

**C98F00**  
**Workers' Compensation Commission**

***Operating Budget Data***

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(\$ in Thousands)

	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>	<u>FY 02-04</u> <u>Change</u>	<u>FY 05</u>	<u>FY 04-05</u> <u>Change</u>
Operations	\$9,781	\$10,877	\$11,391	\$1,610	\$11,500	\$109
Contractual Services	875	1,545	1,359	484	1,239	-120
Grants	52	52	52	0	52	0
Contingent & Back of Bill Reductions	0	0	0	0	-41	-41
<b>Adjusted Grand Total</b>	<b>\$10,708</b>	<b>\$12,475</b>	<b>\$12,802</b>	<b>\$2,094</b>	<b>\$12,750</b>	<b>-\$52</b>
General Funds	10,482	0	0	-10,482	0	0
Special Funds	165	12,415	12,773	12,608	12,761	-12
Contingent & Back of Bill Reductions	0	0	0	0	-41	-41
<b>Adjusted Special Funds</b>	<b>\$165</b>	<b>\$12,415</b>	<b>\$12,773</b>	<b>\$12,608</b>	<b>\$12,720</b>	<b>-\$53</b>
Reimbursable Funds	61	60	29	-32	30	1
<b>Adjusted Grand Total</b>	<b>\$10,708</b>	<b>\$12,475</b>	<b>\$12,802</b>	<b>\$2,094</b>	<b>\$12,750</b>	<b>-\$52</b>
<b>Annual % Change</b>		<b>16.5%</b>	<b>2.6%</b>		<b>-0.4%</b>	

- The fiscal 2002 cost containment action reduced the general fund appropriation by \$141,000 and the special fund appropriation by \$1,000. Cost containment actions have not impacted the Workers' Compensation Commission (WCC) since the 2002 action.
- The fiscal 2005 allowance decreases \$51,979 from fiscal 2004 adjusted working appropriation levels. The Web-enabled File Management System is nearing completion, which accounts for the decrease in special funds. The decrease is offset by the addition of rent on new regional hearing sites, as well as a new file management server – an IBM I-series Model 810.

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

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*C98F00 – Workers’ Compensation Commission*

***Personnel Data***

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	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>	<u>FY 02-04</u> <u>Change</u>	<u>FY 05</u>	<u>FY 04-05</u> <u>Change</u>
Regular Positions	132.5	132.5	128.5	-4.0	128.5	0.0
Contractual FTEs	8.1	8.9	12.8	4.7	17.8	5.0
<b>Total Personnel</b>	<b>140.6</b>	<b>141.4</b>	<b>141.3</b>	<b>0.7</b>	<b>146.3</b>	<b>5.0</b>

***Vacancy Data: Regular Positions***

Turnover Expectancy	3.11	2.42%
Positions Vacant as of 12/31/03	5.00	3.89%

- Regular positions remain constant at 128.5 in fiscal 2005, while contractual positions increase by five. These five positions will examine workers’ compensation file integrity.

## ***Analysis in Brief***

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### **Issues**

***Harris v. Board of Education of Howard County:*** The Maryland Court of Appeals decision in *Vernell Harris v. Board of Education of Howard County* resulted in a significant change to the definition of what is a compensable injury under Maryland Workers’ Compensation law. **DLS recommends that WCC report back on the resulting *Harris*-related impact on claim totals.**

***Bethlehem Steel Bankruptcy:*** The bankruptcy of Bethlehem Steel has resulted in increased scrutiny of the self-insurance division. **DLS recommends that WCC and the Maryland Insurance Administration (MIA) issue a joint evaluation of the possible consolidation of the self-insurance administration.**

### **Recommended Actions**

1. Adopt committee narrative to analyze the possible consolidation of the regulation of self-insured and group self-insured entities.
2. Adopt committee narrative to track the effects of the *Harris* case.

### **Updates**

***SJ1 and HJ1 Potentially Raises Judicial Compensation Levels:*** Senate Joint Resolution 1 (SJ1) and House Joint Resolution (HJ1) propose salary increases for State judges. WCC members’ salaries must be at least equal to a District Court judge.

