



# The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

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## STATE OF THE STATE

Governor Robert L. Ehrlich, Jr. gave his second State of the State address before the legislature assembled in a joint session. The Governor emphasized his administration's commitment to "five pillars": fiscal responsibility, educational excellence, health and the environment, public safety, and commerce. Among the policy initiatives for this session that support these pillars are efforts to make a cleaner Chesapeake Bay, implement medical malpractice reform, legalize slot machines, introduce a new revenue stream for highway and mass transit construction, and begin an anti-crime program that shifts from incarceration to substance-abuse treatment, when appropriate. The Governor also called on the Assembly to work with him in a bipartisan and collegial manner free of the rancor and divisions that plague the U.S. Congress.

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## COURTS AND CIVIL PROCEEDINGS

Current law allows a prosecutor to appeal a court decision to throw out vital evidence prior to trial. But an appeal sets the defendant free pending the outcome of the appeal, and if the prosecutor loses the appeal, the case is dismissed. Three bills make these provisions less onerous to prosecutors:

- [HB 80](#) allows a prosecutor to try a case with the remaining evidence if the appeal is lost; and
- [HB 34](#) and [HB 304](#) allow a judge to decide whether or not to release a defendant in the face of a prosecution pretrial appeal.

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## CRIMES, CORRECTIONS, AND PUBLIC SAFETY

Several bills expand the list of aggravating circumstances that could make a convicted murderer eligible for the death penalty:

- [HB 250](#) adds killing an off-duty law enforcement officer in retaliation for the officer's actions while on duty;
- [HB 244](#) adds committing more than one first-degree murder within a three year period of time; and
- [SB 181/HB 301](#) add the intimidation of a witness or victim that results in the death of the victim or witness.

Scheduled for a committee hearing next week, [HB 118](#) requires police interrogations in connection with a capital case to be electronically recorded.

The Governor has proposed legislation ([SB 185/HB 296](#)) to expand the crimes relating to victim, witness, or juror intimidation and to increase penalties for the crimes. The bills also alter the court hearsay rule by allowing an out-of-court statement from a witness or victim to be used at trial against the person who made the victim or witness unavailable, killed the witness or victim through an act of intimidation, or who solicited another to do the intimidation.

Another administration proposal ([SB 194/HB 295](#)) seeks to make it easier for nonviolent drug offenders to get substance abuse treatment, instead of jail time and a permanent criminal record. The statewide diversion program enables prosecutors to evaluate offenders as to whether they could be successfully treated for drug abuse. Once identified as treatable, a drug offender is to be assigned to a drug treatment facility. The prosecutor then places the offender's criminal charge on an inactive docket so the charge may be expunged after three years.

According to the Maryland Alcohol and Drug Abuse Administration, drug treatment can cost \$1,000 to \$7,000 for each patient, but it costs as much as \$43,000 a year to keep a person in jail. The Governor has appropriated funds to pay for treatment for 98 adults and 310 juveniles to start the program.

The measure also creates an Alcohol and Drug Abuse Council in each county to develop a local plan for meeting needs of the general public and the criminal justice system for drug and alcohol evaluation,

prevention, and treatment services. The councils also review and recommend for approval local grant applications for substance abuse treatment services.

Under the provisions of [SB 98](#), heard in committee this week, it is a misdemeanor for a social worker, teacher, police officer, or certain health practitioners to fail to report suspected child abuse, subject to a maximum fine of \$1,000. Current law provides no penalty for persons who are required to report child abuse but who fail to do so, other than the possibility of sanctions imposed by the relevant licensing board.

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## ECONOMIC AND BUSINESS ISSUES

### *Insurance*

Scheduled for a committee hearing next week, [HB 132](#) prohibits an automobile insurance company from considering an accident in which the insured person was not at fault in determining whether to assign the insured to a classification that involves a higher premium. The companion bill, [SB 205](#), was introduced this week. Also introduced in the Senate this week, [SB 241](#) does not allow an insurer, who considers claims history in canceling or refusing to renew coverage, to consider an inquiry that does not result in a claim for benefits by a policyholder. The measure also requires the insurance company to give written notice if another claim filed by the policyholder could result in cancellation or refusal to renew the coverage.

