



# The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

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## **BILL DEADLINES**

Bill deadlines have passed in both the Senate and House. At this point 786 Senate bills and 6 resolutions and 1,325 House bills and 7 resolutions are before the Assembly.

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## **COURTS AND CIVIL PROCEEDINGS**

Maryland law states that “only a marriage between a man and a woman is valid in this State.” With the Massachusetts Supreme Court decision clearing the way for same-sex marriages there, [SB 746/HB 728](#) provide that same-sex marriages validly entered into in other states or countries are not valid in Maryland and that same-sex marriages are against the public policy of this State. Other legislation, [SB 673/HB 16](#) proposes a constitutional amendment to define marriage as being between a man and a woman. Hearings are scheduled for later this month and in March.

Maryland judges may reconsider sentences they hand out to criminals at any time and for any reason under the authority of a 50-year-old procedural rule. [SB 333/HB 812](#) limit reconsideration to one year after a defendant’s motion for sentence revision, which must be made within 90 days after sentencing, except in cases involving an illegal sentence, fraud, mistake, or irregularity. Judges must state in writing the reasons for reconsideration and notify the victims in advance of revising, modifying, or reducing a sentence. A similar bill, [HB 464](#), limits judicial sentence reconsideration to five years after a defendant’s motion for sentence revision.

Introduced in response to a juvenile justice advocacy group report that concluded that 40-50% of juveniles do not demand legal representation when they appear in court, [SB 163/HB 511](#) allow a child to waive the right to counsel, only if the child has consulted with a lawyer and the court deems the decision was made knowingly and voluntarily. A parent or guardian would also be barred from making the decision.

The Maryland Legal Services Corporation is seeking an increase in the funding it receives through surcharges assessed in circuit court and District Court civil actions. [SB 316/HB 706](#) raise the circuit court surcharge from \$10 to \$40 per case. In District Court, the surcharge would increase from \$2 per case to \$5 per summary ejection case and \$17 per case for all other civil cases. The Maryland Legal Services Corporation Fund finances organizations such as the Legal Aid Bureau, House of Ruth, and the Maryland Volunteer Lawyers Service.

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## **CRIMES, CORRECTIONS, AND PUBLIC SAFETY**

Current Maryland law requires health care practitioners, police officers, educators, and human service workers to report suspected child abuse, but does not criminalize failure to do so. The Senate amended and gave preliminary approval to [SB 98](#), which makes it a misdemeanor to fail to report, with a maximum penalty of a \$1,000 fine. The bill also requires an oral report to be made as soon as possible, but not later than 24 hours after suspicions arise, and a written report be made no later than 48 hours after suspicions arise. However, a person who is required to report child abuse need not report the abuse, if that person has reason to believe that a report has already been made. The companion bill, [HB 510](#), will be heard in committee next week.

This week the public had an opportunity to testify on [HB 365](#), which adds sexual orientation and gender identity or expression to Maryland’s hate crime law. The State’s hate crime law prohibits a person from harassing or committing a crime against a protected person, damaging, defacing or destroying property of a protected person or property associated with a protected person, or attempting to do so, or burning or attempting to burn an object on the property of a protected person. Testimony on the companion measure, [SB 698](#), will be heard next month.

Next week a Senate committee will hear from Marylanders on a bill to hasten reform of the juvenile justice system. [SB 543](#) sets a December 31, 2004, deadline for the Department of Juvenile Services to meet

a number of requirements including submission of a 10-year Master Facility Plan for juvenile detention and commitment facilities, and a comprehensive Reform Plan for development of community-based services and family-centered aftercare case plans.

**SB 543** also restricts to one year any contract with a vendor for providing services at the Charles H. Hickey, Jr. School, and requires by December 31 regulations for programs and services that are consistent with existing standards that apply to private child residential programs and facilities, and an evaluation of the procurement and contracting procedures of the Department of Juvenile Services.

