



February 8, 2018

Board of Directors

John Applegate
Alyson Flournoy
Robert Glicksman
Alice Kaswan
Alexandra Klass
Thomas McGarity
Sidney Shapiro
Amy Sinden
Robert R.M. Verchick

Maryland General Assembly
House Standing Committee on Appropriations
Subcommittee on Education & Economic Development
House Office Building, Room 121
Annapolis, MD 21401

Re: Written Testimony for Feb. 15 Budget Hearing on DLLR Business Regulation

Dear Subcommittee Members:

Thank you for this opportunity to provide written testimony on the budget for the Department of Licensing Labor and Regulation, Division of Labor and Industry, Maryland Occupational Safety and Health (MOSH). As explained in more detail below, our review of MOSH budget materials, federal audits, and MOSH performance reports leads us to conclude that the agency’s limited budget is hampering its ability to carry out its mission of ensuring the health and safety of Maryland workers. Our key findings:

Advisory Council

Patricia Bauman
Frances Beinecke
Eula Bingham
W. Thompson Comerford, Jr.
Sally Greenberg
John Passacantando
Henry Waxman
Robert Weissman

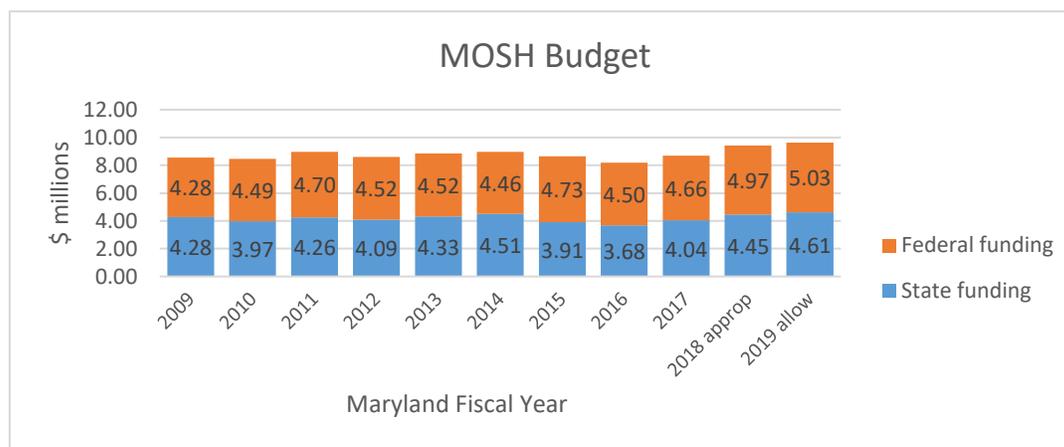
- MOSH struggles with significant turnover among health and safety inspectors – a management challenge compounded by resource shortfalls.
- Without enough inspectors, MOSH is failing to meet inspection targets, leaving too many employers to police themselves.
- MOSH is unable to update its regulatory standards on a timely basis, in part because of insufficient resources.

While we recognize that FY 2018 appropriations provide MOSH with a modest increase in funding, and that a slight increase is proposed for FY 2019, further assessment of MOSH’s performance over the following year is needed to determine whether these funding levels are sufficient for the agency to operate effectively, or whether additional funding is warranted in the future.

As you know, the 2017 JCR required MOSH to submit a performance report, which contains a wealth of information about current staffing levels, challenges, and needs of the agency. Requiring the agency to submit this report again in the year ahead would help identify strategic opportunities to meet MOSH’s critical needs and ensure that Maryland’s workforce remains protected from safety and health hazards that pose a significant risk of illness, injury, and death on the job.

MOSH's Budget

As the state agency tasked with implementing Maryland's federally approved state occupational safety and health program, MOSH gets up to 50 percent of its funding annually from federal OSHA. The chart below shows that from 2009 to 2017, MOSH received only a modest 1.6 percent increase in its overall budget. Notably, the state-funded portion of the budget declined by roughly 6 percent over the same period, despite the fact that the agency has not met its enforcement goals in recent years, which, as we explain below, is due to a need for *additional* staffing.



Source: <http://www.dbm.maryland.gov/budget/Pages/operbudget/historical-operbud-docs.aspx>. For 2019, <http://www.dbm.maryland.gov/budget/Documents/operbudget/2019/Proposed/Volume2.pdf>.

MOSH's Staffing

MOSH is responsible for ensuring the health and safety of roughly 2.4 million workers across 160,000 worksites throughout the state. According to MOSH, the agency has a staffing benchmark of 54 compliance officers (36 safety and 18 health) to conduct all inspections throughout the state. This equates to roughly one inspector per 45,000 workers. This is a cause for concern for two reasons.

