

# Report on the Department of Labor, Licensing and Regulation

## Maryland Transition

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# **I Executive Summary**

## **1. DLLR Overview and Mission:**

The Department of Labor, Licensing and Regulation (DLLR) has numerous important and diverse responsibilities. It is charged with administering licenses for and regulating 23 businesses, professions and trades, enforcing occupational safety and health laws, coordinating the state's workforce development initiatives, overseeing and regulating financial institutions, running the unemployment insurance program, and regulating the racing industry.

With a permanent staff of 1467, DLLR is comprised of seven divisions: Office of the Secretary, Division of Labor and Industry, Division of Financial Regulation, Division of Occupational and Professional Licensing, Division of Unemployment Insurance, Division of Workforce Development, and Division of Racing.

The Department's budget for FY2006 was \$173,100,757 funded with general, federal and special funds. The vast majority, 79% for FY06, of its budget comes from the federal government. State general funds and special funds make up the rest at 11% and 10% respectively. The budget for FY2007 totals \$177,977,537.

DLLR currently defines its mission as "safeguarding and protecting Maryland citizens and supporting the economic stability of the State by providing business, the workforce and consumers with high-quality customer-focused regulatory, employment and training services." Its goals are to "promote and foster a more competent and productive labor force for Maryland, protect workers and consumers, and provide greater accessibility to our services and programs."

DLLR's responsibilities are to protect Maryland's workers and consumers, and promote the health and stability of our state's business and industry. In recent years, however, budget policy has made it difficult for DLLR to carry out its statutory mandates of protecting the health, safety and rights of Maryland's workforce. Since 2003, general fund appropriations have been cut by \$12,864,125, or 44% (through FY 07). While special funding has grown considerably by \$9,952,681, or 63% (through FY07), that is still a loss of close to \$3 million. Although federal funds have increased, they cannot be used for enforcement of workplace safety or wage and hour laws. And, for FY2006, funding Office of Employment Standards Service was completely cut from the budget. While funding was restored for FY2007, DLLR continues to suffer a chronic shortage in human capital to ensure the rights of workers are enforced and workplaces stay safe.

This also impedes the speedy disposition of consumer complaints involving various occupations and financial industries, timely and proper oversight to assure that licensees are meeting the continuing education requirements, and that 9,100 new license applications for mortgage originators are properly processed and vetted.

DLLR has moved forward in the use of technology to reduce the costs and increase the efficiency of licensing of the individual occupations and businesses under its authority, but it has not kept pace in fully meeting Maryland's workplace needs.

Going forward, the Department's mission should be to act now to address current and future workforce challenges, including those within DLLR's own workforce; to be more strategic in

protecting consumers, enlightening the public and licensees about their rights and responsibilities and targeting industries with high levels of violations of wage and hour, safety, and consumer laws.

A suggested mission statement might be: “Seize Opportunity to Make Maryland a Top Competitor in Knowledge-based Global Economy; Foster Integrity and Professionalism of Regulated Businesses; Increase Public Education and Target Repeat Violators of Employment and Safety Laws; and Safeguard Maryland’s Horse Industry and the Open Space it Protects.”

## **2. Overall Issues:**

### **1. Act now to leverage the public and private resources needed to assure that Maryland’s students and adults are ready to fill current and future positions in high demand industries:**

- Over the next ten years, DLLR projects that job growth in Maryland will expand by 23% but that the workforce will grow by just 2%. If the State’s labor force is not projected to grow then we must find ways to increase the productivity of *all* workers to meet the demands of future jobs – especially in Maryland.
- The state may want to review how it has organized its various economic development, education and labor agencies and resources in order to assure the competitiveness of its workforce and increase overall labor force participation.

### **2. Address DLLR’s own immediate and near-term workforce crisis and backlogs arising from low salary and staffing levels and anticipated retirements:**

- DLLR is responsible for 49,000 investigations, inspections and enforcement efforts per year conducted across four of its seven divisions. Across these divisions, retirement and the competition for wages are negatively affecting DLLR’s ability to meet its legislatively-mandated responsibilities. Among investigators and inspectors, there has been a 65% attrition rate within the past four years. In the next few years, 1/3 of DLLR investigative/inspection staff will be eligible to retire.
- DLLR should obtain sufficient appropriations, staffing and salary support to meet legislative mandates, operational needs of programs, executive expectations, and workload to keep pace with industry growth.

### **3. Actively enforce employment and safety laws; increase awareness of employment and consumer rights and duties; systematically investigate industries with high number of employment, consumer protection and safety law violations:**

- Employment Standards Service program activities and staffing should be modified (at a minimum) to fully comport with legislative enforcement mandates.
- DLLR should ensure the Employment Standards Service (ESS) is fully staffed and funded. DLLR elected to eliminate funding for the ESS twice in the past 16 years resulting in a disbanding of staff and termination of activity. When first terminated in

1991, the unit possessed an investigative staff of 35. It was reestablished in 1994 but with only 3 wage investigators and limited regulatory authority. ESS was again stripped of its funding in FY 2006, resulting in the loss of all experienced wage and hour investigators. The unit was re-funded for 2007, with an increase in slotted investigator positions from 3 to 6, but with only two thus far hired by January, '07.

**4. Expand public education and outreach to industry in an effort to decrease statutory violations and increase understanding of employment rights in order to ultimately improve service to public and to licensees:**

- DLLR should expand efforts in meeting the special needs of the immigrant workforce and respond to the wage and employment issues associated with this burgeoning community.
- DLLR should establish effective outreach and public information efforts as proactive means to decrease statutory violations of wage and employment laws and better protect Maryland workers.

**5. Review collection, budgeting and use of Special Funds for licensing boards and commissions:**

- Currently, within the seven divisions of DLLR there are approximately 20 licensing and regulatory entities that are budgeted through Special Funds. 12 of these get 100% of their budget through the use of Special Funds.
- Special funding needs to be critically evaluated. This funding source requires study and analysis as to whether it undercuts the effectiveness of regulation, consumer protection, or management oversight and whether it provides adequate resources needed for DLLR regulatory bodies to meet their missions.

**6. Increase Alternative Dispute Resolution to speed complaint resolution and eliminate backlogs in all Divisions:**

- DLLR presently expends considerable funding on costs associated with those disputes, primarily at the Attorney General's Office and the Office of Administrative Hearings. DLLR should consider significantly increasing the use of Alternative Dispute Resolution ("ADR"), in particular Mediation, to (a) extinguish the backlog of complaints; and (b) manage complaints, on an ongoing basis, in a more economical and timely manner.

**7. Review all Department and Division Diversity and Affirmative Action Plans to assure compliance with current EEO regulations and guidelines:**

- Although no obvious issues were raised concerning EEO regulations, DLLR may want to consider developing a Diversity and Affirmative Action Plan/Policy and performance measures inclusive of EEO guidelines.

**8. Assure timely Board and Commission appointments and reviews so that no governing body fails to take decisions because it lacks a quorum:**

- 24 of the 28 boards and commissions (Green Bag and non Green Bag) within DLLR have seats that are either expired or are due in 2007. The number of seats needing new appointments for 2007 is approximately 99.
- All vacancies, expired terms, members continuing to serve, and attendance issues should be dealt with as expeditiously as possible. There should be active recruitment of potential appointees, with outreach to make the pool of candidates as large as possible, and in consultation with stakeholders, in regard to criteria as well as to candidates.
- Additionally, DLLR should consider studying the best practices of other states concerning encouraging and requiring all appointees to attend meetings of boards and commissions.

*Note: the following attachments are included in this report - See Appendix Boards and Commissions Vacancies (1)*

### **9. Recognize economic, environmental and historic value of Maryland's Horse Farms and Racing Industry and support their continued viability:**

- Currently, the Maryland's horse industry is overseen by two different regulatory bodies: The Maryland Horse Industry Board, which has express jurisdiction over farms that are engaged in hacking, boarding, and lessons; and the Maryland Racing Commission which has express jurisdiction over licensed facilities. Combining the two agencies would help solve an unintended gap in jurisdiction.
- At present Maryland's purse and bred funds are being quickly out paced by those of race tracks in surrounding states.
- A critical issue for the Governor and General Assembly to weigh carefully in determining the future of Maryland racing is the central role that the horse industry plays in land preservation and open space. Maryland's 20,000 horse farms preserve about 685,000 acres of green open space, or approximately 10% of the State's land area.
- Study possible benefits of an independent Racing Authority with bond issuing capability or transfer of Racing Commission to MD Department of Agriculture

*Note: the following attachments are included in this report - See Appendix Comparison of Maryland Thoroughbred and Standardbred Bred Rates with Surrounding States (2); MD Horse Breeder Assoc. Horse Farm Map (3)*

### **3. Suggested Identifiable "StateStat" Performance Measurables and Indicators:**

Last year, DLLR conducted approximately 49,000 inspections or claims investigations across all of its divisions. These include inspections on amusement rides, elevators, boiler and pressure vessels, consumer complaints in the financial industry, consumer complaints in occupations such as contracting, electrical, plumbing among many others. Although, DLLR has worked hard to keep up with demand in both inspections, especially related to public safety, and in consumer complaints, backlogs are chronic. This is mostly related to staffing, salary and funding issues but

they are all measurable functions of state government. We suggest the new administration consider the following as possible indicators of effective government:

### **Labor and Industry**

- Consider measurables of timeliness of Board and Commission appointments and failure of Board and Commission quorums
- Elevator Safety Inspection Unit. There is presently a 23% backlog for elevator inspections, representing roughly a six month inspection delay. Also, the program is no longer able to conduct re-inspections of elevators cited with safety violations
- Boiler and Pressure Vessel Unit. Among the boilers that DLI is required to inspect, for FY 2007 there is a 29.18% backlog across the State

### **Occupational & Professional Licensing**

- Use StateStat to establish procedures to insure that licenses are issued only to qualified applicants, to measure length of time required to respond to license applications and renewal requests, and verify validity of application and renewal submissions and ensure compliance with continuing education requirements
- Track complaint resolution across the division's 20+ boards , as well as reducing its 180-day measure for resolving complaints
- The division should use a uniform, formal system for complaint resolution to track and analyze consumer complaints and agency performance, and to detect, solve and prevent any trends or changes as they emerge

### **Financial Regulation**

- Within Financial Regulation, State Stat should consider revising upward from 68% the percentage of consumer complaints resolved within 60 days. It should also consider revising upward the current consumer satisfaction goal 75%.

