EXHIBIT I
MARYLAND DEPARTMENT OF PLANNING

INTERAGENCY MEMORANDUM

TO: The Honorable Martin O’Malley, Governor
FROM: Richard E. Hall, Secretary
DATE: July 30, 2010

CC: Matt Gallagher, Chief of Staff
    Joe Bryce, Chief Legislative Officer
    Ted Dallas, Deputy Chief of Staff
    John McDonough, Secretary of State
    Brian Hanmooch, Special Assistant
    Matt Power, Deputy Secretary

RE: Redistricting - Timeline, Key Issues, Discussion

I. Executive Summary

Now that the Census outreach effort is behind us, its primary purpose of redistricting is approaching. This memorandum provides background on state and congressional redistricting, and outlines related issues and timelines of note. While redistricting may seem a long time off, we have already had several meetings with Karl Aro at DLS about the issue, and the general chatter level has increased. We have already begun some of the background work with the data, looking at which redistricting software to purchase, etc. The first key visible steps for the Governor associated with redistricting is appointing the advisory committee. Currently this would occur in January 2011 which means the discussion of possible candidates should begin now. We get the data from the Census Bureau in late February 2011. During the next few months it may be helpful to remind legislators and congressmen that the next Governor draws the legislative boundaries and that we are preparing to do this now. Maryland is the only state where the redistricting plan is the Governor’s plan.

MDP has been the primary staff to the Governor in preparing the redistricting maps and related work since the early 1970’s. Therefore much of this information is based on the agency’s past experience. Obviously DLS puts significant resources into the effort as well. This memorandum also outlines recommended preparations, including budget and staffing.

II. Decisions and Recommendation Actions

The primary purpose of this memorandum is to provide an update on redistricting, outline a proposed schedule, and to highlight key issues. The only action I suggest now is to direct me to work with John McDonough, Joe Bryce, Matt Gallagher et. al. to move forward. In addition, we will be working with DBM on a deficiency request to support some of the redistricting costs.
III. Background, Process, and Timeline

Outlined below is the redistricting process and major milestones that will occur during the next two years. This timeframe, much of which is driven by Federal and state requirements, needs to be kept in mind so that the budgetary and staff preparations can be in place as the work proceeds during these two years.

- January 2011 – Governor appoints redistricting advisory committee.
- February or March 2011 – MDP receives census data.
- May to August 2011 – Public hearings held by advisory committee around the state.
- May to Fall 2011 – State and Congressional plans developed.
- Early Fall 2011 – Public hearing on draft Congressional plan.
- Fall 2011 - Governor calls special legislative session for congressional redistricting due to the early primary election date (February 14, 2012).
- November 2011 – Redistricting advisory committee submits state plan to the Governor.
- December 2011 – Governor holds public hearings on state plan.
- January 11, 2012 – Governor submits state redistricting plan to General Assembly as Joint Resolution.
- February 24, 2012 – 45th day, General Assembly must enact plan by end of this day or the Governor’s plan takes effect.
- Anytime after February 24, 2012 – Go to Court of Appeals to defend the plan.

IV. Governor’s Advisory Committee on Redistricting

A. Background

For the past three rounds of redistricting, 1981, 1991 and 2001, the Governor has appointed an Advisory Committee on Redistricting (Committee). Neither the State Constitution nor State law requires the appointment of such a Committee. The idea to appoint a Committee stemmed from the Court of Appeals invalidation of the 1972 redistricting plan submitted by the Governor and adopted by the General Assembly because the Governor failed to hold public hearings on the plan. The Committee should hold hearings across the state to receive public input on the plan to ensure that a plan was not invalidated by the court. When the 1981 redistricting plan was challenged in court, the Court of Appeals rejected a lack of public hearings claim noting that the record showed that numerous public hearings were conducted by the Governor’s Committee throughout the state as well two hearings that were personally conducted by the Governor to receive comment on the recommended legislative districting plan before its final adoption.

The creation of a Committee also served an important secondary purpose of allowing the President and the Speaker to engage in the creation of the Governor’s plan early on in the process thus preventing a major attempt by the General Assembly to pass its own redistricting plan. The Commission has provided a useful vehicle for this collaboration to
To date, the General Assembly has never passed its own redistricting plan and the Governor's plan has always gone into effect on the 45th day of Session. Maryland is a unique State regarding redistricting, no other state gives its governor this much power in the effort.

The Committee has always consisted of five members: a designee of the Governor, the President of the Senate, the Speaker of the House, and two citizen members. Of the two citizen members, one has been a republican. One member of the committee has also been an African-American. The following lists the make-up of the last three advisory committees.

- **1981 Committee** - William S. James, State Treasurer and chairman (Governor's designee), Senate President James Clark, Jr., Speaker Benjamin L. Cardin, Dr. C. Vernon Gray, a Democrat from Howard County and a professor at Morgan State University, and Barbara Fetterhoff, from Washington County and a member of the League of Women Voters (republican).

