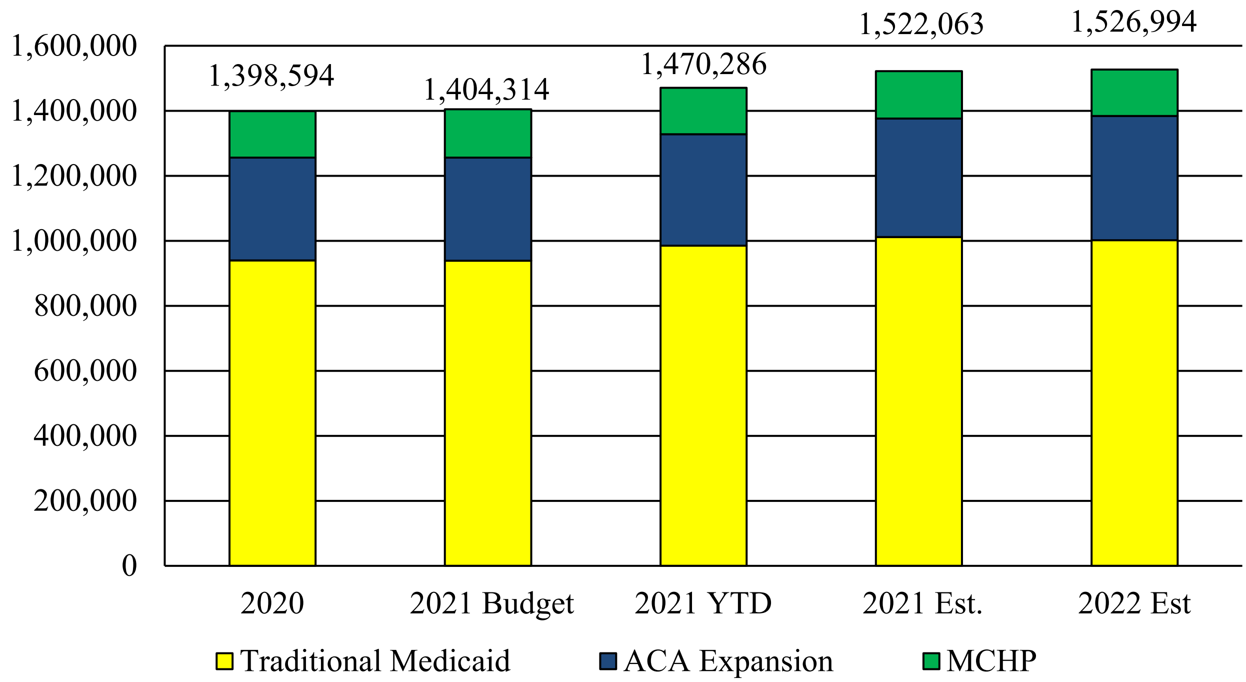
Maryland's Medical Care Programs, including Medicaid, Maryland Children's Health Program (MCHP), Employed Individuals with Disabilities, and others, provide eligible low-income individuals with comprehensive health care coverage. Funding is derived from both federal and State sources with a Federal Medicaid Assistance Percentage (FMAP) or matching rate in fiscal 2022 of 50% to 90% for Medicaid, depending on the eligibility category, and 65% for MCHP.

Enrollment Growth Exceeds Budgeted Caseload

The Medicaid program has seen rapid enrollment growth since March 2020 due to two related factors: (1) the significant economic disruption caused by COVID-19; and (2) the suspension of eligibility redeterminations under the federal Families First Coronavirus Response Act. This Act also provides a temporary 6.2 percentage point increase to Maryland's FMAP for eligible Medicaid expenditures for each quarter in which a public health emergency is declared by the federal Secretary of Health and Human Services.

As shown in **Exhibit 1**, through September 2020, average monthly enrollment in Medicaid was already almost 66,000 above the budgeted caseload with the expectation that enrollment will grow even more by the end of fiscal 2021 to more than 1,522,000 enrollees.

Exhibit 1
Medicaid/MCHP Average Monthly Enrollment
Fiscal 2020-2022 Est.



ACA: Federal Patient Protection and Affordable Care Act
MCHP: Maryland Children's Health Program
YTD: year to date

Source: Department of Legislative Services

This additional caseload translates into spending that would otherwise require an additional $341.7 million in general funds in fiscal 2021. However, a variety of available one-time funding totaling $569.1 million more than offsets this level of general fund need. Specifically:

- The increase in FMAP under the public health emergency declaration noted above, which the Department of Legislative Services (DLS) currently assumes will be in place for three quarters of fiscal 2021, produces general fund savings of $422.1 million.

- DLS also assumes that Maryland Medicaid underestimated the extent of savings from the enhanced FMAP in fiscal 2020 by $80.0 million. This assumption is based on the volume of claims in the applicable two quarters of fiscal 2020 that the enhanced match was available and the extent of general fund savings reported at close-out by Medicaid. As of

October 2020, Medicaid is still reconciling the fiscal 2020 enhanced FMAP based on concerns raised about potential underestimation of savings.

- Medicaid reported that it made an overpayment of $50.0 million to the federal government in fiscal 2020 for the clawback payment, the cost-sharing payments made by states for the Medicare Part D prescription drug program. DLS assumes that this overpayment will be credited to Medicaid in fiscal 2021.

- DLS also estimates, based on spending through September 2020, that the fiscal 2020 accrual is $17.0 million higher than necessary to cover fiscal 2020 claims paid in fiscal 2021.

Fiscal 2022 Medicaid Outlook

As shown in **Exhibit 2**, the general fund impact of enrollment growth in the Medicaid program is not felt until fiscal 2022. As indicated in Exhibit 1 – consistent with the expectation that a COVID-19 vaccine will be widely available by fall 2021, signaling a more favorable economic climate, the end of the public health emergency, and the reinstatement of eligibility redeterminations – while Medicaid enrollment is not expected to fall in fiscal 2022, growth is forecast to be limited. Nevertheless, expenditure levels are forecast to be significantly above fiscal 2020 actuals. The one-time funding used to support ongoing program costs in fiscal 2021 is not anticipated to be available, thereby necessitating an increase in general funds.

Exhibit 2
Medical Care Programs Expenditures
Fiscal 2020-2022
($ Millions)

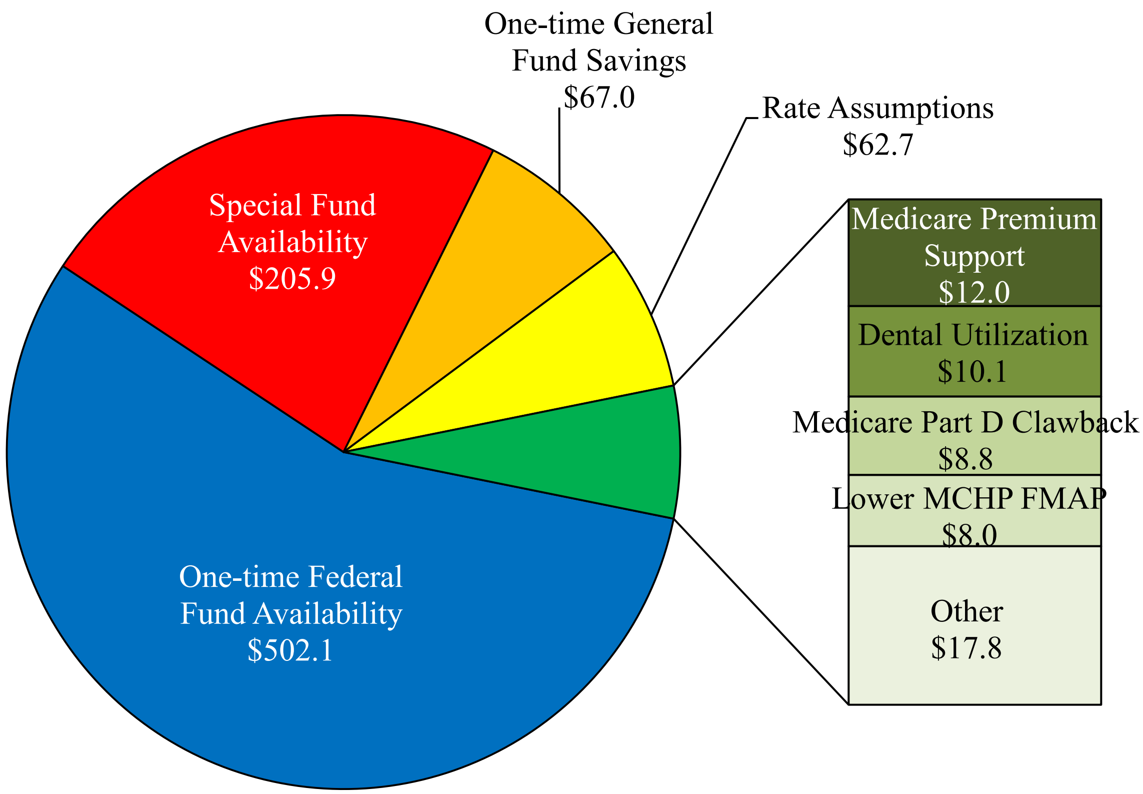
Funds	2020 Actual	2021 Adjusted	2022 Estimate	2021–2022 $ Change	2021–2022 % Change
General	$3,483.4	$3,556.7	$4,451.0	$894.3	25.1%
Special	979.3	952.2	746.3	-205.9	-21.6%
Federal	7,155.0	7,597.5	8,058.7	461.2	6.1%
Total	**$11,617.7**	**$12,106.5**	**$13,256.0**	**$1,149.6**	**9.5%**

Note: Fiscal 2021 budget is adjusted for July 1, 2020 Board of Public Works reductions and anticipated deficiencies. Data is for major provider payments only and includes Medicaid-funded behavioral health services.

Source: Department of Legislative Services

As detailed in **Exhibit 3**, other major changes driving fiscal 2022 general fund growth include lower available special fund revenue (primarily a technical change in the accounting for the Rate Stabilization Fund made in the Budget Reconciliation and Financing Act of 2020) and rate increases. More detailed enrollment and per capita expenditure estimates are included in **Exhibit 4**.

Exhibit 3
Medicaid – Why General Funds Grow
Fiscal 2021-2022
($ in Millions)



FMAP: Federal Medical Assistance Percentages
MCHP: Maryland Children's Health Program

Source: Department of Legislative Services

Exhibit 4
Enrollment and Service Year Per Capita Expenditures*
Fiscal 2020-2022

	2020 Actual	2021 DLS Estimate	2022 Baseline	2021-2022 % Change
Enrollment by Category				
Medicaid	939,251	1,011,526	1,001,269	- 1.0%
MCHP	143,031	146,049	142,728	- 2.3%
ACA Expansion	316,313	364,488	382,997	5.1%
Total	**1,398,595**	**1,522,063**	**1,526,994**	**0.3%**
Cost Per Enrollee				
Medicaid	$8,657	$8,583	$8,896	3.6%
MCHP	2,315	2,488	2,445	-1.7%
ACA Expansion	9,040	9,279	9,360	0.9%
Total	**$8,095**	**$8,024**	**$8,409**	**3.0%**

ACA: Federal Patient Protection and Affordable Care Act
MCHP: Maryland Children's Health Program

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

Source: Department of Legislative Services

Human Services

Public Assistance Caseload Trends

Beginning in March 2020, high unemployment due to COVID-19 led to an unprecedented rise in Temporary Cash Assistance and Temporary Disability Assistance Program recipients. Despite a decline in July and August 2020, recipients remain at a level above the pre-COVID-19 recession. As a result, a general fund shortfall is anticipated in fiscal 2021 that will increase substantially in fiscal 2022. Recipients of Supplemental Nutrition Assistance Program benefits also increased significantly from March to July 2020, and federal legislation authorized additional emergency allotments and a pandemic electronic benefit transfer program.

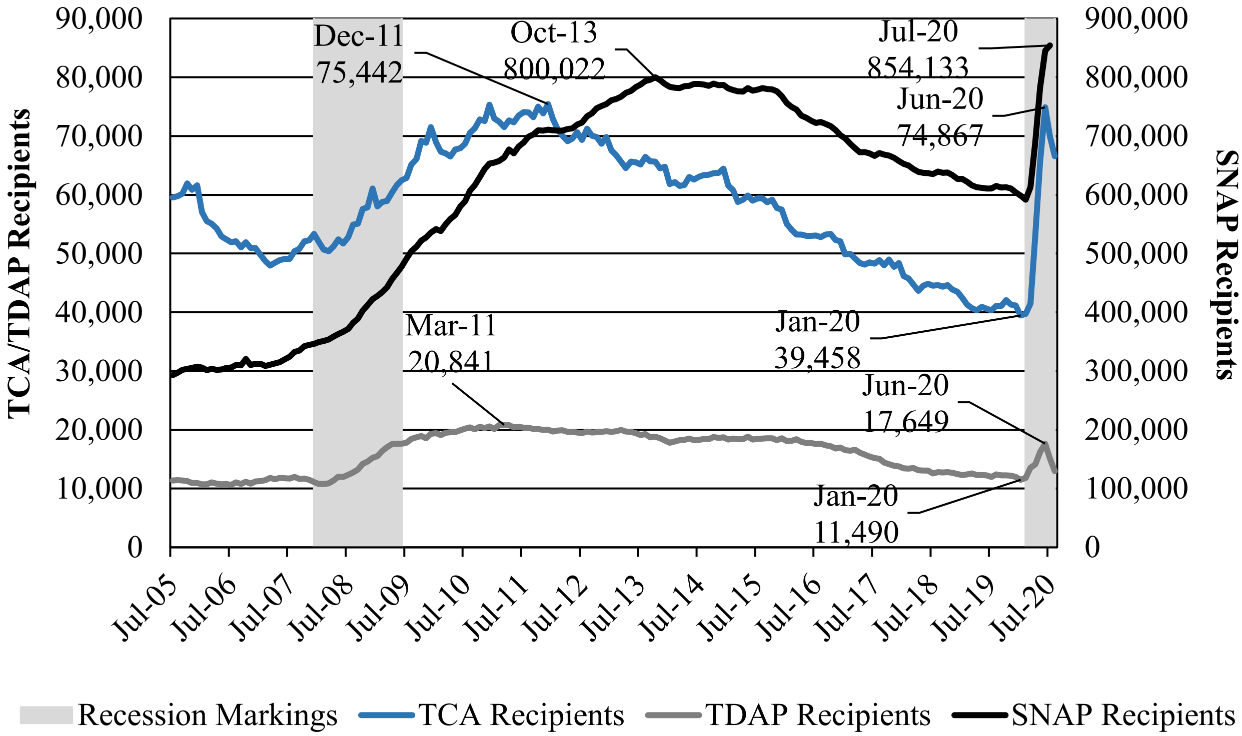
Public Assistance Programs

Temporary Cash Assistance (TCA) provides monthly cash grants to needy children and their parents or caretaker relatives and is funded with general funds, federal Temporary Assistance for Needy Families (TANF) funds, and certain child support collections. The Temporary Disability Assistance Program (TDAP) is a State program for disabled adults that provides a limited cash benefit for individuals with a short-term disability or for individuals with a long-term disability while awaiting approval for federal disability benefits. The Supplemental Nutrition Assistance Program (SNAP) is a 100% federally funded benefit that helps low-income households purchase food. The State offers a supplemental benefit to SNAP that provides a benefit for households with a member who is at least 62 years old to ensure that these households receive at least $30 per month.

COVID-19 Impact on Caseloads

Following Great Recession-related peaks (December 2011 for TCA and October 2013 for SNAP), the number of recipients of TCA and TDAP generally had been on the decline through the end of calendar 2019. TDAP recipients had declined since October 2015. As shown in **Exhibit 1**, these programs began to experience an unprecedented rise in recipients beginning in March 2020 as the State began shutting down due to COVID-19, leading to extremely high unemployment rates. Between February and June 2020, the number of TCA recipients increased by 88.5% with consecutive month increases of more than 10,000 recipients in April and May. During that same period, TDAP recipients increased by nearly 50%. Both programs experienced substantial declines in the number of recipients in July and August 2020. Despite these declines, TCA remains significantly elevated compared to the pre-COVID-19 recession level (approximately 69% higher), while TDAP recipients have returned to a level much closer to the pre-recession low (approximately 13% higher). Recipients in both programs peaked at levels below the Great Recession, though the TCA peak was fewer than 600 recipients from this level.

Exhibit 1
TCA, TDAP, and SNAP Recipients
July 2005 to August 2020



TCA: Temporary Cash Assistance
TDAP: Temporary Disability Assistance
SNAP: Supplemental Nutrition Assistance Program

Source: Department of Human Services; Department of Legislative Services

SNAP recipients also increased at unprecedented rates during this time. From the pre-recession low in February through July 2020, the number of SNAP recipients increased by 44.6% with increases exceeding 60,000 recipients in three consecutive months and a one-month increase exceeding 90,000 in May 2020. In July 2020, the number of SNAP recipients (855,224) exceeded the Great Recession peak by more than 50,000 recipients. The number of recipients decreased in August 2020 to 833,691, which is a decline of 2.5%. This decrease was due partially to recertifications that were suspended by six months for those with recertifications due from March through June 2020. The Department of Human Services recently announced that recertifications would be suspended by six months for those with recertifications due in November and December 2020.

Federal COVID-19-related SNAP Legislation

The federal Families First Coronavirus Response Act of 2020 authorized an increase in SNAP benefits to the maximum allowable level for a household size (known as emergency allotments). This action drastically increased average benefits per case in Maryland. The availability of the emergency allotment has effectively suspended the State supplemental minimum SNAP benefit for seniors program, as no households are receiving less than $30.

The Act also authorized a pandemic electronic benefit program (P-EBT) through September 30, 2020, which allowed for issuance of a SNAP benefit equivalent to daily reimbursement for a free breakfast and lunch for children eligible for free-or reduced-price school meals for days in which schools were closed due to the pandemic. Maryland issued benefits of $370.50 per child for the 2019-2020 school year with benefits of more than $167 million provided to greater than 450,000 children. Maryland also received approval to issue P-EBT benefits for school closures in September 2020. Maryland estimated benefits issued in September will total $47.5 million for approximately 439,500 children. The federal Continuing Appropriations Act, 2021 and Other Extensions Act extends and expands authorization for P-EBT. As of October 2020, the impact of that extension and expansion in Maryland is unknown.

Budgetary Impacts of the Increased Caseloads

Even with recent declines in the number of recipients, which the Department of Legislative Services (DLS) anticipates will continue through fiscal 2022, TCA and TDAP caseloads are substantially higher than the level upon which the fiscal 2021 budget was based. The increase in caseloads will lead to substantial shortfalls despite anticipated lower average TCA and TDAP benefits. The lower average benefits occur due to low inflation (less than 1%) and a higher than expected increase in SNAP benefits (more than 5%), allowing the State to meet the requirement that TCA benefits plus SNAP benefits equal 61% of the Maryland Minimum Living Level without a TCA benefit increase. Under Chapter 408 of 2018, TDAP benefits are tied to the level of a one-person household in TCA beginning in fiscal 2021.

As shown in **Exhibit 2**, DLS projects a shortfall of approximately $70.5 million in TCA in fiscal 2021. However, DLS expects that the available TANF balance and federal Coronavirus Relief Fund support will largely offset this shortfall. As a result, the fiscal 2021 general fund shortfall is projected to be $14.4 million. The need for general fund support for TCA increases substantially in fiscal 2022, when additional federal funds are not available.

As shown in **Exhibit 3**, DLS projects a TDAP shortfall of $1.3 million in total, or $2.2 million in general funds. DLS projects that the special funds budgeted for the program are overstated, which increases the need for general funds relative to the overall shortfall.

Exhibit 2
Temporary Cash Assistance Enrollment and Funding Trends
Fiscal 2020-2022

	2020 Actual	2021 Approp.	2021 Estimate	2022 Baseline	% Change 2021-2022
Average Monthly Enrollment	46,767	38,263	65,661	61,721	-6.0%
Average Monthly Grant	$217.03	$226.46	$221.48	$221.48	0.0%
Budgeted Funds in Millions					
General Funds	$2.8	$3.1	$17.5	$57.1	226.2%
Total Funds	**$121.8**	**$104.0**	**$174.5**	**$164.0**	-6.0%
Estimated Shortfall			**-$70.5**		
Estimated General Fund Shortfall			**-$14.4**		

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

Exhibit 3
Temporary Disability Assistance Program Enrollment and Funding Trends
Fiscal 2020-2022

	2020	2021 Approp.	2021 Estimate	2022 Baseline	% Change 2021-2022
Average Monthly Enrollment	13,159	11,726	12,712	11,949	-6.0%
Average Monthly Grant	$214.15	$252.49	$241.72	$254.84	5.4%
Budgeted Funds in Millions					
General Funds	$29.0	$29.8	$32.0	$31.7	-1.0%
Total Funds	**$33.8**	**$35.5**	**$36.9**	**$36.5**	-0.9%
Estimated Shortfall			**-$1.3**		
Estimated General Fund Shortfall			**-$2.2**		

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

DLS projects a SNAP shortfall of approximately $895 million, which assumes emergency allotments are available through March 2021 but does not account for extension of P-EBT. The exact shortfall will depend on the length of the SNAP emergency allotment and the State's participation in the continuing P-EBT program. The SNAP shortfall is exclusively federal funds.

Human Services

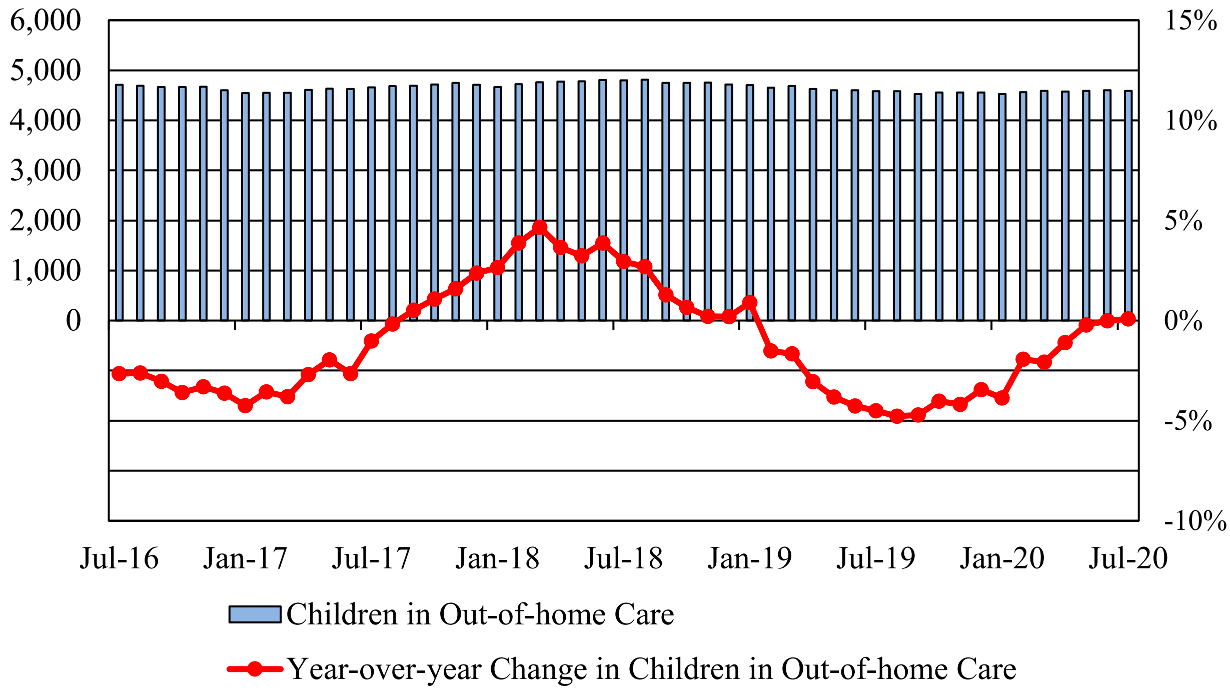
Child Welfare Caseload Trends

The State's shutdown of schools, day care centers, medical visits, and court proceedings due to COVID-19 impacted the entry into and exit from out-of-home placements. Similarly, court closures due to COVID-19 led to a decrease in subsidized adoptions and guardianships, although an increase has been seen as courts reopen. In addition, provider rate increases for institutional placements significantly increased the cost of these placements in the beginning of fiscal 2021, although cost containment actions taken by the Board of Public Works will stabilize these costs.

Out-of-home Placements Stable Due to Fewer Entries and Exits

Beginning in March 2020, the closure of in-person school, day care, medical visits, and court proceedings due to COVID-19 dramatically reduced child maltreatment reports. Court closures reduced the ability to conduct certain activities needed for exiting foster care, and the Department of Human Services (DHS) began a temporary policy of allowing youth who would otherwise have aged out of care to remain in care. As a result, after declining on a year-over-year basis since February 2019, the number of children in out-of-home care was effectively level with the year prior from May through July 2020, as shown in **Exhibit 1**. Although this data includes placement types not paid for through the DHS Foster Care Maintenance Payments Program, it is generally reflective of the trends in regular foster care placements. For a more detailed discussion of this issue, see the section "Child and Elder Abuse Reporting" within Human Services of this *Issue Papers of the 2021 Session*.