### **Workforce Development**

- Create a monthly dashboard set of indicators that give it, in the GWIB, a set of indicators that show how the Maryland citizens and its employers are faring, how key education and training initiatives are achieving results to address the needs in the state and how key stakeholders, like employers and citizens, assess the system's performance
- DLLR and DWD should modify the current performance measure for registered apprenticeships and consider increasing it by at least 50%
- Consider using the "ten opportunities for improvement" listed in June 2004, GWIB report to the General Assembly as efficiency improvement indicators

## **II Identified Action Items by Division**

**Workforce Development:** *Make Workforce Development One of the Highest Gubernatorial and Administrative Priorities*

- Assure that there are adequate numbers of Marylanders with skills required by State's high demand industries: e.g., health, biotech, construction, education, hospitality and

tourism, aerospace, engineering; information technology; transportation and warehousing; finance and insurance; retail; and manufacturing

- Make Maryland's future workforce a priority by developing comprehensive K-16+ School to careers plan in partnership with State's education and post-secondary institutions, guidance from Governor's Workforce Investment Board and use of pertinent labor market information
- Develop "bridge" programs to give low skilled/low wage workers and the unemployed the added support needed to increase their skills
- Take front and center role in developing comprehensive strategy assuring Maryland workforce is prepared for an influx of BRAC related jobs
- Actively promote and measure sharing of resources among state and local agencies related to workforce development
- Recognize the value of apprenticeships to businesses (professional and building trades) needing skilled workers
- Make membership on Governor's Workforce Investment Board a sought-after appointment
- Maintain active involvement of business and labor leaders and State Secretaries on Governor's Workforce Investment Board High Demand Industry alliances
- **Determine how to access some portion of the \$142 Million in existing Reed Act (Unemployment Insurance) funding to permit expansion of workforce training and literacy programs; explore Food Stamp Employment and Training 50% Matching Funds, as well as General Obligation Bonds; Lifelong Learning Accounts; Tuition-based Strategies and Program Related Investments**
- Increase adult literacy funding
- Support the changing face of Maryland's workforce with multi-lingual workplace communications and innovative employment options, including part-time, flexible hours and workplace locations
- Address transportation and affordable housing barriers to employment in State's overall workforce
- Support Federal Workforce Investment Act Re-Authorization and weigh-in on USDOL Notice of Proposed Rule Making due February 20, 2007
- Conduct thoughtful study of workforce development responsibilities of DLLR and other Cabinet Offices to determine whether an independent Workforce Development Department or Authority would better assure the readiness of Maryland's students and adults for the global, knowledge-based economy

*Note: the following attachments are included in this report - See Appendix*

*Potential New and Untapped Revenue Sources for Job Training and Workforce Services for Consideration by the State of Maryland (4); Maryland Workforce Development Association Transition Position Paper (5); Baltimore City Performance Measure Dashboard/Scorecard: A Model for Consideration (6)*

**Occupational and Professional Licensing:** *Make Regulation Work More Effectively for Consumers, Licensees and Taxpayers*

- Verify validity of application and renewal submissions and ensure compliance with continuing education requirements



- Significantly increase use of Alternative Dispute Resolution to reduce complaint backlogs, reduce costs and manage complaints more efficiently
- Actively explore feasibility of on-line applications for occupational and professional licenses
- Review Special Funding in assuring adequate funding and staffing levels of and effective regulation by affected Boards and Commissions
- Actively recruit potential candidates and pools, and review attendance records, of Board and Commission members to eliminate disruption that occurs when these governing bodies lack quorums

*Note the following attachment is included See Appendix  
Chart of Boards and Commissions and Numbers of Licensees (7)*

**Division of Labor & Industry:** *Step up Strategic Enforcement of Employment and Safety Laws to Protect Employees and Law-abiding Businesses*

- Conduct study to determine the staffing and salary levels commensurate with enforcement responsibilities and advocate for increases where required
- Systematically investigate industries with high numbers of wage, hour and safety and health violations and target repeat violators
- Conduct study to determine nature and extent of wage and employment problems encountered by immigrant community and actively expand efforts across the Division to hire qualified Spanish speaking and other diverse investigative and support staff
- Increase public information efforts and expand outreach to increase awareness of rights and safety requirements and to reduce statutory violations
- Work with other DLLR divisions to identify possible cross-cutting issues and areas of mutual enforcement interest, eg, study the possible withholding of occupational licenses from repeat violators of Wage Payment and Collection Law.
- Collaborate with Office of the Attorney General and other enforcement officials to pursue repeat violators and protect health & safety and wages of employees and interests of law-abiding businesses
- Actively seek data from local safety and health inspectors re repeat violators
- Develop pilot program to engage community participation, establish partnerships and build local capacity to address chronic issues of wage and employment violations

**Financial Regulation:** *Assure Continued Safety of State-Chartered Banks and Other Financial Entities*

- Review salary structure to determine level necessary to retain trained inspectors and supervisory staff and to perform statutory responsibilities effectively
- Support “over the target” request of \$143,000 in 2008 budget for salary increases
- Plan for significant anticipated retirements by senior supervisory staff
- Review and monitor the collection, budgeting and use of special funds
- Plan for possible changes in staffing levels and fees paid should PNC change to a federal charter once its acquisition of Mercantile is completed
- Determine appropriate staffing levels for new mortgage originator licensing responsibility

- Review legality of tax refund anticipation loans and enforcement of pay day lending laws and their impact on consumers

**Unemployment Insurance:** *Provide Effective Safety Net to Unemployed and Keep Employer Taxes as Low as Possible*

- Develop legislative proposals to **permit use of approximately \$73 Million in REED Act funds that it is estimated can be used without impacting the solvency of the UI Fund, and permit Maryland to collect its own FUTA funds from employers which it is estimated would return approximately \$35 Million to Maryland**
- Maintain UI Division's high national ranking in maintaining the UI Fund
- Review possible revisions to funding formula that increases taxes on employers in economic downturns rather than in periods of prosperity
- Pursue improved technology such as debit cards Internet application development
- Develop plan to address language barriers for non-English-speaking claimants
- Consider pros and cons of consolidating operations in one location in Baltimore City
- Study the impact of raising the UI weekly benefit from \$300 to \$450 per week on the solvency of the UI Fund and on the adequacy of the State's safety net for those who lose their jobs through no fault of their own

*Note: the following attachments are included in this report - See Appendix  
Chart showing comparative State UI benefit levels, JOTF Issue Brief, pg. 4 (8)*

**Racing:** *Support Continued Economic and Environmental Viability of Maryland's Racing and Horse Industries and Horse Farms*

- Significantly expand promotion of Maryland Racing and its Horse Industry and Farms
- Analyze benefits of an independent Racing Authority or merger with Department of Agriculture
- Adjust business model from solely gambling-based to an entertainment destination-based model with emphasis on great customer service
- Modernize facilities or develop new facilities
- Mitigate further erosion of racing's market share by its principal competitor, the State Lottery, by dedicating proceeds from the Lottery's new RaceTrax game and similar horse racing- themed games to the Maryland Purse and Bred Funds
- Support additional short-term subsidies to the Purse and Bred Funds until new facilities, marketing and promotion strategies have had chance to take effect
- Eliminate or reduce 5% sales tax on claiming races in order to make purchases more attractive to prospective buyers
- Propose legislation to eliminate the 6:15 rule, which precludes racing or simulcast betting on thoroughbreds after the 6:15PM Start time, pursuant to a recent agreement finally reached by the Thoroughbred and Standardbred industries
- Redefine legalities regarding telephone account wagering, off track betting and simulcasting
- Examine salary caps and other funding limits for lab testing, which have precluded retaining skilled laboratory staff and limit necessary testing
- Increase from \$5,000 to \$25,000 per day fines that Commission can levy on race tracks

- Investigate possible regional breeding and racing compacts with surrounding states to promote racing and limit overlapping racing days
- Review Racing Commission appointments, structure, policies, including possible compensation for members to assure necessary expertise and consistent attendance