***Regional Hearing Sites Now Open:*** Four new regional sites are slated to open around the State in fiscal 2004.

***Web-enabled File Management System Nears Completion:*** The Web-enabled File Management System is entering the final phase of development in fiscal 2005.

***C98F00 – Workers’ Compensation Commission***

**C98F00**  
**Workers' Compensation Commission**

***Operating Budget Analysis***

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**Program Description**

The Workers' Compensation Commission (WCC) administers the Workers' Compensation Law. This law requires most Maryland employers to obtain and maintain insurance to provide benefits for employees who sustain an accidental personal injury, occupational disease, or death in the course of their employment. WCC receives, processes, and adjudicates all workers' compensation claims and refers appropriate claimants to the Division of Vocational Rehabilitation. WCC also provides information technology support services to the Subsequent Injury Fund (SIF) and the Uninsured Employers' Fund (UEF) under an interagency support services agreement. WCC is a special-funded agency that recovers expenditures with an annual maintenance assessment imposed on insurance carriers, the Injured Workers' Insurance Fund (IWIF), and self-insured employers. The WCC mission addresses the need for:

- the effective and timely delivery of services provided to its customers;
- a system for electronic exchange of all claims information documents; and
- the establishment of an effective system for collection and analysis of all costs associated with the delivery of workers' compensation benefits.

**Performance Analysis: Managing for Results**

WCC has done a good job of meeting performance goals dealing with the timely adjudication and administration of claims. Objective 1.1 aims to set 90% of non-permanency hearings within 60 days of filing. The commission has achieved this standard, and it is reasonable to assume continued success. WCC also aims to issue 95% of orders within 30 days of concluding hearings. The commission exceeded this goal in fiscal 2002, was slightly under goal in fiscal 2003, and expects to meet the goal in fiscal 2004 and 2005. Finally, WCC looks to ensure that 95% of disputed claims from insurance companies are processed within 15 days of filing. This goal was achieved in fiscal 2002 and 2003.

WCC also tracks the total volume of cases filed with the commission. While claims have dropped by 2.2% from fiscal 2001 to 2003, the commission anticipates an increase of 5% from fiscal 2003 to 2005. Also worth noting is the estimate that appeals will increase 2% annually between fiscal 2003 to 2005, as shown in **Exhibit 1**. **WCC should comment on whether these estimates account for the broadening of the "compensable injury" standard established by the Maryland Court of Appeals decision in *Harris v. Board of Education of Howard County*.**

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**Exhibit 1**  
**Program Measurement Data**  
**Workers’ Compensation Commission**  
**Fiscal 2001 - 2005**

	<u>Actual</u> <u>2001</u>	<u>Actual</u> <u>2002</u>	<u>Actual</u> <u>2003</u>	<u>Est.</u> <u>2004</u>	<u>Est.</u> <u>2005</u>	<u>Ann.</u> <u>Chg.</u> <u>01-03</u>	<u>Ann.</u> <u>Chg.</u> <u>03-05</u>
Set 90% of non-permanency hearings within 60 days of filing	n/a	92%	89%	90%	90%	n/a	0.6%
Issue 95% of commission orders within 30 days of hearings end	n/a	98%	92%	95%	95%	n/a	1.6%
Process 95% of disputed claims from insurance companies (and self-insured companies) within 15 days of filing	n/a	95%	95%	95%	95%	n/a	0.0%
Employee claims filed	28,421	27,407	27,205	28,565	29,995	-2.2%	5.0%
Hearings set	41,145	39,803	40,816	41,500	43,670	-0.4%	3.4%
Compromise agreements approved	n/a	9,157	8,423	9,000	9,200	n/a	4.5%
Cases appealed	n/a	1,976	2,114	2,115	2,200	n/a	2.0%

Source: Workers’ Compensation Commission

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## **Governor’s Proposed Budget**

As shown in **Exhibit 2**, the fiscal 2005 allowance decreases almost \$52,000 from fiscal 2004 working appropriation levels. This is attributable predominately to the completion of major initiatives in fiscal 2004 and 2005. The Web-enabled File Management System – a major information technology initiative – enters the final development phase, resulting in a decrease of almost \$320,000 in development costs. This is offset by associated costs from this project – including a new server to support this web system, maintenance of existing databases, and additional hardware and software to support the system. These increases total \$142,400.

