



The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

Issue 04-6

February 16-20, 2004

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GREEN BAG APPOINTMENTS

Gubernatorial appointments for 2004 were submitted to the Senate and House today at the morning sessions. In the Senate, the Governor's Appointments Secretary delivered the list of gubernatorial appointments in the official Green Bag of Maryland. The green leather bag, embossed with the Maryland Great Seal, is modeled on the green bags used by English barristers of old to convey official documents. Except for this annual presentation ceremony, the Green Bag resides in the State Archives. Article II, Section 13 of the Maryland Constitution requires the Governor to submit nominations of civil officers to the Senate within 40 days of the beginning of each regular session, although the actual Green Bag is not mentioned.

COURTS AND CIVIL PROCEEDINGS

The House rejected the salary increases for judges that were recommended in the Judicial Compensation Commission Report ([HJ 1](#)). The House passed an amended resolution for Senate consideration that retains current salaries for all State judges for fiscal years 2005 and 2006, but allows them to receive any cost-of-living salary increase that may be awarded to other State employees. The Governor's proposed budget contains a 1.6% general pay raise for State employees.

[SB 78](#), to remove the requirement that the surviving spouse of a judge who retired on a disability pension must be age 50 or older to receive the 50% benefit from the Judges' Retirement System, passed the Senate unamended.

The Senate passed [SB 163](#) to restrict the right of a child to waive assistance of counsel when the child appears in court. The waiver may be used only after the child has consulted with a lawyer and the court deems the decision was made knowingly and voluntarily. In addition, a parent or guardian is barred from waiving the child's right to counsel. A hearing for companion [HB 511](#) is scheduled for early March.

Testimony heard by a House committee this week targeted legislation related to the rights of immigrants:

- [HB 7](#) prohibits the use of a consular registration card issued by a foreign government as proof of identity for foreign residents unless the card is accompanied by a valid visa or permanent resident card (green card);
- [HB 579](#) prohibits a requirement that a police officer enforce federal immigration laws, and prohibits a police officer from detaining an undocumented immigrant without meeting current warrantless arrest requirements, or from searching for undocumented immigrants for the sole purpose of detaining them; and
- [HB 89](#) requires a police officer to detain an undocumented alien who has been taken into custody pursuant to the performance of the officer's normal duties. The detention continues until the alien is transferred to the custody of the U.S. Bureau of Citizenship and Immigration Services, which must be informed of the detention as soon as possible. A police officer may not search for undocumented aliens solely for the purpose of detaining them.

The law governing interstate child custody disputes is clarified and expanded to address interstate enforcement of child custody orders, including visitation provisions, under the Maryland Uniform Child Custody Jurisdiction and Enforcement Act ([SB 269/HB 400](#)). The uniform law upon which the Maryland legislation is based has been adopted by 35 states. [HB 400](#) was heard in committee this week, and [SB 269](#) was heard last week.

Under Maryland court rules, police must present a suspect to a court commissioner without unreasonable delay, and in no event later than 24 hours after arrest. Current law prohibits exclusion of a confession from evidence solely because the defendant was not presented to a court officer within those guidelines, but allows delay of presentment to be considered, among other factors, in deciding the voluntariness and admissibility of a confession. [SB 627](#) provides that there

is a rebuttable presumption that the voluntariness of a confession is not affected by a delay of presentment of up to 12 hours after arrest. Further, if a confession is obtained from a defendant within 24 hours after arrest, any delay in presentment of the defendant before a judicial officer may not be given any greater weight by the court than any other factor examined in determining the voluntariness of the confession. A hearing will be held on the bill next month.

CRIMES, CORRECTIONS, AND PUBLIC SAFETY

[HB 613](#) changes from a misdemeanor to a felony the crime of visual surveillance, with prurient intent and without consent, of a person in a private place and the crime of using a camera for deliberate surreptitious observation of a person inside a private residence. The maximum penalty is increased from six months in jail and a \$1,000 fine to five years in jail and a \$10,000 fine, putting it more in line with the penalty for the crime of illegal audiotaping. The bill will be heard in two weeks.

[HB 1145](#) removes the limit of \$5,000 for veterinary care included in compensatory damages that can be awarded in a civil action brought by the owner of a pet that was intentionally injured or killed. Compensatory damages include the fair market value of the pet before death and the reasonable and necessary cost of veterinary care. The bill also removes the limit on compensatory damages that a person is liable for who intentionally and with malice injures or kills a pet, and adds punitive damages as well. Current law provides that deliberate acts of torture and mutilation of animals is a felony with a maximum penalty of \$5,000 and three years in jail.