### III Overview of Divisions

#### Workforce Development

##### **I Overview and Mission:**

The DWD has oversight responsibility for implementation and administration of the state's publicly funded workforce programs. This includes facilitating employment opportunities through labor exchange and offering employment readiness, job training services and labor market analysis information. The DWD is also responsible for promoting and certifying apprenticeship programs and for administering job training, assimilation and English as a second language to Russian re-settlers. It also provides guidance and oversight to the state's 12 local workforce investment areas that receive federal Workforce Investment Act (WIA) grant funds, the nation's primary investment in workforce development

##### **II Pressing Issues**

- **Prepare for Base Realignment and Closure Implementation (BRAC) Opportunities**— Over the next 4-6 years, 40-60,000 new high skilled/high wage jobs will be added to Maryland's economy, along with over 7,000 "spin off" jobs needed to support the 100,000 new residents. *DWD must take a front and center role in developing and implementing a well designed, comprehensive strategy to ensure Maryland*
- **Fragmented System Needs Alignment** – DWD/DLLR is a stand-alone entity focused on building the future workforce. However, it is just one agency, among many within the state which has as part of its goals, skill building and preparing the workforce of the future, in part, similar goals. *Some of the most promising practices over the last 5-10 years are in states that have chosen to partner and align resources across agencies.*<sup>1</sup>
- **Address the decreased funding for workforce training**- The US DOL, through the Workforce Investment Act (WIA), is the principal investor in Maryland's workforce system. However, since 2000, the state's WIA allocations have dropped by nearly 50%--- and this trend is expected to continue and possibly accelerate. This is a result of federal resources being diverted to other efforts and the fact that WIA funding formulas are tied by statute to the unemployment rate. Maryland's share of WIA dollars has declined to some extent due to its relatively low overall unemployment rate, although this has little bearing on the need for a trained, highly skilled and educated workforce in all areas of the state. *Alternative, creative funding venues (federal, state and private) must be sought to make up this drastic loss of resources. A key source of funds to explore is the 2002 REED*

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<sup>1</sup> "Workforce Development in the United States: An Overview," Prepared by Mary Gardner Clagett for the New Commission of the Skills of the American Workforce, October, 2006, [http://www.skillscommission.org/pdf/Staff%20Papers/ACII\\_WIA\\_Summary.pdf](http://www.skillscommission.org/pdf/Staff%20Papers/ACII_WIA_Summary.pdf)

*Act distribution to the state's account in the Unemployment Trust Fund of which more than \$ 142 million is available for improvements to the state's workforce system.*

- **Develop bridge programs for the low skilled /low wage workers and unemployed citizens-** In the 21<sup>st</sup> century workplace, people need opportunities that will help them increase their education and build skills that businesses demand. *The state's workforce system needs to create/offer more "on ramps" to careers and provide greater access for more citizens to become prepared to succeed in the labor market.*
- **Leave no one behind-** Previously incarcerated people, the disabled, the economically disadvantaged, etc often require multiple and intensive workforce services to help them join the mainstream economy. *DLLR needs to create incentives and programs that encourage employers to recognize these "challenged populations" through education and training as an excellent current and future labor resource.*
- **Preparing Maryland's future workforce for the new knowledge-based economy-** With the retirement of the thousands of "baby boomers" and the growing need to fill high skilled jobs- many in math, science, construction and engineering fields. *DLLR/DWD should take the lead to create a working partnership with the state's education and post secondary agencies, along with the input and guidance of the GWIB and the use of pertinent labor market information.*
- **Respond to the Changing Face of Maryland's Workforce-** Immigrants, older workers, challenged populations—all make up a drastic shift in how the state's workforce will look in the next several years. *From multi-lingual workplace communications to more part time, flexible and innovative employment options, DLLR/DWD must make a concerted and pro-active effort to recruit, engage and develop a more diverse worker pool than it has had in the past.*
- **Address Transportation Barriers-** "Spatial mis-match"--- jobs going unfilled in the counties where unemployment is low while qualified job seekers in the metropolitan areas are unable to access reliable transportation to these jobs. *A plan to connect jobs and job seekers must be part of the state's workforce agenda.*
- **Support Federal Workforce Investment Act Re-Authorization** – For the past several years, Congress has been unable to re-authorize the federal Workforce Investment Act (WIA), which is the largest source of funding for the state's workforce activities. With a new Congress in place it is very likely that re-authorization of this important, legislation will occur this spring. *DLLR/GWIB will need to be actively engaged in the re-authorization dialogue to promote and support key features of the legislation.*
- **Weigh in on the Federal Department of Labor Notice of Proposed Rulemaking-** The DOL recently issued a notice of proposed rulemaking to implement several major policy changes to the Workforce Investment Act (WIA) and Wagner Peysner Act regulations. These range from issues pertaining to membership and roles of state and local workforce boards to fiscal considerations. *DLLR/GWIB should be examining this NPRM and its potential implications and prepare comments to be submitted to DOL on or before February 20, 2007.*

### **III Recommendations:**

Each of the pressing issues and the imbedded recommendations cited above should be thoroughly explored by the DLLR/DWD in partnership with the GWIB. As the policy making body for the state's workforce development system, the GWIB should determine how it will plan

its agenda and priorities around these concerns and build a work plan to recommend viable solutions and action items.

#### **DLLR/DWD:**

- DLLR/DWD should assume a key role in the overall BRAC planning/implementation initiative with the Department of Business and Economic Development and the Department of Education
- DLLR/DWD should create employer driven industry specific pipeline training programs that reach into the schools, offer “on ramps” to challenge populations, extend to postsecondary training and beyond. Maryland has a number of existing “on ramp” programs creating pathways for both youth and adults in growth industry sectors. Some are in the construction industry – for example, a number of the union trades have pre-apprenticeship and apprenticeship programs. Other examples are Jumpstart in Baltimore with ABC/Goodwill/Jobs Opportunities Task Force, the Pre-Apprenticeship Readiness Training Program in Montgomery County with Goodwill/ABC and the Montgomery County Construction Trades Program for high school students. Other industry examples are the BioStart to BioPro for lab associates conducted by the BioTechnical Institute of Maryland.. These programs should be reviewed in an effort to scale up similar activities as needed by regional industries.

#### **Governor’s Workforce Investment Board (GWIB):**

- The GWIB’s roles and responsibilities should be clearly defined so that its relationship with DLLR is supportive and complementary. The GWIB should be the body that sets sound policy, infuses effective business practices and acumen to the system and establishes the long term vision for the state’s workforce agenda.
- The GWIB should serve as “lead workforce facilitator.” It should review how other state agencies are engaged in workforce development activities and where appropriate, formalize MOUs and/or other forms of inter-agency agreements among the key state agencies referenced above.
- The GWIB has engaged employers in the development of important sector specific workforce plans. GWIB should develop performance measures beyond existing process measures by identifying new measures that relate to the coordination and execution of these plans through partnerships with various state agencies and other partners.
- GWIB should take a pro-active position in identifying workforce training and literacy funding. Alternative funding should be sought from federal, state and other private/philanthropic sources. **An aggressive effort to tap into the REED Act funds should be a priority.**
- Recognition of the local delivery system in the state’s ability to deliver quality services to employers and customers must be elevated. The local areas are where the “rubber meets the road” and are primarily responsible for how well the state meets/exceeds its performance standards. GWIB should have greater representation of local workforce board chairs and workforce investment area directors.
- GWIB’s membership should also be expanded to include more small business, minority and women-owned business leaders as these businesses represent the majority of the state’s and nation’s economic growth.

- The engagement key state agency secretaries should continue as the GWIB moves to increase coordination across the state’s workforce related agencies.
- **A final recommendation from this workgroup is to conduct a thoughtful study of the structure and organizational design of the Department of Labor, Licensing and Regulation. We believe there may be a need to create a state agency that is solely focused on workforce development. With the extraordinary employment opportunities the BRAC initiative is bringing and the critical issues of worker shortages, global/regional competition, a growing immigrant workforce and the challenge of preparing our emerging workforce, this is the time to position the state to become a national leader in workforce development.**

#### **IV Performance Measures:**

Federal legislation governing the primary DWD funds (WIA and Wagner Peyser) requires that the state report outcomes and activities relative to a set of pre-determined annual performance standards. These standards capture information only on persons who are formerly “enrolled” in WIA funded programs and do not reflect the overall performance of the state’s workforce delivery system.

- DWD should create a monthly dashboard set of indicators that show how Maryland citizens and employers are faring, how key education and training initiatives are achieving, and how key stakeholders assess the system’s performance. For example, the Baltimore Workforce Investment Board created a draft dashboard for the BWIB to evaluate and consider for implementation. DWD and the GWIB should assess “dashboards” developed by other state departments of labor and state workforce boards and consider adopting one that meets the needs of Maryland.
- DWD should modify the current performance measure for registered apprenticeships and consider increasing it by at least 50%.
- In June 2004, GWIB submitted a final report to the General Assembly in response to the legislature’s request of GWIB to “Identify Inefficiencies with the State’s Own Workforce Development Delivery System”. This final report provided information on ten opportunities for improvement. The GWIB should examine this report and define progress that has been made in each of the ten areas. Moving forward, benchmarks should be created to gauge further evidence of achievement in improving the state’s workforce delivery system.
- GWIB should develop performance measures beyond the existing process measures (such as completing strategic plans and increasing awareness), by identifying new measures that relate to the coordination and execution of these plans through partnerships with various state agencies and other partners.