The regional hearing sites that opened in fiscal 2004 resulting in cost savings to the commission, as building improvements decreased by \$141,000 in fiscal 2005. Like the Web-enabled File Management System, associated costs offset some of the savings. Rent on the facilities is now annualized, resulting in a \$76,000 increase.

**Exhibit 2**  
**Governor's Proposed Budget**  
**Workers' Compensation Commission**  
(\$ in Thousands)

	<u>FY 03</u>	<u>FY 04</u>	<u>FY 05</u>	<u>FY 04-05</u>	<u>FY 04-05</u>
	<u>Actual</u>	<u>Approp.</u>	<u>Allowance</u>	<u>Change</u>	<u>% Change</u>
Special Funds	\$12,415	\$12,773	\$12,761	-\$12	-0.1%
Contingent & Back of Bill Reductions	0	0	-41	-41	
<b>Adjusted Special Funds</b>	<b>\$12,415</b>	<b>\$12,773</b>	<b>\$12,720</b>	<b>-\$53</b>	<b>-0.4%</b>
Reimbursable Funds	60	29	30	1	5.1%
<b>Adjusted Grand Total</b>	<b>\$12,475</b>	<b>\$12,802</b>	<b>\$12,750</b>	<b>-\$52</b>	<b>-0.4%</b>

**Where It Goes:**

**Personnel Expenses**

Increments and other compensation.....	\$120
Workers' compensation assessment.....	72
Employee and retiree health insurance.....	18
Retirement.....	-89
Turnover and cost containment adjustment.....	-184
Other personnel and operating changes.....	-20

**Other Changes**

Information Technology equipment and software related to Web initiative.....	142
Adjustment to telecommunications charges .....	96
Lease of IBM I-series computer .....	76
Leases for regional hearing sites.....	72
Actuarial studies.....	50
Contractual positions to verify file integrity.....	47
Publishing of Workers' Compensation Law of MD, Annotated Law Book.....	9
Completion of Regional Hearing Sites construction.....	-141
Completion of Web-enabled File Management System Initiative.....	-320

**Total** **-\$52**

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

### ***C98F00 – Workers’ Compensation Commission***

Assessments on self-insured companies to commission actuarial studies and audits account for a \$50,000 increase in fiscal 2005. Additionally, five contractual employees will examine workers’ compensation file integrity at a net cost of \$47,000.

#### **Impact of Cost Containment**

The fiscal 2005 allowance reflects the elimination of \$41,320, the appropriation for matching employee deferred compensation contributions up to \$600, contingent upon enactment of a provision in budget reconciliation legislation.

## Issues

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### 1. *Harris v. Board of Education of Howard County*

The Maryland Court of Appeals ruled in May 2003, in *Vernell Harris v. Board of Education of Howard County* that an injury suffered while on the job need not be the result of “unusual activity” to be compensable under workers’ compensation laws.

Ms. Vernell Harris, a cafeteria worker in Columbia, Maryland, injured her back moving a large box of detergent. While her job description included moving boxes nearly the size of the one in question, the Board of Education argued that the moving of boxes was not an “unusual activity”, which was the previous standard for compensable workers’ compensation for injury. The Court of Appeals opinion by Judge Eldridge acknowledged two questions – first whether the definition of ‘accident’ within the statute, should be revisited – and second, if not, whether the accident in question was an unusual activity. The court did revisit the definition of accident, and thus declined to review the second question. The court wrote:

The current Maryland Workers’ Compensation Act, in §9-101(b) of the Labor and Employment Article, defines ‘accidental personal injury’ as follows:

§ 9-101. Definitions.

(a) *In general.*- In this title the following words have the meanings indicated.