Exhibit 1
Out-of-home Placements
July 2016 to July 2020

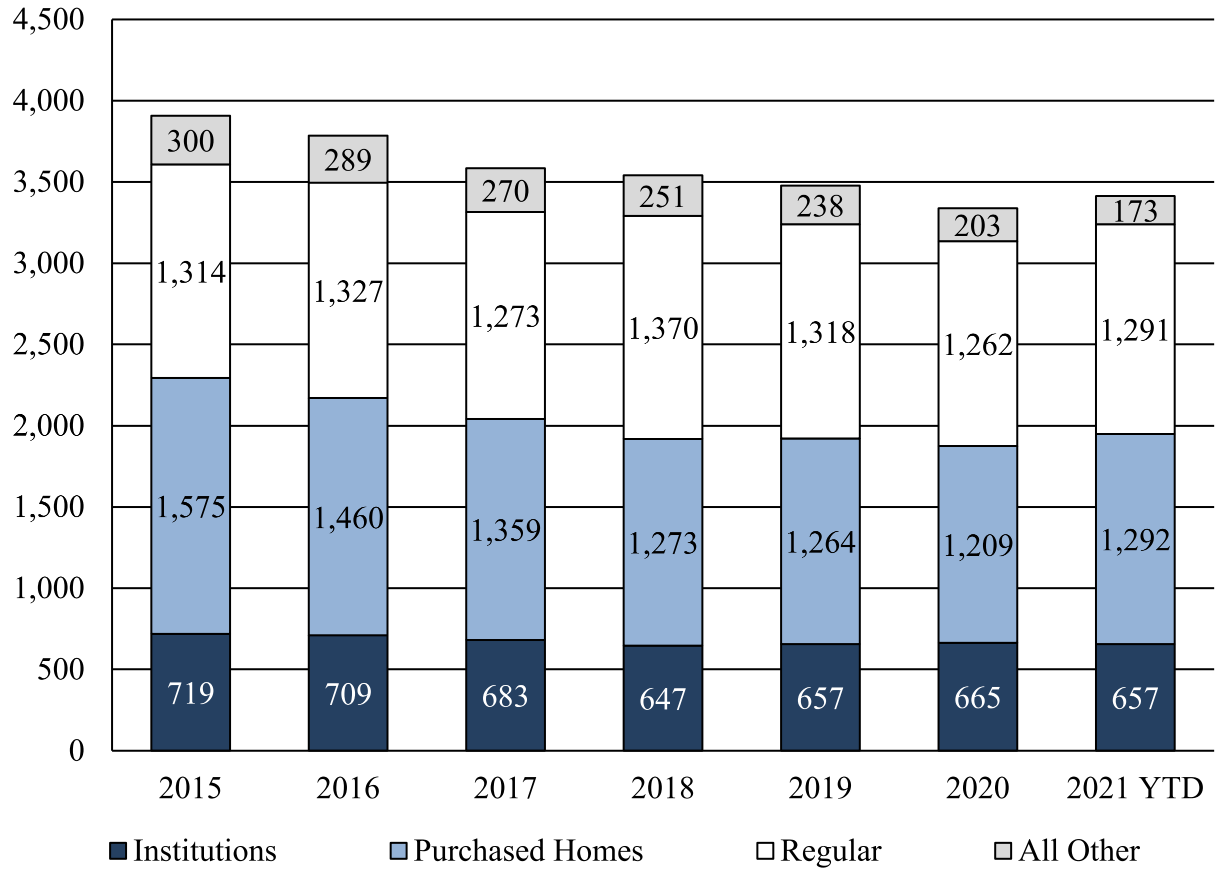


Source: Department of Human Services; Department of Legislative Services

Placement Type Variations

As shown in **Exhibit 2**, consistent with recent history, the average monthly foster care caseload continued to decline in fiscal 2020. However, the fewer entries into care exaggerated early year declines in many placement types. The decline occurred among most placement categories except institutional placements, which increased for the second consecutive year after declining in all years since fiscal 2008. Institutional placements have the highest average monthly placement cost. In the first two months of fiscal 2021, the average monthly caseload has increased by 2.2%, primarily due to increases in regular foster care placements (2.3%) and purchased home placements (6.9%). Purchased home placements largely consist of treatment foster homes involving higher levels of care and cost. The increased caseload is likely impacted by the slow return to normal activities during the pandemic, including the partial reopening of day care, the resumption of medical visits, and the phased resumption of court activity. By contrast, institutional placements have decreased slightly during this period.

Exhibit 2
Foster Care Average Monthly Caseload
Fiscal 2015-2021 (through August 2020)

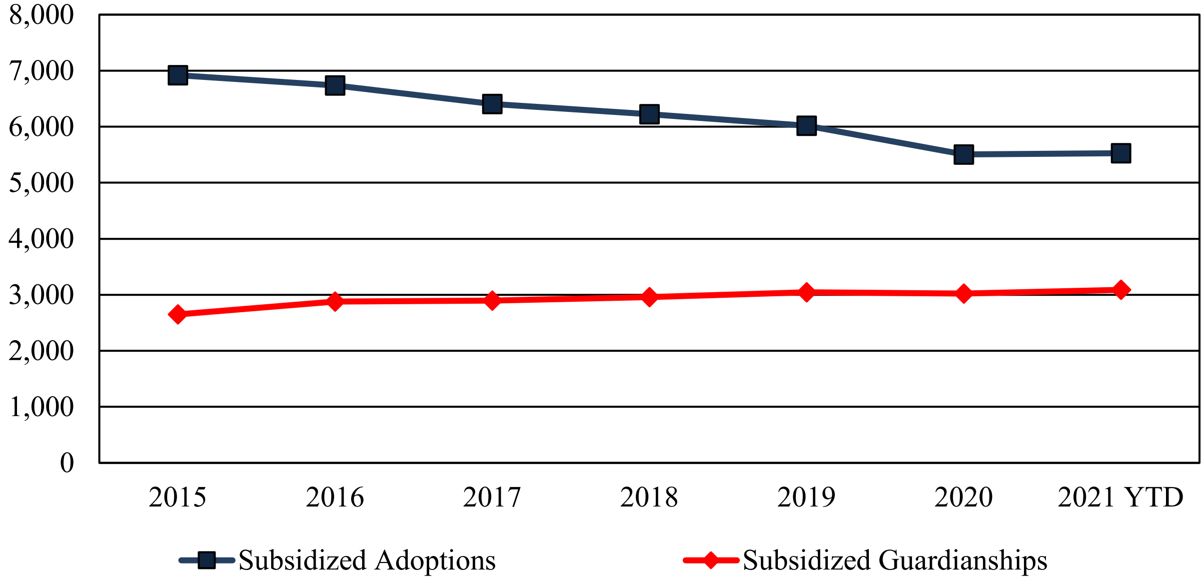


YTD: year to date

Source: Department of Human Services; Department of Legislative Services

The average monthly caseload for subsidized adoptions and subsidized guardianships was also impacted by the changes in operations associated with COVID-19, primarily due to court closures impacting movement into permanency options. As shown in **Exhibit 3**, after increasing in all recent years, the average monthly number of subsidized guardianships decreased by 0.8% in fiscal 2020. The average monthly number of subsidized adoption cases had generally been declining between 2% and 5% in recent years but decreased by 8.5% in fiscal 2020. Both caseload types have increased compared to fiscal 2020 averages in the first two months of fiscal 2021. These increases would be expected as the local departments of social services and courts begin to move children into these permanency options with the reopening of the courts.

Exhibit 3
Subsidized Adoptions/Guardianships Average Monthly Caseloads
Fiscal 2015-2021 (through August 2020)



YTD: year to date

Source: Department of Human Services; Department of Legislative Services

Purchased Institution Placement Costs

In addition to caseload changes, costs in child welfare in fiscal 2020 and 2021 year to date have been significantly impacted by provider rate increases granted in fiscal 2020, particularly for institutional placements. Following the rate increases, the average monthly placement costs for institutional placements increased by an average of 30%. The average monthly placement cost in fiscal 2020 was $10,703, which has increased to $11,105 in the first two months of fiscal 2021, compared to $8,422 in fiscal 2019. There is no anticipated provider rate increase in fiscal 2021 after cost containment actions approved by the Board of Public Works in July 2020 withdrew funds budgeted for a 2% increase. As a result, provider rates should stabilize in fiscal 2021, although at this higher level. The increased cost of institutional placements drove shortfalls in fiscal 2020 and drive the Department of Legislative Services projected shortfall ($19 million) in fiscal 2021. However, approximately $2 million of this shortfall is related to costs associated with retaining youth in care that would otherwise have aged out through December 2020 and other COVID-19-related foster care placement costs.

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Human Services

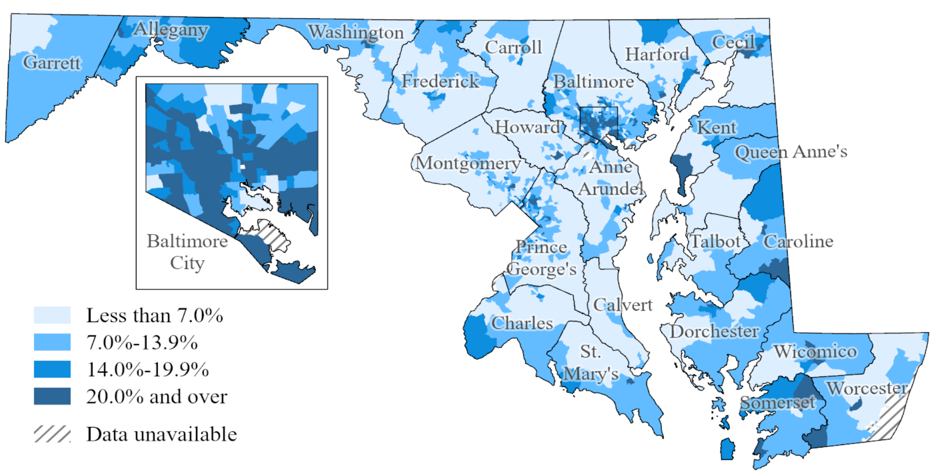
Poverty in Maryland

In 2019, Maryland's poverty rate continued to be below the national rate. However, the Supplemental Poverty Measure suggests that a greater proportion of Marylanders face financial hardship than is reflected by the official poverty measure. Several areas of the State face poverty rates greater than 20%. Based on initial data, the COVID-19 pandemic has resulted in loss of employment income, greater food insecurity, difficulty paying for household expenses, and greater housing instability for many Marylanders.

Maryland Poverty Rate

According to the U.S. Census Bureau, in 2019, 7% of all Marylanders and 11.1% of Maryland children lived in poverty. In that same year, Maryland had the fifth overall lowest poverty rate and the thirteenth lowest child poverty rate in the nation. However, many areas of the State face poverty rates greater than 20%. As shown in **Exhibit 1**, from 2014 to 2018, more than half of Maryland counties had census tracts with average poverty rates greater than 20%. Baltimore City and many other areas in Maryland also grapple with persistent poverty (20% or more of the population living in poverty for at least 30 years).

Exhibit 1
Five-year Average Poverty Rate by Census Tract
Calendar 2014-2018



Note: Calendar 2019 census tract data is scheduled to be released in December 2020.

Source: U.S. Census Bureau; Department of Legislative Services

Supplemental Poverty Measure

To reflect variations not captured by poverty thresholds or guidelines (such as geographic location, work status, and medical care costs), the Supplemental Poverty Measure (SPM) accounts for variables such as the value of noncash benefits and nondiscretionary expenses. For 2017 to 2019, Maryland was 1 of 16 states for which the official poverty estimate was, on average, lower than the SPM by a statistically significant difference. After California, Maryland had the greatest average difference between the official poverty measure and the SPM. This difference indicates that financial hardship exists for a greater proportion of Marylanders than is reflected in the official poverty rate.

Economic Instability during the COVID-19 Pandemic

The COVID-19 pandemic has resulted in significant disruptions in Marylanders' employment, income, food security, and housing status. Until full-year 2020 data is available, the U.S. Census Bureau created the Household Pulse Survey to make near real-time data available to inform pandemic recovery planning efforts. While the data may not meet some of the U.S. Census Bureau's statistical quality standards, widely reported economic stability challenges are affirmed in this experimental data. Data from Week 16 – September 30 through October 12 – suggests the following economic stability challenges in Maryland during the pandemic:

- ***Loss of Income:*** More than one-third (39%) of Maryland respondents indicated that they have experienced loss of employment income, for either themselves or a household member, since March 13, 2020, while an additional 23.2% reported that they expect loss of employment income in the next four weeks for either themselves or a household member. Loss of employment income was highest among Hispanic or Latino adults (52.7%) compared with Black (38.4%) or White (36.3%) adults;

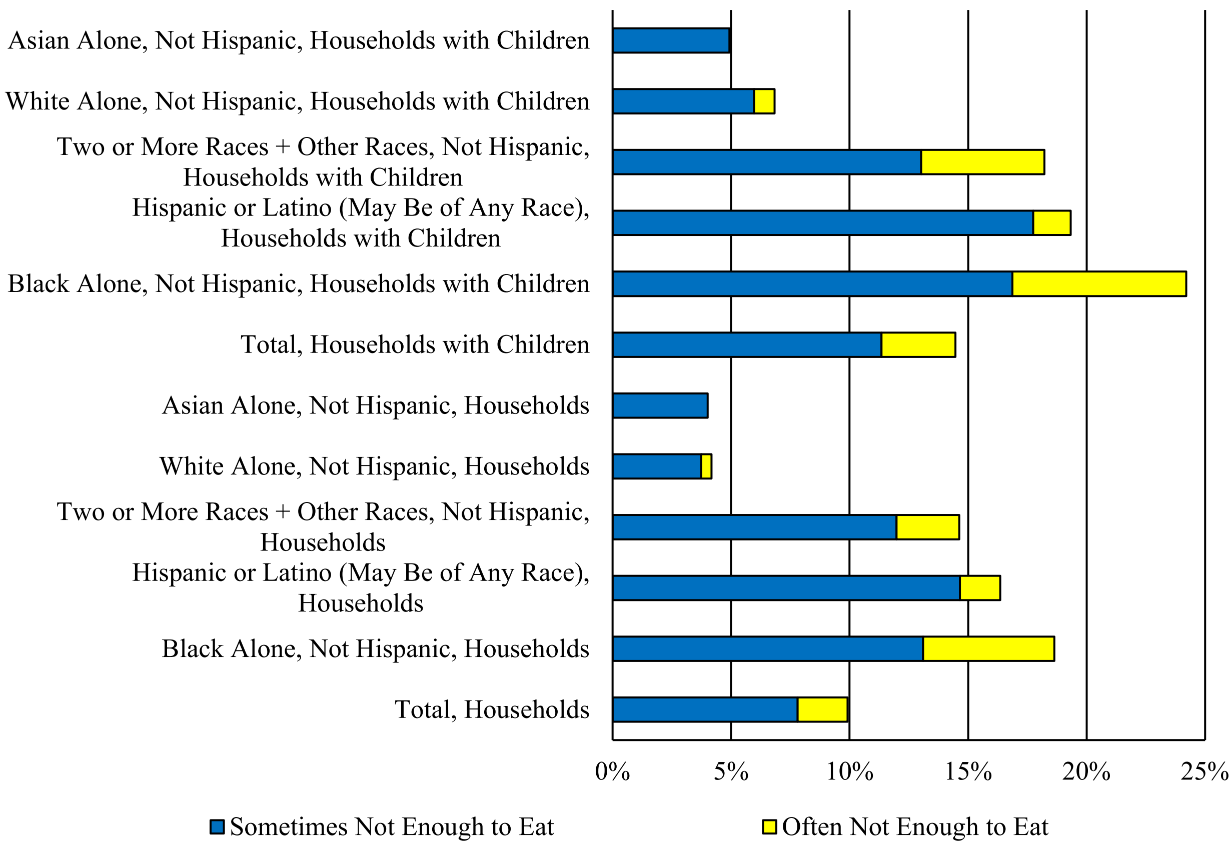
- ***Food Insecurity:*** As shown in **Exhibit 2**, 10% of adults reported that their household sometimes or often did not have enough to eat in the last seven days compared with 9.3% prior to the pandemic. Among households with children, 14.5% reported that their household sometimes or often did not have enough to eat in the last seven days compared with 13.8% prior to the pandemic. Food insecurity disproportionally impacts persons of color, with rates among Hispanic or Latino adults (16.4%) and Black adults (18.6%) 3.9 times and 4.4 times greater than White adults, respectively. Among households with children, this level of food insecurity among Hispanic or Latino households (19.3%) and Black households (24.2%) was 2.8 times and 3.6 times greater than White households, respectively;

- ***Difficulty Paying for Usual Household Expenses:*** More than one-quarter (28.1%) of Maryland respondents reported that it was somewhat or very difficult for their household to pay for their usual expenses such as food, rent or mortgage, car payments, medical expenses, or student loans during the pandemic. Difficulty paying for household expenses was approximately twice as prevalent among Hispanic or Latino adults (39.9%) and Black adults (37.1%) than among White adults (19.9%); and

- ***Housing Insecurity:*** Just over half of Maryland respondents (50.4%) indicated that they were somewhat or very likely to need to leave their current home in the next two months due to eviction with an additional 5.1% somewhat or very likely to need to leave their home due to foreclosure.

Exhibit 2

Food Insecurity in Maryland



Note: The U.S. Census Bureau indicates that the Household Pulse Survey's subpopulation data – including data classified by Hispanic origin, race, and household type – may have small sample sizes and large standard errors.

Source: U.S. Census Bureau; Department of Legislative Services

Human Services

Child and Elder Abuse Reporting

The COVID-19 pandemic has reduced access to mandatory reporters of child and elder abuse. Reports of child abuse were down by nearly 47% between April and July 2020, but evidence suggests reported cases are more severe than in prior years. The eventual return to in-person schooling will likely result in a significant rise in reports. During COVID-19, the elderly are at increased risk of neglect, self-neglect, financial exploitation, and abuse. Reports of elder abuse have decreased by about 25% during the pandemic, but the actual rates and severity of elder abuse have likely increased.

Child Abuse Reporting

Mandatory reporters of child abuse include health practitioners, police officers, educators, and human service workers acting in a professional capacity who have reason to believe that a child has been subjected to abuse or neglect. Mandatory reporters must notify the local department of social services (LDSS) or the appropriate law enforcement agency if abuse or neglect is suspected. As far as reasonably possible, a report must include the name, age, and home address of the child and the child's parent or other person responsible for the child's care; the whereabouts of the child; and the nature and extent of the abuse or neglect. The report must also include any available evidence about previous instances of abuse or neglect, any information that would help determine the cause of the suspected abuse or neglect, and the identity of any person responsible for the abuse or neglect. A law enforcement agency must thoroughly investigate each report to ensure the protection of the alleged victim. Within 10 working days after completing the investigation, a law enforcement agency must submit a written report of its findings to the State's Attorney and the State-designated protection and advocacy system.

Elder Abuse Reporting

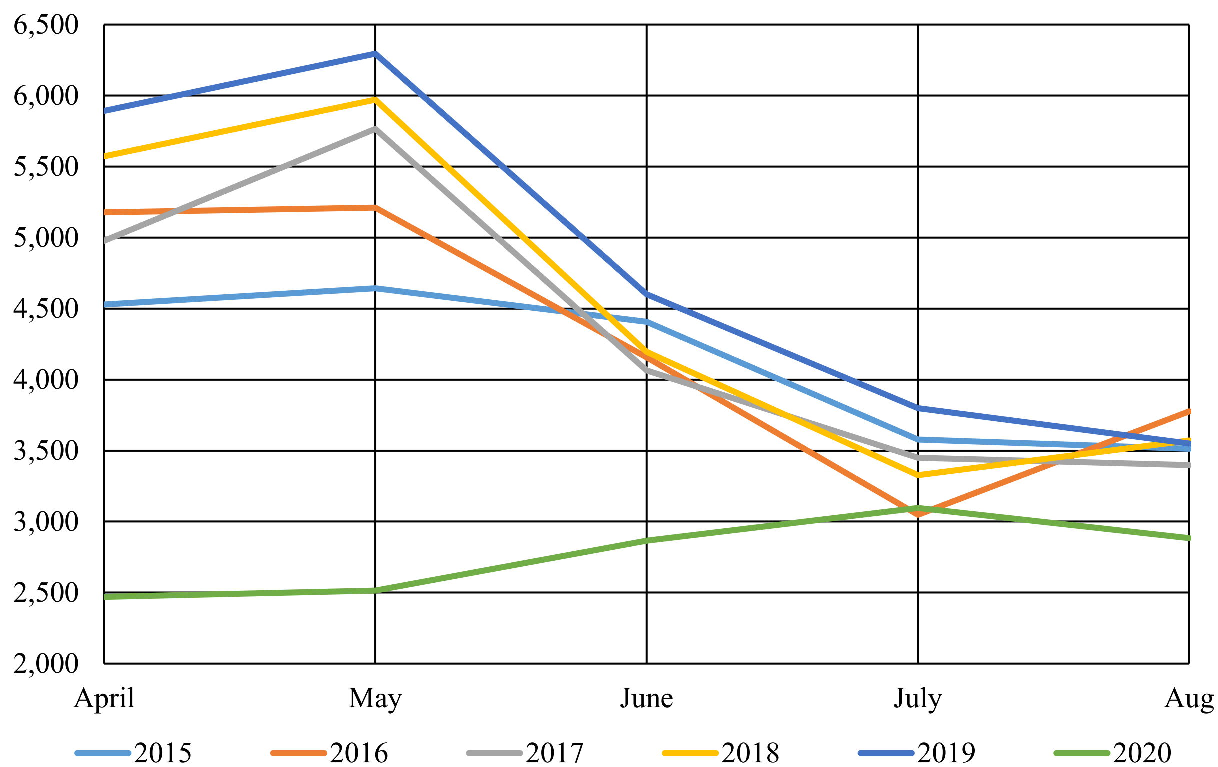
A vulnerable adult is an adult who lacks the physical or mental capacity to provide for the adult's daily needs. Similar to child abuse reporting, any health care practitioner, police officer, or human service worker who contacts, examines, attends, or treats an adult and who has reason to believe that the adult has been subjected to abuse, neglect, self-neglect, or exploitation must notify LDSS. As far as reasonably possible, the report must include the name, age, and home address of the alleged vulnerable adult and the person responsible for the care of the alleged vulnerable adult; the whereabouts and nature of the capacity of the alleged vulnerable adult; and the nature and extent of the abuse, neglect, self-neglect, or exploitation. After receipt of a report, LDSS must begin a thorough investigation. The investigation must be completed within 60 days or 10 days for an emergency situation. Following the investigation, LDSS must recommend the appropriate adult protective services.

Reporting Trends and the COVID-19 Pandemic

Child Abuse and Neglect

The Department of Human Services receives, on average, 4,630 child maltreatment reports per month. However, between April and July 2020, during the strictest COVID-19 stay-at-home and social distancing orders, child maltreatment reports declined to 2,736 per month (a 46.8% decrease compared to the same period in 2019). Nationwide, reports of child maltreatment between March and May 2020 were 40% to 60% lower than during the same months in 2019. Seasonal and historical drops in child maltreatment reports are common and primarily driven by school breaks; however, the sudden reduction in access to mandated reporters, as seen during the COVID-19 pandemic, is unprecedented. **Exhibit 1** shows the significant drop in child maltreatment reports between April and August 2020 compared to prior years.

Exhibit 1
Seasonal Comparison of Total Child Maltreatment Reports
April through August, 2015-2020



Source: Department of Human Services, Department of Legislative Services

Families experiencing poverty and economic insecurity have higher rates of child maltreatment. For many children, COVID-19 stay-at-home orders, school closures, and unstable economic conditions may be a source of danger. School is a safe space for students, and amidst closures, mandated reporters are no longer able to observe a child's physical and emotional well-being. Additionally, social workers no longer have a place to speak with children away from the home. Since current child protection systems depend on in-person interactions with children, the eventual return to in-person schooling will likely result in an increase in child welfare maltreatment reports, which could overwhelm child welfare systems.

Although child maltreatment reports during the pandemic have decreased, many reported cases have been more severe than in previous years. For example, between March 15, 2019, and April 20, 2019, 50% of children referred to Children's National Hospital due to child abuse concerns required hospitalization. Of those hospitalized, 34% had injuries, including head trauma, fractures, and injuries to multiple areas of the body, and 3% of children died as a result of their abuse. During the same period in 2020, those statistics increased to 86%, 71%, and 10%, respectively.

