



Larry Hogan | Governor
Boyd Rutherford | Lt. Governor
R. Michael Gill | Secretary of Commerce
Signe Pringle | Deputy Secretary of Commerce

July 26, 2022

The Honorable Guy Guzzone
Chairman, Senate Budget and Taxation Committee
3 W Miller Senate Office Building
Annapolis, MD 21401

The Honorable Ben Barnes
Chairman, House Appropriations Committee
House Office Building, Room 121
Annapolis, MD 21401-1991

**RE: Report on the Maryland State Arts Council (MSAC) Funding Formula – 2022 JCR,
Page 208**

Dear Chairmen Guzzone and Barnes:

In accordance with Page 208 of the 2022 Joint Chairmen's Report, the Maryland Department of Commerce (Commerce) is pleased to present the Report on the Maryland State Arts Council (MSAC) Funding Formula. This report, drafted in consultation with the Department of Budget & Management (DBM), includes a written review by Commerce's Principal Counsel of the applicable statute, as well as a justification for the current interpretation of the required calculation method under statute as it applies to the MSAC general fund appropriation. I look forward to your review of the report and will be pleased to respond to any questions. Upon review of the report Commerce respectfully requests the release of \$100,000 of the appropriation for the Office of the Secretary in Commerce that is being withheld. If my staff can be of further assistance, or if you have any questions regarding this report, please feel free to contact me at 410-767-6301.

Sincerely,

DocuSigned by:

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R. Michael Gill
Secretary

Enclosure

cc: Members, Senate Budget and Taxation Committee
Members, House Appropriations Committee
Secretary David Brinkley
Emily Haskell, Department of Legislative Services



Department of Commerce – Report on the Maryland State Arts Council (MSAC) Funding Formula

In accordance with p. 208 of the 2022 Joint Chairmen's Report

Submitted by
Maryland Department of Commerce

July 2022

Introduction

Page 208 of the 2022 Joint Chairmen's Report requested a report on the calculation method for the Maryland State Arts Council (MSAC) General Fund appropriation. The Chairmen requested that the report include a review from Commerce's Assistant Attorney General of the relevant statute, as well as a justification for the current interpretation of the required calculation method under statute as it applies to the MSAC general fund appropriation.

History

State Finance and Procurement Article 7-325 currently reads "For fiscal year 2013 and each fiscal year thereafter, the Governor shall include in the annual budget bill submitted to the General Assembly a General Fund appropriation for the Maryland State Arts Council in an amount not less than the amount of the General Fund appropriation for the Council as approved in the State budget as enacted by the General Assembly for the prior fiscal year, increased by not less than the percentage by which the projected total General Fund revenues for the upcoming fiscal year exceed the revised estimate of total General Fund revenues for the current fiscal year, as contained in the report of estimated State revenues submitted by the Board of Revenue Estimates to the Governor under § 6–106(b) of this article."

In uncodified language, Chapter 145, Acts of 2016 altered the distribution of revenue attributable to a 5% State admissions and amusement (A&A) tax rate on electronic bingo and electronic tip jars so up to \$1M in each fiscal year is distributed to the Preservation of Cultural Arts in Maryland and the remainder is distributed to MSAC. *That uncodified language directed that any funds distributed to MSAC from A&A revenue must be included in the prior year's appropriation for the purposes of calculating the mandated appropriation to MSAC under State Finance and Procurement Article 7-325.*

Chapter 23, Acts of 2017, the Budget Reconciliation and Financing Act (BRFA) of 2017, clarified that those additional funds are to be included in the calculation of the mandated appropriation to MSAC through Fiscal Year 2021. At that time State Finance and Procurement Article 7-325 read "any funds distributed to the Maryland State Arts Council in accordance with § 2–202 of the Tax – General Article as enacted in this Act shall be included in the Maryland State Arts Council's prior fiscal year appropriation in addition to the amount of the General Fund appropriation for the prior fiscal year and the sum shall be used for purposes of calculating the required appropriation under § 7–325 of the State Finance and Procurement Article."