(b) *Accidental personal injury.*- ‘Accidental personal injury’ means:

(1) an accidental injury that arises out of and in the course of employment;

The above-quoted language contains no mention of ‘unusual activity.’ Under the plain language of the statute, what must be ‘accidental’ is the *injury* and not the activity giving rise to the injury. The activity giving rise to the injury need only ‘arise[] out of and in the course of employment,’ and not be otherwise excluded by the act.” *Citations omitted. Harris v. Board of Education of Howard County*, 375 Md. 21, 29-30, 825 A.2d 365, 370-371 (2003).

The National Council on Compensation Insurance (NCCI) indicated a 2% increase in premiums will result from the change in eligibility derived from *Harris*. Some claimants’ lawyers suggest a much larger impact, and other industry trade groups suggest no impact at all. **In lieu of continuing to debate what may be a question for law professors, the Department of Legislative Services (DLS) recommends that committee narrative be adopted that requires an update from WCC with an analysis of *Harris*-related claims, including the number of claims as well as the resulting commission orders yielding awards under the *Harris* doctrine. This report should also track the number of WCC decisions appealed to the judiciary on *Harris* grounds.**

## **HB 13/SB 113 Attempt to Overrule the *Harris* Decision**

House Bill 13 and Senate Bill 113 have been introduced in the House and Senate which would change the Workers' Compensation statute to overrule the *Harris* decision. These bills would amend the definition of accident to include unusual activity.

## **2. Bethlehem Steel Bankruptcy**

As discussed in the UEF analysis (C96J), the bankruptcy of Bethlehem Steel will result in a dramatic increase in the number of workers' compensation claims which implead the UEF. Bethlehem Steel was under the regulatory umbrella of WCC's self-insurance administration. The failure of Bethlehem Steel (albeit a unique product of negotiated agreements and insufficient securitization over claims) has forced the commission to add safeguards to the administration of self-insured companies. It is important to note that while group self-insured companies fall under the Maryland Insurance Administration's (MIA) watch, single self-insured companies are regulated by WCC.

In response to Bethlehem Steel and a downturn in the economy, WCC has instituted tri-annual actuarial studies and audits of self-insured companies. In addition, the commission has also developed software specifically for monitoring these companies. This software will enable, in conjunction with the contracted actuaries, WCC to perform actuarial analysis of any self-insured company on demand. Finally, the commission has established regulations regarding the commission's authority over these entities. **The commission should comment on the specific nature of these regulations. Additionally, DLS recommends that committee narrative be adopted which requires WCC and MIA to jointly issue a recommendation to evaluate the possible consolidation of the self-insured entities and group self-insured entities inside either WCC or MIA.**

## ***Recommended Actions***

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1. Adopt the following narrative:

**Potential consolidation of self-insured and group self-insured companies:** In light of the Bethlehem Steel bankruptcy and the associated costs to the State, it is the intent of the committees that an analysis be performed regarding the potential consolidation of the regulation of self-insured, as well as group self-insured companies. The committees request that the Workers' Compensation Commission and the Maryland Insurance Administration jointly prepare a report detailing a recommendation for or against the consolidation of the self-insured and group self-insured entities. This report should explain why the operational structure and expertise of either WCC or MIA make that agency better suited to one or both of the categories. The report should be submitted to the committees by December 1, 2004.

<b>Information Request</b>	<b>Authors</b>	<b>Due Date</b>
Analysis of the possible consolidation of the regulation of self-insured and group self-insured insurance companies	Workers' Compensation Commission and Maryland Insurance Administration	December 1, 2004

2. Adopt the following narrative:

**Impact of *Harris v. Board of Education of Howard County*:** In light of the Maryland Court of Appeals decision in *Harris v. Board of Education of Howard County*, the committees are concerned that the potential for increased workers' compensation costs be balanced with the rights of injured workers. The committees request that the Workers' Compensation Commission prepare a report detailing the caseload impact of the *Harris* decision. This report should include the number of *Harris*-related claims, as well as the awards generated from these claims. This report should also track the number of commission orders appealed to the courts on *Harris* grounds. This report should be submitted to the committees on August 1, 2004.

