

2012

BIENNIAL REPORT

VIRGINIA

MOTOR VEHICLE DEALER BOARD



**Mission Statement**

***The Motor Vehicle Dealer Board will administer sections of the Commonwealth's Motor Vehicle Dealer Laws and Regulations as charged; promote the best interests of both the automotive consumer and dealer body; and process all motor vehicle related complaints promptly and professionally; while providing a high level of customer service.***

*Chairman*  
Richard D. Holcomb  
Commissioner  
Department of Motor Vehicles

*Executive Director*  
Bruce Gould  
Executive Director  
Motor Vehicle Dealer Board



November 2012

The Honorable Robert F. McDonnell  
Governor, Commonwealth of Virginia  
State Capitol  
Richmond, Virginia 23219

Dear Governor McDonnell:

I am pleased to provide to you the Motor Vehicle Dealer Board's Biennial Report as required by Va. Code §46.2-1503.5. The Motor Vehicle Dealer Board (Board), whose management is responsible for the integrity and objectivity of the information presented herein, has prepared this report.

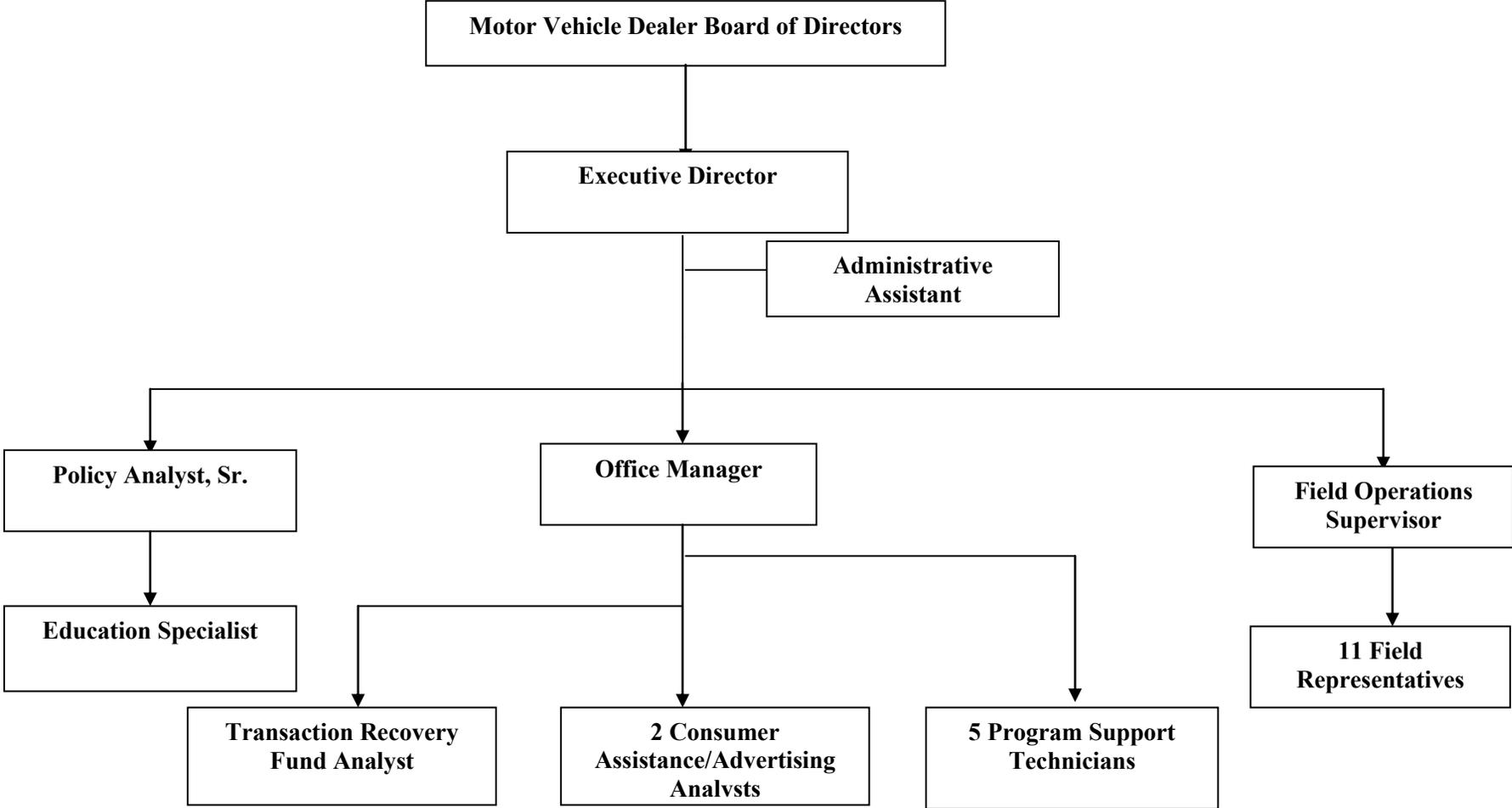
The Board has been in place for nearly sixteen years. In that time, we have made every effort to educate the dealer community on the laws and regulations governing their industry. The approach of the Board and its staff is to education dealers so that they will have the necessary knowledge and tools to further the professionalism of the automobile dealer industry. In addition, the Board has taken a pro-consumer stand in its administration of the Transaction Recovery Fund; enforcement of Advertising Regulations and by assisting consumers when they are having a dealer related problem.