Elder Abuse, Neglect, and Self-neglect

COVID-19 disproportionately impacts the elderly, which is a population increasingly vulnerable to neglect, abandonment, exploitation, and abuse amidst the pandemic. The U.S. Centers for Disease Control and Prevention initially recommended that adults over the age of 65 not leave their home. Unfortunately, social isolation is one of the greatest risk factors for elder abuse. Limiting in-person contact with anyone outside the home lowers the ability for outside caregivers to provide necessary health care and treatment and prevents others from detecting abuse. The COVID-19 pandemic has also created a greater need for elders to depend on others, which is a situation that may lead to some form of abuse, neglect, or exploitation.

Many elderly individuals are also at increased risk of self-neglect. Afraid to leave their home for doctor's appointments, groceries, prescription medications, or other needs during the pandemic, many have neglected their own physical well-being. Additionally, unable to see their friends and families, many have become depressed or anxious. Often, self-isolation is a precursor to declining self-care, leading to improper hygiene, inadequate diet, or untreated medical conditions. Staying home with fear of contracting COVID-19 has created a situation that allows an elderly individual's health to rapidly decline without loved ones noticing or being able to step in.

Furthermore, stock market instability during the pandemic has affected investments and retirement accounts for many elderly individuals, causing them to be more financially unstable and more susceptible to financial scams, which in turn, causes them to be more susceptible to other forms of abuse.

Each year, approximately 10% of adults older than age 60 experience some form of elder abuse in the United States; however, an estimated 93% of cases go unreported. Additionally, in approximately 60% of elder abuse and neglect incidents, the abuser is a family member. Unfortunately, similar to child maltreatment reports, reports of elder abuse have decreased during the COVID-19 pandemic, since many elderly individuals are not leaving the home or coming in contact with anyone who can detect instances of abuse, neglect, self-neglect, or exploitation. Elder abuse reporting has decreased by approximately 25% during the pandemic, but given the rate of under reporting, it is likely that the rates and severity of elder abuse have also increased.

Transportation

Overview of Draft *Consolidated Transportation Program*

The Maryland Department of Transportation's draft 2021-2026 *Consolidated Transportation Program* (CTP) lists all capital projects funded in the current fiscal year and those planned for the next five years. Spending over the six-year period of the draft 2021-2026 CTP totals $13.4 billion, a nearly $3 billion decrease from the 2020-2025 CTP.

Overview

The *Consolidated Transportation Program* (CTP) is Maryland's six-year capital budget for transportation projects. It is updated annually and includes all major and minor capital projects that the Maryland Department of Transportation (MDOT), its modal administrations, and the Washington Metropolitan Area Transit Authority are undertaking in the current year and over the next five-year planning period. The CTP also includes mandated State aid to local governments. Capital projects for the Maryland Transportation Authority are also included in the CTP but are excluded from this analysis. **Exhibit 1** compares six-year spending contained in the 2020-2025 CTP to the draft 2021-2026 CTP by fund source.

Exhibit 1
Comparison of Six-year Capital Spending by Fund Source
Fiscal 2020-2026
($ in Millions)

	2020-2025 CTP	Draft 2021-2026 CTP	Change	% Change
Special Funds				
Taxes, Fees, and Other	$3,939.0	$2,822.9	-$1,116.1	-28.3%
Bond Proceeds\Premiums	2,267.0	1,304.0	-963.0	-42.5%
Subtotal – Special Funds	***$6,206.0***	***$4,126.9***	***-$2,079.1***	***-33.5%***
Federal Funds	$5,822.1	$5,729.0	-$93.1	-1.6%
Other Funds[1]	1,853.5	1,279.1	-574.4	-31.0%
General Funds	903.0	890.0	-13.0	-1.4%
Subtotal – State Program	***$14,784.6***	***$12,025.0***	***-$2,759.6***	***-18.7%***
State Aid Special Funds	$1,541.2	$1,381.6	-$159.6	-10.4%
Total	**$16,325.8**	**$13,406.6**	**-$2,919.2**	**-17.9%**

CTP: *Consolidated Transportation Program*

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

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

Source: Maryland Department of Transportation 2020-2025 CTP, draft 2021-2026 CTP; Department of Legislative Services

Total spending in the draft CTP decreases by $2.9 billion (-17.9%) compared with the 2020-2025 CTP. Special funds, including bond proceeds, decrease by nearly $2.1 billion (-33.5%) for the State capital program and by over $2.2 billion when State transportation aid is included. Other funds, which do not flow through the State budget, decrease by $574 million (-31%) compared to the prior CTP, largely due to cancellation of the planned issuance of $350 million in revenue debt to support a project at the Baltimore-Washington International Thurgood Marshall Airport.

Exhibit 2 compares MDOT's total capital spending in each plan by mode and for State aid to local governments. Programmed spending decreases for every mode and for State aid. The State Highway Administration incurs the largest decrease on a dollar basis at nearly $1.3 billion (-19.3%), while the Maryland Aviation Administration sees the largest percentage decrease at -62.8% (-$649 million).

Exhibit 2
Comparison of Six-year Capital Spending by Mode
Fiscal 2020-2026
($ in Millions)

	2020-2025 CTP	Draft 2021-2026 CTP	Change	% Change
Secretary's Office	$146.5	$88.3	-$58.2	-39.7%
WMATA	2,705.5	2,704.6	-0.9	0.0%
State Highways	6,584.9	5,313.0	-1,271.9	-19.3%
Port	1,159.7	891.0	-268.7	-23.2%
Motor Vehicle	147.0	95.9	-51.1	-34.8%
Mass Transit	3,007.0	2,547.2	-459.8	-15.3%
Airport	1,034.0	385.0	-649.0	-62.8%
Subtotal	***$14,784.6***	***$12,025.0***	***-$2,759.6***	***-18.7%***
State Aid	1,541.2	1,381.6	-159.6	-10.4%
Total	**$16,325.8**	**$13,406.6**	**-$2,919.2**	**-17.9%**

CTP: *Consolidated Transportation Program*
WMATA: Washington Metropolitan Area Transit Authority

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

Source: Maryland Department of Transportation 2020-2025 CTP, draft 2021-2026 CTP; Department of Legislative Services

Exhibit 3 compares MDOT's six-year capital spending in each plan by category. Programmed spending for major projects decreases by over $1.6 billion (-20.2%), while the largest decrease on a percentage basis occurs in the Development and Evaluation Program, which sees programmed spending decline by nearly $99 million (-46.0%).

Exhibit 3
Comparison of Six-year Capital Spending by Category
Fiscal 2020-2026
($ in Millions)

	2020-2025 CTP	Draft 2021-2026 CTP	Change	% Change
Major Projects	$8,139.6	$6,499.4	-$1,640.2	-20.2%
System Preservation/Minor Projects	6,263.2	5,247.7	-1,015.5	-16.2%
Development and Evaluation Program	214.9	116.0	-98.9	-46.0%
Local Transportation Aid	1,541.2	1,381.6	-159.6	-10.4%
Other	167.0	162.2	-4.8	-2.9%
Total	**$16,325.9**	**$13,406.9**	**-$2,919.0**	**-17.9%**

CTP: *Consolidated Transportation Program*

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

Source: Maryland Department of Transportation 2020-2025 CTP, draft 2021-2026 CTP; Department of Legislative Services

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Transportation

Status of Recent Transportation Initiatives

Over the past few years, several high-profile transportation initiatives related to mass transit, traffic congestion, high-speed transit, and freight have been proposed in the State. This paper provides a brief status update on a number of these initiatives.

Chesapeake Bay Bridge Third Crossing

Background

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

Status

MDTA is conducting a $5 million study, titled the Chesapeake Bay Crossing Study: Tier 1 NEPA (Bay Crossing Study), to identify a preferred corridor across the Chesapeake Bay. The Bay Crossing Study will evaluate multiple corridor alternatives based on specified criteria as well as environmental and financial considerations. MDTA has moved forward with analyzing four of the preliminary alternatives: Corridor 6 (MD 100 to US 301 between Pasadena, Rock Hall, and Centreville); Corridor 7/Existing Corridor (US 50/301 to US 50 between Crofton and Queenstown); Corridor 8 (US 50/301 between Crofton and Easton); and a no-build alternative. The Bay Crossing Study is scheduled to be completed in summer 2021.

Howard Street Tunnel Reconstruction

Background

The inability to run high-cube double-stack railroad traffic through the Howard Street Tunnel (HST) has been a long-standing issue for the Maryland Port Administration (MPA). Completed in 1895, the existing single-track freight tunnel, as well as several clearances along the rail alignment, are approximately 18 inches too short to allow modern double-stack intermodal trains to travel to and from the Port of Baltimore. The Maryland Department of Transportation

(MDOT) began working with CSX in 2015 to develop a cost-effective solution to modify HST to allow double stacking. In 2017, MPA sought federal grant funding to help finance the needed improvements. Soon after MPA applied for federal funding, however, CSX withdrew its support for the project, and MPA ultimately withdrew the federal grant application. Just over a year later, in December 2018, members of the Maryland congressional delegation announced that CSX had recommitted to the project.

Status

Of the estimated $466 million required for the project, $125 million is covered by an Infrastructure for Rebuilding America (INFRA) grant from the U.S. Department of Transportation (USDOT). In order for the project to proceed with the INFRA grant, the remaining funds must be provided by the State, CSX, and other partners. During the 2020 legislative session, Governor Lawrence J. Hogan, Jr., proposed a funding plan that was modified slightly by the legislature. This funding plan, combined with funding from CSX, will cover the remaining $341 million. The grant agreement between MDOT, MPA, and USDOT is expected to be signed during fall 2020.

I-495 and I-270 Public-private Partnership Managed Lanes

Background

In September 2017, Governor Hogan announced the Traffic Relief Plan comprising four components: the I-495 and I-270 Public-private Partnership (P3) Program; the MD 295 Managed Lanes; the Baltimore Area Traffic Relief Plan; and the statewide Smart Traffic Signals project (MDOT has since consolidated the MD 295 Managed Lanes component with the Baltimore Area Traffic Relief Plan). As envisioned by the State Highway Administration, the I-495 and I-270 P3 Program would reduce traffic congestion by adding two dynamic tolling lanes in each direction to the Maryland portion of the Washington Beltway (I-495) and to I-270 from the Washington Beltway to Frederick. As proposed, this $7.6 billion project would be paid for entirely from toll revenue generated by the project and would be constructed and operated by one or more concessionaires chosen through a P3 procurement.

Status

The Board of Public Works (BPW) approved the I-495 and I-270 P3 Program as a P3 procurement in June 2019. In January 2020, BPW amended its approval of the project as a P3 to require, among other things, that the project be completed in phases. The first phase covers the portion of I-495 from just south of the American Legion Bridge up to and including the I-270 spurs, and the portion of I-270 from the Beltway north to I-395. Four private-sector teams have been shortlisted to respond to the request for proposals to be the developer for one or more phases of the project. The *Managed Lanes Study Draft Environmental Impact Statement* was published on July 7, 2020, with public comments accepted through November 9, 2020. On October 21, 2020, the Maryland-National Capital Park and Planning Commission (M-NCPPC) voted unanimously to reject the project as submitted, citing issues with the Managed Lanes Study and concerns over land use, transportation, and environmental impacts. M-NCPPC controls parkland that will likely be needed for the project.

Loop and Hyperloop

Background

The Boring Company is proposing to construct parallel twin tunnels between Washington, DC and Baltimore City, largely under the Baltimore-Washington Parkway, in a project referred to as the DC-to-Baltimore Loop. As envisioned, the loop will be a high-speed underground transportation system that transports passengers in autonomous electric vehicles carrying between 8 and 16 riders and traveling at 125 to 150 miles per hour. Design objectives include maximizing the use and utility of existing public rights-of-way; minimizing environmental impacts, particularly community impacts; minimizing curves to optimize travel times, design speed, and passenger comfort; and designing for potential future expansion and conversion to hyperloop, which would draw a vacuum inside the tube to eliminate air friction and allow for greater speeds of over 600 miles per hour.

Status

MDOT, as the State agency sponsor for the project, has submitted an Environmental Assessment (EA) for review to the Federal Highway Administration and the Federal Rail Administration (FRA). The public comment period on the draft EA originally closed on June 10, 2019, but due to public interest was extended to July 17, 2019. According to the federal Permitting Dashboard, the EA is still in progress despite an estimated completion date of summer 2019. Other permits required for the project are listed as "paused." Copies of the EA, as well as a draft Programmatic Agreement to satisfy requirements under the National Historic Preservation Act, are available at https://www.dcbaltimoreloop.com/.

Maglev

Background

The Baltimore-Washington Superconducting Maglev (SCMAGLEV) Project is a proposal by the Baltimore Washington Rapid Rail (BWRR) company (a subsidiary of the Northeast Maglev company) to construct a high-speed rail line utilizing SCMAGLEV technology between Baltimore and Washington, DC. This is the first segment in a long-range plan by Northeast Maglev to develop SCMAGLEV service between Washington, DC and New York City. In 2015, MDOT, as the State agency sponsor for the project, secured a $27.8 million grant from USDOT to conduct planning activities for the SCMAGLEV project. BWRR is providing the required 20% match toward the federal grant.

Status

An environmental review under NEPA is currently underway. Two alignments in the Baltimore-Washington Parkway corridor have been identified. In December 2019, FRA paused its assessment of the Environmental Impact Statement (EIS) to allow BWRR time to provide more information on the design and engineering of the train, stations, and alignments. The project was taken off pause in May 2020, and work on the Draft EIS has resumed. According to the federal Permitting Dashboard, completion of the environmental review and permitting for the project is projected for January 2022. Additional information can be found on the project website at http://bwmaglev.info/.

Purple Line Light Rail

Background

The Purple Line light rail project is a 16.2-mile light rail line that will extend from Bethesda in Montgomery County to New Carrollton in Prince George's County, with a total of 21 stations. It will provide a direct connection to the Metrorail Red, Green, and Orange lines at Bethesda, Silver Spring, College Park, and New Carrollton. The Purple Line will also connect to the Maryland Area Regional Commuter, Amtrak, and regional and local bus services. Project information can be found at https://www.purplelinemd.com/en/.

Status

In June 2020, the Purple Line Transit Partners (PLTP), the P3 concessionaire for the project, notified MDOT of its intent to terminate the P3 agreement under the agreement's notice of termination provision due to cost increases caused by extended delays for which MDOT refused to provide compensation. MDOT obtained a temporary injunction prohibiting PLTP from leaving the project, but the District Court ruled that PLTP had the right to terminate the agreement. MDOT is evaluating how it will proceed; options include assuming oversight of the construction project, entering into a P3 agreement with another company, and reaching an agreement with PLTP to continue work under the existing P3 agreement. Completion of the project will be delayed, perhaps significantly, beyond calendar 2022 depending on the option MDOT decides to pursue. Project information can be found at http://purplelinemd.com.

Business Regulation

Renewable Energy

A Federal Energy Regulatory Commission Order related to the application of the Minimum Offer Price Rule may significantly impact the goals of the Renewable Energy Portfolio Standard in coming years. Economic shifts in fuel for generation and closing of plants may result in measures related to the transition and to address labor and employment. Recent legislation encourages brownfields for siting renewable energy projects.

Renewable Energy Portfolio Standard

Maryland's Renewable Energy Portfolio Standard (RPS) was enacted in 2004 to facilitate a gradual transition to renewable sources of energy. Electric companies and other electricity suppliers must submit Renewable Energy Credits (REC) equal to a percentage specified in statute each year or else pay an Alternative Compliance Payment equivalent to their shortfall. Chapter 757 of 2019 increased RPS from 25% by 2020 to 50% by 2030. Effective October 1, 2019, the Act reestablished the expired Tier 2 of RPS as an additional requirement to include electricity from large hydroelectric sources for two years (2019 and 2020). New offshore wind capacity is required beginning with at least 400 megawatts in 2026, increasing to at least a cumulative 800 megawatts in 2028 and to at least a cumulative 1,200 megawatts in 2030. The carve-out for solar increased from 5.5% to 6.0% in 2020 with further annual increases until the solar carve-out reaches 14.5% in 2028.

Legislators and others have expressed interest in altering certain aspects of RPS, including the treatment of waste-to-energy and black liquor, a paper mill residue, both currently designated as Tier 1 resources, as well as the treatment of hydropower. Efforts to remove waste-to-energy and black liquor have failed several times, most recently during the 2020 legislative session. A 2020 bill to further extend the inclusion of hydropower also failed.

Federal Energy Regulatory Commission Order

On December 19, 2019, the Federal Energy Regulatory Commission (FERC) issued an order requiring that PJM (the regional transmission operator that serves Maryland and several other surrounding states) apply its Minimum Offer Price Rule (MOPR) to all resource types, with few exceptions, to address state-preferred generation resources and resource attributes that rely on state subsidies. Exceptions would apply only to (1) existing renewable energy resources in RPS programs; (2) existing Demand Response, Energy Efficiency, and capacity storage; (3) existing self-supply; and (4) existing competitive resources that do not receive state subsidies. New and other, nonexempted existing resources may seek unit-specific exceptions to the MOPR. Generally, the price floor for new state-subsidized resources that have not cleared a PJM capacity auction would be the net cost of new entry for that type of resource. However, the floor for state-subsidized resources that have cleared the auction would be their going forward costs, net of revenues they could receive from PJM's energy and ancillary services markets. Resources receiving federal subsidies would not be subject to the revised MOPR.

The order effectively targets and nullifies programs subsidized by states to meet their policy needs and legislative mandates. For example, the State's existing RPS program and goal of reaching 50% renewable energy by 2030 would be impaired. While existing resources would be exempt from offering capacity at or above the price floor, new renewables receiving REC payments would be subject to the revised MOPR and, as a result, might not be able to clear the capacity market. This may be a short-term concern for some renewable plants since their going forward costs in future years may be minimal, but FERC is requiring PJM to justify that this is indeed the case. In the meantime, electricity customers may be exposed to higher capacity costs as a result of load serving entities having to buy more capacity than necessary and buying that capacity at higher prices as a result of more fossil generation clearing the auction. The cost of complying with Maryland's RPS requirements may also increase.

Several states and other organizations have filed lawsuits related to the FERC order. Those actions have been consolidated and will be heard by U.S. Court of Appeals for the Seventh Circuit in the coming months.

Coal-fired Power Plant Closures

The recent closure in the State of the Dickerson coal fired power plant and the impending closure of two coal-burning units at the Chalk Point power plant, along with the closure of other coal–fired power plants across the country, have resulted in proposals to address the economic impact of such closures. Bills introduced in 2020 sought to establish a cap on carbon dioxide emissions for electric generating units in the State that primarily burn coal as fuel with a staggered timeline for implementation. The bills would have established a Fossil Fuel Community Transition Account and related advisory board within the Department of Commerce to provide grants for specified individuals and communities affected by the transition from fossil fuels and the retirement of electric generating units using proceeds from specified accounts within the Strategic Energy Investment Fund. It is likely that similar legislative proposals will appear in coming sessions, along with proposals to address the labor and economic impacts of plant closures based on shifts in generating technologies and fuels.

Voluntary Cleanup Program

Chapter 544 of 2020, among other things, requires the Maryland Department of the Environment (MDE) to waive application fees for the Voluntary Cleanup Program for a qualifying applicant who intends to use eligible "brownfield" property to generate clean or renewable energy. The Act also expands the definition of eligible property to include sites listed on the Superfund

Enterprise Management System. Lastly, the Act exempts a public service company that is a public-private partnership (P3) formed for the generation of clean or renewable energy from the existing public service company franchise tax if (1) 30% or more of the electricity generated through the P3 is purchased by the public partner and (2) the clean or renewable energy generating station is sited on an eligible clean and renewable energy generation site, as determined by MDE.

Business Regulation

Small Wireless Facilities and Implementation of the Fifth Generation Data Network

Implementation of 5G, the fifth generation of wireless data networks, has begun. The Federal Communications Commission rules relating to the installation and maintenance of small wireless facilities, including limits on local control of permitting and siting processes, were recently upheld by the U.S. Court of Appeals for the Ninth Circuit.

What Are Small Wireless Facilities and Why Are They Needed?

As demand for high-speed Internet access has increased, wireless providers have begun implementing the fifth generation of wireless data networks, commonly known as 5G. Wireless providers anticipate that download speeds on the 5G network may meet or exceed the speeds that consumers experience on their wired home networks. Further, proponents claim that these connection speeds may facilitate the adoption of new technologies, such as self-driving cars, and improve access to remote learning, telework, and telehealth services, demand for which has increased significantly in light of the ongoing COVID-19 pandemic.

In order to fully implement the 5G network, wireless providers must build and maintain "small wireless facilities" instead of using the more traditional and much larger cellular towers that maintain the current 4G network. Small wireless facilities include antennas and poles of various sizes and heights. Compared to cellular towers, small wireless facilities provide wireless services to a much smaller area, meaning that a large number of facilities must be built throughout the country in order to maintain the 5G data network. The Cellular Telecommunications Industry Association estimates that hundreds of thousands of facilities are likely needed. Many small wireless facilities are being built on publicly owned land, rights-of-way, and utility poles; and doing so requires the permission of cities, towns, counties, and other local governments, which generally involves paying for and acquiring permits for each installation. In addition, siting facilities on private structures may also require local permits.

Federal Communications Commission Rules to Address Conflicts with Local Governments

The lack of a regulatory framework in some states for the installation and maintenance of small wireless facilities has led to conflict between the wireless industry and local governments. One such conflict is over the use of public rights-of-way and publicly owned property and equipment. The wireless industry has argued that it should have access to local rights-of-way and locally owned equipment as the infrastructure is already in place for the siting of small wireless facilities. Local governments, on the other hand, have argued the need to have procedures in place to ensure uniformity in siting, design, permitting, and maintenance of these wireless facilities. Local jurisdictions typically have this authority over other users of local rights-of-way, including telecommunications companies and cable television providers.

In response to these conflicts and to hasten the implementation of the 5G data network, the Federal Communications Commission (FCC) adopted new rules relating to the installation and maintenance of small wireless facilities in 2018. Among other things, the rules require local governments to take action on applications to install 5G equipment on government property in publicly owned rights-of-way within 60 or 90 days, depending on certain circumstances, and limit the amount of money that a local government may charge for such installations. Specifically, a local government may charge no more than $100 for each application to install a small cell facility and an annual fee of no more than $270 for each facility. The fee caps have been particularly controversial, and many cities and other local governments question whether the commission has the authority to establish these requirements.

As a result of the adoption of these new rules, a number of local governments, including the cities of Bowie and Westminster and Montgomery County, filed suit against FCC. Ultimately, the U.S. Court of Appeals for the Ninth Circuit in the case of *City of Portland v. United States* largely upheld the FCC rules with the exception of those rules related to certain aesthetic requirements. The decision clears the way for local governments to maintain control in the limited area of aesthetic regulations while simultaneously restricting their fee authority.

Legislative Action in Recent Years

During Maryland's 2018 legislative session, Senate Bill 1188 and House Bill 1767 were proposed to address the conflict between wireless carriers and local governments in Maryland. The bills would have established procedures and guidelines for the installation and maintenance of small wireless facilities. Both bills failed. In 2019, Senate Bill 713 and House Bill 1021 would have established procedures and requirements for the permitting, installation, and regulation of wireless facilities. The bills also would have established a wireless facilities surcharge, administered by the Comptroller, to provide revenue to the Digital Inclusion Fund established in the Department of Housing and Community Development. Again, both bills failed. No legislation was introduced on this subject during the 2020 legislative session.

Unless a further appeal from the Ninth Circuit opinion succeeds or contrary legislation is passed by Congress, there appears to be little opportunity to alter the permitting and siting process to accommodate the continuing concerns of local government over 5G deployment.

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Business Regulation

Public Service Commission Initiatives

The COVID-19 pandemic led to moratoriums on utility service terminations, originally and broadly by the Governor and then subsequently and to a more limited extent by the Public Service Commission. In July 2020, the commission established Public Conference 53 to examine the effects of the pandemic on utilities and customers and consider possible mitigation strategies. A gas explosion in August 2020 has also renewed interest in pipeline safety, including an existing program to fund the identification and replacement of vulnerable and deficient gas distribution pipes, the Maryland Strategic Infrastructure Development and Enhancement program.

Public Utility Arrearages and Moratorium

Background

The COVID-19 pandemic has had a significant impact on the State's economy with significant loss of jobs and income and increased demand for essential utility services for residences, among many other issues. The Governor issued executive orders to protect residents from the immediate catastrophic economic impacts of the pandemic by imposing moratoriums in a number of areas where shuttered businesses have left many people, including business owners and employees, without income for basic household expenses such as rent and utilities. Households found themselves stranded in housing they could no longer afford in the short term with necessary services like electricity, gas, telephone, and Internet all generating bills that could not be paid. The result was mounting arrearages of unpaid bills for utility services.

Executive Action

On March 16, 2020, the Governor issued an executive order imposing a moratorium on terminations and late fees for utility services through at least May 1, 2020, which was subsequently extended several times. The moratorium prohibited late fees and terminations by several types of "residential service company," including electric, gas, sewage disposal, telegraph, telephone, water, cable television companies, and Internet service providers. Residential customers with increasing utility arrearages could have faced looming turnoffs of utility services at the same time they were trying to regain work, manage access to remote schooling for children, and stay as safe as possible from the continuing health threats of the pandemic. In the meantime, continuing usage of utility services meant that public service companies were facing increased debt, with the prospect of it becoming uncollectible, and ultimately passed along to the remaining customers, while crushing affected households. The Governor's moratorium finally expired on September 1, 2020.