### *Utilities*

Several measures before the Assembly concern the federal “do not call” registry and telephone services:

- [HB 2](#) provides for the enforcement of the federal “do not call” registry under State law and, if the Public Service Commission finds the federal “do not call” registry is not in effect, establishes a State registry. (Enactment of this legislation allows the Attorney General to enforce the “do not call” registry in State courts and permits a private right of action.);
- [SB 88](#) provides that a violation of the federal Telemarketing and Consumer Fraud and Abuse Prevention Act or the federal Telephone Consumer Protection Act (the “do not call” registry) is an unfair or deceptive trade practice under State law. (The bill, up for a hearing next week, also allows a

person affected by a violation of the law to bring action against a person who violates the law); and

- [SB 126/HB 107](#) provides that a customer must give prior authorization before a telephone company may include a charge on behalf of another business or entity on a customer’s bill. The Senate bill is before a committee next week.

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## EDUCATION

Addressing school construction, [HB 199](#) requires the Board of Public Works to include modular construction as an approved public school construction or capital cost. The Board must adopt regulations to define modular construction. Another measure, on the hearing schedule for next week, classifies as a permanent classroom a relocatable classroom with a connecting walkway to the main school building. Under [HB 9](#), the cost of purchasing the classroom and walkway constitutes an approved public school construction or capital improvement cost.

Two bills, [HB 172](#) and [HB 256](#), allow active duty military personnel, their dependents, and certain veterans to pay in-state tuition at public colleges and universities in the State. In addition, [HB 172](#) enables dependents to continue their education at the same rates if they remain enrolled at a school, but the military personnel is transferred.

Two bills dropped in the hopper this week target the growing problem of obesity in children:

- [HB 359](#) mandates that each public school have a physical education program for all students, K-12, requiring five hours per week during the school year with the participation requirements to be satisfied by physical activity that takes place on or off the school grounds; and
- [HB 346](#) establishes a school nutrition program to encourage local public school systems to serve more fresh fruits and vegetables, eliminate fried foods, and review portion sizes. The bill also restricts the types of beverages and food that may be served.

This week Senators heard testimony on [SB 77](#), which prohibits a public school student from harassing or intimidating another student on school property, at a school event, or on a school bus. A witness to such an event or someone who has reason to believe a student

has been subjected to harassment or intimidation must report the incident to the appropriate school officials. Local boards of education must adopt policies that prohibit harassment and intimidation and publish the policies in student handbooks.

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## ELECTIONS AND ETHICS

A Senate committee will hear citizens testify next week on [SB 105](#) to alter the circumstances under which a convicted felon may register to vote. Current law requires that a first conviction for the individual must complete the court-ordered sentence imposed for the conviction, including probation, parole, community service, restitutions, and fines. And, for a subsequent conviction, the individual must complete the court-ordered sentence, including probation, etc., and at least three years must elapse since the completion of the court-ordered sentence, including probation, etc. As amended, the bill provides that the individual is eligible if the individual has been released from the custody of the Division of Correction or a local correctional facility. The companion is [HB 329](#).

The same Senate committee will hear testimony in early February on [SB 95](#) to allow a minor under the age of 14 accompanying a voter to have access to the voting room at a polling place and a minor up through the age of 13 to accompany a voter into the voting booth. Current law permits children under the age of 11 in a voting booth.

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## ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

Testimony was taken this week on [SB 13](#), which establishes the procedures that Department of Natural Resources must follow to completely close an area of State waters to all finfishing. A hearing is scheduled for the companion, [HB 202](#), on February 5.

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## FINANCIAL INSTITUTIONS AND COMMERCIAL LAW

[HB 43](#) prohibits a prepaid gift certificate issued to a purchaser from expiring prior to its redemption. Gift certificates donated to charity or used for a sales promotion may expire if: (1) the expiration date is imprinted on the gift certificate; or (2) the issuer gives written notice of the expiration date. Committee

members will hear public testimony next week. A similar bill, [SB 173](#), has a hearing later in February.

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## FISCAL MATTERS

This week, Governor Ehrlich submitted his \$847.4 million capital budget to the General Assembly. The capital budget is not found in one bill but consists of the \$624.8 million Maryland Consolidated Capital Bond bill ([SB 191/HB 300](#)), as well as \$192.4 million in the Budget Bill ([SB 125/HB 200](#)). Since transportation projects are not funded through the capital budget, these figures exclude transportation projects.

The major beneficiary in the proposal is education, funded at \$363.5 million with public school construction receiving \$99.2 million from general obligation bonds in the capital bond bill and \$2.4 million in special funds in the Budget Bill. State colleges and universities receive \$169 million, plus an additional \$25 million in revenue bonds. Community colleges are allocated \$58.8 million.

The capital budget includes \$114.5 million in bonds and special and federal funds for environmental programs including \$98.5 million for various wastewater treatment plant programs and \$500,000 for small creek and estuary control.