ECONOMIC AND BUSINESS ISSUES

Economic Development

Recently, House committees held public hearings on several bills dealing with economic development and business issues in Maryland:

- [HB 342](#) establishes a task force to study the automobile industry in Maryland to determine why there are so few minority-owned dealerships;
- [HB 663](#) expands the uses of the Historic Preservation Loan Fund of the Maryland Historical

Trust (MHT) to authorize loans for refinancing historic properties. (Under current provisions, MHT loans may be used for acquiring, rehabilitating, or restoring historic properties, which are defined as those listed on, or eligible for, the National Register of Historic Places. Similar legislation passed the House last year); and

- [HB 659](#) repeals the authority of the Maryland Economic Development Corporation (MEDCO) to acquire real property or rights or easements in real property by condemnation. Although MEDCO is authorized to use eminent domain to acquire real property or rights or easements in real property for projects, subject to approval by two-thirds of the legislative body of each political subdivision in which the property is to be taken, it has never used this authority in its 20-year history. (The Senate companion bill is [SB 716](#). This legislation failed in previous sessions.)

Under current law, real property can be effectively transferred without payment of transfer and recordation taxes by transferring a controlling interest or ownership of the entity, if the property is owned by a corporation, limited liability company, or partnership.

These transfers are not recorded in the land records of the local jurisdictions and are, therefore, difficult to track. Some citizens argue that the mandate for real property to be assessed at its market value is jeopardized for commercial and industrial properties, if these transfers are not known to the assessor. [SB 379](#) addresses this issue.

The Senate measure requires that the amount of consideration paid for a transfer of a controlling interest in an entity be reported to the State Department of Assessments and Taxation. The bill applies to transfers of controlling interests by entities that own real property that constitutes at least 80% of the value of its assets and that has a total assessed value of at least \$500,000. The bill exempts certain transfers (e.g., mergers and dissolutions) from the reporting requirement.

Reporting requirements for minority business loans and higher education loans are also under consideration. [HB 415](#) directs the Commissioner of Financial Regulation to require each financial institution subject to regulation by the State to submit a verifiable annual report on higher education loans and minority business loans. The bill also requires the Treasurer to consider the extent of commercial loans a financial institution has made to

minority business enterprises prior to selecting the financial institution as a depository. Under current law, the Treasurer must consider higher education loans. The bill prohibits the Treasurer from designating a financial institution as a depository if the financial institution: (1) fails to truthfully and accurately comply with the bill's reporting requirements; or (2) has been found through an administrative or judicial process to have discriminated in its lending practices on the basis of race, gender, or national origin. [SB 324](#) is the companion bill.

Insurance Matters

Committees in both houses held public hearings this week on several insurance-related bills. Automobile insurance coverage is the subject of:

- [SB 205](#) that 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, [HB 132](#), had a hearing last month); and
- [SB 460/HB 486](#) that requires an insurer to offer, if requested or elected by the first named insured, liability coverage for claims made by a family member in the same amount as the liability coverage for claims made by a nonfamily member under the policy, if the liability coverage under the policy or binder exceeds the minimum coverage required by law. An insurance company may not refuse to provide motor vehicle coverage because the first name insured requests or elects this type of coverage. (Similar legislation has been introduced in recent sessions. Last year the Senate passed a bill that failed in the House.)

Other legislation affects insurance for homeowners. Under [HB 816](#), insurance companies that issue homeowner's insurance in Maryland would be required to offer coverage for loss caused by or resulting from mold that is not caused by the homeowner's negligence. The bill, heard by a committee this week, reverses a Maryland Insurance Administration ruling authorizing the exclusion of coverage for mold-related damage.

Recent introductions include [SB 585/HB 1071](#), the Homeowner's Insurance Policyholder Bill of Rights. Both bills, scheduled for hearings next week, contain provisions that require insurance companies to:

- supply policyholders with a clear summary of coverages and exclusions under the policy;
- state if the coverage is for replacement or actual cash value;
- promptly provide in writing contact information for the adjuster assigned to assess damages for a loss;
- provide in writing any offer to settle a claim; and
- send information to the address provided by policyholder, if damages require policy holder to vacate the insured premises.

[HB 999](#), also on the hearing schedule next week, requires a homeowner's insurance company to send written notice to a policyholder if it intends to cancel or not renew a policy, to increase the premium, or to reduce coverage. The bill sets out the information that must be in the written notice and contains other provisions relating to implementation of the act.

EDUCATION

A number of proposals set up task forces to study various issues related to education. [HB 524](#) establishes a Task Force to Study Leasing New Public School Facilities to evaluate the potential costs and benefits of leasing new schools, as opposed to the current practice of constructing new school buildings. [HB 525](#) establishes a Task Force to Study the Feasibility of Using Standard School Construction Plans to study the feasibility of developing and using standard school building construction plans for constructing all State school buildings. These bills have been through the hearing process in the House.