Public Service Commission Response

Responding to the economic and social impacts of COVID-19, the Public Service Commission opened a proceeding on July 8, 2020, to address the effects of the pandemic on utilities and customers, Public Conference 53 (PC 53). The commission took public testimony in late August. On August 31, 2020, the commission issued an order addressing residential customer concerns about arrearages and terminations. The order (1) imposed its own moratorium on terminations of utility services until October 1, 2020; (2) invalidated any termination notices sent before October 1, 2020; (3) extended to 45 days the minimum period between the date of a termination notice and the intended termination, effectively extending the practical moratorium on turnoffs until November 15, 2020; (4) required that the term of any structured repayment plan must be for at least 12 months, and in the case of customers with low income as certified by the Office of Home Energy Programs, at least 24 months; (5) waived any requirement for a down payment or deposit as a condition of beginning a payment plan; and (6) prohibited a public service company from refusing to negotiate or denying a payment plan due to the customer's failure to meet certain prior payment plans. As part of PC 53, in September, the commission also requested that each Maryland gas and/or electric investor-owned utility develop cost-neutral arrearage forgiveness programs and/or arrearage management programs. Filings were received in October and hearings are scheduled for November.

While the commission's extended moratorium was limited, it did provide an opportunity for public service companies to advertise the options for relief that were included, such as the availability of negotiated payment plans over a period of up to two years for households with significant arrearages and the different assistance programs available for income-qualified households.

The commission took pains to point out that its extended moratorium applied only to services that the commission regulates – distribution of electricity and natural gas and local telephone service. Other services such as cable-based television, Internet service, and Voice over Internet Protocol (VoIP) telephony, as well as competitive energy sources such as propane and fuel oil, are not subject to commission jurisdiction, and the commission's moratorium did not apply to those unregulated services in any fashion.

State Energy Assistance Programs

As the full scale of accumulated arrearages becomes clearer through the end of 2020, the limitations of existing utility assistance programs are being highlighted. Before Maryland embarked on restructuring the electricity industry in 1999, the only regularly available public funding for low-income energy customers was the Maryland Energy Assistance Program (MEAP), which provides assistance in obtaining fuel of several types but only to households below 175% of the federal poverty level (FPL) and is entirely funded by annual appropriations from the federal government. The 1999 restructuring law established the Electric Universal Service Program (EUSP), funded by an assessment on the State's electricity customers, and largely administered by the Office of Home Energy Programs. EUSP provides limited assistance to electricity customers below 175% of FPL in the form of (1) bill assistance for current charges; (2) retirement of existing arrearages once every seven years; and (3) weatherization assistance. Historically, demand has outstripped available funds for both bill assistance and arrearage retirement, with some of the shortfall being made up by additional money from the Strategic Energy Investment Fund.

In their current form, MEAP and EUSP cannot address arrearages for households that are struggling but have income higher than the 175% threshold. These arrearages may only be dealt with by a negotiated payment plan if sufficient available income and assets are available. For some households, however, such a plan is not feasible, and the remaining alternative may well be bankruptcy. In the case of bankruptcy, the uncollected arrearages are spread across the remaining utility customers through higher distribution rates.

For additional discussion of utility arrearages and energy assistance, see the section "Energy Assistance Programs" within COVID-19 of this *Issue Papers of the 2021 Session*.

Natural Gas Infrastructure – Incidents and Replacement

Background

A natural gas explosion rocked the Labyrinth Road area of northwest Baltimore City on August 11, 2020. Three homes were destroyed, several people died, and many others were left homeless due to property damage. The explosion raised a great deal of concern about the safety and maintenance of natural gas distribution facilities, including questions about the inspection and condition of gas mains and related utility equipment. It also renewed attention to other gas explosions in recent years, including an August 25, 2019 event at a commercial complex in Columbia and an explosion on August 10, 2016, at the Flower Branch apartment complex in Silver Spring. Investigations of the two more recent events are ongoing, but a preliminary assessment of the Labyrinth Road event suggests that the cause of that explosion was inside the house and beyond the utility company's control.

Safety oversight of natural gas facilities in Maryland is divided between the federal government and the State. Transmission facilities such as gas pipelines are under the jurisdiction of the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the U.S. Department of Transportation. PHMSA has delegated enforcement of federal pipeline safety regulations to the Public Service Commission. The commission has original jurisdiction over distribution infrastructure as well as gas operators in the State. Inspection and maintenance activities are included in State regulations which also incorporate by reference relevant federal regulations.

Maryland Strategic Infrastructure Development and Enhancement Program

The Labyrinth Road event turned many legislators' attention to the Maryland Strategic Infrastructure Development and Enhancement program (STRIDE). STRIDE is a recently established program to identify vulnerable and deficient gas distribution pipes and replace them on an accelerated schedule. Traditional rate regulation would only allow a gas company to replace distribution facilities such as piping and valves as needed and then seek reimbursement for the prudently incurred costs after the fact in a rate case. STRIDE allows the utility to create a plan to schedule, obtaining prospective cost recovery and facilitating financing of the replacement activities at more favorable rates.

A number of gas companies in the State have filed STRIDE plans with the commission. In response to the Labyrinth Road event, the commission and Baltimore Gas and Electric (BGE) provided information to the legislature on the current status of the utility's first STRIDE plan in Baltimore City and elsewhere in its service territory. Washington Gas, the incumbent gas utility serving the Washington suburbs, subsequently provided similar information on its STRIDE process to the legislature.

Gas utilities are now in their second phase of STRIDE filings. In the first phase, 2014 to 2018, approximately 290 miles of gas mains were approved for replacement at a total cost of over $800.0 million by BGE, Columbia Gas, and Washington Gas. In the second phase, 2019 to 2023, the commission has approved replacement of 400 miles of gas mains at an anticipated total cost of $1.2 billion. The costs are funded by a surcharge on monthly gas bills and are subject to annual review and true-up by the commission.

Gas main materials that are most eligible for replacement under STRIDE are vintage cast iron and wrought iron pipes, bare steel mains and services and unprotected coated steel, related mechanically coupled mains, and certain plastic and copper materials, depending on the utility and the age of the equipment.

For BGE, as of the end of 2019, the utility had replaced 257 miles of cast iron and bare steel pipeline, and 1,083 miles remained to be replaced. The average pace of BGE's replacement work is 48 miles per year at an average cost of $2.5 million per mile. BGE anticipates completing STRIDE mains and other infrastructure replacements by 2040 at a cost of approximately $2.7 billion.

Washington Gas uses STRIDE for replacement of service connections as well as pipelines. The company had replaced approximately 85 miles of mains by the end of 2019 and had 560 miles of mains to be replaced in coming years. Washington Gas anticipates completing its STRIDE service connection replacements by 2025 and its pipeline replacement work by 2035. In the first six years of STRIDE projects, the company spent approximately $276.0 million.

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Business Regulation

Uninsured Employers' Fund

Although the General Assembly passed legislation during the 2020 session to ensure that the Uninsured Employers' Fund remains solvent through fiscal 2021, further legislative action is needed to ensure ongoing solvency.

Uninsured Employers' Fund and Subsequent Injury Fund

Purposes

The Uninsured Employers' Fund (UEF) and Subsequent Injury Fund (SIF) each support the State's workers' compensation system in a different way. If an injured employee who should be receiving workers' compensation benefits is not properly compensated by the employer or the employer's insurer (which may happen because the employer fails to purchase workers' compensation insurance or becomes insolvent), UEF directly pays the claimant's compensation benefits and medical expenses. SIF, in turn, exists to encourage the hiring of workers with preexisting disabilities by assuming the financial responsibility for a worker's preexisting disability in the event that the worker sustains an accidental workplace injury. SIF operates by reviewing and investigating workers' compensation claims when they involve preexisting health conditions. Under these circumstances, employer liability is limited to damages caused by the current injury, and SIF incurs any additional liability from the combined effects of the current and prior injuries.

Funding

UEF and SIF are both special funded, and their revenues are primarily derived from an assessment on awards against employers or insurers for permanent disability or death and amounts payable by employers or insurers under settlement agreements. SIF receives a 6.5% assessment on these awards and settlements; this is the sole mechanism for funding SIF, and it pays for both workers' compensation claims and SIF administrative costs. UEF receives a base 1.0% assessment on these awards and settlements. UEF also collects penalties from sanctions on uninsured employers and revenues from the recovery of benefits paid out for uninsured claims.

By statute, if the UEF fund balance is $5.0 million or more, its assessments are suspended. The assessments are resumed if the UEF fund balance drops below $3.0 million or UEF's director determines that the balance will do so in the next three months. The director of UEF must notify each self-insured employer and insurer when assessments are suspended or resumed. Regardless of the $5.0 million "limit" on the UEF fund balance, if the UEF board of directors determines that its fund balance is inadequate to meet its anticipated losses, the board may direct the Workers'

Compensation Commission to impose an additional 1.0% assessment (2.0% total) on awards against employers or insurers for permanent disability or death. In practice, UEF has not suspended assessments in recent history.

Recent Legislation Addressed UEF Insolvency for Fiscal 2021

The fiscal 2021 budget analysis of UEF projected that UEF would likely become insolvent in fiscal 2021 without some kind of financial assistance. Specifically, in recent years, two large Maryland self-insured employers became insolvent, resulting in significant claims payments from UEF: Bethlehem Steel in 2001 and the A&P grocery chain in 2015. In addition, UEF began contracting with a third-party administrator in fiscal 2018 for claims processing, resulting in operating costs of $5.3 million in fiscal 2021, more than three times higher than fiscal 2017 operating costs. As a result, UEF has seen annual expenditures rapidly outpace revenues, depleting the fund balance.

To address the UEF projected insolvency, for fiscal 2021 only, Chapter 495 of 2020 altered the assessment on certain workers' compensation awards and settlements that fund both SIF and UEF by decreasing SIF's share by 1.0% (bringing it to 5.5%) and increasing the UEF share by 1.0% (bringing it to a maximum of 3.0%). Doing so is estimated to increase revenues for UEF by $4.0 million in fiscal 2021 and decrease revenues for SIF by the same amount. At the time of the enactment of Chapter 495, SIF had a fund balance of approximately $100.0 million.

Future Considerations for UEF Solvency

While Chapter 495 helped UEF remain solvent in the short term, the agency is likely to continue to experience solvency issues in the future. To address this potential issue, the budget committees of the General Assembly have asked UEF to provide information on its progress to obtain an outside actuarial evaluation of the health of the fund and appropriateness of the assessment on workers' compensation awards. While this update was originally due on September 1, 2020, the COVID-19 pandemic has slowed agency activities over the interim. The information is expected to be available for the 2021 legislative session.

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Public Safety

Police Reform

The death of George Floyd in Minneapolis police custody in May 2020 led to protests nationwide as well as a push for police reform on the national, state, and local levels. In Maryland, during the 2020 interim, a variety of legislative bodies explored areas for police reform and discussed potential legislation. In addition, advocates continued to call for improvements in police oversight, methods and procedures, consequences for misconduct, and transparency.

Background

Chapter 753 of 2018 established the Commission to Restore Trust in Policing to review and investigate the Gun Trace Task Force corruption matter in Baltimore City and to make recommendations regarding reform of the Baltimore Police Department (BPD). During 2018, 2019, and 2020, the commission held over 20 public hearings to receive testimony from witnesses, including representatives of Baltimore City and BPD, former police officials, public interest advocates, representatives of the Community Oversight Task Force, a representative of the Commission on Accreditation for Law Enforcement Agencies, and members of the public. The commission also obtained and reviewed documents from Baltimore City, the courts, and other sources; interviewed factual witnesses; and conducted other research and investigative activities. The commission is set to submit a final report and recommendations by December 31, 2020.

In May 2020, Speaker of the House Adrienne A. Jones and House Judiciary Committee Chairman Luke Clippinger created an interim Workgroup to Address Police Reform and Accountability in Maryland. The workgroup was charged with (1) reviewing policies and procedures relating to the investigation of police misconduct, including the Law Enforcement Officers' Bill of Rights (LEOBR); (2) determining the viability of uniform statewide use of force policies and arrest procedures; (3) reviewing practices regarding the use of body cameras and disclosure of body camera footage; and (4) identifying national best practices for independent prosecution of law enforcement-related crimes.

The workgroup held eight meetings between June and October 2020 and received testimony from the Maryland Police Training and Standards Commission (MPTSC), national experts on criminology and policing, public interest advocates, members of the public, law enforcement representatives, the Office of the Public Defender, and State's Attorneys. Recommendations from the workgroup are expected in late 2020.

In addition, Chapter 309 of 2020 created the Law Enforcement Body Camera Task Force to study options for the economical storage of audio and video recordings made by law enforcement body-worn cameras and to make recommendations for storage considering the budgets of State, county, local, and campus law enforcement jurisdictions. The findings and recommendations of the task force are expected by December 31, 2020. Further, BPD, Maryland's largest police agency, continued to implement reforms, underway since 2017, in connection with the U.S. Department of Justice consent decree process.

Although the General Assembly has passed a number of police reform measures in recent years, most notably Chapter 519 of 2016, advocates continue to call for improvements in police oversight, methods and procedures, consequences for misconduct, and transparency.

Police Oversight by the Maryland Police Training and Standards Commission

MPTSC, an independent agency within the Department of Public Safety and Correctional Services, oversees the State's law enforcement agencies. MPTSC conducts police training at its campus in Sykesville and prescribes standards for and certifies local police training schools. It also certifies individuals as police officers who meet commission standards and establishes minimum police training requirements.

Chapter 519 of 2016 added to the duties of MPTSC by requiring it to:

- require training on antidiscrimination and use of force de-escalation;
- adopt and recommend a set of best practices and standards for use of force;
- implement strategies to increase diversity within law enforcement agencies;
- develop standards for the psychological evaluation of police officers involved in traumatic events;
- develop a system for annual reporting of serious officer-involved incidents and discipline administered;
- establish a confidential hotline for law enforcement personnel to obtain counseling and referral to appropriate programs;
- develop best practices for the establishment and implementation of a community policing program in each jurisdiction; and
- develop a uniform public complaint process.

Although these measures have expanded MPTSC's oversight function, MPTSC lacks authority to enforce compliance by individual law enforcement agencies. Advocates suggest that MPTSC be given the power to sanction by having the ability to withhold funding from noncompliant agencies.

Police Methods and Procedures

In response to reported incidents across the country in which citizens were seriously injured or killed by police, it has been suggested that the State exert more control over the methods and procedures used by police officers. Specific ideas include:

- banning "no-knock" warrants;
- limiting the use of deadly force and placing statewide use of force rules in statute;
- banning the use of chokeholds and other restraining techniques that impede or block blood flow or breathing;
- prohibiting the use of military-grade equipment;
- establishing a duty to intervene by an officer when a colleague is using inappropriate force;
- requiring officers to report misconduct of other officers;
- requiring officers to provide or call for medical assistance when a detainee is injured;
- banning the discharge of a firearm by officers at moving vehicles;
- limiting the types of matters that police are authorized to address or supplementing police response with personnel who have special expertise to address the needs of the situation, such as social workers or mental health counselors; and
- creating an "early warning" system to identify, retrain, and discipline officers involved in an excessive number of violent incidents.

Consequences for Police Misconduct

Another area of concern for reform advocates is the process by which police misconduct is addressed.

Law Enforcement Officers' Bill of Rights

LEOBR was enacted in 1974 to guarantee police officers certain procedural safeguards in investigations that may lead to disciplinary action. LEOBR extends protections to officers in two major components of the disciplinary process: (1) the conduct of an internal investigation of a complaint that may lead to a recommendation of disciplinary action against a police officer; and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. LEOBR delineates such matters as who may conduct an investigation, what information must be disclosed to an officer under investigation, when and where an interrogation may take place, and the duration of an interrogation.

Critics of LEOBR contend that it unfairly provides law enforcement officers with more privileges than are available to other citizens and that it causes undue difficulty in disciplining or removing bad officers. The provisions most frequently objected to include authorization for a five business day waiting period before an officer is required to submit to interrogation, authorization for an officer to be interrogated or investigated only by other sworn officers, authorization for the disciplinary process to be changed by collective bargaining, and authorization for an officer to have records of disciplinary matters expunged under certain circumstances. Reform advocates have called for LEOBR to be modified or repealed altogether.

Citizen Representation on Hearing Boards

Chapter 519 of 2016 authorized the chief of a law enforcement agency to appoint to an administrative hearing board, as a nonvoting member, one member of the public who has received training by MPTSC on LEOBR and matters relating to police procedures. Chapter 519 further provided that, if authorized by local law or collectively bargained, the hearing board may include up to two nonvoting or voting members of the public who have received MPTSC training. However, it has been reported that since the law took effect, no law enforcement agencies in the State have included citizens on hearing boards.

Reform advocates have called for more citizen oversight of and participation in the police discipline process. Specific proposals include requiring citizen membership on hearing boards, authorizing citizens to serve as investigators in misconduct cases, and creating citizen complaint oversight boards.

Investigation and Prosecution of Police Crime

With regard to police misconduct that rises to the level of possible criminal activity, concerns have been expressed that local State's Attorney's offices may have too many ties to the local law enforcement agency to be able to objectively and effectively investigate and prosecute the agency's officers. Consequently, many are in favor of authorizing an independent agency such as the Office of the Attorney General or the Office of the State Prosecutor to investigate and prosecute these cases. Such an arrangement could also encourage the reporting of misconduct by the public and police officers, who may be reluctant to report locally.

Transparency

A final area of reform sought by advocates is increased transparency of police activities. This could be achieved by the establishment of more public reporting requirements for police agencies as well as public release of police disciplinary records and increased usage of and improved procedures relating to body cameras.

Public Release of Police Disciplinary Records

The Maryland Public Information Act (MPIA) governs access to information about the affairs of government and the official acts of public officials and employees. The MPIA generally requires denial of inspection of certain types of records, including personnel records. Case law establishes that internal affairs records of an investigation into the conduct of a law enforcement officer are considered "personnel records" for purposes of the MPIA and, are therefore, shielded from disclosure to complainants and others who are interested in the outcome of police disciplinary proceedings.

Reform advocates have called for amendment of the MPIA to allow disclosure of police disciplinary records as a public transparency measure. A further extension of that proposal involves the creation of a publicly accessible electronic database containing information about police misconduct complaints.

Body Cameras

MPTSC is required by statute to develop and publish a policy for the issuance and use of body-worn cameras by police officers that addresses several issues including when camera recording is mandatory, prohibited, or discretionary; access to and confidentiality of recordings; the secure storage of data; and the review and release of recordings. MPTSC has created such a policy, but it is advisory only. The State does not require local law enforcement agencies to use body cameras, although some do. There is widespread support for the use of body-worn cameras, but the law enforcement agencies that do not use them often contend that they lack the requisite funding.

Advocates have called for mandatory statewide body camera usage, perhaps with delayed implementation to allow time for all agencies to obtain funding.

Public Safety

Firearms

Sales of regulated firearms and applications for Handgun Qualification Licenses in Maryland follow a strict background check process that utilizes a number of State and federal databases to determine a person's eligibility to purchase, rent, receive, or possess a regulated firearm under State and federal law. The number of applications for Handgun Qualification Licenses and regulated firearms purchases has significantly increased in recent years.

Firearm Sales During 2020

Record Sales and Background Checks

According to numerous sources, including the Associated Press, the Brookings Institution, and the National Shooting Sports Foundation, firearm sales set national records in 2020. Between January 1, 2020, and September 30, 2020, there were 28.8 million firearm background checks performed using the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS), a significant increase since 1998 when the total was 892,840. However, because of varying state laws and purchase scenarios relating to firearms, the number of NICS checks performed do not represent a one-to-one correlation for the number of firearms sold.

Background checks related to firearms in Maryland also increased during 2020. According to the Department of State Police (DSP), for calendar 2020 as of October 8, 2020, the department received 74,159 applications to purchase a regulated firearm and 48,642 applications for a Handgun Qualification License (HQL). For comparison, during calendar 2019, DSP received 53,726 applications to purchase a regulated firearm and 20,083 applications for an HQL.

State and Federal Firearm Background Checks

Maryland regulates the sale, transfer, rental, and possession of regulated firearms, which includes handguns and assault weapons, but does not regulate the sale of rifles or shotguns to the same extent. While DSP is responsible for conducting background checks involving regulated firearms, the NICS system is used to perform background checks for certain transactions involving rifles and shotguns.

Federal NICS System

The Brady Handgun Violence Prevention Act of 1993 established the federal NICS background check system. In Maryland, NICS is used for a transaction involving the transfer of a rifle or shotgun by a Federal Firearms Licensee (FFL) to a non-FFL. A NICS background check is not required for a sale or transfer of a rifle or shotgun between private parties if both parties are residents of the same state and a single NICS background check may cover a transaction involving the transfer of multiple firearms. According to a 2014 report prepared by the FBI, 91% of NICS background checks resulted in an immediate eligibility determination.

During an NICS background check, a name check is conducted to search national databases for possible matches, including:

- the **National Crime Information Center (NCIC) Database** that contains information regarding wanted persons, foreign fugitives, protection orders, known or appropriately suspected terrorists, sex offenders, and violent individuals;

- the **Interstate Identification Index (III)** that accesses criminal history records; and

- the **NICS Indices** that contain information on prohibited persons as defined in the Gun Control Act of 1968 and include information about individuals who have been determined to be prohibited under federal or state law from possessing or receiving a firearm.

State Firearm Background Checks

DSP is responsible for background checks for persons purchasing, renting, or receiving regulated firearms. Unless otherwise exempted under State law, a person must possess a valid HQL before the person may purchase, rent, or receive a handgun. Generally, the Secretary of State Police must issue an HQL to a person who (1) is at least 21 years old; (2) is a State resident; (3) has completed a firearms safety training course; and (4) is not prohibited by federal or State law from purchasing or possessing a handgun. Before issuing an HQL, DSP performs a fingerprint-based background check to determine whether the person is prohibited from purchasing or possessing a handgun under federal or State law.

An additional background check performed by DSP is required at the time that a person actually purchases, rents, or receives a regulated firearm. This includes individuals acquiring a regulated firearm through a licensed firearm dealer, private sale, gift, or inheritance.

According to DSP, to begin the process of purchasing a regulated firearm, a person must complete a Maryland State Police Application and Affidavit to Purchase a Regulated Firearm (Form 77R) using an electronic licensing portal accessible through DSP's website. State law authorizes a person to sell, rent, or transfer a regulated firearm seven days after a firearm application is executed and forwarded to DSP for a background check, unless DSP disapproves the sale, rental, or transfer.

During a background check for an HQL or for the sale, rental, or transfer of a regulated firearm, DSP contacts several databases and sources to determine whether the applicant is prohibited from purchasing or possessing a regulated firearm under federal or State law, including:

- the **Criminal Justice Information System Repository** that collects, manages, and disseminates Maryland's criminal history record information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes;

- the **Maryland Department of Health (MDH)** that maintains records indicating that the individual is prohibited from possessing a firearm for reasons related to the individual's mental or physical state;

- the **Department of Juvenile Services** that provides information about whether the individual has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult;

- the **Judicial Information System** that includes information relating to criminal histories and warrants;

- the **Maryland Telecommunications Enforcement Resources System** that provides access to databases including the NCIC, III, NICS Indices, National Law Enforcement Telecommunications System, and the Maryland Motor Vehicle Administration; and

- the **Maryland Courts Portal to Court Records and Secure Case Search** that provides secure access to State court records.

DSP Background Check System Outage

According to DSP, the State data system used to process firearm-related background checks experienced an outage between June 21, 2020, and June 24, 2020, which prevented DSP from performing background checks using the system. While the outage spanned only four days, background checks performed by DSP can take several days to process.

Because of the system outage, DSP determined that 1,048 firearm purchase applications with incomplete State background checks became eligible for release, and 257 regulated firearms were released by dealers after the seven-day waiting period had passed. However, DSP advises that it coordinated with the FBI to perform background checks using the federal NICS background check system during the outage. Once the State data system was restored, DSP performed State background checks on all release-eligible purchase applications and resumed work processing pending and incoming purchase applications. DSP confirmed that no regulated firearms were released to prohibited persons during the outage.

Prior Legislation Expanding Firearm Background Check Requirements

During the 2020 legislative session, the General Assembly passed Senate Bill 208 and House Bill 4, which would have required, with specified exceptions, licensed firearm dealers to facilitate NICS background checks for all sales, rentals, or transfers of a rifle or shotgun, including those between private parties. The bills established several conditions that apply to such sales, rentals, or transfers, and established criminal penalties for violations and civil liability protections for licensed firearm dealers under specified conditions. Governor Lawrence J. Hogan, Jr. vetoed both bills for policy reasons.