For conservation programs there is \$15 million for Program Open Space in bond money plus an additional \$2 million in federal funds, \$5 million each in bond money for the GreenPrint and Community Park and Playground programs, and \$17.1 million for agricultural land preservation in bond money and special and federal funds.

Other proposed authorizations include:

- \$8.4 million for community health facilities;
- \$2.4 million for federally qualified health centers;
- \$9.6 million for an addition to the Clifton T. Perkins Hospital;
- \$5.4 million for a public safety communications system;
- \$17.5 million for the North Branch Correctional Institution;
- \$15.3 million for local jails;

- \$6 million for the Partnership Rental Housing Program; and
- \$5 million for the Community Legacy Program.

Additionally, a number of bond bills for special projects have been introduced by individual members and will receive committee consideration later in the session.

Under the Maryland Constitution a bond bill may not pass until the Budget Bill has passed. The General Assembly may increase the authorization for a project or add a project in a bond bill, as well as delete or reduce projects.

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## GAMING, RACING, AND SPORTS

### *Gaming*

Video lottery terminals (VLTs), or slots as they are more popularly known, were proposed last session as a means to provide a significant new revenue source for the State and to assist Maryland's horse racing industry. Again, this issue is at the forefront of the 2004 session. So far, the only bills in the hopper are the gubernatorial proposals, [SB 197/HB 293](#), which authorize an expanded State Lottery Commission to regulate the operation of as many as 11,500 slot machines at four race tracks as well as 4,000 slot machines at two other sites along the Interstate 95 corridor in Prince George's, Howard, Baltimore, Harford or Cecil Counties or Baltimore City.

Revenue obtained from the machines is earmarked with 45% to education, 39% to race track owners, 10% to racing purses, and 4.75% to local governments where the tracks are located. An annual fee of \$390 per machine will be allocated to a compulsive gambling fund. The Senate bill has a hearing date of February 11.

Another measure, [HB 253](#), taps funding for education by requiring the Comptroller to distribute 25% of the State lottery proceeds to local school systems for public education and to help fund the Bridge to Excellence in Public Schools program.

### *Sports*

[HB 277](#) establishes an Athletic Trainer Advisory Committee as a subunit of the State Board of Physicians. The committee is to develop regulations and license

athletic trainers to ensure minimum standards of competency for athletic trainers

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## HEALTH CARE AND HEALTH INSURANCE

The Clean Indoor Air Act of 2004 bills ([SB 140/HB 260](#)) were introduced late last week. As in past sessions, the bills prohibit a person from smoking in all indoor areas open to the public and places of employment, including restaurants and bars. Legislation in past sessions failed.

Introduced again this session, [SB 247/HB 203](#) allows licensed pharmacists to dispense emergency contraception under an approved arrangement with a physician. Regulations are to be established by the Board of Pharmacy and the State Board of Physicians. Last session, similar legislation passed in the House, but failed in a Senate committee.

Other legislation, [SB 248/HB 204](#), also allows pharmacists to dispense emergency contraception following a written protocol developed by the pharmacist and a physician. The Emergency Contraception Dispensing Program is in the Department of Health and Mental Hygiene, which is to adopt regulations to govern the program.

Responding to concerns that have now gained nationwide attention, [HB 309](#) establishes the State Advisory Council on Obesity in Youth directed to coordinate collecting and analyzing data, increase public awareness of the problem of obesity in youth, and report to the Governor and the General Assembly with recommendations for statewide action. Similar legislation failed last session. [HB 340](#) expands Maryland's child wellness insurance mandate to include treatment and counseling for obesity in children under the age of 18.

This week citizens provided public commentary on another widely publicized topic. [HB 114](#) bans the sale, distribution, prescription, or dispensing of dietary supplements containing "ephedrine group alkaloids," except under certain circumstances, and establishes penalties for violation. The bill is a result of the federal Food and Drug Administration's consumer alert regarding the safety of dietary supplements containing ephedra.

The Administration's medical malpractice reform bill ([SB 193/HB 287](#)) addresses concerns regarding

unaffordable or unavailable malpractice insurance for physicians. Provisions of the legislation include reducing the cap on noneconomic damages in medical malpractice to a flat cap of \$500,000; limiting economic damages, and requiring future awards for economic and noneconomic damages exceeding \$250,000, less \$100,000 to be paid immediately, to be paid through periodic payments. No committee hearings have been scheduled, but Maryland's medical community gathered in large numbers in Annapolis last week to support the proposed reform.