First, the agency's benchmark is based on levels that have not been revised in more than 30 years – since 1985 – despite that Maryland's workforce has grown substantially over that period. Second, the International Labor Organization (ILO) recommends the benchmark be set at one inspector per 10,000 covered workers. To satisfy that recommendation, MOSH would need at least 250 inspectors on staff; yet, from 2009 to 2016, MOSH employed at most 61 compliance officers, with the fewest compliance officers in 2016 at a mere 43. MOSH not only needs additional funding to hire more compliance officers to meet its own outdated benchmark, but would need a much larger boost in its budget to recruit the number of officers needed for the modern era.

Furthermore, according to information provided by MOSH in its performance report required by the 2017 JCR, the agency's inability to retain compliance officers is directly linked to the overall reduction in inspections and enforcement.¹ Throughout MOSH's report, it states that "MOSH inspections were reduced from projected activities due to the decreased number of inspectors through retirements and those leaving the agency for other positions." Further, the agency

¹ See response to JCR request at [http://dlslibrary.state.md.us/publications/JCR/2017/2017_114-115\(MOSH\).pdf](http://dlslibrary.state.md.us/publications/JCR/2017/2017_114-115(MOSH).pdf).

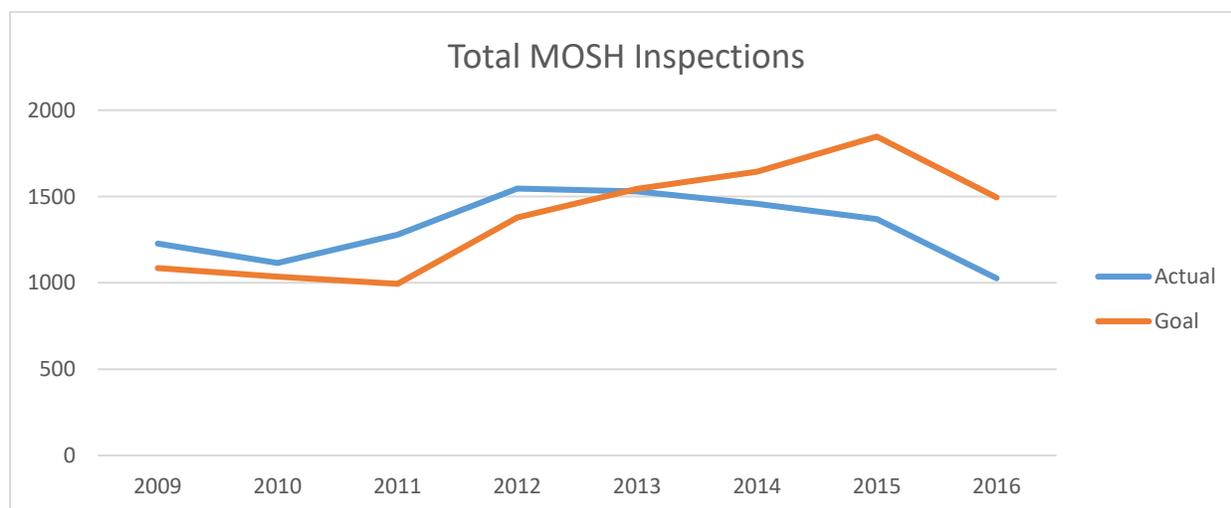
notes, “The challenge of higher-paying federal and private industry for similar positions will continue to affect retention rates.”



Source: [http://mlsd.ent.sirsi.net/client/en_US/default/search/detailno_nmodal/ent:\\$002f\\$002fSD_ILS\\$002f0\\$002fSD_ILS:26565/one](http://mlsd.ent.sirsi.net/client/en_US/default/search/detailno_nmodal/ent:$002f$002fSD_ILS$002f0$002fSD_ILS:26565/one).

MOSH Inspection Data

In 2016, with the lowest staffing levels on record since 2009, MOSH was only able to conduct about 1,100 inspections – meaning the vast majority of Maryland workplaces went uninspected. AFL-CIO has calculated that it would take MOSH 158 years to inspect each workplace within its jurisdiction just once.² In fact, from federal FY 2013 to 2016, MOSH failed to meet its target inspection goal – a goal that MOSH itself is actively involved in negotiating with federal OSHA. Despite cutting the goal for FY 2016, MOSH still dramatically underperformed. We note that Maryland Workers’ Compensation Commission Enforcement statistics suggest that the number of work-related injuries in the state has remained relatively steady since 2009 – with roughly 22,000 to 24,000 workers’ compensation claims filed each year.



Source: <https://www.osha.gov/dcsp/osp/efame/maryland.html>. For 2016, see response to JCR request at [http://dlslibrary.state.md.us/publications/JCR/2017/2017_114-115\(MOSH\).pdf](http://dlslibrary.state.md.us/publications/JCR/2017/2017_114-115(MOSH).pdf).

² AFL-CIO, Death on the Job: The Toll of Neglect 171 (2017), <https://aflcio.org/sites/default/files/2017-04/2017Death-on-the-Job.pdf>.