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Public Safety

State Correctional System Update

The COVID-19 pandemic has resulted in an acceleration of declines in the adult correctional population, as efforts have been made throughout the criminal justice system to reduce risk of exposure through enhanced use of alternatives to incarceration and remote communications for community supervision. Adjustments to policies, procedures, and facility operations have been implemented to maintain proper social distancing and limit unnecessary contact. As of October 13, 2020, approximately 6% of the 28,750 individuals in the combined inmate population and employee workforce have tested positive for the virus.

Background

The Department of Public Safety and Correctional Services (DPSCS) is responsible for operating 4 detention facilities in Baltimore City and 15 State correctional facilities. In addition, the Division of Parole and Probation (DPP) provides court-ordered supervision to offenders in the community. For fiscal 2021, DPSCS has a budget of over \$1.5 billion and approximately 9,618 employees, which accounts for 11.9% of the total State workforce and 6.4% of general fund expenditures.

Population Trends

The number of offenders in DPSCS custody has sharply declined in recent years. In the first quarter of fiscal 2021, an average of 16,428 offenders were incarcerated, while 2,154 were detained. This represents a 10.7% decline over the first quarter of fiscal 2020 and a 28.3% decline from the peak correctional population of nearly 26,000 offenders in fiscal 2011. On average, there have been 500 fewer offenders in State custody each year.

Community supervision under DPP includes criminal supervision (parole, probation, and mandatory release cases) and cases under the Drinking Driver Monitor Program (DDMP). DPP supervised 91,402 total criminal cases and 21,158 total DDMP cases in fiscal 2020. Criminal cases have declined 22% since fiscal 2015 and 4% since fiscal 2019. DDMP cases have declined 23% since fiscal 2015 and 3% since fiscal 2019. Overall, DPP has reduced total caseloads by almost 5,000 cases each year since fiscal 2015. While Pretrial Release Services Program (PRSP) participants in Baltimore City are not monitored by DPP agents, they are supervised in the community under the Division of Pretrial Detention and Services. PRSP cases have been markedly stable for the past three fiscal years and are currently at 4,385, despite the reported increased use of PRSP by judges during the COVID-19 pandemic.

Capital Plan and Facility Openings and Closures

The 2021 capital budget plan for DPSCS includes $27.5 million in general obligation bonds for infrastructure, safety, and electrical improvements to facilities across the State; $11.6 million for construction projects at local jails; and $13.6 million in bonds and bond premiums to finish site demolition and begin design of a Therapeutic Treatment Center for Baltimore City detainees.

DPSCS continues to consolidate facilities, staff, and resources as the number of offenders under custody declines. From July 2015 to September 2019, the department eliminated almost 2,700 beds at locations in Baltimore City, Hagerstown, Jessup, and the Eastern Shore for various legal, operational, and maintenance reasons. In September 2019, DPSCS fully depopulated the Brockbridge Correctional Facility (BCF) in Jessup and in January 2020, announced plans to repurpose BCF as a comprehensive pre-release, re-entry, and workforce development facility. In August 2020, as a result of the ongoing pandemic, DPSCS announced that plans for BCF have been suspended.

COVID-19

As a result of the State of Emergency and Catastrophic Health Emergency declarations in response to the COVID-19 pandemic, State correctional facilities closed to the public beginning on March 12, 2020. Parole and probation offices closed on March 31, 2020, and community supervision activities transitioned to mostly remote contact.

The department restricted movement throughout correctional facilities to allow for social distancing by inmates and staff. To further prevent transmission risk and to accommodate a possible surge of the virus, DPSCS identified 1,350 quarantine and 813 isolation cells across the State correctional system and constructed temporary medical tents at several facilities.

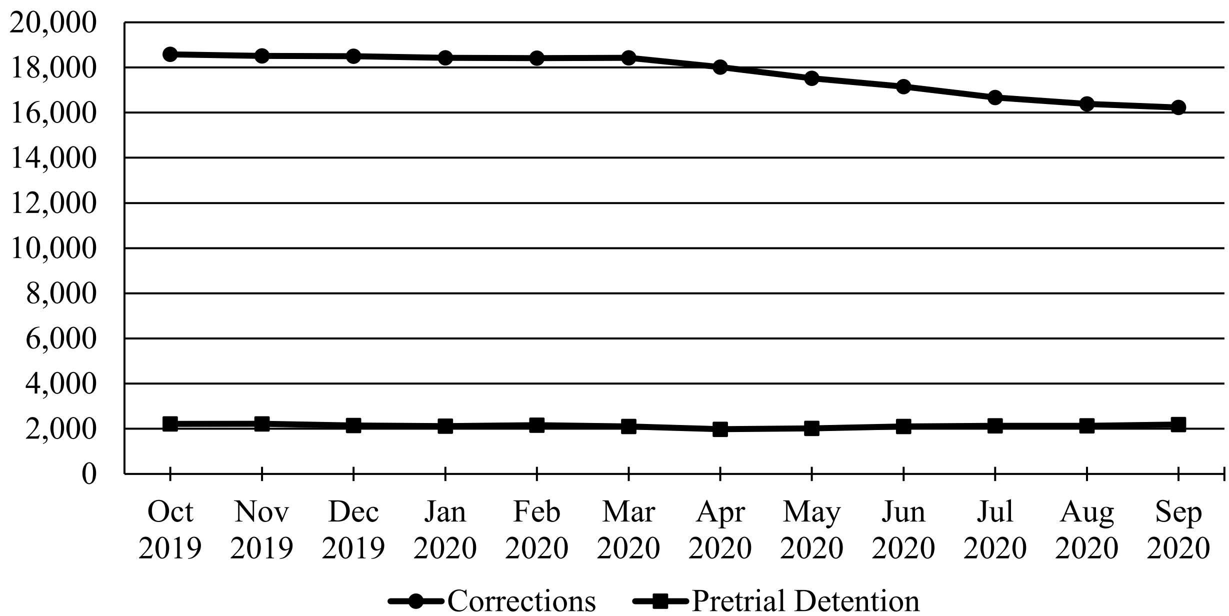
Population Decrease

On April 19, 2020, Governor Lawrence J. Hogan, Jr. issued an executive order for the Maryland Parole Commission and the Commissioner of Correction to work with the Judiciary to identify and expedite the release of individuals who were within 120 days of release at that time. Inmates were screened for early mandatory supervision, early home detention, and expedited parole. Through early release efforts, 140 inmates and 48 parolees were released; however, a larger number of individuals were released under other flexible options afforded in statute, including pretrial supervision and home detention. Most jurisdictions implemented similar deincarceration strategies.

From March 1 to May 1, 2020, 1,207 individuals were released from the Division of Pretrial Detention, either on bond or on supervision, and 940 individuals were released on their own recognizance after booking at the Baltimore Central Booking and Intake Center. Placements on home detention increased threefold, and placements on pretrial supervision increased 70%. In addition, post-conviction releases were significantly elevated with 1,352 released on parole, home detention, or case termination compared to approximately 100 in the same period last year – a 5% reduction in the overall incarcerated population in just two months.

DPSCS has consistently released individuals at an elevated rate since the early stages of the pandemic, as shown by the incarcerated population decline in **Exhibit 1**. In the first quarter of fiscal 2021, DPSCS had a total bed capacity of over 23,000 and a total average daily population of approximately 18,600, demonstrating a level of success in reducing congregate populations to allow for effective social distancing and quarantine procedures.

Exhibit 1
Population Decline
Fiscal 2020-2021 Q1



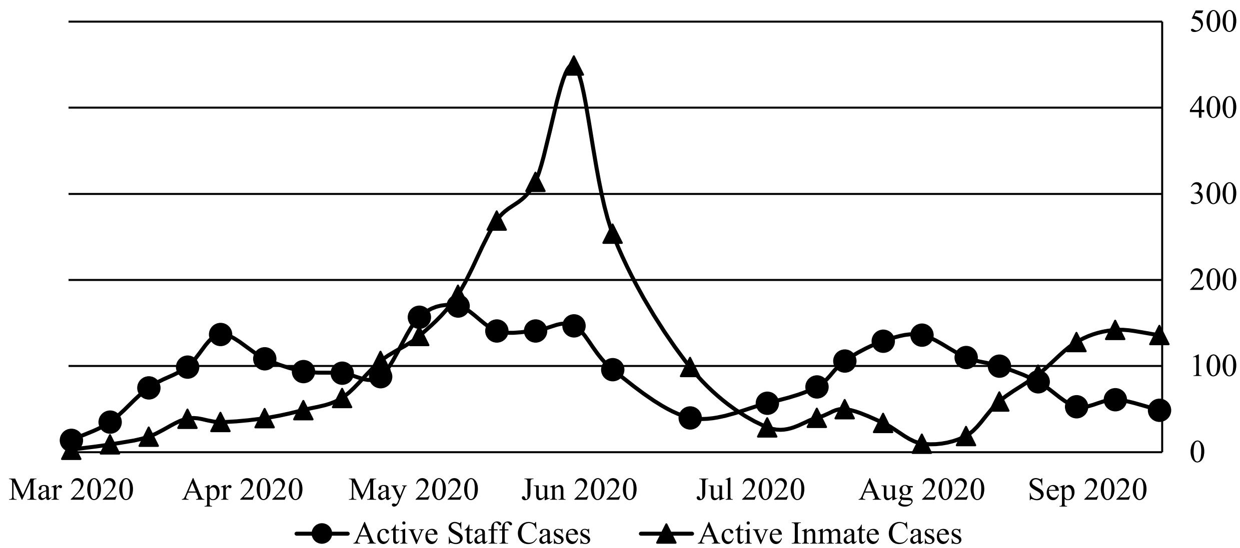
Source: Department of Public Safety and Correctional Services

COVID-19 Testing and Cases

Prior to May 20, 2020, DPSCS conducted tests of COVID-19 symptomatic individuals, according to then existing Centers for Disease Control and Prevention and Maryland Department of Health guidance. Beginning on May 20, 2020, DPSCS began the process of systematically testing every correctional employee and inmate, which was completed in July 2020. COVID-19 testing by DPSCS is funded through federal assistance and administered through Corizon Health, the medical services provider. The department continues to regularly test staff and inmates. As of October 13, 2020, 732 staff members and almost 1,000 inmates have contracted COVID-19, 683 staff members and 831 inmates have recovered, and 2 staff members and 11 inmates have died due to the virus.

Exhibit 2 shows all DPSCS active COVID-19 cases since March 30, 2020. The peak of 449 active cases at the end of June 2020 is related to the large number of asymptomatic individuals who would not otherwise have been tested prior to the universal screening/testing. Active cases have fluctuated since, creeping back above 100 active inmate cases in October 2020.

Exhibit 2
DPSCS Active COVID-19 Cases
March 2020 to September 2020



DPSCS: Department of Public Safety and Correctional Services

Source: Department of Public Safety and Correctional Services

Criminal Law

Legalization of Marijuana

The legalization of marijuana remains a major topic of discussion in state legislatures, including Maryland. The State has taken significant steps to better understand this complex issue, including the formation of the Marijuana Legalization Workgroup and contracting with outside entities to assess potential effects of legalization. Legislation regarding legalization and other related issues is likely to be introduced during the 2021 legislative session.

Marijuana Legalization in the United States

Even though marijuana remains a Schedule I substance under the federal Controlled Substances Act (CSA), efforts to legalize the adult use of marijuana continue across the country. As of October 2020, 11 states (Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Washington, and Vermont) and the District of Columbia have legalized the adult use of marijuana. In 2018, Vermont became the first state to legalize the adult use of marijuana through the legislature (rather than through ballot initiative). In June 2019, Illinois became the most recent state to legalize the adult use of marijuana also through its legislature. Four states (Arizona, Montana, New Jersey, and South Dakota) have ballot initiatives to legalize adult use in the November 2020 election.

In addition to initiatives by individual states, the Marijuana Opportunity Reinvestment and Expungement Act was introduced in both chambers of the U.S. Congress in July 2019. The bills, as introduced, would remove marijuana from the list of scheduled substances under the CSA and eliminate criminal penalties for an individual who manufactures, distributes, or possesses marijuana. There has been no action outside of committee on either bill.

In November 2019, the Pew Research Center reported that 67% of Americans are in favor of legalizing marijuana for adult use, with 32% in opposition. A decade earlier, just over half of all adults (52%) opposed legalization. As both the number of states considering and the number of Americans in favor of marijuana legalization for adult use increases, Maryland continues to explore legalization and related issues.

Marijuana Legalization Initiatives in Maryland

Although adult use of marijuana is not legal in Maryland, the State has legalized medical cannabis, decriminalized the possession of small amounts of marijuana, and authorized the expungement of convictions for possession of marijuana. In 2019, the President of the Senate and the Speaker of the House of Delegates created the Marijuana Legalization Workgroup. Comprised of 18 members of the Senate and the House of Delegates, the workgroup was established to ensure that legislators understand the complexities of marijuana legalization and are prepared should the State move forward with legalizing marijuana. The workgroup was charged with focusing on several key areas including (1) the criminal justice impacts of legalizing marijuana for adult use; (2) appropriate tax and licensing structures; (3) regulatory models and best practices in other states; (4) the public health impacts of marijuana legalization; (5) challenges relating to federal tax and banking laws; and (6) ways in which the State can ensure and promote small, minority, and women-owned business participation. The workgroup met on several occasions during the 2019 interim and produced summary reports of their meetings but did not make final recommendations. Although none were sponsored by the workgroup, bills legalizing marijuana for adult use were introduced during the 2020 session. However, no significant action was taken on any of the bills. The workgroup did not meet during the 2020 interim.

Due to the ongoing interest in the legalization of marijuana for adult use, the Maryland Medical Cannabis Commission has contracted with Mathematica and Botec Analysis to conduct an assessment of the current and future size of the medical cannabis market; the health, public safety, and economic impact of legalizing adult-use cannabis in Maryland; and the impact of legalization of marijuana for adult use on medical cannabis patients in the Maryland Medical Cannabis Program. The goal of the market assessment is to provide data to assist policymakers in determining (1) the size of a medical and adult-use cannabis market over the next five years; (2) mechanisms needed to protect public health, provide consumer protection, and ensure public safety; and (3) types of tax and tax rates that would result in revenues needed to fund regulatory operations and also provide revenues for public health initiatives, local law enforcement training, and other public needs while maintaining a sustainable market for adult-use cannabis. The market assessment is expected to be completed in November 2020.

Federal Enforcement Issues

The federal government has been enforcing marijuana provisions related to the legalization of adult use at the state level pursuant to guidelines issued by the U.S. Department of Justice (DOJ). Prior guidance from DOJ during President Barack H. Obama's administration indicated that using federal law enforcement resources against state medical marijuana programs was not a priority. Additional guidance stated that when enforcing marijuana provisions of federal law, DOJ would focus on specific priorities, such as preventing associated violence and the distribution of marijuana to minors, and defer its right to challenge states' legalization laws. In a 2018 memorandum to all U.S. attorneys, former Attorney General Jefferson B. Sessions III announced that previous guidance regarding federal marijuana prosecutions was rescinded with immediate effect. Current Attorney General William Barr has pledged not to prosecute marijuana companies that comply with state laws, but there has been no official DOJ guidance since the 2018 memorandum rescinding prior guidance.

Expungement

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

In Maryland, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to six months and/or a $1,000 fine. However, pursuant to decriminalization legislation enacted in 2014, possession of less than 10 grams of marijuana is a civil offense punishable by a fine of up to $100 for a first offense with increased fines for subsequent offenses.

Court records are not automatically expunged in Maryland, even if the crime on which the conviction is based is no longer a crime. In general, a petition to expunge a conviction for a crime when the act on which the conviction is based is no longer a crime can be filed at any time. Convictions for possession of marijuana under §5-601 of the Criminal Law Article have been eligible for expungement since 2017. A petition for expungement of such a conviction may be filed by a defendant four years after the later of the conviction or the satisfactory completion of the sentence, including probation. Defendants whose charges for possession of marijuana resulted in a disposition other than a conviction have been eligible to file a petition for expungement, subject to specified timelines and criteria, for several years.

Legislation introduced in the 2020 session (Senate Bill 699/House Bill 83) would have required the automatic expungement of all court and police records pertaining to any disposition of a charge of possession of marijuana, according to specified timelines and requirements, thereby eliminating the need for a petition to be filed. As amended, the bills would have only prohibited the Maryland Judiciary Case Search from in any way referring to the existence of a District Court criminal case in which a charge of possession of marijuana was the only charge in the case and the charge was disposed of before October 1, 2014. Although House Bill 83 passed the General Assembly as amended, the Governor vetoed it for policy reasons. In light of the continued interest in the legalization of marijuana and concerns about the number of individuals who have criminal records as a result of marijuana-related charges, it is likely that legislation regarding expungement of charges of possession of marijuana will again be considered in the 2021 session.

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Criminal Law

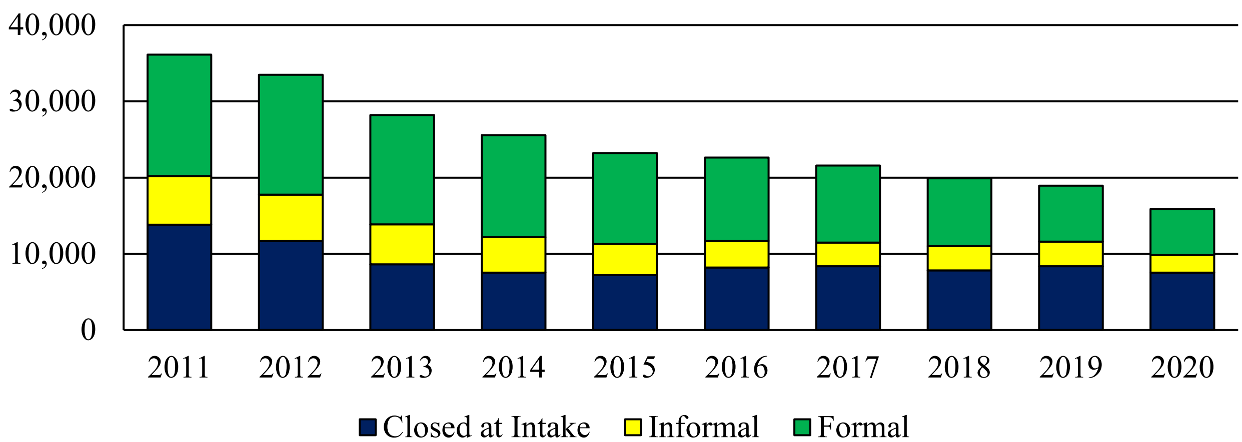
Department of Juvenile Services Update

The COVID-19 pandemic has accelerated the decade-long trend of declining populations in the juvenile justice system due to increased diversion efforts and fewer referrals to the Department of Juvenile Services. This has resulted in both operational and fiscal impacts as the department oversees historically low population levels.

Complaints and Referrals Decline

The Department of Juvenile Services (DJS) received 15,879 complaints and referrals in fiscal 2020. As shown in **Exhibit 1**, this represents a 16.2% decrease from fiscal 2019 and the fewest number of referrals in 10 years. The closure of schools in March 2020 is likely a cause for the decline; referrals dropped by 47.4% between March and April 2020. Referrals to DJS are expected to remain subdued for a portion of fiscal 2021, as school systems continue to operate in a virtual capacity for the near future.

Exhibit 1
Department of Juvenile Services
Complaints and Dispositions
Fiscal 2011-2020



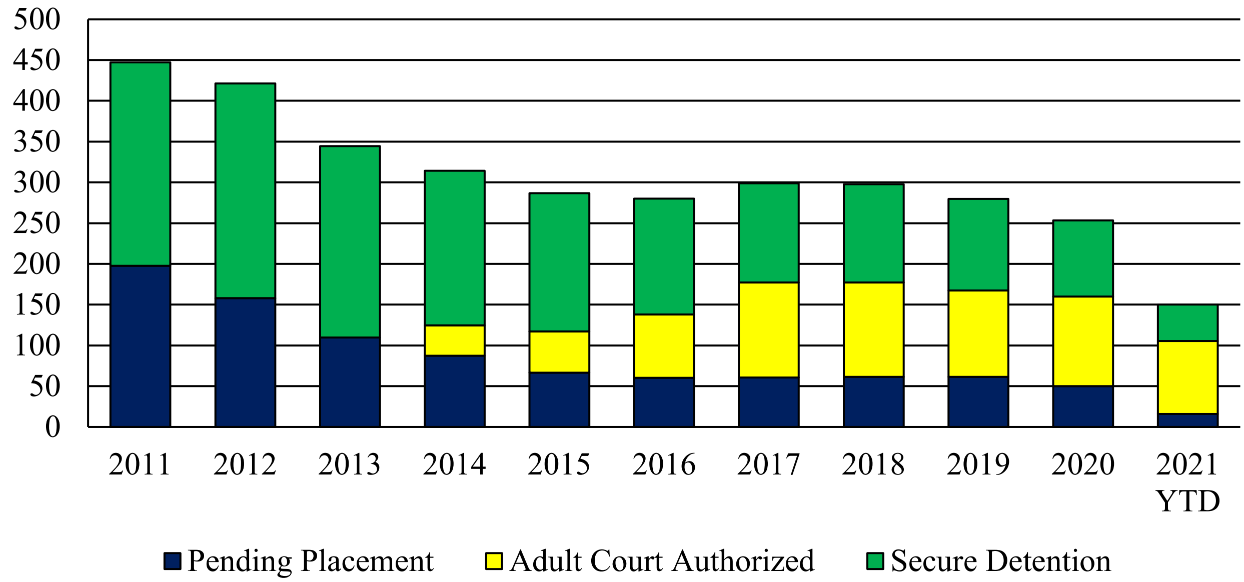
Note: Total complaints are typically 1% or 2% higher than the sum of those resolved at intake and the informal and formal caseload. The difference relates to jurisdictional issues or cases in which a decision was not recorded.

Source: Department of Juvenile Services

Increased Diversion Efforts Reduce Detained and Committed Populations

The detained average daily population (ADP) consists of three populations: (1) the secure detention population (*i.e.*, youth awaiting juvenile court disposition); (2) the pending placement population (*i.e.*, youth awaiting placement in a committed facility after juvenile court disposition); and (3) the adult court authorized population (*i.e.*, youth charged as adults pending a transfer determination to the juvenile court). As shown in **Exhibit 2**, the detained ADP was 253 youth in fiscal 2020, which is a 9.6% decrease from fiscal 2019.

Exhibit 2
Department of Juvenile Services
Average Daily Detained Population
Fiscal 2011-2021 YTD



YTD: year to date

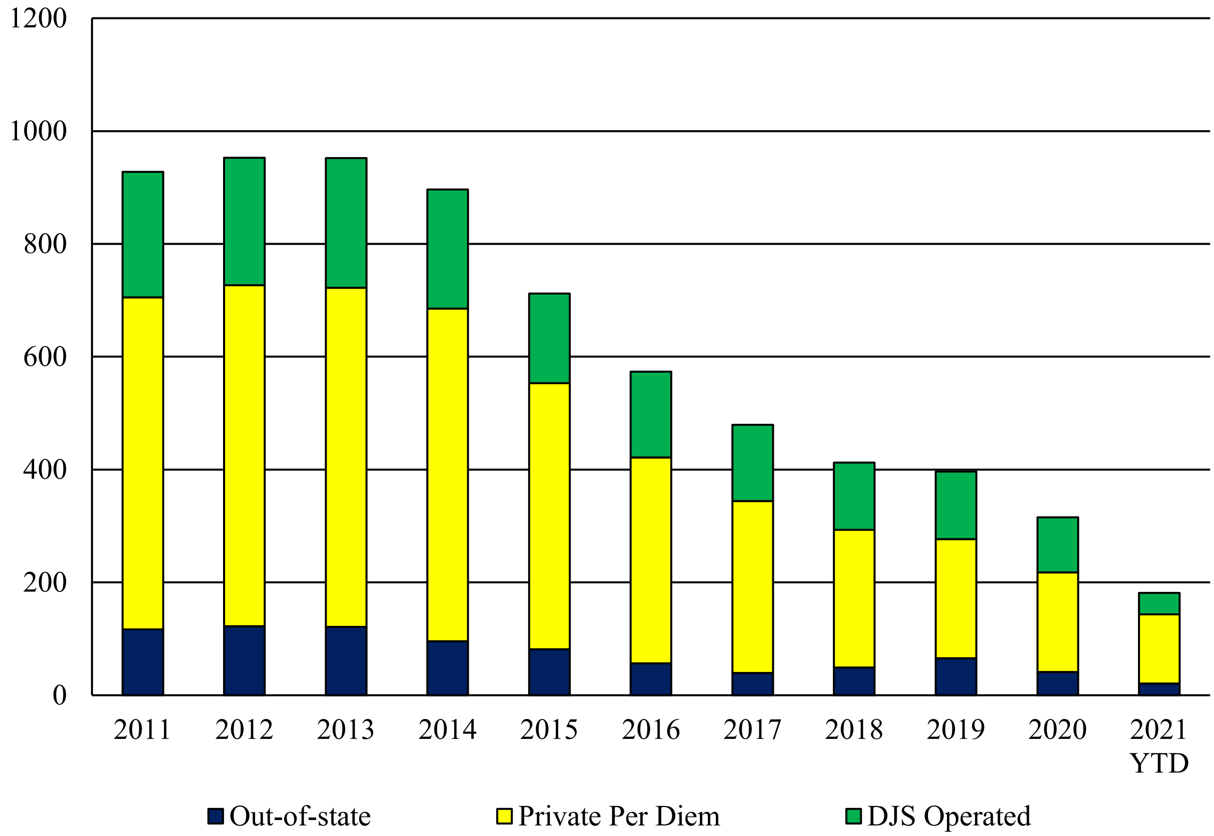
Note: Fiscal 2021 YTD reflects July and August 2020.

