

**D39S00**  
**Maryland State Board of Contract Appeals**

***Operating Budget Data***

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(\$ in Thousands)

	<b>FY 02</b>	<b>FY 03</b>	<b>FY 04</b>	<b>FY 03-04</b>	<b>FY 03-04</b>
	<u>Actual</u>	<u>Approp</u>	<u>Allowance</u>	<u>Change</u>	<u>% Change</u>
General Funds	\$458	\$525	\$535	\$10	1.86%
Contingent & Back of Bill Reductions	0	0	-2	-1	
<b>Adjusted General Funds</b>	<b>\$458</b>	<b>\$525</b>	<b>\$533</b>	<b>\$9</b>	<b>1.63%</b>
<b>Adjusted Grand Total</b>	<b>\$458</b>	<b>\$525</b>	<b>\$533</b>	<b>\$9</b>	<b>1.63%</b>

- The comparison between the fiscal 2003 working appropriation and fiscal 2004 allowance accounts for fiscal 2003 and 2004 contingent and back of bill reductions.
- Total funds increase by \$8,552 (1.6%). There are only changes in general funds.

***Personnel Data***

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	<b>FY 02</b>	<b>FY 03</b>	<b>FY 04</b>	<b>Change</b>
	<u>Actual</u>	<u>Working</u>	<u>Allowance</u>	<u>Change</u>
Regular Positions	5.00	5.00	5.00	0.00
Contractual FTEs	0.00	0.00	0.00	0.00
<b>Total Personnel</b>	<b>5.00</b>	<b>5.00</b>	<b>5.00</b>	<b>0.00</b>

***Vacancy Data: Regular Positions***

Budgeted Turnover: FY 04	0.00	0.00%
Positions Vacant as of 12/31/02	0.00	0.00%

- There is no budgeted turnover for fiscal 2004.
- There are no vacant positions as of December 31, 2002.

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

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## ***Analysis in Brief***

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### **Issues**

***Consolidation of the Maryland State Board of Contract Appeals with the Office of Administrative Hearings (OAH):*** It is possible that the State could achieve cost savings by consolidating the Maryland State Board of Contract Appeals with OAH. The Department of Legislative Services has provided a range of options regarding the possible consolidation of the board with OAH.

### **Recommended Actions**

1. Add budget bill language to consolidate the Maryland State Board of Contract Appeals with the Office of Administrative Hearings.

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***Operating Budget Analysis***

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**Program Description**

Title 15, Subtitle 2 of the State Finance and Procurement Article established the Maryland State Board of Contract Appeals and vested it with the authority to hear and resolve all protests and disputes relating to the letting of contracts, and the performance breach, modification, and termination of State contracts. Statutory qualifications to serve on the three-member panel are the ability to serve in a quasi-judicial capacity and possession of a thorough knowledge of procurement practices and processes. The Maryland State Board of Contract Appeals mission addresses the need to:

- resolve bid protest and contract claims before the board in the least time possible consistent with established legal requirements; and
- enhance the value and credibility of board opinions, by providing in a timely manner, written opinions in sufficient detail and with appropriate research and documentation to serve as guides to future actions by procurement authorities, the legal community and contractors doing or wishing to do business with the State.

**Performance Analysis: Managing for Results**

A review of the submitted Managing for Results (MFR) performance data generally shows that performance is moving (or is estimated to move) in a positive direction. The Board of Contract Appeals effectively links its performance measures to goals and objectives. Objective 1.1 is to publish bid protest opinions within three months or less after receipt of the Agency Report. The board provides a performance measure with the number of bid protest decisions issued in three months or less. The board has achieved (or expects to achieve) at least an 80% rate from fiscal 2001 through 2004. Objective 1.2 is to publish contract claim opinions within six months or less of the close of the record. The board provides a performance measure with the number of opinions issued in six months or less. The board has achieved (or expects to achieve) a 100% rate from fiscal 2001 through 2004.