- **1991 Committee** - Benjamin L. Brown, an attorney from Baltimore, chairman (Governor's designee and African-American), President Mike Miller, Speaker Clayton Mitchell Jr., Norman Glasgow Sr., an attorney from Montgomery County (republican), and Donna M. Felling, a former member of the House of Delegates from Baltimore County.

- **2001 Committee** - John T. Willis, Secretary of State and chairman (Governor's designee). President Mike Miller, Speaker Casper R. Taylor, Isiah Leggett, Montgomery County Councilman, and Louise L. Gulyas, Worcester County Commissioner (republican).

**B. Process**

The Committee is appointed by the Governor just before MDP receives the census data from the US Census Bureau (January 2011). Appointment of the Committee prior to receiving the data allows the Committee to hold at least one organizational meeting to establish the rules and procedures that will govern the meetings of the Committee. It also allows staff to begin the difficult process of scheduling at least 12 public hearings across the State since the President of Senate and the Speaker of the House attend each of the public hearings. While the Committees in the past have consisted of 5 members with one African-American member, an expansion of the Committee to 7 members may need to be considered to ensure that other emerging minority groups (Hispanics, Asians, etc.) are included. This may be particularly important in light of the fact that a majority minority Hispanic district may (depending on the census data and other factors) have to be created pursuant to the Voting Rights Act. See Part V. Trends & Issues below.

The approximately 12 public hearings are held across the state beginning in the spring of 2011 through the summer in order to allow the public to testify on redistricting and to present to the Committee redistricting plans drawn by the public and various interest
groups. All of the hearings are transcribed and become part of the record of the creation of the plan which is ultimately presented to the Court of Appeals (or the Federal District Court for the Congressional Plan) when the plans are challenged.

Concurrently with the public hearing process, the Committee begins the process of developing both the state and congressional redistricting plans. Plans developed during this time are informed by the public input. They are initially kept internal to the Committee and serve as the key work product for the Committee as they move towards final plans to present to the Governor.

The early congressional primary requires a special session of the General Assembly for a congressional redistricting plan that will occur in February 2012. Given this timing, it is likely that the Committee will need to finish the congressional plan first. The state legislative districts will not take effect until the 2014 elections. It is important to note that unlike the state plan, the Governor has no constitutional or statutory responsibility for the congressional plan and it is introduced like a regular bill and subject to the Governor’s veto.

After the state plan is developed and adopted by the Committee, the Governor will hold at least one public hearing to take testimony from the General Assembly and the public on the plan adopted by the Committee. The Governor is not bound to submit the plan adopted by the Committee. In the last round of redistricting, after the state plan was presented, Governor Glendening received last minute appeals from several legislators and he made several small changes to the plan before he submitted it to the General Assembly on the first day of the session. Thus, the Committee’s plan was not the plan that was ultimately submitted by the Governor.

C. Role of MDP

MDP has served as the primary staff on redistricting since the early 1970’s. Since the creation of the Committee in 1981, MDP has served as primary staff to the Committee representing the interests of the executive branch along with the Governor’s designee. The Department of Legislative Services (“DLS”) also serves as the staff to the Committee to represent the interests of the legislative branch. MDP staff works with the Governor’s staff and the Governor’s designee on the Committee to prepare the maps for both the Congressional and state plans. MDP also prepares the maps requested by the Committee. On the other hand, DLS only prepares the maps requested by members of the General Assembly that occurs during the Committee process and during the legislative sessions.

During the process of preparing the maps for the Governor to review as well as officially for the Committee, a consultant is necessary to advise the Committee on the various legal requirements (US Constitution, Federal Voting Rights Act, and Maryland Constitution) and whether the plan meets those requirements. This same consultant then becomes the necessary expert witness for the Administration and General Assembly when the plans are challenged in court. Some states are hiring such consultants now in order to get the
best consultants for redistricting and to prevent those that may challenge a redistricting plan in court from hiring a consultant that we may want to use. Karl Aro is working on funding what he sees as his half of the consultant's work and the Administration will be expected to pay for its share of the consultant.

In addition to preparing the maps for the Governor and the Committee, MDP historically provided staffing to the committee including staffing all of the public hearings that are held across the State by the Committee. MDP is traditionally responsible for scheduling and organizing the public hearing. Because the Speaker and the President attend all of the public hearings the process of scheduling them is very difficult. MDP also is responsible for compiling the public record from these hearings, including the taping and transcription of the testimony, because the public record becomes part of the eventual court submissions. While we are always striving to limit funding requests and to share expenses with DLS, we need to work with you to secure a budget for these efforts.