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## ECONOMIC AND BUSINESS ISSUES

The full Senate approved **SB 122** to establish a task force to study the dynamics of elderly and retiree migration into and out of Maryland. Topics include the review of the impact of tax policies, State and county expenditures on the elderly and retired, and benefits of the elderly and retired to the State and local communities. A House version, **HB 966**, was introduced this week.

Next week, Senators will hear testimony on the creation of an Equal Pay Commission to study the extent of wage disparities, in both public and private sectors, between men and women and between minorities and nonminorities. The commission will present recommendations including proposed legislation to the General Assembly leadership and the Governor (**SB 250**). Last session a similar measure failed.

Other legislation on the Senate's hearing schedule prohibits an employer from requiring or allowing an employee to work for more than five consecutive hours without a 30 minute break in a calendar day. **SB 162** does not apply to every employee and may not be applied to abridge any right that a collective bargaining agreement grants to an employee.

Also on a committee's agenda next week, **SB 273** increases the liquidated damages for which a contractor, under a public works contract, is liable to the public body in not complying with the prevailing wage rate. Instead of paying \$20 for each laborer or other employee for each day for which the prevailing wage rate was not paid, a contractor would be liable for 16 times the hourly prevailing wage rate.

## EDUCATION

Last Monday's evening floor session of the General Assembly was preceded by one of the largest demonstrations by the public in recent memory. The 6,000 plus Marylanders filled Lawyer's Mall at the foot of the State House and the lanes of Rowe Boulevard beyond in support of full funding for the Thornton Plan for Maryland's K-12 public schools.

After much debate on Thursday and Friday, Thornton-related legislation passed the House. **HB 345** repeals the "trigger provision" in the Thornton Plan (Bridge to Excellence in Public Schools Act of 2002, Chapter 288). The 2002 bill reworked the State education funding formulas to increase State aid to education over a six year period. Because of an unsure fiscal outlook, an amendment was added that required the General Assembly to pass a joint resolution or "trigger provision" by the fiftieth day of the 2004 session in order to proceed with full implementation of the Act. A recent opinion by the Office of the Attorney General, however, indicated that the "trigger" provision may represent an unconstitutional legislative veto. According to the Attorney General, keeping the provision in law places the State at risk of a lawsuit on constitutional grounds. The Senate companion bill, **SB 245**, was before a committee this week.

Several bills before committees this week deal with the role that schools play in the health of students:

- **HB 346** establishes a school nutrition program that prohibits public elementary and secondary schools from serving non-nutritious drinks and food between 12:01 a.m. and the end of the last lunch period;
- **HB 359** requires that every public elementary and secondary school have a program of physical education that is required for all students in kindergarten through grade 12 for five hours per week during the school year. (The requirements may be fulfilled either on or off the school grounds); and
- **HB 358** requires the State Board of Education to establish procedures for the administration of the Youth Risk Behavior Surveillance System Survey (YRBSS) developed for the Centers for Disease Control and Prevention (CDC). YRBSS was designed to determine and assess the prevalence of risk behaviors including tobacco use, unhealthy dietary behaviors, and inadequate physical activity. CDC provides competitive grants to some states to

encourage administration of YRBSS; Baltimore City students currently participate in the survey through a grant from CDC. In addition, 34 states administered YRBSS to students in 2001.

Other bills address reemployment of teachers, full day kindergartens, high school drop-outs, and testing requirements:

- [SB 8](#) extends the sunset dates through June 2008, for provisions that permit teachers, principals, and supervisors of principals to be reemployed by county boards of education without being subjected to an earnings limitation;
- [HB 428](#) requires that county boards of education by the 2007-2008 school year provide full-day kindergarten programs for all kindergarten students in that county that attend a school in a critical needs or low socioeconomic area. (By the 2011-2012 school year, each county board shall provide full-day kindergarten programs for all kindergarten students in that county);
- [HB 502](#) deems a student age 14 or older a dropout and to have withdrawn from school if the student willfully fails to attend school or receive instruction for a period of more than 90 days unless excused by a superintendent or school principal or someone authorized by them;
- [HB 762](#) requires the State Board of Education to administer only multiple choice tests and contains provisions related to the development and implementation of written tests and assessments by each county board of education; and
- [HB 766](#) requires that the State Board of Education establish curriculum guides and courses of study that are age-appropriate and that are consistent with the TV parental guidelines for minors established by the Federal Communications Commission. A county board may not provide instruction or training in any curriculum or course of study to a minor child under 15 without the written consent of the parent or guardian.