Attempting to rein in prescription drug expenses, [SB 167](#) requires the implementation of a Canadian mail order plan for prescription drugs available to participants in the State employee and retiree health benefits programs, the State's medical assistance and pharmacy assistance programs, and other State prescription drug programs as appropriate. The bill's preamble indicates pharmacy costs in Maryland increased an average of 18% annually over the past three years.

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## STATE GOVERNMENT

Governor Ehrlich proposes to add a new Department of Disabilities to the existing 18 principal departments in the executive branch. [SB 188/HB 299](#) elevate the Governor's Office for Individuals with Disabilities to a cabinet-level department charged with ensuring equal access and enjoyment of State resources by individuals with disabilities that is comparable to individuals without disabilities. Within the new department, initiatives in the proposals establish a statewide Disability Implementation Plan and Board, a Maryland Advisory Commission on Disabilities, an enhanced Office for Disability Constituent Services, and an Office of Research and Evaluation.

Several legislators are sponsoring bills that propose a new Maryland Office of Minority Health and a Minority Health Advisory Commission in the Department of Health and Mental Hygiene. The office is to be an advocate for the improvement of minority health care and to establish forums, programs, or initiatives designed to educate the public regarding minority health issues, with an emphasis on preventative health and healthy lifestyles. Under the legislation, "minority person" includes African Americans, Hispanics, Asian and Pacific Islanders, and American Indians statewide. A hearing is scheduled for next week on [HB 86](#). The Senate companion is [SB 177](#).

Also scheduled for hearings next week, are two bills that address filling vacancies in the constitutional offices of the Attorney General and the Comptroller, both of whom are elected statewide. [SB 164](#) codifies the circumstances under which the senior Deputy Attorney General serves as acting Attorney General, if the Attorney General is temporarily unable or unavailable to carry out the duties of the office.

The other measure, [SB 166](#), proposes to amend the Maryland Constitution to add provisions to the gubernatorial appointment process of the Attorney General and the Comptroller when those offices become vacant. The legislation provides that the Governor appoint a new Attorney General or Comptroller of the same political party, if any, as that of the Attorney General or Comptroller whose office is being filled. The bill also specifies that the Governor appoint the Attorney General by and with the advice and consent of the Senate, as is currently required by the Constitution for the appointment of the Comptroller.

Constitutional amendments must be approved by three fifths of the membership of the legislature and then submitted for approval by the voters at the next general election, which will be November 2004.

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## TRANSPORTATION

Next week, a Senate committee will hear from the public on [SB 233](#), which prohibits a licensed driver under the age of 18 from driving with a passenger under the age of 18 for 181 days after the driver's license is issued. The restriction imposed on the licensee does not apply to a passenger who is a spouse, daughter, son, stepchild, or sibling of the licensee. A police officer may only enforce the restriction as a secondary violation and the violation may not be the primary cause for stopping a motorist.

The Senate passed legislation providing that if an applicant for renewal of a driver's license who is at least 21 years old, but less than 40 years old, passed a vision test as prescribed by the Motor Vehicle Administration (MVA) within the previous six years, the applicant is not required to take a vision test to renew the driver's license. Currently, every individual applying for renewal of a driver's license must appear in person at an MVA office and pass a vision test prescribed by the MVA, or the MVA must accept certification of acceptable visual acuity from a licensed physician or optometrist. Under [SB 35](#), the customer wait time at the MVA could be reduced if eligible drivers in the 21 to 40 age group

(about 130,000 drivers) use alternative means, other than in-person visits, to renew their drivers' licenses.

A House committee listened to comments this week on [HB 30](#), which expands the exemption governing the type of energy efficient vehicles that may use high occupancy vehicle (HOV) lanes at all times, to include qualified hybrid vehicles. Currently, only drivers of inherently low emission vehicles (ILEVs) are allowed to use HOV lanes at all times. Under the bill, the MVA, the State Highway Administration, and the Department of State Police are to consult to design a permit to designate a vehicle as a qualified hybrid vehicle authorized to use a HOV lane. A similar measure, [SB 97](#), was also heard by a Senate committee this week.

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## **UPCOMING**

Next Friday, February 6, is the Senate Bill Introduction Date deadline. According to the Senate rules, bills introduced "after the twenty-fourth calendar day" of a regular session are referred to the Senate Rules Committee, rather than one of the four standing committees. With bill introductions reaching 294 in the Senate and 476 in the House, hearings will begin to fill up each committee's afternoon hours.