The 2017 BRFA accomplished this by amending the uncodified language in Chapter 145, Acts of 2016, by introducing uncodified language in the BRFA that read as follows,
"Chapter 145 of the Acts of 2016

SECTION 2. AND BE IT FURTHER ENACTED, That any funds distributed to the Maryland State Arts Council in accordance with § 2–202 of the Tax – General Article as enacted in this Act shall be included in the Maryland State Arts Council's prior fiscal year appropriation IN ADDITION TO THE AMOUNT OF THE GENERAL FUND APPROPRIATION FOR THE PRIOR FISCAL YEAR AND THE SUM SHALL BE USED for purposes of calculating the required appropriation under § 7–325 of the State Finance and Procurement Article."

The distribution to MSAC of a portion of A&A revenue attributable to a 5% A&A tax rate under § 2–202 of the Tax – General Article was set to sunset after Fiscal Year 2021, but Senate Bill 465 of the 2020 Legislative Session extended that distribution in perpetuity. The bill passed but was vetoed by Governor Hogan. In 2021 the veto was overridden and the alterations became effective as Chapter 14 Acts of 2021 in Fiscal Year 2022. This legislation however did not contain the uncodified language previously included in the BRFA of 2017, indicating how MSAC’s appropriation under § 7-325 of the State Finance and Procurement Article should be calculated.

Explanation of the Current Interpretation

The Department of Budget & Management (DBM)'s calculation of the MSAC appropriation applies the State's General Fund revenue percentage growth to the sum of the \$1 million A&A tax revenue distributed to MSAC plus the prior year's MSAC legislative appropriation and then backs out the \$1 million to arrive at the mandated general fund appropriation.

The legislation that initially added A&A funding to MSAC and incorporated it into the calculation of the MSAC appropriation under § 7–325 of the State Finance and Procurement Article was set to sunset two years ago but was extended via new legislation. However, that new legislation only directly extended the A&A funding to MSAC, but did not address the uncodified provision in the BRFA of 2017 regarding the calculation of the MSAC appropriation under § 7–325 of the State Finance and Procurement Article, leaving some ambiguity regarding that calculation.

Review by Commerce Assistant Attorney General

As noted, the current language describing the calculation of MSAC’s mandated appropriation reads as follows:

State Finance and Procurement Article §7–325

(a) (2) For fiscal year 2013 and each fiscal year thereafter, the Governor shall include in the annual budget bill submitted to the General Assembly a General Fund appropriation for the Maryland State Arts Council in an amount not less than the amount of the General Fund appropriation for the Council as approved in the State budget as enacted by the General Assembly for the prior fiscal year, increased by not less than the percentage by which the projected total General Fund revenues for the upcoming fiscal year exceed the revised estimate of total General Fund revenues for the current fiscal year, as contained in the report of estimated State revenues submitted by the Board of Revenue Estimates to the Governor under § 6–106(b) of this article.

The question is whether the uncodified language that originated in Section 2 of Ch. 145 of 2016, which was extended by the 2017 BRFA, still applies to the calculation set forth above.

We understand that DBM’s position is that it does not. While the issue is not clear cut, Commerce counsel, in consultation with an AAG who handles budget matters for the General Assembly, has concluded that DBM’s position is a reasonable approach given the history of the relevant legislation.

The A&A distributions to MSAC under TG § 2-202, as amended by the 2017 BRFA, were set to expire after FY2021. The General Assembly amended § 2-202 again in 2020 to continue the distributions to MSAC beyond FY2021, without any directive that those new distributions are to be included in the calculation of MSAC's appropriation under SFP § 7-325. Given that lack of directive, those A&A distributions for FY2022 and later arguably would not have to be incorporated into the calculation of MSAC's appropriation under SFP § 7-325.