Source: Department of Juvenile Services

Compared to fiscal 2020 data, the fiscal 2021 year-to-date detained ADP shows that, while the adult court authorized population remained relatively steady, the secure detention ADP and pending placement ADP decreased by 51.6% and 68.0%, respectively. The significant reductions in these two populations appear to be a response to Chief Judge Mary E. Barbera's order, issued on April 13, 2020, directing local courts to find alternatives to detaining juveniles in facilities to minimize their risk of contracting COVID-19.

As shown in **Exhibit 3**, the committed population has also steadily declined. The fiscal 2020 committed population ADP was 315 youth, down 20.7% from fiscal 2019, due in large part to a significant decline in the population during the final quarter of the year. The fiscal 2021 year-to-date committed ADP shows a further 42.2% decline. In July and August 2020, the out-of-state and private per diem ADP were 21 and 123 youth, respectively, while the ADP for youth in DJS facilities was 38, which is only 24% of the State's capacity.

Exhibit 3
Department of Juvenile Services
Average Daily Committed Population
Fiscal 2011-2021 YTD



YTD: year to date

Note: Fiscal 2021 YTD reflects July and August 2020.

Source: Department of Juvenile Services

Operational and Fiscal Impacts of COVID-19

DJS has shifted to increased use of community detention as youth are diverted from residential placements; the department employs electronic monitoring and video conferencing platforms to maintain its community detention and community supervision operations. Within facilities, youth are managed in smaller groups with dedicated dormitory and bathroom facilities. At the end of fiscal 2020, DJS closed the J. DeWeese Carter Youth Facility and the Meadow Mountain Youth Center, resulting in the relocation of staff and 10 youth to other facilities and reducing the available committed bed space in DJS-operated facilities from 214 to 160 beds.

In response to revenue shortfalls brought on by the pandemic, the Board of Public Works adopted $413.2 million in cost containment actions on July 1, 2020, including a $15.5 million reduction of DJS's budget. This reduction is a 6.0% decrease from DJS' legislative appropriation and reflects decreases in the DJS population and facility closures. Although the increased use of diversion and community-based programs and subsequent decline in the population of youth placed out of home is in line with the interests of the Juvenile Justice Reform Council, the fiscal 2022 baseline budget developed by the Department of Legislative Services does assume a modest increase in ADP, as court and daily life activities return to more normal operations.

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Environment and Natural Resources

The Status of Chesapeake Bay Restoration

Maryland's Phase III Watershed Implementation Plan anticipates that the State will achieve, and possibly exceed, statewide nutrient and sediment reduction goals by 2025. However, pollution loading resulting from climate change, population growth, and the Conowingo Dam may impact the achievement and sustainability of bay restoration beyond 2025. Further, uncertainty regarding federal funding levels and lawsuits filed against the U.S. Environmental Protection Agency also pose challenges for Maryland in achieving bay restoration goals.

Chesapeake Bay Total Maximum Daily Load

In December 2010, the U.S. Environmental Protection Agency (EPA) established a Chesapeake Bay Total Maximum Daily Load (TMDL), as required under the federal Clean Water Act and in response to consent decrees in the District of Columbia and Virginia. This TMDL sets the maximum amount of nutrient and sediment pollution that the bay can receive and still meet water quality standards. It also identifies specific pollution reduction requirements. Measures to meet a pollution reduction of at least 60% were required to be in place by calendar 2017, and all reduction measures must be in place by calendar 2025.

Phase III Watershed Implementation Plan

As part of the TMDL, bay jurisdictions (Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia) must develop watershed implementation plans (WIP) that identify the measures being put in place to reduce pollution and restore the bay. Specifically, WIPs (1) identify pollution load reductions to be achieved by various source sectors and in different geographic areas and (2) help to provide "reasonable assurance" that sources of pollution will be cleaned up. WIPs must be submitted to EPA for review and evaluation. Each bay jurisdiction submitted a Phase I WIP in calendar 2010 detailing how the jurisdiction plans to achieve its pollution reduction goals under the TMDL and a Phase II WIP in calendar 2012 establishing more detailed strategies to achieve the TMDL on a geographically smaller scale. In August 2019, each bay jurisdiction submitted a Phase III WIP to ensure that all measures to meet restoration goals are in place by calendar 2025.

Achieving the Goal: Progress and What Lies Ahead

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

Maryland's Phase III WIP anticipates that the State will achieve (and possibly exceed) statewide nutrient and sediment pollution reduction goals by calendar 2025. Maryland's strategy relies on accelerated pollution load reductions from both the wastewater (42% of Maryland's reductions) and agricultural (52% of Maryland's reductions) sectors to achieve a majority of the necessary reductions. Although the State anticipates meeting its 2025 pollution reduction goals, concerns have been raised regarding whether Maryland is fully on track to meet its restoration goals. Among those concerns are (1) whether Maryland's Phase III WIP includes sufficient detail regarding the actions that must be taken in order to achieve pollution reduction goals; (2) the feasibility of continued reliance on the wastewater sector to meet pollution reduction goals when other sectors fall short; and (3) whether adequate resources to implement necessary agricultural practices are available. In addition, Maryland's Phase III WIP acknowledges that pollution loading resulting from climate change, population growth, and the Conowingo Dam may impact the achievement and sustainability of restoration beyond calendar 2025. Most recently, in its July 29, 2020 evaluation of Maryland's 2018-2019 completed and 2020-2021 projected milestones, EPA notes that Maryland did not achieve its 2019 targets for nitrogen and phosphorus but did achieve its target for sediment.

Chesapeake Bay Program Funding

The Chesapeake Bay Program directs bay restoration and operates as a partnership between federal and state agencies, local governments, nonprofit organizations, and academic institutions. President Donald J. Trump's federal fiscal 2021 budget request called for reducing Chesapeake Bay Program funding by 91% from $85 million to $7.3 million, which would have been a significant reduction in the funding available for bay water quality monitoring and coordination activities between the bay jurisdictions. Of note, the $85 million budgeted in federal fiscal 2020 represented an increase from the $73 million budgeted in recent years. On July 24, 2020, the House of Representatives passed an appropriations bill to increase funding for the Chesapeake Bay Program to $90.5 million; the Senate Appropriations Committee has yet to approve federal fiscal 2021 funding for the Chesapeake Bay Program. Subsequently, on October 1, 2020, the federal fiscal 2020 budget continuing resolution, which maintains funding for the Chesapeake Bay Program at the federal fiscal 2020 level ($85 million) through December 11, 2020, became public law. Also on October 1, the House of Representatives passed America's Conservation Enhancement Act, which reauthorizes the Chesapeake Bay Program for another five years, providing up to $92 million annually by federal fiscal 2025.

Conowingo Dam

The Conowingo Dam, a peaking hydroelectric facility that uses reservoir storage to generate electricity during peak electricity demand periods, has been described as the biggest best management practice (BMP) on the Susquehanna River because it collects sediment and phosphorus that would otherwise flow into the bay. However, the dam, which is owned by Exelon Corporation, has reached an end state in terms of sediment storage capacity. The Conowingo Dam officially has its own reduction target of 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus under a separate WIP managed by a trio of third parties contracted for this purpose – the Center for Watershed Protection, the Chesapeake Bay Trust, and the Chesapeake Conservancy. The draft Conowingo WIP was released on October 14, 2020, and reflects an over-the-target reduction of 6.7 million pounds of nitrogen per year. The total annualized cost of nitrogen reduction is still to be determined but ranges from $53.3 million per year to $266 million per year. The draft WIP is the first of three WIP-related documents for the dam and reflects the recommended BMP implementation strategy. The remaining two documents await the completion of the draft Conowingo WIP public comment period. They include (1) a financing plan, expected sometime between December 2020 and March 2021, which will be crucial for jurisdictions like Pennsylvania that are already struggling to meet their own WIPs and (2) a more detailed implementation strategy that will be an addendum to the draft Conowingo WIP.

In addition, the Conowingo Dam is in the midst of relicensing by the Federal Energy Regulatory Commission (FERC). The license expired on September 1, 2014, and the dam will receive automatic 1-year renewals until it is relicensed. FERC cannot act on an application for licensing unless a Clean Water Act Section 401 water quality certification is issued by the Maryland Department of the Environment (MDE). On April 27, 2018, MDE issued the water quality certification with special conditions, which led Exelon to file an administrative appeal with MDE and lawsuits in federal and State court. Ultimately, on October 29, 2019, the State announced an agreement between MDE and Exelon that requires Exelon to invest more than $200 million in environmental projects and operational enhancements to improve water quality over the 50-year license term, thus settling Exelon's legal challenges to the water quality certification. FERC has not ruled on the relicensing of the Conowingo Dam, and there have been ongoing challenges to the validity of MDE's agreement with Exelon.

Lawsuits Filed Against EPA

On September 10, 2020, the Attorneys General from Delaware, Maryland, Virginia, and Washington, DC filed a lawsuit in the U.S. District Court for the District of Columbia. The lawsuit seeks to compel EPA to comply with its nondiscretionary duty under the Clean Water Act to ensure that each signatory state to the Chesapeake Bay Agreement develops and implements management plans (the Phase III WIPs) that achieve and maintain the nutrient reductions goals in the agreement. In particular, Pennsylvania and New York are singled out for having inadequate Phase III WIPs, tacitly approved by EPA that will achieve only 75% and 66% of the required nitrogen reductions, respectively. The lawsuit further states that EPA's failure to ensure the development of adequate plans is tantamount to jeopardizing the success of overall Chesapeake Bay restoration, since the Phase III WIP process is the final period in which a statutory or regulatory mechanism is available to ensure that the bay states will achieve and maintain those reductions. A similar lawsuit was filed on September 10, 2020, by the Chesapeake Bay Foundation, Inc., Maryland Watermen's Association, Inc., Anne Arundel County, and two Virginia farmers.

Staffing Challenges in the Agriculture Sector

The agriculture sector is expected to contribute more than half of the nitrogen reductions between 2018 and 2025, despite staffing challenges as well as the outreach complications related to 43% of the agricultural land in Maryland being rented or leased. To this end, the Maryland Department of Agriculture's fiscal 2021 budget included 53 soil conservation district positions funded by Chesapeake and Atlantic Coastal Bays 2010 Trust Fund reimbursable funds with the intent of improving job retention. However, the 53 positions have not been filled since Governor Lawrence J. Hogan, Jr. instituted a hiring freeze, effective April 13, 2020, as part of the response to the COVID-19 pandemic. A hiring freeze exemption has been submitted, but it remains to be seen when the positions will be filled and what, if any, long-term impact may result from the delay.

Policy Implications

A number of challenges lie ahead for Maryland and the other bay jurisdictions, including the need to accelerate the reduction of nitrogen loads, particularly on agricultural lands. Congress appears willing to fund the Chesapeake Bay Program, but actual funding levels remain unknown, and lack of enforcement actions against Pennsylvania and New York for inadequate Phase III WIPs has led to two lawsuits being filed against EPA. While Maryland's Phase III WIP indicates that the State will make necessary nutrient and sediment pollution load reductions by calendar 2025, the State still faces several challenges, including the availability of adequate resources to implement the WIP, particularly for staffing in the agricultural sector; the need to address pollution loads resulting from the Conowingo Dam; and long-term challenges posed by population growth and climate change.

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State Government

Status of the Elections System

The State's election system has recently undergone significant changes that may impact the system in the future. These changes include (1) modifications made to 2020 elections due to the death of U.S. Congressman Elijah Cummings and the COVID-19 pandemic; (2) the use of wide area networks on Election Day; and (3) the extension of the voting system contract.

Introduction

The State's election system has recently undergone significant changes. Elections held in 2020 have seen an unprecedented surge of voting by mail due to the changes in the administration of those elections and voters seeking to avoid possible exposure to the coronavirus at polling places. Separately, the State is making important decisions about the use of technology in the voting process. A wireless network connecting in-person voting locations is being used on a wider scale this year than ever before. Additionally, although the contract for the State's voting system was recently extended through the 2022 elections, a new voting system could be implemented for the 2024 elections. These developments and their potential impact on the future of the State's election system are discussed below.

2020 Elections

The vacancy in the office of Representative in Congress for the Seventh Congressional District of Maryland, which resulted from the death of U.S. Congressman Elijah E. Cummings, was scheduled to be filled through a February 2020 special primary election and an April 2020 special general election. The presidential primary election was also to be held on the same day as the special general election. The concurrent administration of a special general election and a presidential primary election would be a new technical challenge for the State Board of Elections (SBE).

The plans that SBE had made for the April elections, however, were upended in March when Governor Lawrence J. Hogan, Jr. issued a proclamation altering the timing of and the voting methods to be used in those elections due to the COVID-19 pandemic. The proclamation required that (1) the special general election be converted to a mail-in election with limited in-person polling places and (2) the presidential primary election be postponed to June 2.

For the special general election, each of the approximately 490,000 registered voters in the congressional district was sent a mail-in ballot, and each of the three jurisdictions within the district set up one in-person polling location and two ballot drop boxes. The quick change in election administration methods created some problems. Many voters who requested a mail-in ballot before the change did not receive their ballots, and there were reports of some voters receiving their mail-in ballots while other members in their household did not. SBE later admitted to forgetting to send the absentee ballot list to the mailing vendor and worked to correct the error when it was made aware of the problem. Overall, the voter turnout for the special general election was 32% with 99% of those voters voting by mail-in ballot.

For the June presidential primary election, all eligible active voters (approximately 3.5 million) were sent a mail-in ballot with a return envelope with prepaid postage, ballot drop boxes (66 locations across the State) were used, and in-person voting was conducted at vote centers (42 total, with at least 1 and up to 4 in each jurisdiction) rather than at traditional polling places. The relatively minor issues that occurred during the special general election were magnified in the presidential primary election. Some of the challenges, and responses to those challenges, included:

- ***Incorrect Date on the Primary Ballot:*** Ballot databases were finalized, ballots for in-person voting were printed, and ballots had been mailed to overseas and military voters before the Governor changed the date of the election. The cost to reprint and retest all the ballots was determined to be too high. SBE notified voters that the ballot was valid for the June 2 primary election through its statewide media campaign.

- ***Ballot Printing Error in Mailed Ballots for Democratic Contest for Baltimore City Council District 1:*** SBE worked with the Baltimore City Board of Elections to duplicate affected mail-in ballots onto correctly printed ballots for scanning.

- ***Delayed Mailing of 330,000 Ballots for Contests in Baltimore City and Montgomery County:*** The Baltimore City Board of Elections added two in-person voting centers and increased the number of ballot drop boxes from 5 to 15. The miscommunications between SBE and the mailing vendor, SeaChange, regarding this issue ultimately caused SBE to review and strengthen its oversight of future vendor contracts.

- ***Lack of Precinct Level Results:*** Normally, precinct level results are determined by the ballot styles scanned on the scanner assigned to each precinct polling location. As the canvassing of votes was altered by the changes to the election, SBE determined that the costs to collect this data for the primary election was prohibitive; however, the ballots have been designed to allow this data to be collected for the presidential general election.

Overall, after 13 days of counting, the results of the presidential primary election were certified on June 15. The voter turnout for the primary election was 42% with 97% of those voters voting by mail-in ballot.

Governor Hogan initially called for holding the presidential general election as a typical in-person election. SBE sent a letter expressing continuing concerns about voter safety and the difficulty in recruiting a sufficient number of election judges. As a result, Governor Hogan issued a proclamation approving SBE's election plan to hold the election using a vote center model while continuing to encourage voters to request and vote by mail-in ballot.

SBE approved 80 vote centers for early voting and 315 vote centers for Election Day voting. Additionally, 284 ballot drop boxes were located in jurisdictions throughout the State. Because any registered voter can vote at any vote center in the voter's county, SBE printed, and each local board of elections (LBE) stocked, every ballot style in every vote center in that county. As of October 20, Maryland voters had requested 1.6 million mail-in ballots for the general election. To mitigate concerns regarding the time it will take to count the high number of mail-in ballots, SBE voted to amend regulations to allow LBEs to begin counting mail-in ballots on October 1. The results of early counting will be held until after voting closes on November 3.

In addition to the lessons learned by responding to the challenges discussed above, SBE learned other important information from the 2020 elections, including that:

- ***Voters Like Ballot Drop Boxes:*** Voters gave positive feedback on having safe, secure, and convenient containers to drop off completed ballots without having to trust the postal service to return their ballot to the local board of elections.

- ***Voter Education Campaigns Work:*** SBE launched an extensive statewide media campaign, including digital, print, radio, and television advertisements and social media, for both the regular primary and general elections. After receiving feedback that more targeted outreach to communities with people of color and other minority groups was needed, for the presidential general election, SBE engaged in specific outreach to Maryland's Black, Latino, Asian American and Pacific Islander, Disability, and LGBTQ communities; Maryland's nonprofit, business, and religious/faith-based organizations; Maryland's veterans, seniors, and homeless and justice-involved populations; and other hard-to-reach communities.

- ***Elections Can Be Conducted Safely:*** SBE was able to secure sufficient and appropriate personal protective equipment to protect election judges and voters.

Wireless Network of Voting Locations

Following the enactment of Chapters 609 and 755 of 2019, which allow for an individual, at a polling place on Election Day, to both register to vote and then subsequently vote (same-day registration), SBE developed a plan to establish a wide area network (WAN) – a secure wireless network – that would connect the electronic poll books at each polling place in the State's six largest counties to SBE on Election Day. The network was expected to allow for the same day registration and polling place voter information to be transmitted to SBE throughout the day, which would provide sufficient time for the information to be processed so that it would be ready for use by LBEs in the absentee and provisional ballot canvasses in the days after the election.

A similar network has been used since 2010 during early voting to ensure that voters do not vote more than once at separate early voting centers. However, the plan that was developed in 2019 to network the poll books in the polling places for the 2020 elections represented a significant expansion of the use of such a network and raised concerns about security and cost. In addition, when the expanded system was first used during the February 2020 special primary election, a small number of voters encountered delays as a result of the poll books slowing down. The delays were determined to be associated with the WAN, and the network was subsequently shut down for the rest of the day. After the election, SBE was able to identify the cause of the delays and fix it.

To ensure voter confidence, SBE decided soon after the special primary election not to require the six jurisdictions to use the WAN for the remaining elections in 2020. However, with the changes to the format of those elections – including the use of vote centers rather than polling places – the WAN became necessary to ensure that voters could not vote a regular ballot at more than one vote center in the voter's county, which was the same reason for the need to network poll books during early voting. SBE indicated in August that the WAN was used without issue in the special general election and presidential primary election. SBE indicated that having the network routers already procured and the experience using the WAN in the elections conducted up to that point in 2020 was beneficial in being able to implement the 2020 general election vote center format. The WAN was also expected to allow election officials to have a better understanding of the status of each vote center during in-person voting.

Voting System Contract

On September 23, 2020, and at the request of SBE, the Board of Public Works approved an extension to the State's voting system contract through the 2022 elections, which was set to expire in March 2021. The board also approved an option to extend the contract for an additional two years through the 2024 elections. Elections Systems & Software has provided the State's voting system since 2016, when the State switched to a paper ballot system from the previous paperless touchscreen system. The extension of the voting system contract is expected to cost $13.1 million, with the cost split evenly between the State and the counties as required by law. If the State exercises the option to extend the contract, the extension is expected to cost an additional $8.8 million.

SBE argued that the contract extension is in the best interest of the State because the voting system has performed well in previous elections, with few instances of ballot scanners or ballot marking devices malfunctioning. In addition, SBE noted that, before the 2022 elections, election officials will be implementing a new statewide electronic poll book system as well as making necessary changes to election systems and processes as a result of redistricting. SBE stated that election officials "do not have the capacity" to make those changes and implement a new voting system all at once and that, therefore, keeping the current voting system through 2022 was the best option.

SBE indicates that it plans to evaluate the market over the next two years to determine whether better voting system options are available. If so, it may draft a request for proposals and procure a new voting system for the 2024 elections. However, implementation of a new voting system typically takes 18 to 24 months, and election officials may not have the capacity to begin the procurement process until after the 2022 elections. Therefore, an extension of the current voting system contract through the 2024 elections may be more likely.

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State Government

Open Meetings Act – Adapting to Technology

While advances in communication technology may be used to facilitate public access to the deliberations of public bodies, members of public bodies must be aware of when technology instead poses a barrier to openness. Maryland courts and regulatory bodies will continue to evaluate innovations in public meeting and deliberative processes and the methods by which those innovations are employed in light of the overarching goals of the Open Meetings Act.

Maryland Open Meetings Act and Communication Technology

The Maryland Open Meetings Act (OMA) is rooted in the philosophy that public business should be performed in a public manner. The OMA generally applies when a quorum of the members of a public body meet to discuss issues within that body's jurisdiction. The default assumption is that a public body should conduct its business in a manner that is open to the public. As technology has evolved, so have communication patterns to, from, and among members of public bodies. This includes communication via remote audio or video conferencing, interactive websites (such as discussion boards and forums), email, and text messaging. While the OMA does not specifically address these types of technology, the Court of Special Appeals has noted that, with these changing technologies, statutory references to members being "present" and "convening" for a meeting "can encompass participation through the use of technology". *Tuzeer v. Yim, LLC*, 201 Md. App. 443 (2011).

The use of technology can be employed to enhance accessibility for the public to the activities of a public body, as when posting online meeting notices and agendas or allowing for remote or teleconferencing of meetings. However, facilitating openness may complicate transparency if that technology fails. The Open Meetings Compliance Board (OMCB) has found that technology failure does not excuse the obligation to comply with the OMA. The OMA compliance requirement exists even when the technology failure is not readily apparent at the time of the meeting.

Additionally, the use of alternative forms of communication carries with it the risk that aspects of the deliberative process may occur outside the public view. For example, group emails, even of an administrative nature sent to a quorum of members of a public body, may turn to deliberation outside the public eye when the "reply all" feature is employed if the nature of the discussion shifts. Discussion taking place on a public, online forum may extend over days or weeks, making it difficult for members of the public to monitor the ongoing discussion or determine when dialogue on a particular topic has concluded.

In 1996, the Maryland Attorney General found that an exchange of emails between a majorities of commission members did not constitute a meeting under the OMA because the emails were spaced over the course of days and never constituted a "simultaneous exchange." 81 Op. Md. Att'y Gen. 140 (1996). Since that time, however, widespread use of laptop computers and smart phones has given members of public bodies ready access to email, and response times have been cut dramatically. OMCB has found that the exchange of emails may constitute a meeting based on a variety of factors, including the number of messages, the frequency with which they were sent, and that the decision of the public body appeared to be made solely through email. OMCB has resisted applying a bright line rule to email communications but instead looks at the context of the communication. It has advised that guidance from the Wisconsin Attorney General is instructive when deciding whether discussion through a series of emails constitutes a meeting. "Courts are likely to consider the following factors: (1) the number of participants involved in the communication; (2) the number of communications regarding the subject; (3) the timeframe within which the electronic communications occurred; and (4) the extent of the conversation-like interactions reflected in the communications." 09 *OMCB Opinions* 259 (2015).

Furthermore, OMCB has also found that substantive communication among members occurring outside of the public view, even when the number of members does not constitute a quorum, may violate the OMA.

Open Meetings Laws and Communication Technology in Other States

In recent years, states have considered legislation addressing forms of electronic communication in the context of open meetings, such as email, text messaging, online message boards, and social media platforms. For example, in 2013, Texas enacted legislation specifying that a communication or exchange of information between members of a governmental body about public business or public policy does not constitute a meeting or deliberation if the communication is (1) in writing and posted to an online message board or similar Internet application that is viewable and searchable by the public; (2) displayed in real time; and (3) maintained on the message board or similar application for at least 30 days after the communication is first posted. In 2019, Rhode Island considered, but did not pass, similar legislation that would have also clarified that telephonic communication, text messaging, email, facsimile, teleconferencing, instant messaging, social networking, and other similar means of communication may not be used by a member of a public body to circumvent the spirit of the state's open meetings statute.

Additionally, Vermont enacted legislation in 2013 specifying that communication between members of a public body, including communication through email, telephone, or teleconferencing, for the purpose of scheduling a meeting, organizing an agenda, or distributing meeting materials is not considered a meeting as long as no other business of the public body is discussed. In 2020, the Colorado General Assembly considered, but did not pass, similar legislation clarifying the types of email communications between elected officials that would not be considered a meeting under the state's open meetings law, including communication related to scheduling, forwarding information, responding to an inquiry from an individual outside of the public body, or posing a question for later discussion. Under existing Colorado law, the use of email by elected officials to discuss pending legislation or public business among themselves is considered a meeting subject to open meetings requirements.