Upon reviewing the report, I'm sure you will agree that the Board is making a positive impact upon the dealer community and the motor vehicle consumer. We thank you for your support as we continue our efforts to minimize regulations and enhance consumer protection.

Sincerely,

Bruce Gould  
Executive Director

*Motor Vehicle Dealer Board  
Organizational and Operational Chart*



(Rev: 01/12)

# INTRODUCTION

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The 1995 General Assembly overwhelmingly adopted legislation to shift the regulation and oversight of the new and used motor vehicle dealer industry from the Department of Motor Vehicles, to a professional board as described below. Oversight and regulation of motorcycle, trailer and recreational dealers continues to be performed by DMV.

The Board consists of nineteen members for which the Governor, subject to confirmation by the General Assembly, appoints seventeen. In order to stagger appointments and ensure continuity, initially, eight members were appointed to two-year terms and nine were appointed to four-year terms.

The statute creating the Board stipulates that nine members shall be licensed franchise (“new”) motor vehicle dealers, and seven members shall be independent (“used”) dealers. Further, the statute requires that of the seven independent dealers, one shall be primarily engaged in vehicle rental, and one in the motor vehicle salvage business. The other three members include a consumer with no connection to the motor vehicle dealer industry; the Commissioner or his designee of the Virginia Department of Agriculture and Consumer Services and the Commissioner of the Department of Motor Vehicles, who serves as the Board’s chairman.

Members of the Board represent all areas of the Commonwealth. In addition, they represent all levels of ownership. Board members include those that own several dealerships (“mega dealers”) to those with small operations and just a few employees. This cross section ensures that all perspectives of the industry have a voice on the Board.

The primary focus of the Motor Vehicle Dealer Board, as mandated by Virginia statute (Chapter 15 of Title 46.2), is to regulate new and used car dealers including certifying and licensing dealers and salespersons. Additionally, the MVDB administers the Motor Vehicle Transaction Recovery Fund (MVTRF), handles consumer complaints regarding motor vehicle dealers, monitors dealer advertising, and schedules hearings.

Organizationally, the Board staff is divided into two functional areas: Field Operations and Headquarters Operations. The field operations consist of a supervisor and eleven field representatives who work out of their “home-offices” located throughout the Commonwealth. Educating dealers, salespersons and consumers is the primary focus of the field representatives. Enforcement becomes necessary only after continued, blatant disregard for laws.

The number one priority of the Dealer Board Headquarters Operations is to process initial and renewal applications of our licensees (dealers and salespersons). This work constitutes the highest volume and work effort of the Headquarters staff. As part of the licensing process, the Board issues dealer license plates and renewal decals as directed by DMV.