#### **V Long Term Challenges and Proposed Solutions**

Considering the integration of workforce development, economic development and education into a regional/state competitiveness authority (based on a recommendation from the recent report entitled “Tough Choices or Tough Times” from the New Commission on the Skills of the American Workforce (National Center on Education and The Economy, December 2006) – so that the state aligns skill building and training for citizens with the economic opportunities and growth industries of the region. For DLLR, that means working hand-in-

hand with economic development, education and other agencies around specific statewide goals and performance measures. For the state, that means creating an authority that both develops goals and strategies but also has responsibility of coordinating the actual work of the key state agencies to achieve increased workforce competitiveness and higher labor force participation rates

Aligning resources to focusing on career advancement and economic growth needs – employers need workers at all levels and job seekers and workers aim to improve their economic opportunities and quality of life. Education and training initiatives need to be aligned from K-16 through adult learning in order to promote continuing success and advancement. Jobs alone do not lead to self-sufficiency and wealth creation. DLLR should work with GWIB to develop a strategic plan that focuses on building the competitiveness of its economy and workforce

*Note: the following attachments are included in this report - See Appendix Potentially New and Untapped Revenue Sources for Job Training and Workforce Services for Consideration by the State of Maryland (4); The Maryland Workforce Development ( MWDA) Transition Position Paper (5); Performance Measure Dashboard/Scorecard: A Model for Consideration (6)*

## **Occupational and Professional Licensing**

### **I Overview and Mission:**

The Division of Occupational and Professional Licensing administers the regulatory programs of 23 of the State's occupations and professions. Work is done through offices or boards or commissions, whose volunteer members generally are appointed by the Governor or the Secretary of the Department. In all, the Division regulates over 220,000 licensees, employs about 86 staff, and operates with a budget estimated at \$9.0 million.

### **II Pressing Issues:**

**The Division of Occupational and Professional Licensing should implement more potent and extensive measures to ensure applicants meet licensing requirements.**

- The division must establish procedures to insure that licenses are issued only to qualified applicants. Legislative audits have found that “independent verifications were not performed to insure that licenses were issued only to qualified applicants and a few employees had the ability to both process and approve licenses on-line through DOPL's automated licensing system.”
- The division must verify the accuracy of application and renewal content, starting, most importantly, with criminal background checks. We suggest an approach as follows: (1) Critical analysis of which occupations and licenses should include consideration of criminal background; (2) Development of written guidance to the Boards regarding the

impact of a criminal background on the application for those specific licenses; (3) Revision of the applications to reflect this procedure, including potential omission of criminal background questions on applications for licenses where criminal background will not be considered; and (4) Implementation of measures, in this new approach, to ensure balance and sensitivity to the societal objective of meaningful and fair access to re-employment for ex-offenders. Where it is determined that criminal background will be a consideration in licensing, appropriate statutory or regulatory authorizations should ensure that applicant representations are subject to an independent criminal background check. As well, the division must develop a reliable system for verification of credentials. DLLR also should explore utilizing its own Labor and Industry information to check licensees' credentials.

- The division's laudable progress in establishing electronic means of application and renewal for licenses has resulted in the speedy issuance of licenses and has cut processing costs. However, that shift compounds the challenges of verifying applicants' representations in applications and renewal applications.
- The division should look to expanding its use of technology to check applicants' information, using best practices. It should also explore the feasibility of on line applications in order to reduce delays in license issuance.
- The division must establish an ongoing process for insuring compliance with continuing education provisions for renewing licenses. Legislative audits have found that "DOPL had not conducted audits of continuing education requirements for certain renewal licenses or established a policy specifying the frequency for conducting such audits."
- DOPL should comply with the law requiring issuance of licenses to elevator mechanics and contractors as required by state law.

**The division should significantly increase the use of Alternative Dispute Resolution ("ADR"), in particular Mediation, to (a) extinguish the backlog of complaints; and (b) manage complaints, on an ongoing basis, in a more economical and timely manner.**

- It is common knowledge that use of mediation significantly reduces the incidence of litigation, while sparing the costs and time associated with heightened or protracted dispute. DLLR presently expends considerable funding on costs associated with those disputes, primarily at the Attorney General's Office and the Office of Administrative Hearings. Institution of a mediation program could close out the backlog, significantly reduce the time to resolve complaints going forward, and conserve funds presently consumed in the hearing process, both at the Office of the Attorney General and the Office of Administrative Hearings, and in some instances, in Circuit Court proceedings.
- Note, there are numerous mediation programs in use throughout state government, and considerable knowledge and experience readily available on this subject. For example, mediation programs have been developed in the Circuit Courts, the Department of Human Resources, the Maryland Human Relations Commission, the Department of Education, and the Consumer Protection Division of the Attorney General's Office.



**All standards and policies regarding dispute resolution and complaint processing should be reviewed and streamlined where possible.**

- The division should maximize informal complaint resolution by staff and the boards.
- The division should use a uniform, formal system for complaint resolution to track and analyze consumer complaints and agency performance, and to detect, solve and prevent any trends or changes as they emerge.
- DLLR should use such mechanisms as these in order to significantly reduce its backlog of consumer complaints, as well as to reduce its 180-day measure for resolving complaints, and to be able to attain that reduced time measure.
- DLLR should utilize its ability to enforce the Maryland Consumer Protection statute if appropriate, or to assist in potential criminal cases.

**Procedures, policies, and criteria regarding any special funding of boards, commissions, and offices should be well formulated.**

- Special funding currently affects the Office of Cemetery Oversight, the five “Design Boards” Fund, and the Real Estate Commission, and will be used for the Board of Public Accountancy beginning July 1, 2007.
- The budget analysis of DLLR last legislative session asked the department to comment on issues associated with special funded boards and commissions and on ensuring self-sufficiency and proper documentation. The Legislative Audit report of May 2005 found that adequate documentation of the Design Boards’ Fund was not maintained; the department responded that adequate controls are now in place. The Sunset Review of the Office of Cemetery Oversight recommended that it revert to general funding; a bill to continue the office did not pass last session, and the office will sunset June 30 if no action is taken this session.
- Special funding needs to be critically evaluated. A study should consider such issues as: questions and recommendations raised in the budget analysis, audit, and sunset review; calculations of indirect costs; impact on the general fund of the State; impact on fees for licensees; the views of the board members and stakeholders currently or potentially special funded; effects on unlicensed practice; experiences with special funds at DLLR’s Division of Financial Regulation and the Maryland Department of Health and Mental Hygiene; experiences in any other states; best practices for funding; questions as to whether special funding undercuts the effectiveness of regulation, consumer protection, or management oversight; questions as to whether special funding has provided adequate resources; any criteria that could be set concerning future decisions regarding special funding; any other issues; and overall whether special funding is appropriate public policy.
- Any changes in a board’s current funding mechanism that would allow or disallow special funding would require legislative action.

**Board and commission members are the principal authorities for most of the division's work.**

- All vacancies, expired terms, members continuing to serve, and attendance issues should be dealt with as expeditiously as possible. There should be active recruitment of potential appointees, with outreach to make the pool of candidates as large as possible, and in consultation with stakeholders, in regard to criteria as well as to candidates. No Board or Commission should have to delay any decision because of a quorum failure.
- DLLR should look to ways to increase the value of service on its boards and commissions, such as making training available or moving meeting sites around the state, and should explore the need for compensation to assure expertise as well as consistent attendance.

*Note: the following attachments are included in this report - See Appendix  
Boards and Commissions Vacancies (7)*

**III Recommendations on DLLR's Current Proposed Legislation:**

- Understanding that we have only descriptions and not proposed legislation, we support the proposed legislation related to appraisers and home inspectors.
- We wholeheartedly support the continuation and short sunset review for the Office of Cemetery Oversight this session; we suggest the administration work with legislative partners regarding whether the office should have general or special funding.
- We support the work of the Joint Design Boards. We suggest that the administration work with the legislature and the affected licensees about the details of the funding and license fee legislation, remembering that current law is in effect until June 30, 2008, and would allow for action to be taken next session.

**Labor and Industry**

**I Overview and Mission:**

The Division of Labor and Industry's (DLI) mission is to protect and promote the health, safety, and employment rights of workers in Maryland by providing direction and support to the programs within the Division. These programs are: (1) the Employment Standards Service, (2) the Railroad Safety and Health program; (3) the Safety Inspection program; (4) the Prevailing Wage unit; and the Maryland Occupational Safety and Health (MOSH) program .

**II Pressing Issues:**

**A number of serious issues confront the Division of Labor and Industry (DLI) in various areas from staffing to salaries to service provision and protection of Maryland workers.**

- In order to fulfill its mandate in the 21<sup>st</sup> Century, DLI needs to adapt to the rapidly developing business and labor environment throughout the State. The Division must rise

to new challenges by examining the shortfalls in salaries/staffing levels for each program, as well as by evaluating new legislative mandates and demographic changes rapidly taking place in the State. The Division has not kept pace to meet the realities of a growing populous, workforce. The new Administration should recognize the urgency of responding to deficiencies by taking steps to re-establish and expand Division capacity, and re-evaluate service needs.