Another measure establishes a Task Force to Study Student Mentoring Programs ([HB 958](#)) and another provides for a Task Force to Study Implementing a Parental Involvement Grade in Public Schools that is charged to study the feasibility of implementing a parental involvement grading system in the public schools ([HB 978](#)). On a similar tack, [HB 979](#) requires each school district and each school to develop a parental involvement plan to establish programs and practices that enhance parental involvement in their children's education.

Bills recently introduced place the spotlight on student service programs, teacher bonuses, achievement gaps for African American and Latino students, and children in need of assistance:

- [SB 649](#) prohibits the State Board of Education from requiring student service as a condition of graduation, but allows a school system to have a student service program which the student may choose to participate in as an elective;
- [SB 650](#) allows a county board to use a bonus, stipend, or other salary enhancement not exceeding \$500 to recruit or retain a teacher who teaches in a critical teacher shortage subject area in a public high school;
- [HB 1280](#) establishes the Closing the Gap School Recognition Awards program to recognize primary and secondary schools that have made significant efforts in reducing achievement gaps for African American and Latino students and requires the Governor to include \$2,750,000 in the budget to fund the awards; and
- [HB 1238](#) requires that, if a juvenile court forwards a copy of its order regarding a child in need of assistance to the public or private school that the child attends, the order must be forwarded by the principal or head of school to the person tracking attendance at the school who must report to school officials if the child is habitually truant.

Receiving an unfavorable House committee report, [HB 137](#) would have added burglary of a public school building and willful damage of a public school building to the list of damages that must be reported to the local superintendent of schools, if a student is arrested and charged with the offense.

ELECTIONS AND ETHICS

Recently, the Senate passed a measure ([SB 87](#)) that broadens the Open Meetings Act to allow any person, not only a person “adversely affected,” to sue in a circuit court for failure to comply with the Act. The House passed the companion bill ([HB 73](#)) with the same provisions. As well, the Senate okayed a bill ([SB 111](#)) to broaden the definition of a “public body” to include a multimember board, commission, or committee appointed by an official who is subject to the policy

direction of the Governor or chief executive authority of a political subdivision.

The General Assembly adopted the Open Meetings Act in 1977, and while it has been amended over the years, the underlying purpose of the law has remained unchanged: to require “that, with the exception of special and appropriate circumstances, public business be performed in an open and public manner” and to allow citizens “to observe the performance of public officials and the deliberations and decisions that the making of public policy involves.”

Committee testimony on [HB 518](#) addressed prohibiting individuals or entities who do business with the State from engaging in enumerated campaign related activities for the benefit of the Governor, Lieutenant Governor, Attorney General, Comptroller, a member of the General Assembly, or a candidate for these offices. “Doing public business” means making, during any 12-month period, one or more contracts with one or more governmental entities involving cumulative consideration of at least \$100,000, but does not include receiving a salary from a governmental entity.

[HB 735](#), on the same hearing agenda, alters the period of time in which a voter may change party affiliation or their registration status from or to a decline, from 12 weeks before a primary election to 21 days before a primary election, which corresponds with the deadline to register to vote. Decline status refers to a voter who is not affiliated with a political party.

ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

Two environmental bills have been approved by their original chamber and sent to the opposite one:

- [SB 202](#) allows Anne Arundel County to adopt a “right to farm” ordinance. (The companion bill, [HB 825](#), will be before a committee on March 4); and
- [HB 308](#) repeals a 1927 prohibition of the use of a “devil diver,” a device that helps to keep the dredge on the bottom while dredging for oysters.

A House committee killed [HB 26](#), which would have prohibited manufacturing, processing, or distributing after October 1, 2008, products that contain more than one-tenth of 1% of the flame retardant polybrominated diphenyl ether.

FINANCIAL INSTITUTIONS AND COMMERCIAL LAW

The Senate passed [SB 172](#) that repeals a sunset provision for legislation enacted in 2000 regarding late fees for consumer contracts including a cap on the imposition of such fees. The companion bill, [HB 455](#), is still pending in committee.

A credit card protection proposal, [HB 349](#), heard by a committee this week, prohibits a merchant from accepting payment by credit card for consumer goods or services, unless the merchant requires the consumer to provide the consumer's zip code before completion of the transaction. The bill does not apply to transactions conducted in person.

A Senate committee rejected legislation to regulate the use of electronic check conversions ([SB 234](#)).