About 425 consumers, most by telephone, contact the Board staff each month to request mediation or assistance solving a problem concerning a dealership. This has proven to be a very successful program as most situations can be resolved with the introduction of mediation and a clear understanding of the problem by all parties involved. The most common questions and complaints received from consumers are related to:

- Dealer has gone out-of-business
- Title/Registration not obtained by the dealer for the consumer
- Contract/Pricing questions and disputes
- Motor vehicle is in need of repair shortly after the purchase

Most consumers contact us by telephone. However, of the approximately 425 consumer contacts made to our office each month, on average, about 45 are done via an email. (We receive about 25 additional emails each month from dealers; prospective dealers; and salespersons; and others with general questions.) Consumers contact Board staff via an email address and an easy to complete form established on the MVDB website. Once received, Board staff review the email and respond accordingly. The MVDB has established a performance measure to ensure that email correspondence is replied to in a timely fashion. This measure, respond to 98% of all website email within three (3) business days, reported 98.5% of all emails during this report period are being responded to within the three day timeframe.

The Board has been very aggressive in monitoring dealer advertising as well as other dealer practices. During the current reporting period, the Board assessed \$20,000 in advertising related civil penalties as a result of enforcement efforts. In keeping with the Board's philosophy of "education first", during the reporting period, Board staff made 455 educational telephone calls to dealers and wrote 188 educational letters for a grand total of 643 educational contacts.

Also, the Motor Vehicle Dealer Board has aided consumers defrauded by dealers by awarding a total of \$215,935 during this report period from the Motor Vehicle Transaction Recovery Fund (MVTRF), which is funded through assessments paid by all dealers the first three years they are in business. In FY 10, \$700,000 was transferred from the MVTRF to the General Fund, leaving a balance of \$250,601 in the Fund. At the close of this Biennial period, the Fund balance was \$283,159. Legislation initiated by the MVDB in the 2012 General Assembly, eliminated the previous \$250,000 minimum requirement that must be maintained in the Fund as well as increased from \$20,000 to \$25,000, the maximum amount a single consumer may collect from the Fund. The 2012 legislation also established a mechanism for automatic adjustment of this maximum as well as the maximum amount that can be paid on the behalf of a single dealer. The Board initiated this legislation as it believes these changes will better serve consumers.

When it comes to enforcing the laws, rules and regulations, the MVDB's philosophy is "education first". If educational efforts do not produce the desired outcomes, then we must use our enforcement authority. One enforcement tool available to the Board is to assess a civil penalty. In this reporting period, the MVDB assessed civil penalties totaling \$117,750 and collected \$92,800 in civil penalties from dealers. (Includes advertising civil penalties as noted above). These penalties are deposited into the Transportation Trust Fund. Any civil penalties not collected, are reported to the Department of Taxation's Debt Set-Off Program for collection.

Lastly, the Motor Vehicle Dealer Board is self-sufficient and is funded strictly by fees paid by dealers. These fees cover all of the expenses of the Board. No general fund dollars are appropriated to the MVDB.

# COMMITTEES

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Five statutorily mandated committees act as an extension of the Board: Advertising, Licensing, Franchise Law, Transaction Recovery Fund and Dealer Practices. At any given time there may be one or more other functioning committees who have a specific assignment. Once these assignments are completed, the committee is disbanded.

These committees are schedule to meet on the second Monday of every other month in Room 702 at the Department of Motor Vehicles Headquarters Building, 2300 West Broad Street, Richmond, Virginia. The full Board meeting is scheduled following the last committee meeting on the same day.

The May 10, 2010 MVDB meeting was the first Commonwealth of Virginia Board or Commission meeting to be broadcast live over the web. All bi-monthly meetings are now broadcast live and are available to the public to view until the next meeting.