The Education Reform and State Accountability Act of 2004, [HB 761](#), calls for the election of the State Superintendent of Schools and an eight member Board of Education. The current State School Board consists of 11 members appointed by the Governor who selects the superintendent.

Under [HB 759](#), “adequate education” is defined as a means of student achievement that is consistent with the mandate under the Maryland Constitution that the State provide a thorough and efficient system of free public schools and that equates to student proficiency in reading, writing, and computational skills at the tenth grade level or higher.

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## ELECTIONS AND ETHICS

Sponsors of [HB 53](#), along with the supporters of the measure, told House committee members that voter verification by a paper trail is the best way for Marylanders to be sure that their votes are accurately recorded. The bill requires Diebold, the manufacturer of Maryland’s current voting system, to develop paper record capability as an add-on. Opponents argued that the cost of printer add-ons is an extra financial burden that neither the State nor local governments can afford. Others also believe that the extra step will unnecessarily complicate the voting process. Currently, official election results are stored on removable memory cards inside of each DRE machine. These cards are transported to local boards of election after polling places close on election night. The cards are capable of producing a permanent paper record of all ballots cast. The companion bill is [SB 393](#).

Bills establishing public financing of campaigns for candidates for the General Assembly ([SB 725/HB 1317](#)) and another measure establishing public financing for statewide races (Governor/Lieutenant Governor, Attorney General, and Comptroller), as well as for legislative races ([SB 562](#)) are in the pipeline.

[SB 95](#) lowers the age of minors who are allowed in a voting booth cleared the Senate this week with a unanimous yes vote. Other measures on the same topic are waiting for public commentary ([HB 11](#) and [HB 18](#))

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## ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

Committee hearings on legislation aimed at preventing toxic materials from reaching Maryland landfills include the following:

- [HB 26](#) prohibits manufacturing, processing, or distributing after October 1, 2008, products that contain more than one-tenth of 1% of

polybrominated diphenyl ether, a fire retardant that is linked to health problems;

- [HB 328](#) requires the Department of the Environment, on or before October 1, 2005, to establish an electronic waste recycling system; and
- [HB 136](#) calls for labeling, and restrictions on possession, after October 1, 2006, of specific products that contain mercury. These products include dyes or pigments, electric switches, florescent lamps, and thermostats.

Another mercury related bill, [HB 648](#), encourages the United States Environmental Protection Agency to comply with the Clean Air Act with respect to mercury and to require coal-fired power plants to reduce mercury emissions. No hearing has been announced as yet for this bill.

A committee also heard testimony on two other environmental bills. [HB 308](#) repeals a 1927 prohibition of the use of a “devil diver” while dredging for oysters. This device helps to keep the dredge on the bottom. [HB 291](#) repeals some provisions of the Water Quality Act of 1998, reducing the administrative burden to the Department of Agriculture and to farmers. The companion bill, [SB 182](#), will be heard February 17.

The Senate has preliminarily approved a bill that allows Anne Arundel County to adopt a “right to farm” ordinance, [SB 202](#), has moved out of committee to the Senate floor. The companion bill, [HB 825](#), is set for a committee hearing on March 4.