V. Other Roles of MDP

In addition to staffing the Governor and Committee, MDP duties are as follows:

- Compile election data obtained from the State Administrative Board of Election Laws (SABEL) and local Boards of Supervisors of Elections, including voter registration, voter turnout and election results compiled by precinct for primary and general elections for President, U.S. Senate, Congress, Governor, State Senate and House of Delegates so that the redistricting software links to the precinct level polygons used in redistricting.
- Prepare, using our GIS staff, all of the Congressional and State redistricting plans, requested by the Governor, the advisory committee, and the publically submitted plans. These plans must be composed of districts and subdistricts (2000 maximum allowable) using a seamless statewide map and assigning any combination of contiguous counties, election districts, voting districts (precincts) or census tabulation blocks to a district/subdistrict.
- Analyze the census data, in conjunction with the redistricting consultant, to determine the majority minority districts that may need to be created as required by the US Constitution and the Voting Rights Act and the Maryland Constitutional requirements.
- Design and develop redistricting website that will inform the public on the activities of the advisory committee, display plans being considered by the committee and submitted to the Governor, allow public to submit comments to the advisory committee.
- Procure the software needed to create the redistricting plans.
- Work with others in the Administration to develop a redistricting plan that is defensible, is based on the data and analysis, and achieves the Governor’s objectives.
- Handle inquiries on the activities of the Committee.
- Assist the Attorney General’s Office in preparing for a court challenge.

VI. Budget Requests

Historically, it has been MDP's budget that has housed the funds necessary to carry out redistricting, including the consultant. DLS will have the staff and funds to perform their activities for the General Assembly and for the Committee. However, if DLS is ultimately
providing all of the redistricting funds and services the Administration would none of these
activities, such as engaging the consultant, it may affect the ability of the Governor to adequately
formulate his plan.

MDP's budget requests have been consistent with the submission of resources allocated in FY
2001. One of the primary factors in requesting some of the equipment, such as computers and
plotters for the maps, is security. Obviously, given the extremely sensitive nature of the maps
that we will be producing, we need to have dedicated computers and plotters in Baltimore and
Annapolis that are only accessible to our redistricting staff.

MDP's over-the-target budget request for FY 2011 was $472,000 and it was not funded. This
request consisted of the following:

- Contractual database to hold election data;
- Contractual planner for redistricting technical assistance;
- Contractual PIO to handle public hearings and public inquiries (6 months);
- Interns for public hearings;
- Equipment – laptops and plotters and map reproduction;
- Redistricting software and training for software;
- Website upgrades for plan publication;
- Public hearing expenses including publication of notices, room fees, audio visual equipment,
  travel, and stenographer for hearing transcripts; and
- Expert/consultant to advise Governor/Committee (consultant also becomes expert witness in
court challenge; this component represents $250,000 of the request.

VII. Preliminary Trends & Issues

Until we see the actual census data, it is difficult to predict exactly what the State will be facing
in terms of redistricting. However, here are some potential issues that we are likely to face:

- Creation of a majority minority Hispanic district in Montgomery or Prince George's
  Counties. In the past redistricting the Hispanic population numbers did not require the
  creation such a district. Whether a district must be created will depend in large part on
  whether this minority group is likely to remain in a compact district. In these two counties, the
  Hispanic community is fairly dispersed which may cause difficulty in creating a district that
  would withstand a "compactness" legal challenge.
- Loss of a district in Baltimore City. If the census data show continued loss of population in
  Baltimore City, either the City loses a district or one of those districts will need to cross the
  City lines into Baltimore or Anne Arundel counties. The crossing of the district into a county
  raises significant legal issues in light of the Court of Appeals' decision in 2002 that the cross
  City/county districts violated the Maryland Constitution's mandate that "due regard" be
given to political boundaries. While Governor Schaefer's 1991 plan did cross the City line,
this 2002 decision raises the legal bar in doing it again.
- New legislation regarding how the prison population is counted. Ultimately this will help
  Baltimore City and somewhat affect the lower Eastern Shore and Western Maryland (i.e.
  Somerset, Allegany and Washington Counties). Senate Bill 400 requires incarcerated
individuals be counted as residents of their last known address before being incarcerated. This means that a prisoner from Baltimore City housed in Hagerstown will be counted in Baltimore City rather than Washington County. MDP is currently working with DPSCS to get the prisoner address database to implement this new law. We are also requesting the same prisoner database from the federal prison in Cumberland since this law also applies to prisoners from Maryland in the federal prison.

- **Congressional Reapportionment.** Maryland's population has not grown enough to result in an additional congressional seat, nor has it lost population to lose a seat.
- **Changes in mapping software.** Some of the redistricting software out there now (currently it is changing every few months as the companies firm up their final versions in time for the redistricting work to begin) not only pushes draft maps out to the web for review and comment, others allow online submittal of draft plans, and some even allow users to create plans on line and submit them. This may be in keeping with the Governor's priorities of providing on-line maps for Marylanders to review and use; however, it will potentially generate a huge number of draft submittals with limited backing.

VIII. Next Steps

We will schedule a meeting with Matt, John, and Joe to discuss these issues and outline next steps for the Administration.