Objectives 1.1 and 1.2 both have performance measures that can help determine if the two objectives have been met. However, Objectives 2.1 and 2.2, both listed in **Exhibit 1**, have no performance measures. Objective 2.1 is difficult to quantify and Objective 2.2 is outside of the board's control.

**The Maryland State Board of Contract Appeals should comment on whether Objectives 2.1 and 2.2 are effective MFR objectives. The board should consider revising the objectives for fiscal 2005.**

Exhibit 1 provides a sampling of MFR measures and all MFR objectives.

**Exhibit 1**

**Program Measurement Data  
Maryland State Board of Contract Appeals  
Fiscal 2001 through 2004**

	<u>FY 2001 Actual</u>	<u>FY 2002 Actual</u>	<u>FY 2003 Est.</u>	<u>FY 2004 Est.</u>	<u>FY 01-02 Ann. Chg.</u>	<u>FY 01-04 Ann. Chg.</u>
Number of new appeals filed	15	31	24	23	106.7%	15.3%
Number of appeals requiring a written decision	10	15	21	18	50.0%	21.6%
Number of bid protest decisions issued in three months or less	9	12	18	16	33.3%	21.1%
Percent of bid protest decisions issued in three months or less	90%	80%	86%	88%	-11.1%	-0.8%
Number of contract claim opinions issued	5	7	7	8	40.0%	17.0%
Number of contract claim opinions issued within six months or less of the close of record	5	7	7	8	40.0%	17.0%
Percent of contract claim opinions issued within six months or less	100%	100%	100%	100%	n/a	n/a
<b>Objective 1.1</b>	Publish bid protest opinions within three months or less after receipt of the Agency Report.					
<b>Objective 1.2</b>	Publish contract claim opinions within six months or less of the close of the record.					
<b>Objective 2.1</b>	Continue to conduct all hearings, conferences, motions, discovery and related actions according to accepted judicial practices, board requirements and consistent with an established schedule.					
<b>Objective 2.2</b>	Require that attorneys file required documents timely and in accordance with established judicial standards and board rules.					

Source: Maryland State Board of Contract Appeals

**Impact of Cost Containment Fiscal 2003**

Fiscal 2003 cost containment reflects the reversion of \$330 in appropriations to support free transit ridership for State employees, contingent upon enactment of a provision in the Budget Reconciliation and Financing Act (BRFA) of 2003.

**Governor's Proposed Budget**

The fiscal 2004 allowance for the Maryland State Board of Contract Appeals is \$533,439. This represents an increase of \$8,552 (1.6%) over the fiscal 2003 working appropriation. There are only changes in general funds. The comparison between the fiscal 2003 working appropriation and the fiscal 2004 allowance accounts for contingent and back of bill reductions.

Total personnel expenses account for an increase of \$12,308. This change includes increases of \$12,755 for health insurance and \$1,075 for retirement. The change also includes a \$1,522 decrease for workers' compensation and other adjustments. Nonpersonnel changes include a \$4,000 increase for Internet services provided by the Maryland Archives, a \$2,000 decrease for legal support and administrative services, and \$2,000 decrease for conferences and seminars.

**Exhibit 2** shows the distribution of funds. The fiscal 2003 working appropriation and the fiscal 2004 allowance are adjusted to include contingent and back of bill reductions.

**Exhibit 2**

**Governor's Proposed Budget  
Maryland State Board of Contract Appeals  
(\$ in Thousands)**

	<u>FY 02</u> <u>Actual</u>	<u>FY 03</u> <u>Approp</u>	<u>FY 04</u> <u>Allowance</u>	<u>FY 03-04</u> <u>Change</u>	<u>FY 03-04</u> <u>% Change</u>
General Funds	\$458	\$525	\$535	\$10	1.86%
Contingent & Back of Bill Reductions	0	0	-2	-1	
<b>Adjusted General Funds</b>	<b>\$458</b>	<b>\$525</b>	<b>\$533</b>	<b>\$9</b>	<b>1.63%</b>
<b>Adjusted Grand Total</b>	<b>\$458</b>	<b>\$525</b>	<b>\$533</b>	<b>\$9</b>	<b>1.63%</b>