The responsibilities of each of these committees are outlined below:

## **ADVERTISING COMMITTEE**

Kevin Reilly, *Chairperson*

### **Committee Functions**

- To advise the Board and the Board staff on matters related to motor vehicle dealer advertising. The committee is to receive and identify advertising issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.
- Review staff reports on advertising complaints and violations. Present a summary report to the Board.
- Direct the advertising staff on how they monitor and identify advertising violations and consumer complaints concerning advertising.

## **FRANCHISE REVIEW AND ADVISORY COMMITTEE**

Thomas Moorehead, *Chairperson*

### **Committee Functions**

- Advise the DMV Commissioner, through the Board, of any violations of Article 7 (Franchises) of the Motor Vehicle Dealer Act. (See § 46.2-1573.C.)
- Assist the Commissioner in assembling panels, made up of three Board members, as described in § 46.2-1573.D.8.
- Meets on an “as needed” basis and not every other month as does other committees.

## **LICENSING COMMITTEE**

Jimmy Whitten, *Chairperson*

### **Committee Functions**

- To advise the Board and the Board staff on matters related to the licensing of dealers, dealer-operators and salespersons. The committee is to receive and identify dealer-licensing issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.
- Review, and then make recommendations to the Board on individual licensing actions proposed by the Executive Director and which are required to come before the Board.

## **TRANSACTION RECOVERY FUND COMMITTEE**

Lynn Hooper, *Chairperson*

### **Committee Functions**

- Monitor the activities and solvency of the TRF and report findings to the Board.
- Review staff reports and recommendations concerning actions against the fund. Make recommendations to the Board on claims against the fund.

## **DEALER PRACTICES COMMITTEE**

Tommy Woodson, *Chairperson*

### **Committee Functions**

- To advise the Board and the Board staff on issues related to the conduct of business. The committee will receive and identify dealer practice issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.

# ADMINISTRATIVE HEARINGS

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Board staff conducted eighty-one administrative hearings during the two year reporting period. The Board's office manager and field staff supervisor prepare and present cases to hearing officers. Both Informal Fact Finding Conferences and Formal Hearings are conducted at the Board's headquarters in Richmond. While Board staff encourages the individuals who are the subject of hearings to appear in person, they may also participate by telephone.

Hearing officers submit their reports/recommendations to the Board's executive director. The Board has given the executive director the dissertation to make decisions on certain types of cases that have been adjudicated through Informal Fact Finding Conferences. The majority of decisions are made by the nineteen member Board at their regularly scheduled meetings. The subjects of hearings that are decided by the Board are encouraged to attend the Board meetings. The Board provides time for the subjects of the cases to address the Board and respond to questions posed by the Board.

In advance of their meetings, Board members are provided with the hearing officer's report /recommendations as well as all evidence presented at the hearing and any comments/exceptions to the report as submitted by the subjects of the hearings. The Board discusses each case in order to make the best decision in the interest of consumers and the motor vehicle dealer Community.

In this reporting period the Board has levied civil penalties, suspended and revoked certificates and licenses and mandated the dealership owners take and pass the two-day dealer-operator course. Oftentimes the Board will mandate that a dealer must have a satisfactory inspection or face a suspension or additional civil penalty.

## DEALER LICENSING

### Licensing Activities

The primary focus of the Board is to license the nearly 3,500-combined franchise (new) and independent (used) automobile dealers in the Commonwealth. (There are about 550 franchise dealers and 2,900 independent dealers.) These dealers have a combined total of approximately 17,400 licensed salespersons.

The following chart displays statistical data for Fiscal Years 2011 and 2012, showing the Board's processing activity as it relates to licensing dealers and salespersons: (Note: About 21% of the 3,500 dealerships have a two year license and about 15% of the approximate 17,400 salespersons have a two year license.) In order to secure a dealer-operator license or a salesperson license, one must first pass a test. Column "C" displays the number of tests administered in FY11 and FY12. Through an agreement with DMV, tests are administered at all DMV Customer Service Centers.