Finally, in 2020, the California Legislature passed legislation authorizing a member of a "legislative body" to engage in separate conversations or communications on an Internet-based social media platform to answer questions, provide information to the public, or solicit information from the public, as long as a majority of the members of the body do not use the platform to discuss business among themselves. The legislation also prohibits a member of a legislative body from responding directly to any communication on an Internet-based social media platform regarding a matter that is within the jurisdiction of the body and that is made, posted, or shared by any other member of the body.

Open Meetings during COVID-19

The COVID-19 pandemic has increased the reliance of state and local governments on the use of remote communications technology to conduct business, and states have increasingly faced questions relating to the use of such technology by public bodies and its implications for open meetings law compliance. Since March 2020, state Attorneys General across the country, including in Maryland, have weighed in on whether their states' open meetings statutes permit public bodies to conduct meetings remotely, such as via teleconferencing or videoconferencing technology, and issued guidance relating to open meetings law compliance in light of social distancing requirements. Governors in at least 24 states have issued executive orders or proclamations temporarily waiving physical meeting requirements and/or authorizing the use of remote meetings technology during the declared states of emergency. Other states have enacted emergency legislation temporarily authorizing or expanding authorizations for public bodies to conduct public meetings via electronic means during the COVID-19 emergency or generally authorizing public bodies to conduct meetings electronically during declared emergencies subject to specified conditions.

These recent executive and legislative actions relating to remote meetings generally require public bodies to ensure that (1) the public is able to access and, when applicable, participate in and/or submit comments via electronic means and (2) all attendees, including participants and observers, are able to hear the proceedings. These actions also generally clarify public notice requirements and other duties and procedures related to the conduct of public meetings. For example, a Michigan executive order providing for electronic meetings during the COVID-19 pandemic states that members of public bodies must avoid the use of email, text messaging, instant messaging, and other electronic forms of communication to deliberate or make decisions and, in general, must avoid decision making that is inaccessible to the public at an open meeting.

Conclusion

While all states and the federal government have enacted open meetings laws, many of these statutes contain broad principles that do not provide guidance on how to maintain transparency when new technologies are employed. Although advances in communication technology may be used to facilitate public access to the deliberations of public bodies, members of public bodies must be aware of when technology instead poses a barrier to openness. Maryland courts and regulatory bodies will continue to evaluate innovations in public meeting and deliberative processes and the methods by which those innovations are employed in light of the overarching goals of the OMA.

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Local Government

State Aid to Local Governments

State aid to local governments is projected to total $8.6 billion in fiscal 2022, representing a $122.2 million, or 1.4%, increase over the prior year. Public schools will continue to receive a vast majority of State aid with State support totaling $7.3 billion in fiscal 2022.

Projected Funding

Local governments are projected to receive $8.6 billion in State aid in fiscal 2022, representing a $122.2 million, or 1.4%, increase over the prior year. Public schools will receive the vast majority of the State funding, while counties and municipalities will receive 8.6% of the total funding. Public schools will receive $7.3 billion in fiscal 2022, which is 85.3% of total State aid. Counties and municipalities will receive $736.2 million in fiscal 2022 with $254.4 million targeted to transportation initiatives and $174.2 million targeted to public safety programs. Community colleges, libraries, and local health departments will receive $526.5 million, which accounts for 6.1% of total State aid. **Exhibit 1** shows the change in State aid by governmental entity for fiscal 2022. **Exhibit 2** shows the change in State aid by major programs.

Exhibit 1
State Aid to Local Governments
Fiscal 2022
($ in Millions)

	2022 State Aid Amount	Percent of Total	2022 Aid Change	Percent Change
Public Schools	$7,319.5	85.3%	$102.8	1.4%
Counties/Municipalities	736.2	8.6%	-31.0	-4.0%
Community Colleges	379.9	4.4%	49.1	14.8%
Libraries	84.1	1.0%	0.2	0.3%
Local Health Departments	62.5	0.7%	1.1	1.8%
Total	**$8,582.1**	**100.0%**	**$122.2**	**1.4%**

Note: Excludes an additional direct expenditure of approximately $109 million that will likely result from an October 2020 State Board of Education decision to waive the requirement that non-immunized students must be excluded from the enrollment count used to determine major direct education formula results.

Source: Department of Legislative Services

Exhibit 2
State Aid by Major Programs
State Funds
Fiscal 2020-2022
($ in Millions)

	2020	2021	2022	2021-2022 $ Change	2021-2022 % Change
Public Schools					
Foundation Program	$3,140.4	$3,218.4	$3,119.9	-$98.5	-3.1%
Geographic Cost Index	145.5	149.5	145.0	-4.6	-3.1%
NTI Education Grant	65.3	69.7	62.8	-7.0	-10.0%
Declining Enrollment Grant	18.9	7.6	0.0	-7.6	-100.0%
Hold Harmless Grant	11.9	9.5	0.0	-9.5	-100.0%
Kirwan Blueprint Funding	245.7	294.7	500.0	205.3	69.7%
Compensatory Aid	1,330.4	1,364.7	1,472.0	107.2	7.9%
Student Transportation	303.0	310.2	296.4	-13.7	-4.4%
Special Education – Formula Aid	303.3	314.9	289.4	-25.5	-8.1%
Special Education – Nonpublic	123.5	123.9	124.5	0.6	0.5%
Limited English Proficiency Grant	311.1	348.2	328.5	-19.7	-5.7%
Guaranteed Tax Base	43.7	41.2	54.7	13.5	32.8%
Head Start/Pre-kindergarten	50.8	75.2	29.6	-45.6	-60.6%
Other Education Programs	142.8	138.6	139.8	1.2	0.9%
Subtotal Direct Aid	***$6,236.1***	***$6,466.4***	***$6,562.6***	***$96.2***	**1.5%**
Retirement Payments	$767.9	$750.3	$756.9	$6.6	0.9%
Total Public School Aid	**$7,004.0**	**$7,216.7**	**$7,319.5**	**$102.8**	**1.4%**
Library Aid	**$83.2**	**$83.8**	**$84.1**	**$0.2**	**0.3%**
Community College Aid	**$330.7**	**$330.8**	**$379.9**	**$49.1**	**14.8%**
Local Health Grants	**$59.1**	**$61.4**	**$62.5**	**$1.1**	**1.8%**
County/Municipal Aid					
Transportation	$261.7	$270.0	$254.4	-$15.7	-5.8%
Public Safety	148.2	186.4	174.2	-12.2	-6.6%
Disparity Grant	146.2	158.3	147.5	-10.8	-6.9%
Gaming Impact Grant	67.5	90.8	91.7	1.0	1.1%
Teacher Retirement Supplemental Grant	27.7	27.7	27.7	0.0	0.0%
Other Grants	32.4	34.0	40.8	6.7	19.8%
Total County/Municipal Aid	**$683.7**	**$767.2**	**$736.2**	**-$31.0**	**-4.0%**
Total State Aid	**$8,160.7**	**$8,460.0**	**$8,582.1**	**$122.2**	**1.4%**

NTI: net taxable income

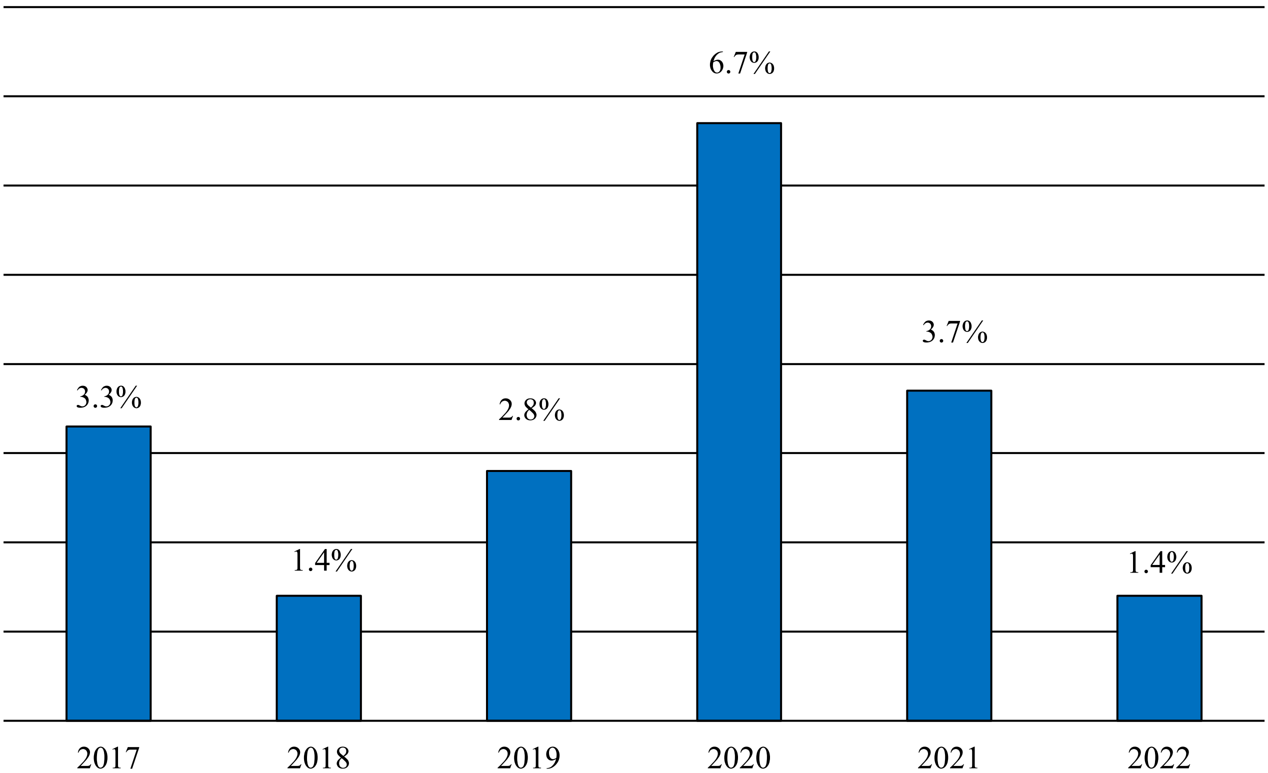
Source: Department of Legislative Services

A waiver decision by the State Board of Education in October 2020 to allow for the count of nonimmunized students when determining full-time equivalent enrollment used for major direct education formulas will likely result in the addition of an estimated $109 million in direct aid as compared to the figures otherwise presented and discussed in this issue paper.

State Aid Funding Trend

The projected 1.4% growth in State aid in fiscal 2022 is relatively modest compared to prior years. Over the prior five fiscal years, the growth in State aid has ranged from 1.4% in fiscal 2018 to 6.7% in fiscal 2020 **(Exhibit 3**). The projected increase in State aid in fiscal 2022 is suppressed by minimal inflationary adjustments in the per pupil foundation amounts used in education aid formulas as well as unusually low school system student enrollment counts that are driven by responses to the COVID-19 pandemic. The per pupil foundation amount increases by 0.8% in fiscal 2022 compared to 2.5% in fiscal 2020 and 1.2% in fiscal 2021. Education funding under the foundation program will decrease by $98.5 million, or 3.1%, primarily due to a projected decrease of 3.8% in full-time equivalent student enrollment. The enrollment decline is related to the impact of the COVID-19 pandemic on in-person schooling; the continuation of remote learning by most school systems has led to significant decreases, particularly in prekindergarten and kindergarten enrollments, as well as an increase in home schooling applications. Compensatory aid will increase by $107.2 million, or 7.9%, largely due to a 6.8% increase in eligible students. In addition, teacher retirement payments are expected to increase by 0.9% in fiscal 2022, representing a $6.6 million increase in funding from the prior year.

Exhibit 3
Annual Change in State Aid to Local Governments
Fiscal 2017-2022



Source: Department of Legislative Services

Local Government

Local Revenue Trends

Local taxes account for approximately 50% of county revenues and represent the primary local revenue source for most counties. Overall, county governments are projecting smaller increases and slower growth in local tax revenues in fiscal 2021 due to the impacts of the COVID-19 pandemic on the economy.

Overview

The local fiscal outlook reflects slower growth and relatively small increases in tax revenue for many county governments due to the economic impacts of the COVID-19 pandemic. General fund revenues increase statewide by just 0.9% in fiscal 2021, and total local tax revenues increase by 1.6% **(Exhibit 1)**. Not surprisingly, several jurisdictions indicated challenges for the fiscal 2021 budget cycle. For example, the annual change in local tax revenues in fiscal 2021 is estimated at 1% or less in five counties, with Queen Anne's County anticipating a decrease in tax revenues. A total of eight counties averaged growth of less than 1%, or a decrease in annual local tax revenues between fiscal 2019 and 2021, with nearly half of counties at less than 2% growth.

Exhibit 1
County Revenue Projections
Annual Percent Change
Fiscal 2019-2021

	2019-2020	2020-2021	Two-year Average
Property Taxes	3.7%	2.9%	3.3%
Income Taxes	4.7%	0.8%	2.7%
Recordation Taxes	-3.0%	-4.1%	-3.5%
Transfer Taxes	-4.3%	-0.9%	-2.7%
Hotel Rental Taxes	-2.4%	-12.8%	-7.8%
Admissions Taxes	-17.0%	-5.8%	-11.6%
Other Local Taxes	-0.6%	1.5%	0.4%
Total Local Taxes	3.3%	1.6%	2.5%
General Fund Revenues	2.4%	0.9%	1.6%

Source: Department of Legislative Services

Property taxes, however, remain fairly stable in many counties and accounted for the largest percentage increase over the two-year period (fiscal 2019 to 2021) with revenue growth exceeding 3% statewide. Property taxes are projected to increase by an average of 3.3% over the two-year period with revenues increasing by 3.7% in fiscal 2020 and 2.9% in fiscal 2021. Income taxes, on the other hand, realize declining growth due to increased unemployment. Although income tax collections are projected to increase by 4.7% in fiscal 2020, reflecting strong wage growth and low unemployment before the start of the pandemic, growth slows to just 0.8% in fiscal 2021, for an average of 2.7% growth over the two-year period. With property and income taxes accounting for approximately 90% of local tax revenues, changes in revenues from these taxes are the main factors impacting local revenue trends. A decrease in growth of income tax revenue is the main cause of the overall decline in growth of total local tax revenues; however, more stable property tax collections offset some of this decline and allow for overall growth, although small, to remain positive in fiscal 2021.

General Fund Revenues

General fund revenues for county governments are projected to total $16.4 billion in fiscal 2021 (**Exhibit 2**). Revenue amounts range from $39.1 million in Somerset County to over $3.5 billion in Montgomery County. On a per capita basis, the amount ranges from $1,330 in Allegany County to $3,908 in Worcester County with the statewide average at $2,720. General fund revenues (per capita) are the highest in Calvert, Howard, Montgomery, and Worcester counties and Baltimore City. The lowest per capita amounts are in Allegany and Wicomico counties.

General fund revenues for county governments are projected to experience slower growth in fiscal 2021, increasing statewide by 0.9% compared to a 2.4% growth rate in fiscal 2020. Over a two-year period, local general fund revenues are expected to increase from $15.9 billion in fiscal 2019 to $16.4 billion in fiscal 2021. This represents a 1.6% average annual increase over the two-year period. Six counties, including Garrett, Queen Anne's, Somerset, Talbot, and Washington counties and Baltimore City, are anticipating a decrease in general fund revenues over the two-year period. In the other counties, the average annual increase ranges from 0.2% in Allegany and Wicomico counties to 5.5% in Dorchester County. Two counties (Dorchester and Caroline) are expecting average annual increases of 5% or greater, while 6 counties are expecting increases between 2% and 5%. Lower growth is projected in 10 counties, where the average annual increase will be between 0% and 2%.

Local Tax Revenues

The projected growth in local tax revenues, which includes both general and special fund revenues, is projected to slow, with local revenues increasing by 1.6% in fiscal 2021, compared to 3.3% in fiscal 2020 (**Exhibit 3**). The average annual increase in local tax revenues over the two-year period is projected at 2.5%. In total, local governments are projected to collect

$16.6 billion in local tax revenues, which is a $789.7 million increase since fiscal 2019. Statewide, local tax revenues average $2,750 per capita. The highest per capita amounts are in Calvert, Howard, Montgomery, and Worcester counties where local tax revenues exceed $3,000 per capita. The lowest per capita amounts are in Allegany, Caroline, Somerset, and Wicomico counties where local tax revenues are below $1,500 per capita.

Most jurisdictions are realizing average annual increases in local tax revenues of between 1% and 4%. Only Anne Arundel County is anticipating increases in excess of 4%, while three counties (Baltimore City, Garrett, and Washington) are anticipating annual increases below 1%. Allegany, Queen Anne's, Somerset, Talbot, and Wicomico counties anticipate a decrease in local tax revenues over the two-year period. Declines in total local tax revenues are driven primarily by declines in income tax collections due to higher unemployment. Additionally, revenues from other tax types including recordation, transfer, admissions and amusement, and hotel rental taxes have all declined due to decreased economic activity and restrictions put in place to combat the pandemic. Property tax revenues, however, remain fairly stable in most counties and helped insulate from larger decreases to growth for total tax revenue.

Property Taxes

As a result of the triennial assessment process and the homestead assessment caps, the property tax remains a relatively stable and predictable revenue source for county governments. Revenue collections are projected to total over $9 billion in fiscal 2021. This represents a $564.8 million increase over a two-year period. For the most part, the increase in county property tax revenue is driven by the growth in the jurisdiction's property tax base. Based on projections by the State Department of Assessments and Taxation, the county assessable base will increase by 2.2% in fiscal 2021, a decrease from the 3.5% growth rate in fiscal 2020. Although just over half of counties are projected to see assessable base growth rates of over 2%, several counties are projected to experience growth rates of 1% or less, which could constrain revenue growth. Additionally, Anne Arundel, Calvert, and Wicomico counties decreased property tax rates in fiscal 2021, while Montgomery County slightly increased rates.

The average annual increase in local property tax revenues over the prior two-year period ranges from 0.9% in Somerset County to 5.6% in Anne Arundel County. Allegany County is the only jurisdiction anticipating a decrease in property tax revenue over the two-year period. About half of the counties are experiencing annual revenue growth rates of between 2.0% and 4.0%. However, five counties are experiencing annual increases of less than 2.0% a year, while six counties are experiencing growth rates of 4.0% or higher.

Exhibit 2
Total General Fund Revenues for Fiscal 2019-2021

County	2019	2020	2021	2019-2020 $ Difference	2019-2020 % Difference	2020-2021 $ Difference	2020-2021 % Difference	Average Annual Difference
Allegany	$93,321,268	$90,842,753	$93,671,910	-$2,478,515	-2.7%	$2,829,157	3.1%	0.2%
Anne Arundel	1,493,947,720	1,566,942,600	1,601,894,100	72,994,880	4.9%	34,951,500	2.2%	3.5%
Baltimore City	1,905,368,001	1,915,559,484	1,894,863,888	10,191,483	0.5%	-20,695,596	-1.1%	-0.3%
Baltimore	2,043,431,617	2,120,231,158	2,161,712,610	76,799,541	3.8%	41,481,452	2.0%	2.9%
Calvert	299,958,707	311,630,741	317,209,190	11,672,034	3.9%	5,578,449	1.8%	2.8%
Caroline	50,402,393	52,667,299	55,517,914	2,264,906	4.5%	2,850,615	5.4%	5.0%
Carroll	400,053,729	398,893,953	402,288,632	-1,159,776	-0.3%	3,394,679	0.9%	0.3%
Cecil	201,641,487	202,043,087	206,921,894	401,600	0.2%	4,878,807	2.4%	1.3%
Charles	409,479,365	414,995,800	424,716,400	5,516,435	1.3%	9,720,600	2.3%	1.8%
Dorchester	52,490,692	55,988,794	58,420,948	3,498,102	6.7%	2,432,154	4.3%	5.5%
Frederick	616,278,256	611,983,668	639,778,493	-4,294,588	-0.7%	27,794,825	4.5%	1.9%
Garrett	84,460,453	82,330,730	82,508,016	-2,129,723	-2.5%	177,286	0.2%	-1.2%
Harford	574,294,849	569,471,000	596,140,092	-4,823,849	-0.8%	26,669,092	4.7%	1.9%
Howard	1,091,526,189	1,105,413,789	1,105,037,881	13,887,600	1.3%	-375,908	0.0%	0.6%
Kent	49,066,164	49,822,217	50,177,497	756,053	1.5%	355,280	0.7%	1.1%
Montgomery	3,404,443,845	3,593,995,088	3,558,478,719	189,551,243	5.6%	-35,516,369	-1.0%	2.2%
Prince George's	2,058,565,726	2,066,136,500	2,090,793,300	7,570,774	0.4%	24,656,800	1.2%	0.8%
Queen Anne's	144,147,998	142,944,137	139,965,120	-1,203,861	-0.8%	-2,979,017	-2.1%	-1.5%
St. Mary's	231,281,931	238,232,064	248,250,005	6,950,133	3.0%	10,017,941	4.2%	3.6%
Somerset	41,894,059	46,029,868	39,118,492	4,135,809	9.9%	-6,911,376	-15.0%	-3.4%
Talbot	90,726,787	87,664,740	89,207,000	-3,062,047	-3.4%	1,542,260	1.8%	-0.8%
Washington	237,077,547	233,782,190	235,896,580	-3,295,357	-1.4%	2,114,390	0.9%	-0.2%
Wicomico	147,944,276	145,128,379	148,394,476	-2,815,897	-1.9%	3,266,097	2.3%	0.2%
Worcester	194,296,023	201,285,552	204,320,631	6,989,529	3.6%	3,035,079	1.5%	2.5%
Total	**$15,916,099,082**	**$16,304,015,591**	**$16,445,283,788**	**$387,916,509**	**2.4%**	**$141,268,197**	**0.9%**	**1.6%**

Source: Department of Legislative Services

Exhibit 3
Total Local Tax Revenues for Fiscal 2019-2021

				2019-2020		2020-2021		Average
				$	%	$	%	Annual
County	**2019**	**2020**	**2021**	**Difference**	**Difference**	**Difference**	**Difference**	**Difference**
Allegany	$75,085,513	$72,982,127	$74,134,967	-$2,103,386	-2.8%	$1,152,840	1.6%	-0.6%
Anne Arundel	1,423,012,803	1,514,137,300	1,551,725,600	91,124,497	6.4%	37,588,300	2.5%	4.4%
Baltimore City	1,539,684,214	1,544,184,625	1,551,870,621	4,500,411	0.3%	7,685,996	0.5%	0.4%
Baltimore	1,867,943,590	1,950,251,611	1,986,068,322	82,308,021	4.4%	35,816,711	1.8%	3.1%
Calvert	283,487,294	296,745,435	302,767,339	13,258,141	4.7%	6,021,904	2.0%	3.3%
Caroline	44,701,610	45,238,484	47,722,500	536,874	1.2%	2,484,016	5.5%	3.3%
Carroll	397,182,380	398,195,330	406,056,742	1,012,950	0.3%	7,861,412	2.0%	1.1%
Cecil	192,850,150	192,954,282	198,170,377	104,132	0.1%	5,216,095	2.7%	1.4%
Charles	400,919,878	404,139,800	417,400,200	3,219,922	0.8%	13,260,400	3.3%	2.0%
Dorchester	47,637,765	49,335,595	50,571,130	1,697,830	3.6%	1,235,535	2.5%	3.0%
Frederick	603,539,160	603,454,992	636,288,164	-84,168	0.0%	32,833,172	5.4%	2.7%
Garrett	71,569,335	72,164,925	72,411,990	595,590	0.8%	247,065	0.3%	0.6%
Harford	589,564,619	589,297,500	623,872,000	-267,119	0.0%	34,574,500	5.9%	2.9%
Howard	1,226,754,830	1,282,348,656	1,296,721,465	55,593,826	4.5%	14,372,809	1.1%	2.8%
Kent	45,378,435	47,363,926	48,033,795	1,985,491	4.4%	669,869	1.4%	2.9%
Montgomery	3,848,112,635	4,081,513,251	4,087,459,104	233,400,616	6.1%	5,945,853	0.1%	3.1%
Prince George's	2,183,311,114	2,215,462,549	2,255,086,757	32,151,435	1.5%	39,624,208	1.8%	1.6%
Queen Anne's	134,566,859	134,683,181	132,089,065	116,322	0.1%	-2,594,116	-1.9%	-0.9%
St. Mary's	223,937,227	228,495,317	237,899,964	4,558,090	2.0%	9,404,647	4.1%	3.1%
Somerset	25,723,570	25,284,723	25,460,625	-438,847	-1.7%	175,902	0.7%	-0.5%
Talbot	83,268,982	81,051,750	82,131,500	-2,217,232	-2.7%	1,079,750	1.3%	-0.7%
Washington	227,649,621	228,452,630	231,396,150	803,009	0.4%	2,943,520	1.3%	0.8%
Wicomico	127,817,843	124,607,782	127,492,685	-3,210,061	-2.5%	2,884,903	2.3%	-0.1%
Worcester	174,294,092	179,782,835	184,909,221	5,488,743	3.1%	5,126,386	2.9%	3.0%
Total	**$15,837,993,519**	**$16,362,128,606**	**$16,627,740,283**	**$524,135,087**	**3.3%**	**$265,611,677**	**1.6%**	**2.5%**

Source: Department of Legislative Services

Income Taxes

The local income tax is the third largest revenue source for county governments, accounting for 17.5% of total revenue in fiscal 2019. Growth in local income tax revenue slowed significantly in fiscal 2021 to just 0.8%. Local income tax revenues are projected to total $5.9 billion in fiscal 2021, which represents a $309.5 million increase over the two-year period. The average annual increase in local income tax revenues over the prior two-year period ranges from 0.2% in Howard County to 8.4% in Dorchester County. However, ten counties are experiencing a decrease in local income tax revenues over the two-year period, and four counties are experiencing annual growth rates below 2%. Eight counties realize growth rates of 5% or higher.