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## FINANCIAL INSTITUTIONS AND COMMERCIAL LAW

A hearing was held this week on the regulation of electronic check conversions, a process in which the routing, account, and serial numbers on a check are used to initiate a one-time transfer of funds electronically from a demand deposit, savings, or other account held by a financial institution. [SB 234](#) prohibits a person who accepts a check from a consumer as payment for consumer goods or services from using the check to make an “electronic check conversion” unless: (1) the person gives the consumer written notice containing specified information; and (2) the consumer consents by signing the written notice. Violations fall under the Attorney General’s Consumer Protection Division.

Other consumer-oriented bills heard this week include an increase in the maximum amount of the civil penalty the Attorney General may recover for the State, from \$25 to \$100, for a violation of the State’s prohibition against printing more than eight digits of a credit card or other payment device number on a receipt provided to the card’s holder ([HB 458](#)) and prohibition of specified disclosures of an individual’s Social Security number (SSN) ([SB 117](#) and [HB 74](#)). Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

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## FISCAL MATTERS

Balancing the State budget requires a large commitment of time and careful consideration throughout each fiscal year. A number of bills are a part of this process this session:

- [SB 125/HB 200](#), the Budget Bill-Fiscal Year 2005, transfer money into the General Fund, add and increase fees, and eliminate or reduce grant programs in order to increase General Fund revenues or reduce expenditures to balance the budget for fiscal 2005;
- [SB 508/HB 869](#), the Budget Financing Act of 2004, increase the fees for various licenses, certificates, permits, filings, and reports in various State departments; provide the Department of Health and Mental Hygiene with general fee-setting authority to cover administrative costs associated with inspections, investigations, permits, licenses, certifications, or registrations; impose a \$1,200 annual fee per nursing home bed; and contain additional provisions to increase revenues to balance the budget;
- [SB 509/HB 870](#), the Fund Transfers Act of 2004, alter the distribution of State revenues by transferring to the General Fund \$102.4 million from local highway aid, \$57.1 million in transfer tax revenues originally for Program Open Space, and balances from certain special funds such as the Spinal Cord Injury Research Trust Fund, State Use Industries, Central Collection Fund, and from funds of the boards for dentists, physical therapists, psychologists, social workers, and physicians. (Other provisions include amendments to current law to carry out contingent reductions in the Budget Bill); and

- [SB 510/HB 871](#), the Budget Reconciliation Act of 2004, make changes to the law to increase General Fund revenues or to reduce expenditures to balance the budget including transferring money from special funds to the General Fund, reallocating revenues to the General Fund, increasing the local share of expenses for nonpublic placement of children with disabilities, repealing certain grant programs including the Governor's Teacher Salary Challenge program and the electric power plant property tax grant program, and reducing certain aid amounts including aid for nonpublic universities and colleges. Among the reduced mandatory expenditures are those for anti-tobacco use campaigns and appropriations for tourism and the arts.

A proposed constitutional amendment, [SB 370/HB 1247](#), gives the General Assembly the authority to increase or add items to the Executive Department in the Budget Bill subject to the veto of the Governor of the increases to the items or to the added items. The total allowance for the Budget Bill, as submitted by the Governor, could not be increased by these changes. If the Governor vetoes an increase in appropriation or a new item, the General Assembly could convene in a special veto override session to consider the veto. Currently, the General Assembly may only delete or reduce items for the Executive Department, but may increase items for the Legislative and Judicial Departments, and the Governor has no veto over any portion of the Budget Bill. This legislation has been considered in past sessions.

A number of corporate income tax bills are under consideration. To minimize tax avoidance, [SB 156](#) and [HB 1037](#) authorize the Comptroller to make allocations, apportionments, and distributions of income, deductions, credits, or allowances among two or more organizations under certain circumstances, and make other changes in determining Maryland corporate income. [SB 727](#) requires corporations meeting certain criteria to use a specified method in determining Maryland taxable income and require specified groups of corporations to file a combined income tax return, except as provided by the Comptroller.