	A Dealer Licenses		B Salespersons Licenses		C Qualified Applicants	
	FY11	FY12	FY11	FY12	FY11	FY12
July	245	285	1,322	1,482	465	461
August	258	266	1,220	1,408	491	549
September	227	259	1,259	1,732	438	485
October	216	298	1,294	1,632	419	494
November	209	211	1,565	1,791	423	441
December	214	236	1,568	1,803	352	349
January	253	253	1,629	1,807	445	506
February	212	230	1,561	1,730	484	662
March	317	307	2,356	2,530	666	615
April	255	213	1,616	1,579	529	562
May	237	226	1,553	1,720	457	677
June	235	267	1,247	1,630	541	617
<b>TOTAL</b>	<b>2,878</b>	<b>3,051</b>	<b>18,190</b>	<b>20,844</b>	<b>5,719</b>	<b>6,418</b>

A criminal history background check is conducted on each and every initial application for a dealer or salesperson's license submitted to the Board. If an applicant has a criminal history, Board staff, using established criteria, determines if the applicant should be granted a license.

### DEALER LICENSE PLATES

The Department of Motor Vehicles is responsible for allocating and distributing license plates, including dealer's license plates. In order to create a "one-stop shopping" experience for dealers, the Board and DMV maintain a Memorandum of Understanding that authorizes the Board to distribute dealer license plates. The following table displays the number of dealer plate transactions handled during the reporting period by Board staff:

Dealer License Plates	
FY 11	FY 12
40,408	41,125

## CONSUMER ASSISTANCE

The MVDB employs two full-time employees whose primary responsibilities are responding to consumer concerns and initiating investigations on the consumer's behalf. However, it is not the intent of staff to act as legal counsel to the consumer. During the reporting period, we averaged about 425 consumer contacts per month.

The Motor Vehicle Dealer Board provides several methods for which a consumer can contact our office and request assistance.

<b>CONSUMER REQUESTS FY11</b>				<b>CONSUMER COMPLAINTS FY12</b>			
	<b>Total</b>	<b>Written</b>	<b>Phone Calls</b>		<b>Total</b>	<b>Written</b>	<b>Phone Calls</b>
July 2010	425	22	403	July 2011	338	25	313
August	422	23	399	August	426	21	405
September	433	35	398	September	500	26	474
October	371	24	347	October	408	12	396
November	405	19	386	November	369	22	347
December	389	25	364	December	351	29	322
January 2011	472	34	438	January 2012	452	29	423
February	460	25	435	February	367	18	349
March	613	28	585	March	461	21	440
April	437	16	421	April	440	17	423
May	427	13	414	May	369	22	347
June	513	19	494	June	400	18	382
<b>TOTAL</b>	<b>5,367</b>	<b>283</b>	<b>5,084</b>	<b>TOTAL</b>	<b>4,881</b>	<b>260</b>	<b>4,621</b>

## DEALER EDUCATION

Legislation initiated by the Board and adopted by the 2005 General Assembly requires, as of January 2006, all applicants for an original independent dealer-operator certificate of qualification to successfully complete a course of study before they can take the certificate of qualification test. Working with the Virginia Independent Automobile Dealers Association and the Virginia Community College System, a two day class was instituted. During the two year reporting period, forty-three classes were held, with nearly 1,000 students attending. Many of those attending are doing so voluntarily or as mandated by the Board.

Regulations were adopted during the reporting period that will require all independent dealer-operators to become re-certified every three years. The regulations were effective as of January 1, 2011. To re-certify, dealer-operators have the choice of either completing an on-line course, a classroom course or taking a test at any DMV Customer Service Center.

Every other month, the MVDB publishes a newsletter called Dealer Talk. The focus of the newsletter is on dealer education on common problems; changes in laws and regulations; updates and reminders of existing law; and actions taken by the Board against dealers.

Dealers and others may subscribe to our email list in order to receive periodic messages concerning items of interest. In addition, we work closely with the trade associations to use their

communication tools to educate dealers. The Board's executive director gives presentations at association meetings.