- The single pressing issue common to all programs within the Division is a lack of adequate resources. Under-funding has resulted in inadequate staffing, an inability to either fully carry out legislatively mandated functions, or carry them out at all. Though some programs within the Division benefit from federal or special funding streams, others are limited only to general funds. The result has been inconsistency in the operation and activity levels of these various departments.
- Another pressing issue is the failure to fully address existing and new statutory mandates. This has occurred chiefly in the activity of the Division's Employment Standards Service – the State's wage and employment enforcement unit.
- Finally, Maryland faces an especially acute problem of wage non-payment among low-wage workers in general, and immigrant workers across the State in particular.

### **Staffing Needs and the Impact of a Lack of Staffing**

- Inadequate staffing has resulted in inspection backlogs and unfulfilled mandates, leading to a lack of enforcement of workers' rights and a probable increase in risk to worker and public safety. The following are examples:
  - **Employment Standards Service.** The Employment Standards Service (ESS) was stripped of its funding as a result of policy decisions for FY 2006, resulting in the loss of all experienced wage and hour investigators. While funding for six investigator positions was restored for FY2007, only two of these positions have thus far been filled, due largely to the unattractive base starting salary of a mere \$24,000 per year. Furthermore, the six positions are inadequate to meet the current need; the Division estimates that they need a minimum of 11 investigators to just begin addressing enforcement mandates. Even this estimate, however, is a sharp reduction from prior staffing levels of 35 investigators in the early 1990s.
  - **Elevator Safety Inspection Unit.** This program is charged with annually inspecting the roughly 20,000 elevators, escalators, and dumbwaiters in the state. However, staffing reductions from a prior level of 35 inspectors to a current level of 23 inspectors have resulted in an annual inspection load of roughly 900 per inspector. There is presently a 23% backlog for elevator inspections, representing roughly a six month inspection delay. Moreover, the program is no longer able to conduct re-inspections of elevators cited with safety violations. The program estimates that it would need to double its existing staff to eliminate the backlog and resume re-inspections.

- **Amusement Ride Unit.** This program currently has five full-time employees during the busy season of April through October. In 2006, these five inspectors performed approximately 5,000 inspections. In order to meet this excessive workload, inspectors were regularly required to work for up to seven days per week, resulting in substantial overtime payments by the Division.
- **Boiler and Pressure Vessel Unit.** The legislature has required semiannual inspections of 7,234 uninsured boilers and pressure vessels and annual inspections of 771 high pressure boilers. Among the boilers that DLI is required to inspect, for FY 2007 there is a 29.18% backlog across the State. Due to low salary levels, staff recruitment efforts have suffered resulting in a staffing shortage of 5 out of 11 needed inspectors.

### **Salaries for Existing Staff**

- The Division faces serious staffing shortages due in significant measure to retirement of older employees and the inability to attract and retain new ones. Among investigators and inspectors, there has been a 65% attrition rate within the past four years. Salaries in the federal government and private sectors are routinely at least 20-25% higher than DLI salaries to perform equivalent work. DLI Wage and Hour investigator starting salary is \$24,000 compared \$52,468 for a Wage and Hour investigator in the US Dept. of Labor. As a result, DLI is facing substantial challenges in attempting to fill existing openings with qualified employees. Moreover, it was reported that DLI experiences high turnover when newer employees, after receiving training from DLLR, move on to higher paying jobs.

### **Assuring full compliance with legislative mandates**

- Programs within the Division, such as the Prevailing Wage unit and the Employment Standards Service, are tied to carrying out certain provisions of the Maryland Annotated Code, Labor and Employment Article. However, DLI has not fully undertaken its responsibilities under the Article, this being true for both long-existing functions and new statutory mandates.

**Failure by DLI to enforce Wage Payment, Wage and Hour, Employment of Minors, Equal Pay Act, Farm Labor Contractor Registration.** *Background:* DLLR elected to eliminate funding for the Employment Standards Service twice in the past 16 years, first in 1992. The unit was re-established in 1994 with only 3 wage investigators, previously 35, and limited to investigation and enforcement activity only under the Maryland Wage Payment and Collection Law. Excluded from program activity were investigative/enforcement actions under other State labor provisions within the unit's mission area, e.g., Maryland Wage and Hour Law, Employment of Minors Law, Equal Pay Act and Farm Labor Contractor Registration Law. Operation of the unit was again terminated in 2006. The unit was re-funded for 2007, with an increase in slotted investigator positions from 3 to 6, but with only two thus far hired by January, '07.

- *2005 Budget Bill:* The General Assembly's 2005 Budget Act mandated for the first time the existence of the Employment Standards Service, and required a minimum funding

level for the unit of \$315,000. The Act changed the law to now require enforcement of the provisions of not only the Maryland Wage Payment and Collection Act, but also the Maryland Wage and Hour and Employment of Minors laws, and to carry out the provisions of the Maryland Equal Pay Act. Though these existing State laws were always within the subject area of DLI's Employment Standards Service, never before had the law required that 1) there actually be an Employment Standards Service, and 2) that those specific laws actually be enforced by the unit, rendering these program enforcement activities non-discretionary.

### **Special needs of the immigrant workforce: Epidemic wage violations**

- According to a report by CASA of Maryland, six of the most pervasive wage violations faced by low-wage workers include failure to pay overtime; improper deductions from pay (bringing actual wages received below state minimum); failure to pay for all hours worked; failure to pay minimum wage; payment with bad checks; and misclassification of workers as independent contractors rather than employees. In addition, the report cites a 2004 survey conducted by UCLA of 476 day laborers in the metropolitan Washington counties of Maryland where it was reported that 58% of these workers had been denied their wages at least once, while another 55% were paid less than they had been promised. In failing to fully address this problem, DLI's lack of bilingual program staff, restrictive money-handling procedures in the Comptroller's Office, and a general failure to assess, adapt and respond to changes in the State's workforce demographics (discussed in the Recommendations section below) have all led to a greatly disproportionate economic impact on this important labor sector, and contributing to this problem.

### **III Recommendations:**

#### **Restore staff numbers and raise staff salaries to competitive levels.**

- This will work to ensure 1) the retention and career longevity of existing program staff , 2) the attracting of new staff with promises of career-sustaining compensation, and 3) improvement in the quality, through competency, of service to the people of Maryland. DLI (and DLLR), in taking these actions, must be realistic in its commitment to providing the staff necessary, at a competitive compensation level, to accomplish the unit's expanded mandate.

#### **Mission statements should be redrafted, Employment Standards Service program activities and staffing should be modified to fully comport with legislative mandates and re-assessed service needs.**

- Though resumption of full Wage Payment and Collection enforcement is vital, the Division will need, as well, to fully understand the new enforcement mandates it is now subject to, and modify both program mission, staff and activities to accommodate them.

#### **Implement a special immigrant needs initiative to identify and respond to the wage and employment problems associated with this burgeoning demographic community in Maryland.**

- DLI must understand changes in workforce demographics rapidly taking place across the State. The Division should focus on the needs of immigrant workers for the benefit of the entire workforce, including greater public education and outreach, provision of information in multiple languages, foreign language competency of investigators, and improved access to investigators for immigrant workers throughout the State, particularly in remote and rural locations.

**Establish effective outreach and public information efforts as proactive means to decrease statutory violations of wage and employment laws and better protect Maryland workers.**

- DLI should work to develop and disseminate greater public education and training materials, and proactively engage communities of workers and employers on wage and employment laws through outreach efforts to community groups, hiring halls, worksites and trade associations.

**Systematically and proactively investigate industries with high numbers of violations to achieve a greater impact.**

**Develop a pilot program to engage community participation, establish partnerships and build local capacity in addressing chronic issues of wage and employment violations.**

- Through a targeted program designed to address the rampant violations of workers rights in certain communities, DLI could encourage the development of partnerships with/between groups representing workers, business sectors, States Attorneys and citizens to identify, prioritize and address problems chronically inherent in certain local labor markets.

**Eliminate or modify requirement for Social Security numbers of wage claimants.**

- Current State requirements for handling funds collected as unpaid wages on behalf of wage claimants involve deposit to the State treasury through the Office of the Maryland Comptroller. However, Comptroller rules require a valid Social Security number as prerequisite to issuing wage claimants a check from the State representing these collected funds. As the effect of this discretionary policy has been to deny wage claimants access to their earned wages, the system should be immediately modified or eliminated, and checks should either be issued to claimants as named payees without any Social Security number, or wage investigators within the Division should be allowed to facilitate transfer of an employer's check directly to a wage claimant without first depositing these funds in the State's account.

**Establish a Governor's Commission on Maryland Wages and Employment.**

- Chaired by the Commissioner of Labor and Industry, this commission could, at a minimum, consist of representatives of labor and business groups, as well as local and State agencies and legal/judicial entities and actively address issues of concern involving wages and employment rights facing Maryland's workforce. Examples include investigating chronic issues involving immigrant labor, prevailing wages, child labor, employee versus independent contractors, overtime and equal pay.