**Where It Goes:**

**Personnel Expenses**

Health insurance .....	\$13
Retirement .....	1
Deferred compensation match.....	-2

**Other Changes**

Internet services including Internet, e-mail, and web site maintenance .....	4
Legal support and administrative management .....	-2

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**Where It Goes:**

Conferences/seminars.....	-2
Office supplies.....	-1
Subscriptions .....	-1
Printing/reproduction.....	-1
<b>Total</b>	<b>\$9</b>

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

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**Impact of Cost Containment Fiscal 2004**

The fiscal 2004 allowance reflects the elimination of the \$1,557 appropriation for matching employee deferred compensation contributions up to \$600, contingent upon enactment of a provision in the BRFA of 2003.

## Issues

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### 1. Consolidation of the Maryland State Board of Contract Appeals with OAH

In September 1997 the Department of Legislative Services (DLS) issued a report to the Maryland General Assembly entitled *The Feasibility of Consolidating Administrative Appeals Agencies*. In this report, DLS proposed merging the Maryland State Board of Contract Appeals, the Maryland Tax Court, and the Property Tax Assessment Appeals Board into the Office of Administrative Hearings (OAH). OAH estimated that only one additional Administrative Law Judge (ALJ), at a significantly lower salary level than a board member, could handle the new contract appeals caseload with the help of two support staff.

It is possible that the State could achieve cost savings by consolidating the Maryland State Board of Contract Appeals with OAH. The board has a relatively narrow jurisdiction. OAH holds hearings in contested cases involving State agencies. The office was created in 1989 to centralize the hearing functions in various units of State government. Administrative law judges, who are all attorneys, hear about 60,000 cases per year. OAH has a fiscal 2004 budget of \$10.8 million and employs 129 people.

DLS has provided a range of options regarding the possible consolidation of the board and OAH.

- **Consolidate the Maryland State Board of Contract Appeals with OAH:** One option is to abolish the Maryland State Board of Contract Appeals and transfer all of its responsibilities to OAH. This option would create a cost savings of roughly \$533,400 assuming that OAH is able to provide support for the new responsibilities within its existing infrastructure. If there is sufficient demand, OAH could add an ALJ position, creating an adjusted cost savings of roughly \$475,000. The 1997 DLS report recommended adding one additional ALJ position to OAH. Given that the number of contract disputes and bid protests have remained relatively level over time (28 new appeals for contract disputes in 1997 and 24 in 2003), the addition of one ALJ position is still a reasonable estimate.
- **Transfer One Board Member of the Maryland State Board of Contract Appeals to OAH:** A second option is to abolish the Maryland State Board of Contract Appeals and transfer one member of the three-member board to OAH. The board member would provide immediate knowledge of procurement practices and processes without requiring OAH to fill the position with an ALJ. This option would create a cost savings of roughly \$418,000 and assumes the elimination of two board members and two support staff positions.
- **Transfer All Board Members of the Maryland State Board of Contract Appeals to OAH:** A third option is to abolish the Maryland State Board of Contract Appeals and transfer all three members of the three-member board to OAH. This option would create a cost savings of roughly \$162,800 and assumes the elimination of two support staff positions.
- **Transfer the Maryland State Board of Contract Appeals' Entire Staff to OAH:** A fourth option is to abolish the Maryland State Board of Contract Appeals and transfer the entire five-person staff to OAH. Transferring the entire staff of the board would eliminate the need for OAH to provide an ALJ and two support staff positions. This option would create a cost savings of roughly \$36,000 and

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would allow full support for the functions of the board within the infrastructure of OAH.

- ***Continue to Operate the Maryland State Board of Contract Appeals without Consolidation:*** A fifth option is to continue to operate the Maryland State Board of Contract Appeals without consolidating its functions with OAH.