### **SELECTED AGENCY INITIATIVES:**

- **Successfully implemented independent dealer-operator recertification program:** All applicants for an original independent dealer-operator certificate of qualification must successfully complete a two-day course of study before they can take the certificate of qualification test. (The dealer-operator is the person responsible for the day-to-day operation of the dealership. This is usually the owner.)

Regulations effective as of January 1, 2011 require all independent dealer-operators to become re-certified every three years. Continuing Education through recertification for Independent Dealer-Operators will keep current operators abreast of legislative, regulatory and policy changes as well as industry trends and helps promote positive business practices. To re-certify, dealer-operators have the choice of either completing an on-line course, a classroom course or taking a test at any DMV Customer Service Center.

The on-line course and classroom course are conducted by two vendors as approved by the MVDB. The regulations included a three-year staggered implementation of the program based on the independent dealer-operator's anniversary date of when they first became certified. Further, the regulations provided an eight-month "window" for individuals to recertify.

- The Board Staff produces a Board Meeting Book which is distributed to all nineteen Board members prior to each of the six yearly meetings held in Richmond. In addition, several interested parties receive these books for a fee. The Meeting Books, which are several hundred pages in length, include information on the Board's activities in the areas of Licensing, Advertising, Dealer Practices, Transaction Recovery Fund; hearing officer reports and evidence presented at hearings and other pertinent matters. In the reporting period we have begun the transition to an electronic book thereby saving paper, time producing the book and money.

Previous to this initiative we produced twenty-eight sets of books for each of the six yearly meetings. We are now down to fifteen books per meeting. Interested parties that receive books may receive an electronic book at no charge.

- In this reporting period The Motor Vehicle Dealer Board continued in its efforts to upgrade and improve automated systems. The agency made significant progress in application development to streamline work processes and to combine legacy applications into a single integrated system for headquarters and field staff. This single system, **OnBoard**, will eventually house all dealer and salesperson licensing data. We envision a complete 360 profile of a dealership including general licensing data on the dealership and salespersons. **OnBoard** will also provide central data point for dealership record of field inspections, customer complaints, violations, hearings, and scanned images (forms, correspondence). **OnBoard** will also eventually service data to our current web applications to promote more online access for the dealer community, consumers, and business.

# FISCAL AFFAIRS SUMMARY

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In FY 96, the Board adjusted licensing fees that dealers pay to the Board. These fees cover all of the expenses of the Board. When these fees were adjusted, it was done with a five year planning horizon. The plan was for the Board to collect sufficient yearly revenues to accumulate a fund balance that would meet operational needs throughout that five-year period.

Efficiencies expanded the original projection. The initial fee structure provided an adequate revenue base that supported the Board until the fees were adjusted in December of 2007.

The Board's financial accounting and reporting functions are provided by DMV. As a result of this joint effort, the Board has been able to conduct its statutory responsibilities and its financial management functions in a most cost-effective manner. The Board's operating revenue, expenditures/transfers and year-end balance for Fiscal Years 2011 and 2012 are shown below:

<i>Fiscal Year Ending June 30, 2011</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,011,874	1,955,054	763,981

<i>Fiscal Year Ending June 30, 2012</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,090,663	2,031,775	822,868

The dealer laws set the maximum fees the Board may levy on dealers. The actual fee schedule is set in APA regulations. The Board successfully completed the APA Regulatory process in the fall of 2007 to adjust fees. The new fees were effective December 1, 2007 – nearly twelve years after the initial fees were put in place.

The 2007 fee structure is designed to produce balances in the first few years to support expenditures that will exceed revenues in the out years. When the new fee structure was developed, it was projected that the new structure would provide an adequate revenue stream for six years. With the economic downturn, the Board has made adjustments and is confident that the 2007 fee structure will be adequate beyond the originally planned six-year time frame. In addition, in FY10 nearly \$85,000 was transferred from the MVDB Operating Fund to the Commonwealth's General Fund. The Board will continue to closely monitor revenue and expenditures.