### **Community Advisory Committee.**

- As an alternative or an adjunct to a Governor’s Commission, establish a community advisory committee comprised of representatives from community and labor groups to help define and identify new goals for the Division, and work with the Division on an ongoing basis.

### **Actively expand efforts across the Division to hire qualified Spanish speaking and other diverse investigative and support staff.**

- The Division’s staff should more fully reflect the character, language and diversity of the people for whom it provides its services.

### **Work to develop better integration with other DLLR divisions.**

- DLLR should encourage greater efforts on the part of its various divisions to assist in the performance of each other’s missions through information sharing and enforcement efforts when opportunities are found to do so. For example, the Department’s Division of Occupational and Professional Licensing and the Employment Standards Service should study the impact of expanding the scope of its disciplinary actions against home improvement contractors and home builders to include cases of wage theft and employment fraud.

## **IV Long Term Challenges and Solutions**

### **Cross-Cutting issues: Protecting workers and workforce development.**

- A prime long-term challenge facing the Division of Labor and Industry, and its wage and employment protection function, involves observing the larger picture of wage and employment protection in Maryland, and connecting the dots between wholly divergent State and local entities holding similar core principles. Workplace and employment protection in Maryland should begin to be considered in the light of promoting solutions on a broad scale rather than only repairing the injuries which occur case by case. Considering wage payment and collection, one should think in terms of economic stability of Maryland families. With this in mind, a line can be drawn to DLI’s sister division of Unemployment Insurance, where a similar objective exists of assisting Maryland families facing work-related economic loss.
- In the long term, through innovative thinking, the principles of maintaining workplace relationships could be leveraged to address multiple issues concurrently, and alternative solutions such as workplace mediation, trainings and other broad and cross-cutting labor and employment outreach could begin to see systemic change taking place for the benefit of Maryland’s workers.

## **Financial Regulation**

### **I Overview and Mission:**

Financial Regulation is charged with supervising state chartered commercial banks, trust companies and credit unions. It is also responsible for licensing, regulating, and examining a variety of other providers of financial services including mortgage lenders, brokers and loan originators among many others.

The Division handles about 3,000 complaints annually from consumers on a variety of issues involving transactions with licensees. It is also empowered to bring charges in court where necessary.

The Office has a budget of \$6.869 million for FY 2007 and a budget request of \$7.254 million for FY 2008. The Office is funded by General Fund appropriation of \$2.935 million and by three special fund appropriations.

## **II Funding Issues**

- The Office has a general fund appropriation for general supervision of the banking and credit union industries and three special funds for licensee regulation of mortgage brokers and originators, debt service companies and money transmitters. These Special Funds vary in size based on the number of licensees and the cost of each license. Most licenses are renewed biennially and expire at the end of a calendar year. The mortgage fund will collect about \$5.7 million in FY 2007 while the money transmitters will collect about \$45,000 and the debt management services only about \$5,000.
- The special funds supported by licensees are to be used for all regulatory efforts, including enforcement, for matters relating only to those specific licensees. No reversion of any special funds to the general fund is provided in the legislation allowing special funding. Expenditures from both general and special funds are governed by the normal appropriations process. Use of special funds for indirect costs, overhead, support of legal and expenses, are allocated by formula designed by the Secretary's office. *There is potential for a build up of excess revenue over expenditures in these funds over time. The collection, budgeting and use of the special funds should be reviewed and monitored.*
- The Commissioner is not requesting special funding for banking supervision this year because of the potential loss of a major part of the current bank income if a change occurs to a major Maryland bank's charter. It has been a goal of the Commissioner's Office to have all regulated entities funded entirely by the fees they pay and for the Office to retain any excess revenue over appropriations in the special funds. Because the charter of the Mercantile Bank and Trust of Baltimore may change once the acquisition of the company by PNC of Pittsburgh is complete in First Quarter 2007 and would result in a loss of income of \$1.8 million to the Office, no legislative request will be made for special funding this year.
- Generally the regulated industry supports special funding because additional money is available for regulation and enforcement of their industries and because if long-term imbalances occur between revenue and appropriations licensees' and banks' fees might be reduced.

## **III Recommendations**



- Management of complaint and enforcement of Maryland consumer protection laws is a central mission of the Office. One of their MFR goals is to dispose of 68% of consumer complaints and inquiries within 60 days. The Office has been meeting and exceeding this goal. With added resources from special funds, however, the Office should consider increasing from 68% their goal for the percentage of complaints reaching disposition within 60 days and possibly revise upward their goal of reaching 75% satisfied on their customer satisfaction survey.
- Enforcement of consumer protection laws should be maintained or escalated for all consumer laws. Special funds now give added support for only three categories of licensees but support is required for investigation and prosecution of all illegal activities by licensees.
- Licensees are also constituents of the Commissioners office and should be able to rely on timely service as their income and livelihood depend on being properly licensed. Currently the Office is processing about 9,100 new licensee applications for mortgage originators. The process appears to be on track but many applicants will have conditional licenses that will become permanent without further activity on the part of licensees if no legal bar to their final license approval is uncovered during a review of the documentation the licensee has submitted.
- Legislative auditors found in 2004 that mortgage lenders were not being examined within the time frames required by state law, sometimes overdue for periods of years. The examinations are to ensure the lenders comply with applicable laws and regulations. The examinations often result in refunds for consumers who have been overcharged and allow the Office to provide better supervision of licensees' activities. The Office's response to the finding indicated that staffing had not increased in proportion to the number of new licensees. Additional staff now have been hired through special funds but the Office still predicts that it will not meet the statutory requirements for completed examinations in FY 2007.

## **Operations**

A large percentage of senior bank supervisory staff is now eligible for retirement and is paid significantly less than examiners at the federal supervisory agencies. This long-term differential is of concern to the Office, which believes that pay increases for the bank supervisors will promote longer service and allow improved recruiting. An "over the target" request for \$143,000 is being made in the FY2008 budget request to support salary increases and to execute the approved review that has been completed by the personnel section of the Office of Budget and Management.

- We recommend that the new administration carefully look at this request, which appears to have merit. In a related staffing issue, however, PNC Bank's recently purchased The Mercantile Bank and Trust Company, the largest bank supervised by the Office. Although no decision has been communicated to the Commissioner, the new owner may change its state charter to a federal charter eliminating about \$1.8 million in annual

revenue and possibly affecting workload and staffing. Reductions in staffing would be handled through attrition according to the Commissioner.

## **Legislation**

The Office has submitted two banking law reform bills, an information sharing bill and bill to amend the debt collection agency law for review by the Secretary's office in preparation for possible introduction in 2007.

- After review of the banking reform bills we recommend that careful review be made of the provisions that would reduce interest rates paid to consumers on certain escrow and savings accounts. Although the change would provide relief for the industry that now is required to pay these rates while their competitor federally-chartered institutions are not, they will affect consumer benefits. The information-sharing proposal appears to allow examination finding about violations of the Bank Secrecy Act to be shared with federal agencies and other state bank regulators. The debt collection agency proposal attempts to redefine a debt collector and will bring a certain new category of collector who purchases debt to collect under the statute for regulation by the Office. Both the information sharing and the debt collection proposals are reasonable approaches to these problems.
- The Commissioner has also proposed in past years that a federal lending law be passed and has asked for a Maryland legislative resolution supporting that concept to be sent to our congressional delegation. The issue is whether states should be allowed to regulate subsidiaries of national banks and whether all companies regardless of charter or affiliation with a bank should be governed by national lending standards. The issue is now before the Supreme Court that granted cert in the case of Wachovia v. Watters. The Maryland AG has filed an amicus brief on behalf of the Commissioner supporting state regulatory authority. We recommend the governor take no position on this issue until that appeal has been decided.
- Debt management companies are currently the subject of a joint report by the Office and the Attorney General's Office to the Economic Matters and Senate Finance committees. The Commissioner's Office and the AG Consumer Protection Division disagree, however, on how the entities should be covered and regulated under the law. What action the committees will take after they review the report is unclear.

## **Unemployment Insurance**

### **I Overview and Mission:**

Maryland's Unemployment Insurance ("UI") program provides a safety net to assist jobless workers to meet basic needs while they secure new employment.

Maryland's UI program currently has a healthy trust fund (\$1 Billion). Unemployment taxes on employers are at an all-time low. Nevertheless, Maryland's unemployment safety net has failed to keep pace with our changing economy. The maximum benefit level has not increased in four years and is not sufficient to prevent many workers, especially low-wage workers most at risk of losing their jobs, from falling into poverty. In addition, large portions of Maryland's

unemployed workers (approximately 70%) either do not access or are ineligible for benefits due to restrictive, outdated eligibility rules that do not comport with today's modern economy.

We recommend significant administrative and legislative changes to ensure that Maryland's UI program is reformed to keep pace with today's economy. We recommend that the State authorize use of a portion of the Reed Act funds to finance some of the administrative changes recommended, without endangering the healthy status of the trust fund. Approximately \$73 million of Reed Act funding could be taken from the trust fund without endangering its healthy status or raising taxes on employers.