Another recent introduction, [HB 849](#) converts a number of business-related tax credits which reduce tax liability directly to a subtraction modification against income. Changing existing State income tax credits to subtraction modifications will reduce the State revenue loss associated with the tax credits. While State revenues will

be reduced by the subtraction modifications, the overall effect will be a revenue savings. Income tax credits reduce State revenues in the amount of the credit claimed on tax returns. Subtraction modifications reduce State revenues by the tax rate multiplied by the amount of the subtraction claimed. Similar legislation failed last session.

The Millionaires' Tax Surcharge bill, [SB 478/HB 1061](#), increases the State income tax rate to 7.75% of all Maryland taxable income on those individuals whose Maryland taxable income exceeds \$500,000. Currently the maximum rate is 4.75% on Maryland taxable income over \$3,000.

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## GAMING, RACING, AND SPORTS

During a major Senate hearing this week, the Governor and the Comptroller joined Maryland's Senate President and other Marylanders in making their positions on legalized slots known. [SB 197](#), an Administration bill, authorizes up to 15,500 video lottery terminals (slot machines) at six locations: four horse racing tracks and two nontrack locations. The bill also provides for one-time application fees, creates the Education Trust Fund and other special funds, and continues the current prohibition on additional forms of commercial gambling. Governor Ehrlich estimated that implementation of the slots bill will bring within four years almost \$900 million a year for the State. Comptroller Schaefer stated that the time had come to find a new revenue source to solve Maryland financial deficit at least in part. Many other citizens, both for and against slots, joined these officials in testifying in an almost seven-hour hearing. No hearing date has been set for companion bill, [HB 293](#).

Two other measures address compulsive gambling. [SB 496](#) establishes a Compulsive Gambling Treatment Program in the Department of Health and Mental Hygiene (DHMH) to provide initial assistance and treatment for compulsive gamblers and their families. To avoid a delay in the implementation of the program, the bill requires the department to allocate \$200,000 on a one-time basis to the Compulsive Gambling Center, Inc. in Baltimore City. [SB 530](#) requires the Secretary of DHMH to conduct a prevalence study and replication prevalence studies to measure the rate of problem and pathological gambling in Maryland.

On an entirely different subject, but one that generates strong opinions, as well, [SB 279](#), heard this week,

repeals an existing prohibition relating to steel-jaw leghold traps in certain counties and establishes a statewide prohibition on the use of leghold traps. As exceptions to the prohibitions, the Department of Natural Resources may issue permits for leghold traps under specified conditions and the U.S. Fish and Wildlife Service may use leghold traps under specified conditions.

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## **HEALTH CARE AND HEALTH INSURANCE**

Opinions (pro and con) relative to the Clean Indoor Air Act of 2004, [SB 140](#), were aired before a Senate committee this week. The bill prohibits a person from smoking in all indoor areas open to the public and places of employment, including restaurants and bars. Also covered are government-owned or operated means of mass transportation including buses, vans, trains, taxicabs, and limousines. The bill increases the fines for a violation, but does not preempt a county or municipal government from enacting and enforcing additional measures to reduce involuntary exposure to environmental tobacco smoke.

The companion proposal, [HB 260](#), has a hearing next week. Legislation in past sessions failed.

Also before a committee this week, [HB 277](#) establishes an Athletic Trainer Advisory Committee within the Board of Physicians to license and regulate athletic trainers who are not licensed and regulated under the Health Occupations Article. The companion bill, [SB 411](#), will be heard later in the month.

[SB 737/HB 1008](#), the Public-Private Partnership for Health Coverage for All Marylanders, is a proposal of the Maryland Citizens' Health Initiative. The legislation extends health insurance coverage to Maryland's uninsured. Program funding sources include an employer payroll tax and an increase in the cigarette tax of 50 cents per pack. The Senate hearing is February 25<sup>th</sup>.

Introduced late in the week, [SB 715](#) and [HB 1271](#), the Access to Health Care and Community Health Care Safety Net Act of 2004, expand health care coverage to the uninsured.