<b>Information Request</b>	<b>Author</b>	<b>Due Date</b>
Effects of the <i>Harris</i> decision	WCC	August 1, 2004

## ***Updates***

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### **1. SJ1 and HJ1 Potentially Raises Judicial Compensation Levels**

Senate Joint Resolution 1 (SJ1) and House Joint Resolution 1 (HJ1) propose that judges' salaries be increased during the fiscal 2005 through 2008 period. By statute the WCC commissioners' salaries would be set equal to or greater than a District Court judge under this plan. This would result in increases of 2% in fiscal 2005, 3.3% in fiscal 2006, 3.8% in fiscal 2007, and 3.7% in fiscal 2008. The salary structure would appear as follows:

- Fiscal 2005 – \$113,750, increase of 2%;
- Fiscal 2006 – \$117,500, increase of 3.3%;
- Fiscal 2007 – \$122,000, increase of 3.8%; and
- Fiscal 2008 – \$126,500, increase of 3.7%.

This would result in increased costs to the agency, including the resulting fringe benefit increases that are tied to salary. Commissioners currently earn \$111,500 annually.

### **2. Regional Hearing Sites Now Open**

WCC has established regional hearing sites as required by Section 9-724 of the Labor and Employment Article. Section 9-724 was enacted through Chapter 90, Acts of 2000 and charges WCC with development of regional hearing sites. WCC has opened the Abingdon site in April 2003 and LaPlata in October 2003. Beltsville and Cambridge sites are planned to open in March 2004. The Frederick site has remained closed due to a delay in finding suitable office space with the Department of General Services. New hearing sites provide a more professional and efficient environment in which to evaluate claims. In previous years, WCC used space in local government facilities including community colleges, municipal buildings, Motor Vehicle Administration offices, as well as circuit and District Courts. The fiscal 2005 allowance includes \$335,398 for the lease of the five facilities.

### **3. Web-enabled File Management System Nears Completion**

The Web-enabled File Management System is nearing completion in fiscal 2005. \$409,720 is budgeted as the final development costs for the project. The total cost of the project is \$3,109,882 over four fiscal years.

***C98F00 - Worker's Compensation Commission***

The project stems from the State requirement that each agency must web enable 50% of its business process by fiscal 2002, 65% by fiscal 2003, and 80% by fiscal 2004. WCC has a contract with Verizon for the Web-enabled File Management System project. The project was designed for completion in three phases. The first phase, completed in September 2002, included on-line registering for web access, on-line filing and processing of employer's first report of injury, and on-line viewing of claim related documents. The second phase includes on-line filing for a variety of WCC forms using digital signature technology. This phase is now complete. The third phase includes the automatic routing of notices to e-mail accounts of registered users. WCC plans to complete phase three by the end of 2004.

## ***Current and Prior Year Budgets***

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### **Current and Prior Year Budgets Workers' Compensation Commission (\$ in Thousands)**

	<b><u>General Fund</u></b>	<b><u>Special Fund</u></b>	<b><u>Federal Fund</u></b>	<b><u>Reimb. Fund</u></b>	<b><u>Total</u></b>
<b>Fiscal 2003</b>					
Legislative Appropriation	\$0	\$228	\$0	\$60	\$288
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	12,299	0	0	12,299
Cost Containment	0	-9	0	0	-9
Reversions and Cancellations	0	-103	0	0	-103
<b>Actual Expenditures</b>	<b>\$0</b>	<b>\$12,415</b>	<b>\$0</b>	<b>\$60</b>	<b>\$12,475</b>
<b>Fiscal 2004</b>					
Legislative Appropriation	\$0	\$12,773	\$0	\$29	\$12,802
Cost Containment	0	0	0	0	0
Budget Amendments	0	0	0	0	0
<b>Working Appropriation</b>	<b>\$0</b>	<b>\$12,773</b>	<b>\$0</b>	<b>\$29</b>	<b>\$12,802</b>

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

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### **Fiscal 2003**

When WCC was moved from a general fund agency to a special fund agency in fiscal 2003; the appropriation was almost entirely brought in through budget amendment (\$11,563,140).