## **II Pressing Issues:**

### **Authorize Portion of Reed Act Funds to Update Maryland's UI Program**

- In March 2002, Congress passed the Job Creation and Worker Assistance Act of 2002 which directed the federal government to distribute \$8 billion in excess federal unemployment trust funds to states known as "Reed Act" funds. Maryland received \$142.9 million of the distribution.
- The 2002 law states that the purpose of the Reed Act funds is to help states to pay unemployment insurance benefits and/or for the administration of unemployment and employment center programs (also known as Job Service). In addition to providing benefits, the 2002 law specifically states that the funds should be used to:
  - (1) provide state-funded extension of benefits;
  - (2) provide benefits to people seeking or available only for part-time work;
  - (3) provide benefits to workers who would qualify for UI benefits with consideration of their most recent earnings;
  - (4) improve filing for claims and payment methods;
  - (5) provide increased staffing to handle increased caseloads and to avoid delays;
  - (6) pay for administrative costs associated with the alternative base period and computer programming and
  - (7) UI and employment service automation costs and performance improvement.
- The Reed Act funds have not yet been used for the intended purposes: benefits distribution and/or administration of UI and Job Service and would require state legislature approval for any distribution. The funds have been used to help maintain a level of healthy solvency for Maryland's UI system. The \$142.9 million in Reed Act funds help to bolster the UI trust fund level of \$1 Billion.
- The state legislature should pass legislation to authorize use of these funds to help those truly in need -- unemployed workers. In particular, we recommend a raise in the benefit level, an expansion in the workers eligible for benefits (see legislative recommendations below), and use for better administration of the program and job service assistance.

### **Benefit Levels for Claimants not Keeping Pace**

- Maryland has not increased the benefit level for claimants in four years. The maximum benefit level \$340 per week is insufficient to prevent many workers from falling into

poverty or to bolster the economy during times of recession. The state's benefit formula is set to replace 54% of a worker's previous wages plus a dependent wage of \$8 per child per week but it replaces only one-third because of the cap of \$340. Additionally, Maryland's benefit level ranks as the 37<sup>th</sup> lowest state in wage replacement with an average weekly benefit amount of \$275. In order for Maryland to keep the unemployed out of poverty while they transition to a new job, the benefit level should be raised on an annual basis dependent on the average weekly wage which would be about \$450 at this time. Prior to doing so, a careful analysis should be performed to determine the impact of raising the current benefit cap so as to assure the continued health of the UI fund.

### **Eligibility Rules not Keeping Pace with the Modern Economy to Ensure Accessibility to all Jobless Workers.**

- Maryland's modern workforce and economy, which increasingly uses part-time workers, women, low wage and non-traditional workers. Maryland's UI program should follow the national trend of changing its eligibility rules to ensure an adequate safety net for all jobless workers who lose work through no fault of their own. In particular, Maryland should provide UI benefits for: workers who worked enough hours to qualify but are ineligible because of the out-dated method used to calculate eligibility (also known as an "alternative base period"), such as new workers and those reentering the workforce who often are the first to lose their jobs; workers who leave one job for a higher paying job, and then get laid off from the new job through no fault of their own; and workers who are only available or seeking part-time work for reasons such as health/medical, family and school. The Administration must address the fact that low-wage workers are most heavily impacted by the current policies and work to address these issues.
- Maryland's UI program has become more efficient and streamlined by using telephone and internet claims processes. These procedures, however, may have restricted access to claimants with limited English proficiency ("LEP"). A portion of Reed Act funding should be used to improve access to LEP individuals, including development and distribution of forms in multiple languages and automated voice messages in languages other than English. In addition, the option to file a claim in-person should be accommodated.

### **III Recommendations:**

#### **Raise the benefit level for claimants**

- The current maximum benefit level of \$340 per week should be increased to approximately \$450 per week to allow claimants to keep up with their basic expenses, assuming an actuarial analysis reveals no adverse impact on Fund viability. The appropriate benefit level increase should be determined yearly by basing the maximum benefit level on the average weekly wage of the previous year, as practiced in most other states.
- **Reed Act funds should be used to pay for the increase in the benefit level and the state should give serious consideration to increasing the taxable wage base which**

**would provide greater solvency to the trust fund. This would make it less dependent on the \$142.9 million in Reed Act funds for its stability.**

### **Discussion of best practices regarding funding of program and employer taxes**

- Currently, the UI trust fund level is reported to be \$1 Billion which is healthy. According to the U.S. Department of Labor, at \$1.2 Billion Maryland's UI trust fund level would have the optimal level of solvency (average high cost is 1.46% of wages) because it would have enough money saved to pay one year of peak-level benefits.
- One way to increase the fund level would to increase the taxable wage base which was last changed in 1993 and has fallen behind wage growth. The state of Maryland's wage base is taxed at \$8500, not far above the federally mandated level of \$7000, and well below the average of \$13,487. Twenty-nine states have a higher taxable wage base than Maryland and sixteen and the Virgin Islands index the wage base. While this would mean an increase in employer taxes, it would provide a larger, more stable trust fund --- less reactive to recessionary times.
- Maryland has some of the lowest employer taxes in the country. Given the healthy trust fund status, an increase in employer taxes is not needed at this time. Over the long-term, however, it is important for the state have a solvent trust fund that is less reactive to recessionary times. The Administration should develop a long-term plan to maintain a healthy trust fund while keeping employer taxes at a reasonable level.

### **Enhance relationship between workforce development and UI department**

- **A portion of Reed Act funding should be authorized to assist in the administration of Maryland's Job Service and workforce development programs so that unemployed workers may develop the skills they need to be redeployed into the economy.**

### **Continue to pursue better technology (such as debit cards and internet application development)**

- The UI program is transitioning to a "debit card" system (rather than paper checks) that will result in substantial savings to the program by reducing postage and administrative costs, and assist in fraud prevention. The debit card transition should continue and be implemented as soon as possible.
- **In addition, Reed Act funding can and should be used to develop a more accessible internet claims process, including accessibility in multiple languages.**

### **Workforce Challenges Facing UI Division**

#### *EEO/Affirmative Action/Diversity Programs*

Develop and implement a divisional Diversity and Affirmative Action Plan/Policy and performance measures inclusive of EEO, establish and maintain an outside state government

oversight interest group, and report quarterly. To ensure superior service delivery within the workplace it is in the best interest of the Citizens of Maryland to have a smoothly working Affirmative Action and Diversity plan/policy (program) for employees. It is in the interest of the entire DLLR to put teeth in these two categories by insisting that personnel “in charge” of each division to include Unemployment Insurance, have an aggressive plan in place to make them work.

- Recommendation: Implement Divisional Affirmative Action and Diversity programs and oversight in the Division of Unemployment Insurance to include state and/or Departmental EEO policy and report quarterly.

#### *Ensure sufficient services with well-trained staff*

The highlights of the Department of Labor, Licensing and Regulation Accomplishments January 2003 – November 2006 clearly identifies that the Division of Unemployment Insurance has developed and transitioned into an operable Information Technology system. The system has developed a new Web Tax application for employers. This completely replaces the old Internet tax application and lays the groundwork for future expansion of UI services to employers on the Internet. In that the system expands the ability to file Internet claims for Unemployment Insurance by allowing combined wage claims and weekly continued claim certifications to be filed on the Internet and to allow military employees to file online, and efficiently trained staff is imperative.

- Recommendation: Highly train employees, maintain training updates and oversight, secure and maintain state of the art technology hardware, software and other materials.

#### *Retirements in the UI Department*

House Bill 1737 - State Employees' and Teachers' Retirement Enhancement Benefit Act of 2006 does not implement a tax increase. This legislation provides that employees hired after 1998 have a benefit threshold that equals 54% of salary after 30 years of service instead of the previous 42%. This legislation increases the “multiplier” – or the percentage of an employee’s average final salary earned each year toward a retirement which calculates retiree’s annual payment from 1.4% to 1.8%. To help pay for the enhanced benefit, employees contribute 5% of their annual compensation, up from 2% that is phased in over a three-year period. The bill also allows the 120 local governments who participate in the employee pension system to opt in to the enhanced benefits by June 30, 2007. Consequently, the department is losing valuable experienced employees to attrition.

- Recommendation: Any perception that the Governor will lean toward raising taxes for higher retirement payouts is certain to be met with resistance from the business community in general. We recommend a campaign to raise levels of awareness and educate the business community, organized labor, and employees about the real “benefit payouts” and current rates which are the lowest in years. The more the business community, labor and employees understand the retirement structure, the less assumption of “infringement” will be perceived. Recommend no change in retirement structure. Institute a study to shift benefit thresholds and years of service to attract enhanced employee employment longevity.

### **Eliminate language barriers for LEP individuals**

- Jobless workers with LEP have increasing difficulty accessing the program because of language barriers imposed by the telephone claims process. Reed Act funding should be used to eliminate language barriers by producing materials in multiple languages, develop automated telephone systems in multiple languages, and permit in-person claims. In addition, adequate and competent translation services should be made available during the appeals process.

### **Develop alternative dispute resolution program for employers and employees**

- Unlike many other state agencies, DLLR has not yet developed a mediation program to assist its constituency (employees and employers). A mediation program could assist in resolving workplace disputes before workers are fired, causing them to enter the UI program. In addition, a mediation program could assist in resolving disputes about eligibility for benefits to avoid the expense and delays caused by adversarial appeals. DLLR should designate a work group of employee and employer representatives to develop a program.