A variety of bills address the physical health of children. Recently, the public testified on two of those dealing with obesity in children, which in the U.S. in the last 20 years has doubled to one in five children. [HB 340](#)

expands the child wellness health insurance mandate to include services related to the prevention, treatment, and counseling for obesity in children under the age of 18. [HB 309](#) creates a State Advisory Council on Obesity in Youth to coordinate work on youth obesity issues; collect and analyze data and reports prepared by Maryland agencies; investigate other states' practices; hold community forums; and make recommendations for improving the physical layout of schools, youth centers, and parks and recreational areas to encourage increased physical activities. The advisory council is to report to the Governor and the General Assembly by June 1, 2006, and every two years thereafter.

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## **REAL PROPERTY, ESTATES, AND TRUST**

[HB 3](#), the Hurricane Isabel Disaster Relief Act, has passed a preliminary House floor vote. The bill, as amended, provides low interest loans for people whose primary residences were damaged by Isabel and who have not received sufficient funds to repair the homes to make them habitable. The bill also includes coverage for the repair or replacement of water and sewer systems, including septic systems. The companion bill ([SB 415](#)) has not had a hearing.

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## **TRANSPORTATION**

[SB 108](#), which has passed the Senate, increases the penalty for driving without authorization, to not only include the current maximum \$500 fine, but a maximum prison term not to exceed two months, or both prison time and the fine. Under current law, an individual is prohibited from driving, or attempting to drive a motor vehicle on any highway in this State, unless the individual has a driver's license, is expressly exempt from licensing requirements, or is otherwise specifically authorized to drive vehicles of the class the individual is driving. This offense is different from simply driving without an issued license, which is a misdemeanor offense with a fine of \$35 and no points.

Mobile infrared transmitters, known as "MIRTs," are devices intended to change traffic lights in two seconds. The technology, once sold exclusively to police and fire departments, is used to clear intersections and halt opposing traffic in emergency situations. However, lower cost copycat versions of the MIRT are now available to the public, generally through Internet sales. To address this issue, three measures were before a House committee this week. The bills provide that a

person without lawful authority may not possess any device capable of transmitting a signal to a traffic light or any railroad sign or signal, for the purpose of altering or otherwise interfering with traffic control signal operations. Under [HB 465](#) and [HB 381](#) a violation is a misdemeanor and subject to imprisonment of up to two months or a fine of up to \$500, or both. [HB 174](#) provides a stiffer penalty of imprisonment of not more than 90 days or a fine of not more than \$5,000, or both for possessing the device. Also, a person who misuses the device is guilty of a felony and is subject to a maximum prison term of two years or a maximum fine of \$10,000 or both.

House committee members also listened to testimony on [HB 265](#) that requires only one registration plate for all registered vehicles, instead of the two plates currently required. The one registration plate is to be attached to the rear of the vehicle. An identical measure, [SB 299](#), is scheduled for a hearing next month.

Notwithstanding statutory restrictions, Transportation Trust Fund (TTF) funds have been transferred to the State's general fund six times between 1984 and 2004 (including one in fiscal 2004). TTF revenues include all motor fuel and vehicle excise taxes, as well as all vehicle registration fees, a portion of the corporate income tax and the rental vehicle sales tax, and cash proceeds from the sale of consolidated transportation bonds. [HB 19](#) places constitutional restrictions on transfers from the TTF and allows TTF funds to be used to pay the principal of and interest on transportation bonds and for any lawful purpose related to construction and maintenance of an adequate highway system or any other transportation-related purpose. The bill creates exceptions to the prohibition on transfers for defense or relief purposes under certain circumstances and with repayment provisions. The amendment will be submitted to the citizens of the State for a vote at the next general election to be held in November 2004.

Another measure, [SB 159](#) proposes to determine the sense of the voters on the issue of funding and building a third Chesapeake Bay bridge crossing. The question, "Do you favor the construction of and commitment of State resources to fund a third Chesapeake Bay bridge crossing?" will be submitted to the citizens of the State at the November 2004 general election.