**Object/Fund Difference Report  
Workers' Compensation Commission**

<u>Object/Fund</u>	<u>FY03 Actual</u>	<u>FY04 Working Appropriation</u>	<u>FY05 Allowance</u>	<u>FY04 - FY05 Amount Change</u>	<u>Percent Change</u>
<b>Positions</b>					
01 Regular	132.50	128.50	128.50	0	0%
02 Contractual	8.94	12.75	17.75	5.00	39.2%
<b>Total Positions</b>	<b>141.44</b>	<b>141.25</b>	<b>146.25</b>	<b>5.00</b>	<b>3.5%</b>
<b>Objects</b>					
01 Salaries and Wages	\$ 8,138,017	\$ 8,264,576	\$ 8,224,063	-\$ 40,513	-0.5%
02 Technical & Spec Fees	452,491	685,664	728,764	43,100	6.3%
03 Communication	403,005	564,440	660,923	96,483	17.1%
04 Travel	145,106	112,419	112,419	0	0%
06 Fuel & Utilities	26,571	35,000	35,000	0	0%
07 Motor Vehicles	88,382	91,091	92,329	1,238	1.4%
08 Contractual Services	1,545,318	1,358,828	1,239,103	-119,725	-8.8%
09 Supplies & Materials	165,398	165,922	179,826	13,904	8.4%
10 Equip - Replacement	33,482	8,000	0	-8,000	-100.0%
11 Equip - Additional	105,578	21,000	87,038	66,038	314.5%
12 Grants, Subsidies, Contr.	52,387	52,387	52,387	0	0%
13 Fixed Charges	1,004,938	1,301,629	1,379,455	77,826	6.0%
14 Land & Structures	314,156	141,010	0	-141,010	-100.0%
<b>Total Objects</b>	<b>\$ 12,474,829</b>	<b>\$ 12,801,966</b>	<b>\$ 12,791,307</b>	<b>-\$ 10,659</b>	<b>-0.1%</b>
<b>Funds</b>					
03 Special Fund	\$ 12,414,527	\$ 12,773,269	\$ 12,761,153	-\$ 12,116	-0.1%
09 Reimbursable Fund	60,302	28,697	30,154	1,457	5.1%
<b>Total Funds</b>	<b>\$ 12,474,829</b>	<b>\$ 12,801,966</b>	<b>\$ 12,791,307</b>	<b>-\$ 10,659</b>	<b>-0.1%</b>

Note: The fiscal 2004 appropriation does not include deficiencies, and the fiscal 2005 allowance does not reflect contingent reductions.

**Fiscal Summary  
Workers' Compensation Commission**

<u>Unit/Program</u>	<u>FY03 Actual</u>	<u>FY04 Legislative Appropriation</u>	<u>FY04 Working Appropriation</u>	<u>FY03 - FY04 % Change</u>	<u>FY05 Allowance</u>	<u>FY04 - FY05 % Change</u>
01 General Administration	\$ 11,439,242	\$ 11,931,561	\$ 12,072,571	5.5%	\$ 12,381,587	2.6%
02 Processing And Adjudication Of Claims	1,035,587	870,405	729,395	-29.6%	409,720	-43.8%
<b>Total Expenditures</b>	<b>\$ 12,474,829</b>	<b>\$ 12,801,966</b>	<b>\$ 12,801,966</b>	<b>2.6%</b>	<b>\$ 12,791,307</b>	<b>-0.1%</b>
Special Fund	\$ 12,414,527	\$ 12,773,269	\$ 12,773,269	2.9%	\$ 12,761,153	-0.1%
<b>Total Appropriations</b>	<b>\$ 12,414,527</b>	<b>\$ 12,773,269</b>	<b>\$ 12,773,269</b>	<b>2.9%</b>	<b>\$ 12,761,153</b>	<b>-0.1%</b>
Reimbursable Fund	\$ 60,302	\$ 28,697	\$ 28,697	-52.4%	\$ 30,154	5.1%
<b>Total Funds</b>	<b>\$ 12,474,829</b>	<b>\$ 12,801,966</b>	<b>\$ 12,801,966</b>	<b>2.6%</b>	<b>\$ 12,791,307</b>	<b>-0.1%</b>

Note: The fiscal 2004 appropriation does not include deficiencies, and the fiscal 2005 allowance does not reflect contingent reductions.