### **Make appeals process understandable and fair, and ensure access to counsel if claimants desire to be represented**

- The adversarial appeals process can be an intimidating one, especially for claimants who are not represented by counsel and must confront attorneys representing the employer. Low-wage workers should be advised of free legal services, such as the Legal Aid Bureau, throughout the claims and appeals process. In addition, currently there is a very low cap on the fees that a claimant's attorney may collect. The cap on fees should be eliminated or increased.

### **Consolidate operations to enhance cost-savings**

- The Director of the DUI recommends that all UI operations in the Baltimore area be consolidated to one central location in Baltimore City, closing the operations in Towson and Southwest Baltimore. We recommend such consolidation of operations to prevent duplicative overhead costs and enhance administrative cost-savings to the Division.
- In addition, over the long-term, DLLR should examine the UI appeals process to determine whether a two-tiered appeals process is necessary. Consideration should be given to the possibility of having one appeal at the administrative level, with any further appeals being filed in the circuit court acting as an appellate court. This should be evaluated in conjunction with the development of a mediation program to eliminate the workload burden on the UI appeals division.

### **Continue Unemployment Oversight Committee**

- The Unemployment Oversight Committee should be continued to provide advice about how to improve the UI program. The membership on the Committee should be well-balanced between business, labor unions, and worker advocate (such as the Legal Aid

Bureau, CASA of Maryland, the Job Opportunities Task Force, and the Maryland Employment Lawyers Association).

#### **IV Legislative Recommendations:**

##### **Pass legislation authorizing use of Reed Act funds**

- See the discussion above in *Authorize Portion of Reed Act Funds to Update Maryland's UI Program (1<sup>st</sup> Bullet)*
- This should be a top priority to update and expand eligibility for the program for the workers trying to improve their economic condition who are presently not eligible for benefits (See *Pass legislation to ensure that workers trying to better...3<sup>rd</sup> Bullet*)

##### **Pass legislation to enable Maryland to collect its own federal UI tax, which will garner approximately \$35 million in additional funding**

- In 2005, the Federal Unemployment Tax Act (FUTA), which is collected by the Internal Revenue Service, brought in \$135 million in employer taxes (\$56 per worker). Maryland received less than \$68 million of the \$135 million back from the federal government. In 2008, the Department of Labor may allow states to collect their FUTA tax on a pilot basis to improve the program. If this happens, Maryland would be able to keep a minimum of 80% of this money which would mean a gain of approximately \$35 million per year to the UI program. FUTA pays for the administration of UI and Job Service, extended unemployment benefits, and offers states loans when needed.

##### **Pass legislation to ensure that workers trying to better their status are not penalized when they lose work through no fault of their own and to keep pace with the modern economy**

- Maryland's UI system was established during an economy drastically different from the world in which we live today. There are many more part-time jobs supporting the economy, and many more women also work part-time while they raise children so their families can afford basic necessities. When these workers lose their jobs through no fault of their own, these families risk falling into poverty without the UI safety net. Part-time workers earn far less than the average Maryland benefit of \$275 but this money helps families.
- In addition, Maryland should follow the national trend of adopting an "alternative base period" so that workers who are trying to better their economic status are not penalized when they lose work through no fault of their own. For example, individuals who exit welfare and enter the workforce and new workers are often the first to be laid off in times of economic hardship. Many of these workers have worked the hours to qualify for UI benefits and should be able to access the UI safety net to prevent them from falling back into the cycle of poverty.
- Maryland should also pass legislation to reaffirm that individuals who leave one job to pursue a job with higher wages, and then lose that job through no fault of their own, are not penalized. The Maryland legislature did not intend to penalize these workers, but



recent decisions by the Court of Appeals make them ineligible for benefits. *See Plein v. Dept. of Labor*, 369 Md. 421 (2002) and *Total Audio-Visual Systems, Inc. v. DLLR*, 360 Md. 387 (2000). This problem should be corrected. (The Director of the UI Division and the previous Secretary of DLLR support this change.)

- Finally, Maryland's system does not permit the spouses of military personnel, who must quit their jobs to accompany their spouse to a new assignment, to access benefits. Given the large number of military families in Maryland, this problem should be corrected. Military families should not be forced into the dilemma of staying together as a family or being able to afford basic necessities.

**Note:** more extensive discussion of the need to update the UI system to comport with modern economic reality, and sample model legislation to accomplish such reforms, see [www.nelp.org/ui/index.cfm](http://www.nelp.org/ui/index.cfm) and <http://www.jotf.org/>.

## **Racing**

### **I Mission and Overview:**

The horseracing industry represents more than ten thousand citizens employed in the agribusiness of horse breeding and the sport of horseracing. The economic impact of the industry is approximately \$1 billion annually. The industry includes over 20,000 horse farms which are home to approximately 87,000 horses with an estimated worth of \$680 million.

The Commission is responsible for regulating the conduct of racing and pari-mutuel wagering in the State. During the past year, the Commission issued 6,424 thoroughbred licenses and 2,507 standardbred licenses. The Division's operating expenditures during fiscal year 2005 were approximately \$7 million.

The Maryland Racing Commission oversees and regulates both the harness and thoroughbred horse racing industries in Maryland. This includes all of the participants in Maryland racing, from the track itself to the jockeys to the concessionaires who provide food and drink at the racetracks as well as state's off-track betting sites.

The Commission also maintains its own lab to test for drugs in horses to maintain the integrity of the sport and serves as deterrent to the abuse of medications in race horses. It analyzes urine and blood samples taken from horses that compete at Maryland tracks, as well as specimens from selected human participants.

All of these measures protect and perpetuate first class horse racing in Maryland. .

### **II Pressing Issues:**

Currently, the Maryland's horse industry is overseen by two different regulatory bodies: The Maryland Horse Industry Board, which has express jurisdiction over farms that are engaged in

hacking, boarding, and lessons; and the Maryland Racing Commission which has express jurisdiction over licensed facilities (i.e. tracks and Bowie Training Center).

- Combining the two agencies would help solve an unintended gap in jurisdiction. There is no agency with jurisdiction over farms that are specifically used for the training and breeding of horses. At this time there is not a need to regulate these facilities but the sharing of information and resources if it became necessary would be beneficial. The horse industry would benefit greatly (in terms of industry strength, lobbying efforts, etc.) from combining its efforts with the greater agriculture community.
- The broader issue is the economic viability of Maryland racing and its larger horse industry. At present Maryland's purse and bred funds are being quickly out paced by those of race tracks in surrounding states. The industry has witnessed a steep decline in the number of stallions standing at stud, mares covered and horses bred. The numbers declined precipitously until 1998, 1999, and 2000 when Maryland provided a \$10 Million purse fund subsidy in lieu of adopting slots. The numbers of Maryland Mares covered steadied during that three year period and have fallen ever since, while those of surrounding states continue to increase.
- A critical issue for the Governor and General Assembly to weigh carefully in determining the future of Maryland racing is the central role that the horse industry plays in land preservation and open space. Put simply, horse farms maintain Maryland's green space. The more than 20,000 horse farms in our state preserve about 685,000 acres of green open space. That equals 10% of the land in Maryland. It is important to note that much of this preserved land is in suburban areas (i.e. Baltimore, Prince Georges, and Anne Arundel Counties) that are in danger of serious over-development. Additionally, horse farms provide a viable market for local grain farmers, who, in turn, preserve thousands of acres of farmland themselves.

### **III Recommendations:**

#### **Support Continued Economic and Environmental Viability of Maryland's Racing and Horse Industries and Horse Farms.**

- Significantly expand promotion, jointly with DBED and the Department of Agriculture, of Maryland Racing and its Horse Industry and Farms
- Study possible benefits of an independent Racing Authority with bond issuing capability or transfer of Racing Commission to MD Department of Agriculture
- Adjust business model from solely gambling-based to an entertainment destination-based model with emphasis on great customer service
- Modernize facilities or develop new facilities; consider new facility in downtown Baltimore and transitioning Laurel to an upgraded training facility and/or limiting racing dates
- Mitigate further erosion of racing's market share by its principal competitor, the State Lottery, by dedicating proceeds from the Lottery's new RaceTrax game to Maryland Purse Funds
- Support additional short-term subsidies to the Purse Funds until new facilities, marketing and promotion strategies have had chance to take effect

- Undertake, jointly with the Department of Agriculture and DBED, promotion of Maryland-bred horses in international as well as national markets
- Eliminate or reduce 5% sales tax on claiming races in order to make purchases more attractive to prospective buyers
- Propose legislation to eliminate the 6:15 rule which precludes racing or simulcast betting on thoroughbreds after the 6:15PM Start time, pursuant to a recent agreement finally reached by the Thoroughbred and Standardbred industries
- Redefine legalities regarding telephone account wagering, off track betting and simulcasting
- Examine salary caps and other funding limits for lab testing, which have precluded retaining skilled laboratory staff and limit necessary testing
- Increase from \$5,000 to \$25,000 per day fines that Commission can levy on race tracks
- Investigate possible regional breeding and racing compacts with surrounding states to promote racing and limit overlapping racing days
- Review Racing Commission appointments, structure, policies, including possible compensation for members to assure necessary expertise and consistent attendance