**Given the range of options provided regarding the possible consolidation of the Maryland State Board of Contract Appeals with OAH, DLS recommends abolishing the board and transferring all of its responsibilities to OAH. This action can be implemented with an amendment to the BRFA of 2003. DLS asks that the board comment on the possible consolidation of the board with OAH.**

## ***Recommended Actions***

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1. Add the following language:

, provided that \$534,996 of this appropriation shall be reduced contingent upon enactment of legislation transferring the duties of the Maryland State Board of Contract Appeals to the Office of Administrative Hearings (OAH). Authorization is granted to transfer five unfunded PINs to OAH, to be reclassified as appropriate.

**Explanation:** The language eliminates the Maryland State Board of Contract Appeals and transfers its duties to the Office of Administrative Hearings (OAH) contingent on an amendment in the Budget Reconciliation and Financing Act of 2003. The consolidation assumes that OAH could provide financial support for the additional responsibilities within its existing infrastructure.

## *Current and Prior Year Budgets*

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### Current and Prior Year Budgets Maryland State Board of Contract Appeals (\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
<b>Fiscal 2002</b>					
Legislative Appropriation	\$510	\$0	\$0	\$0	\$510
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	0	0	0	0
Reversions and Cancellations	-52	0	0	0	-52
<b>Actual Expenditures</b>	<b>\$458</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$458</b>
<b>Fiscal 2003</b>					
Legislative Appropriation	\$525	\$0	\$0	\$0	\$525
Budget Amendments	0	0	0	0	0
<b>Working Appropriation</b>	<b>\$525</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$525</b>

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

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**Fiscal 2002**

Fiscal 2002 expenditures at the Maryland State Board of Contract Appeals totaled \$458,000, which is \$52,000 less than the legislative appropriation. The \$52,000 reversion occurred with the retirement of one member of the three-member board in December 2001. A portion of the salary from the individual who retired was reverted for fiscal 2002.

**Fiscal 2003**

In fiscal 2003 the legislative appropriation was \$525,000. A planned reversion of \$330 of transit subsidy funds is assumed.

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Appendix 2

Object/Fund Difference Report  
Maryland State Board of Contract Appeals

<u>Object/Fund</u>	<u>FY 02 Actual</u>	<u>FY 03 Working Appropriation</u>	<u>FY 04 Allowance</u>	<u>FY 03 - 04 Amount Change</u>	<u>Percent Change</u>
<b>Positions</b>					
01 Regular	5.00	5.00	5.00	0	0%
<b>Total Positions</b>	<b>5.00</b>	<b>5.00</b>	<b>5.00</b>	<b>0</b>	<b>0%</b>
<b>Objects</b>					
01 Salaries and Wages	\$ 420,059	\$ 485,537	\$ 499,072	\$ 13,535	2.8%
02 Technical & Spec Fees	11,794	14,000	11,899	-2,101	-15.0%
03 Communication	6,369	7,242	6,902	-340	-4.7%
04 Travel	16	2,100	0	-2,100	-100.0%
07 Motor Vehicles	5,162	4,500	5,500	1,000	22.2%
08 Contractual Services	2,753	4,888	7,490	2,602	53.2%
09 Supplies & Materials	2,173	3,000	2,000	-1,000	-33.3%
10 Equip - Replacement	7,390	0	0	0	0.0%
11 Equip - Additional	608	1,200	608	-592	-49.3%
13 Fixed Charges	1,495	2,750	1,525	-1,225	-44.5%
<b>Total Objects</b>	<b>\$ 457,819</b>	<b>\$ 525,217</b>	<b>\$ 534,996</b>	<b>\$ 9,779</b>	<b>1.9%</b>
<b>Funds</b>					
01 General Fund	\$ 457,819	\$ 525,217	\$ 534,996	\$ 9,779	1.9%
<b>Total Funds</b>	<b>\$ 457,819</b>	<b>\$ 525,217</b>	<b>\$ 534,996</b>	<b>\$ 9,779</b>	<b>1.9%</b>

Note: Fiscal 2003 appropriations and fiscal 2004 allowance do not include cost containment and contingent reductions.