MOSH's Program Efficiency

Beyond staffing limitations, it is unclear if MOSH is utilizing its resources in the most efficient manner. In AFL-CIO's 2017 *Death on the Job* report, Maryland ranks 49th in the country for average penalty per inspection with violations. Even when a worker dies on the job, the median penalty after MOSH and the employer have settled the case or resolved it through litigation was just \$4,150 in FY 2016. The deterrent effect of an enforcement program is a function of both the likelihood of inspection and the consequences of being caught. With inspection numbers declining and penalties for the most serious cases remarkably low, we question whether MOSH's enforcement program is adequately deterring unsafe employment.

As a condition of its state-plan state status (and federal dollars), Maryland must ensure that MOSH continues to be at least as effective as federal OSHA. As part of this requirement, when federal OSHA adopts a new standard, MOSH is supposed to adopt an identical (or stronger) standard within six months. For example, federal OSHA recently updated its base penalties to account for inflation since penalties were last adjusted in the early 1990s. Federal OSHA has also adopted standards to reduce occupational exposure to crystalline silica and beryllium, which would protect Maryland construction workers from needlessly contracting fatal diseases such as silicosis and chronic beryllium disease.³ Yet, according to information provided by MOSH in response to the report mandated by the 2017 JCR, MOSH has yet to incorporate any of these standards, meaning Maryland workers remain in harm's way.

Conclusion

Common-sense enforcement of Maryland's occupational safety and health laws and regulations protects Maryland workers from on-the-job illnesses, injuries, and fatalities. Because of worker protections, over the past several decades, we've seen fewer work-related incidents. Yet that progress was possible only because the laws and regulations on the books were enforced. Without inspectors and investigators, regulations and permits are mere paper tigers.

Keeping government inspectors in the field, with sufficient resources to carry out MOSH's mission, is the best way to protect Maryland workers and our high-road employers against unfair and unsafe business practices. Competition among businesses is tough, and some low-road employers look to cut corners and save money in the short term by evading their responsibility to follow the law. Government inspectors and investigators play a critical role in policing businesses that cannot be trusted to police themselves.

To better understand MOSH's budgetary needs, we urge you to require MOSH to submit a second annual performance report like that required in last year's 2017 JCR:⁴

The Maryland Occupational Safety and Health Administration shall provide a report including:

- (1) a current organizational chart outlining the current staff, vacant positions, the hierarchy of the department, and the Spanish-speaking employees;*
- (2) the actions that have been or will be taken to attract new employees and improve retention;*
- (3) the metric used to determine the optimum number of health and safety inspectors;*
- (4) the total number of full-time equivalents dedicated to the Voluntary Protection Program and the number of Voluntary Protection Program site visits conducted;*

³ For your reference, we have attached several fact sheets and an article about the protections these standards provide to workers.

⁴ <http://mgaleg.maryland.gov/pubs/budgetfiscal/2017rs-budget-docs-jcr.pdf>.

- (5) a detailed explanation for the decrease in the number of inspections opened and investigated;*
- (6) a detailed explanation for failing to meet the annual enforcement goals described in the Federal Annual Monitoring and Evaluation Reports and what actions the agency is taking or plans to take to improve performance in order to meet these goals;*
- (7) a detailed explanation for the decline in annual inspections and what actions have been or will be taken to address known or foreseeable challenges to performing inspection and enforcement responsibilities;*
- (8) the procedures used to gather, review, and utilize enforcement data, including geographic location and demographic data, to plan enforcement activities for scheduling and prioritizing programmed inspections, including written documentation of the site-specific targeting program; and*
- (9) the procedures for reviewing and adopting federal Occupational Safety and Health Act directives and standards notices and a list of all directives and standards notices received, noting the date received, the action taken, and, if rejected, a reason for the rejection for fiscal 2012 to 2018.*

This report shall be submitted by October 1, 2018, and annually thereafter; and the budget committees shall have 45 days to review and comment. Funds restricted pending the receipt of these reports may be released in the amount of \$250,000 when the report is received but may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the report is not submitted.

Sincerely,

Matthew Shudtz
Executive Director
Center for Progressive Reform

Katherine Tracy
Policy Analyst
Center for Progressive Reform

About the Center for Progressive Reform

The Center for Progressive Reform (CPR) is a 501(c)(3) nonprofit research and advocacy organization comprising a small professional staff of lawyers and a network of 60+ Member Scholars who are professors at institutions of higher learning across the country. CPR specializes in analyzing complex legal, economic, and scientific issues involving federal and state government operations. Our Member Scholars include a number of experts in the field of worker safety and health, two of whom literally wrote the book on the reasons why state and federal agencies struggle to eliminate workplace illnesses, injuries, and fatalities.⁵ One enduring obstacle is that agency resources are grossly outmatched by the sheer number of worksites across the state, as well as the constantly changing nature of the state's workforce.

⁵ See Thomas O. McGarity & Sidney A. Shapiro, *Workers at Risk: The Failed Promise of the Occupational Safety and Health Administration* (1993).