Local Government

Local Government Tax Actions

County governments made limited changes to local tax rates in fiscal 2021, and voters in Montgomery and Talbot counties passed charter amendments in the 2020 general election that alter property tax limitations in those counties.

Local Government Tax Rates

Local tax rates remained constant in most jurisdictions in fiscal 2021 with only five counties making changes to their tax rates. As shown in **Exhibit 1**, four counties made changes to local property tax rates with three counties decreasing their rates and one county increasing them. One county increased its transfer tax rate. No county altered its income, recordation, admissions and amusement, or hotel rental tax rates. A comparison of local tax rates for fiscal 2020 and 2021 is provided in **Exhibit 2**.

Exhibit 1
Counties Changing Local Tax Rates
Fiscal 2019-2021

	2019		2020		2021	
	▲	▼	▲	▼	▲	▼
Real Property	2	5	5	2	1	3
Local Income	1	0	7	0	0	0
Recordation	0	0	0	0	0	0
Transfer	0	0	0	0	1	0
Admissions/Amusement	0	0	0	0	0	0
Hotel Rental	0	0	3	0	0	0

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

Source: 2020 Local Government Budget and Tax Rate Survey; Department of Legislative Services; Maryland Association of Counties

Exhibit 2
Local Tax Rates – Fiscal 2020 and 2021

	Real Property		Income		Recordation		Transfer		Admissions/Amusement		Hotel Rental	
County	**2020**	**2021**	**2020**	**2021**	**2020**	**2021**	**2020**	**2021**	**2020**	**2021**	**2020**	**2021**
Allegany	$0.9750	$0.9750	3.05%	3.05%	$3.50	$3.50	0.5%	0.5%	7.5%	7.5%	8.0%	8.0%
Anne Arundel	0.9350	0.9340	2.81%	2.81%	3.50	3.50	1.0%	1.0%	10.0%	10.0%	7.0%	7.0%
Baltimore City	2.2480	2.2480	3.20%	3.20%	5.00	5.00	1.5%	1.5%	10.0%	10.0%	9.5%	9.5%
Baltimore	1.1000	1.1000	3.20%	3.20%	2.50	2.50	1.5%	1.5%	10.0%	10.0%	9.5%	9.5%
Calvert	0.9370	0.9320	3.00%	3.00%	5.00	5.00	0.0%	0.0%	1.0%	1.0%	5.0%	5.0%
Caroline	0.9800	0.9800	3.20%	3.20%	5.00	5.00	0.5%	0.5%	0.0%	0.0%	5.0%	5.0%
Carroll	1.0180	1.0180	3.03%	3.03%	5.00	5.00	0.0%	0.0%	10.0%	10.0%	5.0%	5.0%
Cecil	1.0414	1.0414	3.00%	3.00%	4.10	4.10	0.5%	0.5%	6.0%	6.0%	6.0%	6.0%
Charles	1.2050	1.2050	3.03%	3.03%	5.00	5.00	0.5%	0.5%	10.0%	10.0%	5.0%	5.0%
Dorchester	1.0000	1.0000	3.20%	3.20%	5.00	5.00	0.75%	0.75%	0.5%	0.5%	5.0%	5.0%
Frederick	1.0600	1.0600	2.96%	2.96%	6.00	6.00	0.0%	0.0%	0.0%	0.0%	5.0%	5.0%
Garrett	1.0560	1.0560	2.65%	2.65%	3.50	3.50	1.0%	1.0%	6.0%	6.0%	8.0%	8.0%
Harford	1.0420	1.0420	3.06%	3.06%	3.30	3.30	1.0%	1.0%	5.0%	5.0%	6.0%	6.0%
Howard	1.2500	1.2500	3.20%	3.20%	2.50	2.50	1.0%	1.25%	7.5%	7.5%	7.0%	7.0%
Kent	1.0220	1.0220	3.20%	3.20%	3.30	3.30	0.5%	0.5%	4.5%	4.5%	5.0%	5.0%
Montgomery	0.9907	0.9912	3.20%	3.20%	4.45	4.45	1.0%	1.0%	7.0%	7.0%	7.0%	7.0%
Prince George's	1.3740	1.3740	3.20%	3.20%	2.75	2.75	1.4%	1.4%	10.0%	10.0%	7.0%	7.0%
Queen Anne's	0.8471	0.8471	3.20%	3.20%	4.95	4.95	0.5%	0.5%	5.0%	5.0%	5.0%	5.0%
St. Mary's	0.8478	0.8478	3.17%	3.17%	4.00	4.00	1.0%	1.0%	2.0%	2.0%	5.0%	5.0%
Somerset	1.0000	1.0000	3.20%	3.20%	3.30	3.30	0.0%	0.0%	4.0%	4.0%	5.0%	5.0%
Talbot	0.6372	0.6372	2.40%	2.40%	6.00	6.00	1.0%	1.0%	5.0%	5.0%	4.0%	4.0%
Washington	0.9480	0.9480	3.20%	3.20%	3.80	3.80	0.5%	0.5%	5.0%	5.0%	6.0%	6.0%
Wicomico	0.9346	0.9286	3.20%	3.20%	3.50	3.50	0.0%	0.0%	6.0%	6.0%	6.0%	6.0%
Worcester	0.8450	0.8450	2.25%	2.25%	3.30	3.30	0.5%	0.5%	3.0%	3.0%	5.0%	5.0%

Note: The real property tax rates shown for Charles, Howard, Montgomery, and Prince George's counties include special tax rates. Real property tax is per $100 of assessed value. Income tax is a percentage of income. Recordation tax is per $500 of transaction.

Source: 2020 Local Government Budget and Tax Rate Survey, Department of Legislative Services, Maryland Association of Counties

Property Tax

For fiscal 2021, three counties (Anne Arundel, Calvert, and Wicomico) decreased their real property tax rates. Montgomery County slightly increased its real property tax rate. Real property tax rates range from $0.6372 per $100 of assessed value in Talbot County to $2.248 in Baltimore City.

Income Tax

No county altered its local income tax rates for calendar 2021. The maximum local income tax rate allowed by State law is 3.2%. Local income tax rates range from 2.25% in Worcester County to 3.2% in 12 jurisdictions (Baltimore City and Baltimore, Caroline, Dorchester, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Somerset, Washington, and Wicomico counties). Approximately two-thirds of the State's population resides in a jurisdiction with a 3.2% local income tax rate.

Recordation Tax

No county altered its recordation tax rate for fiscal 2021. Recordation tax rates range from $2.50 per $500 of transaction in Baltimore and Howard counties to $6.00 per $500 of transaction in Frederick and Talbot counties.

Transfer Tax

Howard County increased its local transfer tax rate for fiscal 2021 from 1.0% to 1.25%. Local transfer tax rates range from 0.5% in eight counties (Allegany, Caroline, Cecil, Charles, Kent, Queen Anne's, Washington, and Worcester) to 1.5% in Baltimore City and Baltimore County. Five counties (Calvert, Carroll, Frederick, Somerset, and Wicomico) do not impose a tax on property transfers.

Admissions and Amusement Tax

No county altered its admissions and amusement tax rate for fiscal 2021. Caroline and Frederick counties are the only jurisdictions that do not impose an admissions and amusement tax. Currently, admissions and amusement tax rates range from 0.5% in Dorchester County to 10.0% in six jurisdictions (Baltimore City and Anne Arundel, Baltimore, Carroll, Charles, and Prince George's counties).

Hotel Rental Tax

No county altered its hotel rental tax rate for fiscal 2021. Effective January 1, 2020, Worcester County increased its local hotel rental tax rate from 4.5% to 5.0%. Hotel rental tax rates range from 4.0% in Talbot County to 9.5% in Baltimore City and Baltimore County.

Tax Limitation Measures

Five charter counties (Anne Arundel, Montgomery, Prince George's, Talbot, and Wicomico) have amended their charters to limit property tax rates or revenues. In Anne Arundel County, the total annual increase in property tax revenues is limited to the lesser of 4.5% or the increase in the Consumer Price Index (CPI). In Montgomery County, the growth in property tax revenues is limited to the increase in CPI; however, this limitation does not apply to new construction. In addition, the limitation may be overridden by a unanimous vote of all county council members. Montgomery County voters at the 2020 general election approved an amendment to the county's charter prohibiting the county from adopting a real property tax rate that exceeds the real property tax rate approved for the previous year, unless approved by all members of the county council. This amendment replaces the county's existing property tax revenue limitation. In Prince George's County, the general property tax rate is capped at $0.96 per $100 of assessed value. Special taxing districts, such as the Maryland-National Capital Park and Planning Commission, are not included under the tax cap. In Talbot and Wicomico counties, the total annual increase in property tax revenues is limited to the lesser of 2% or the increase in CPI. In the 2020 general election, Talbot County voters approved a charter amendment which eliminated the reference to the increase in the CPI so that the total annual increase in property tax revenues is limited to 2%.

Counties may exceed the charter limitations on local property taxes for the purpose of funding the approved budget of the local boards of education. If a local property tax rate is set above the charter limit, the county governing body may not reduce funding provided to the local board of education from any other local source and must appropriate to the local board of education all of the revenues generated from any increase beyond the existing charter limit. This authority was adopted at the 2012 regular session to ensure that counties have the fiscal ability to meet new education maintenance of effort requirements.

In fiscal 2013, Talbot County became the first jurisdiction to exercise this new authority by establishing a $0.026 supplemental property tax rate for the local board of education. No jurisdiction exercised this authority in fiscal 2014 or 2015. In fiscal 2016, Prince George's County became the second county to exercise this authority by enacting a $0.04 supplemental property tax rate to fund its schools. In fiscal 2017, Talbot County again exceeded its charter limit by establishing a $0.0086 supplemental property tax rate for public schools. Montgomery County exceeded the charter limit through a unanimous vote by the county council. In fiscal 2018, Talbot County exceeded its charter limit by approving a $0.0159 supplemental property tax rate for the board of education. In fiscal 2019, Talbot County's property tax rate exceeded the charter limit by $0.025 with the additional revenue attributable to the rate increase above the tax cap appropriated to the board of education. In fiscal 2020, Anne Arundel County exceeded its charter limit for the first time, enacting a supplemental tax rate of $0.034 for the county board of education. Talbot County also exceeded its charter limit in fiscal 2020, enacting a $0.023 supplemental tax rate for the board of education. No jurisdiction exercised this authority for fiscal 2021.

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Local Government

Local Government Salary Actions

Twenty-two county governments and boards of education provided salary enhancements to their employees in fiscal 2021, with 10 counties and 17 boards of education providing cost-of-living adjustments/general salary increases and 9 counties and 19 boards providing step/merit increases.

In total, 22 counties and Baltimore City will provide some type of salary enhancement in fiscal 2021, either in the form of a cost-of-living adjustment (COLA), general salary increase (GSI), step or merit increase, or a combination of enhancements. In a few instances, the salary enhancements are limited to certain groups of employees. **Exhibit 1** compares local salary actions in fiscal 2020 and 2021. By comparison, the State will award a 2.0% COLA to its employees in fiscal 2021, compared to a 4.0% COLA awarded in fiscal 2020, and no step or merit increases.

Exhibit 1
State and Local Government Salary Actions
Fiscal 2020 and 2021

	County Government		Public Schools	
Salary Action	2020	2021	2020	2021
COLA/GSI	19	10	23	17
Step/Merit Increases	20	9	23	19
	State Government		**CPI-Urban Consumers[1]**	
	2020	**2021**	**2020**	**2021**
COLA Amount	4.0%	2.0%	1.9%	1.7%
Step/Merit Increases	No	No		

COLA: cost-of-living adjustment
CPI: Consumer Price Index
GSI: general salary increase

[1] CPI for 2020 and 2021 is an average of the forecasts taken from Moody's Analytics and IHS, Inc.

Source: Department of Legislative Services

Appendix 1 presents specific salary actions for county governments and Baltimore City in the current fiscal year. Ten local governments provided their employees with a COLA or GSI in fiscal 2021, compared to 19 in fiscal 2020. This figure does not include 2 governments that provided COLAs to specific bargaining units and not employees generally. Nine local governments provided step or merit increases in fiscal 2021, compared to 20 in fiscal 2020. In addition, 1 government will provide merit increases to certain bargaining groups but not to employees generally. Finally, 3 counties and Baltimore City had not completed negotiations for all bargaining units by mid-October 2020.

With regard to specific salary actions undertaken by local boards of education in the current fiscal year, 22 boards provided COLAs or GSIs for their employees in fiscal 2021, compared to 23 boards that did so in fiscal 2020. Of these, 17 will provide teachers with some form of COLA or GSI in fiscal 2021. Additionally, 19 boards of education are providing step or merit increases in fiscal 2021, compared to 23 boards that did so in fiscal 2020. Four boards had not completed negotiations for all bargaining units by mid-October 2020. **Appendix 2** presents this information in greater detail.

Furloughs, Layoffs, and Salary Reductions

Like the State, local governments and boards of education continue to assess the impacts of the COVID-19 pandemic on the population, services, and finances. Annually, the counties and Baltimore City and the local boards of education are asked to report furloughs, layoffs, and salary reductions undertaken in the preceding fiscal year as well as those planned for the current fiscal year. For fiscal 2021, only one local government reports having laid off or furloughed employees. It is unknown whether these actions are tied to the effects of COVID-19. Despite this, several governments that were surveyed reported that the response provided for fiscal 2021 represents what is anticipated at the time of submission and that furloughs, layoffs, and salary reductions may be necessary if faced with a downturn in revenues.

Six local boards of education report layoffs or furloughs in fiscal 2021. Primarily, those positions subject to furloughs and layoffs are temporary employees or employees whose responsibilities require or facilitate on-site education of students. Several of these counties reported that these employees were brought back or will be brought back as in-class instruction resumes. Again, these boards and others note that further actions may be necessary if faced with a downturn in revenues at the county level.

Appendix 1
County Government Salary Actions in Fiscal 2021

County	COLA/GSI	Step/Merit	Additional Comments
Allegany	2.0%	No	
Anne Arundel	Varies	No	Most units receive a 2.00% COLA; however, county government employees generally receive no COLA, instead receiving a $1,500 one-time bonus. Correctional program specialists receive a 1% COLA. No merit or step increases for county employees, generally; however, the following bargaining units receive merits: AFSCME 582 (3%); Battalion Chiefs (3.5%); AFSCME 2563 (3%); and Park Rangers (3%). Correctional program specialists receive a merit increase based on years of service.
Baltimore City	Varies	No	FOP Units I and II received a 3% COLA; Managerial and Professional Society of Baltimore received a 2.5% COLA; and City Union of Baltimore Local 800 and all AFL-CIO units (including AFSCME) received a 2% COLA. Baltimore City Fire Fighters IAFF Local 734 COLA and Local 964 are still in negotiations.
Baltimore	0.0%	Yes	Police and firefighters to receive a stipend for certain assignments or certifications (amounts vary). All employees receive a step increase ranging from 3% to 5% (varies by unit).
Calvert	1.42%	Yes	All employees, including the sheriff and correctional deputies, receive the same COLA and a 1 step merit increase.
Caroline	3.0%	Yes	All employees except the sheriff's office received either a 3% GSI or a flat $2,000 GSI, whichever was greater. Sheriff's office employees received step increases of 1 step for 1 to 2 years of service, 2 steps for 3 to 9 years of service, 3 steps for 10 to 21 years of service, and 4 steps for 22+ years of service.
Carroll	0.0%	No	

County	COLA/GSI	Step/Merit	Additional Comments
Cecil	0.0%	Yes	Police officers and firefighters received a 1.5% COLA; firefighters also receive another 1.5% pay scale adjustment. All employees received a 2% step increase.
Charles	0.0%	No	FOP agreement was not finalized by the deadline to submit responses for this report (projected that this will be finalized in fall 2020). Otherwise, no COLA or step for any group of county employees.
Dorchester	0.0%	No	
Frederick	0.0%	Yes	Corrections and Law Enforcement each receive a 4.5% COLA. Fire and Rescue Services receive adjustments for a new pay scale with 16 steps in fiscal 2021 and COLAs of 1.5% in both fiscal 2022 and 2023. County employees received a step increase of 3.5% of the midpoint of the employee's pay grade.
Garrett	0.0%	No	
Harford	2.0%	Yes	$2,000 merit increase.
Howard	2.0%	Yes	All bargaining units receive a GSI of 2% and a step increase of 3%.
Kent	0.0%	No	
Montgomery	0.0%	No	All fiscal 2021 salary schedules will remain at fiscal 2020 levels, excluding the minimum wage and seasonal salary schedules.
Prince George's	0.0%	TBD	Negotiations with the county's bargaining units on fiscal matters have been postponed until mid-November, after the deadline for submitting responses for this report.
Queen Anne's	0.0%	No	
St. Mary's	1.0%	Yes	All employees, except for sworn officers and corrections employees, receive a 1% COLA, a 3.71% pay scale adjustment, a 2.5% merit increase, and a $500 stipend for employees at the top of their pay grade. Sworn officers received the COLA and a 2.5% to 5% merit increase, while corrections employees received the COLA and a 1.5% to 5% merit increase.
Somerset	0.0%	No	
Talbot	0.0%	No	
Washington	0.0%	No	

County	COLA/GSI	Step/Merit	Additional Comments
Wicomico	5.0%	No	FOP salary actions remain undetermined at this time – negotiations were not completed before the deadline for submitting responses for this report.
Worcester	2.0%	Yes	2.5% step increase. Regular full-time employees with at least 20 years of service by December 1 are eligible for a longevity bonus.
Total Jurisdictions Granting Increases	**10**	**9**	

AFL-CIO: American Federation of Labor and Congress of Industrial Organizations
AFSCME: American Federation of State, County and Municipal Employees
COLA: cost-of-living adjustment
FOP: Fraternal Order of Police
GSI: general salary increase
IAFF: International Association of Fire Fighters
TBD: to be determined

Source: Department of Legislative Services

Appendix 2

Board of Education Salary Actions in Fiscal 2021

School System	COLA/GSI	Step/Merit	Additional Comments
Allegany	2.0%	Varies	Compressed steps and enhancements for teachers remain from last year as well as Kirwan stipend of $1,400. Salary scales from last year still remain with Kirwan enhancements. Based on eligibility.
Anne Arundel	TBD	No	COLA for teachers TBD. COLA for majority of units is 2%, except for school administrators – no COLA reported. The county is at an impasse with the teacher's union that was not resolved by the deadline to submit responses for this report.
Baltimore City	1.8%	Varies	PSRP and CUB each receive a COLA that equals the greater of 1.8% or $700. FOP and Local 44 receive no COLA. PSRP and school administrators are also eligible to receive a longevity stipend/bonus: the PSRP varies based on length of service and position (15 years – 0.406% to 0.513%; 20 years – 0.812% to 1.024%; 25 years – 1.222% to 1.54%), while the award for school administrators depends solely on the number of years served (25 years – $1,400 and 30 years – $1,400). Merit/step increases for teachers and administrators vary based on evaluations, professional development, and special projects. Merit/step increases for PSRP, FOP, CUB, and Local 44 vary based on evaluations.
Baltimore	1.0%	No	
Calvert	1.0%	Yes	Teachers and school administrators receive a 1.00% COLA and 1 step, in addition to the potential for restorative steps for those employed in the 2011-2012 school year. Support staff get a $1.10/hour increase and the potential for the restorative step for those employed in the 2011-2012 school year.

County	COLA/GSI	Step/Merit	Additional Comments
Caroline	1.0%	Yes	Teachers receive a 1.00% COLA and 1 step. Support services receive a 2.00% COLA and 1 step. School administrators receive a COLA of less than 5.00% and no step.
Carroll	0.0%	Varies	School administrators, AFSCME, Food Service, and CASE receive a 2.00% COLA. No steps are indicated for these groups. Teachers receive 1 step, and those at the top step will receive a one-time bonus of $2,000.
Cecil	2.1%	Yes	School administrators receive established pay scale changes. Support services receive a 2.00% COLA. Teachers and support services received a 1 step increase.
Charles	1.0%	No	Teachers and school administrators receive a 1.00% COLA and $500 bonus. AFSCME members had pay scales recalibrated, receiving an increase equal to at least $500.
Dorchester	1.0%	Yes	Teachers and support staff receive a 1.00% COLA. School administrators receive a 1.25% COLA, while those above the top of the pay scale receive a one-time bonus of $800. All groups receive a 1 step increase.
Frederick	0.0%	Yes	Teachers receive a merit increase of 1.9% and a $4,000 reimbursement toward a doctorate. Support staff receive a merit increase of 2.6%, and those at the top of the pay scale receive an $800 bonus. School administrators receive a merit increase of 3.0%.
Garrett	1.0%	Yes	Teachers receive a COLA of 1% on average. Administrators receive a COLA of 2% on average. Support personnel, head custodians, and cafeteria managers receive a COLA of 3.5% on average. All employees received a 1 step increase.
Harford	1.5%	Yes	1.5% COLA for all bargaining groups, with the exception of school administrators, who receive no fiscal 2021 COLA. The bargaining group for teachers applied the equivalent value of the 1.5% COLA to create a new top salary step for senior teachers. All groups receive a 1 step increase.

County	COLA/GSI	Step/Merit	Additional Comments
Howard	0.0%	Yes	Nonunion administrative employees received a 1% COLA. All union bargaining units received a 1 step increase, which provides an average salary increase of 2%.
Kent	0.0%	Yes	All groups received a $380 GSI at the top step; this reflects the expected settlement since negotiations were still open. In addition, all groups received a 1 step increase.
Montgomery	0.0%	No	Agreements were either tentative or at an impasse at the time of this report; however, per the county, there will be no COLA or step increases this year for the three union associations.
Prince George's	2.0%	Yes	All bargaining units receive at least a 2% COLA. The SEIU COLA is listed as 2% on July 1, 2020, and 1% on January 1, 2021. In addition, all bargaining units had an additional step increase to make up for a lost step in fiscal 2011. Employees must have been continuously employed in a benefits eligible position from June 30, 2010, to July 1, 2020, to receive this additional step. Those already at the top step will receive a 2% differential for fiscal 2021 only. AFSCME removed the top step (step 17) in fiscal 2021.
Queen Anne's	1.0%	Yes	All units, including support units, received a 1.0% COLA and a 1 step increase. Additionally, in both fiscal 2020 and 2021, teachers received a salary match from the Kirwan/Blueprint funds.
St. Mary's	1.0%	Yes	All units received a 1.00% COLA and a 1 step increase.
Somerset	1.5%	Yes	All units to receive a 1.5% COLA and 1 step increase for fiscal 2021. Teachers will receive the benefit of these salary actions on April 1, 2021, while school administrators and support staff will receive them on January 1, 2021.

County	COLA/GSI	Step/Merit	Additional Comments
Talbot	1.0%	Yes	School administrators and support staff receive a 1.5% COLA, while teachers receive a 1.0% COLA. Teachers and support staff receive a 1 step increase, while school administrators receive the following adjustments: principals and supervisors are given an additional $600 for another year of experience, and assistant principals are given $300.
Washington	TBD	No	Most agreements are still in negotiation as of the time of this report; however, school administrators receive a GSI of 1.0%.
Wicomico	Varies	Yes	Teachers receive a COLA of 1% to 1.5%; support staff receive an average COLA of 2%, linked to salary study adjustments; and school administrators receive a 2% COLA. All units receive a 1 step increase.
Worcester	2.0%	Yes	Teachers receive a 2% COLA, while support staff receive a 2.5% COLA. No COLA is indicated for school administrators. Teachers and support staff receive a 1 step increase. No step increase is indicated for school administrators.
Total Jurisdictions Granting Increases	**17**	**19**	

AFSCME: American Federation of State, County and Municipal Employees
CASE: Carroll Association of School Employees
COLA: cost-of-living adjustment
CUB: City Union of Baltimore
FOP: Fraternal Order of Police
GSI: general salary increase
PSRP: Paraprofessionals and School Related Personnel
SEIU: Service Employees International Union
TBD: to be determined

Source: Department of Legislative Services

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