FISCAL MATTERS

By the end of next week a number of bills related to fiscal issues will have completed the first big step in the legislative process, i.e. committee hearings in the chamber of origin. This week legislators took commentary on:

- [SB 370](#), a proposed constitutional amendment to increase the General Assembly's budgetary powers. (The companion is [HB 1247](#));
- [HB 289](#), the Heritage Structure Rehabilitation Tax Credit Program, and [HB 679](#), the Maryland Heritage Structure Rehabilitation Program. (The companion bills are [SB 190](#) and [SB 246](#));
- [HB 102](#), [HB 103](#), and [HB 271](#), to increase the sales tax from 5% to 6%; and
- [HB 84](#), to apply the sales tax to luxury services.

Delegates also heard commentary on [HB 36](#), which creates a State General Fund Contribution checkoff on Maryland's individual and corporate income tax forms. The general fund consists of any revenues collected by the State that are not dedicated by law to a specific purpose. The individual income tax, retail sales tax, and State Lottery are the three largest sources of general fund revenue. Currently, Maryland has checkoffs on the personal income tax form for the Chesapeake Bay and

Endangered Species Fund (CBESF) and the Fair Campaign Financing Fund (FCFF). The corporate income tax form has no checkoffs.

Next week the following bills are scheduled for testimony:

- [SB 478](#), the Millionaire's Tax Surcharge, adds a new State income tax bracket of 7.75% on individuals with a Maryland taxable income more than \$500,000. ([HB 1061](#) is the companion);
- [SB 558](#) establishes an Education Trust Fund to provide funding for implementation of the Bridge to Excellence in Public Schools Act (Thornton Plan) and alters State income tax rates and rate brackets for individuals with the added revenue to go to the fund. ([HB 1352](#), [HB 1306](#), and [HB 1347](#) are also income tax reform bills);
- [SB 187/HB 297](#), [SB 156](#), [SB 727/HB 1206](#), and [HB 1037](#) authorize changes in Maryland's corporate income tax laws; and
- [HB 57](#), the Biotechnology Investment Incentive Act, provides credits against State income taxes or the insurance premium tax for specified investments in biotechnology companies and venture capital. (The companion bill is [SB 124](#))

GAMING, RACING, AND SPORTS

[HB 1174](#) amends the Maryland Constitution to prohibit the General Assembly from authorizing additional or expanded locations for video lotteries or casino style gaming after the article, if approved by the voters, goes into effect.

[HB 921](#) establishes the Maryland Gaming Commission as an independent unit of State government to include the State Horse Racing Division, the Stadium Authority Division, and the Lottery Division

HEALTH CARE AND HEALTH INSURANCE

The Medical Decision Making Act of 2004, introduced this week, allows same-sex domestic partners and heterosexual partners aged 62 and above to register with the Secretary of the Department of Health and Mental Hygiene (DHMH) as a domestic partnership. The Act,

[HB 1284](#), allows those registered to make medical decisions for their partner in regard to treatment, organ donation, and funeral arrangements. To qualify as domestic partners, the registrants must be at least 18 years old, not related to each other under the Civil Law Rule, and not already married or in a domestic partnership. The registrants must also agree to be in a relationship of mutual interdependence, share a common residence, and agree to register with DHMH. A hearing has been scheduled in early March.

Relating to the possible closure of the Crownsville Hospital Center, [HB 1351](#), introduced this week, prohibits the State from selling the cemetery located on the grounds of the Center and requires the cemetery to be maintained and marked with a commemorative monument.

On a committee hearing agenda recently, [HB 398](#) requires hospitals in Maryland to offer pregnant women the option of donating umbilical cord blood from their newborns to a certified public cord blood bank. The bill is modeled after a new law in Illinois which views the donations as a less costly alternative to bone marrow transplants for people with leukemia and other blood diseases. The companion bill, [SB 332](#), is on the *Schedule* for next week.

Other legislation moving through the committee process includes [HB 327](#), which requires an insurer, nonprofit health service plan, or HMO (carrier) to offer an association health benefit plan to specified associations and employers. Selected criteria for eligibility include being in existence for at least five years, association membership not conditioned on purchase of association-sponsored insurance or any health status-related factor, membership or employment of more than 50, and affiliation with a profession, industry, or trade, a chamber of commerce, or an association of nonprofit entities.

House legislators also listened to testimony on bills related to pharmacy benefit managers. [HB 397](#) permits the State to directly regulate a pharmacy benefits manager (PBM) through registration with the Department of Health and Mental Hygiene. Specific practice standards are imposed on PBM's by [HB 840](#).

REAL PROPERTY, ESTATES, AND TRUSTS

[HB 3](#), the "Hurricane Isabel Disaster Relief Act" has passed in the House this week. The companion bill, [SB](#)

[415](#), is scheduled to be heard by a Senate committee next week. Introduced late last week, [HB 1144](#) creates a Task Force to Study the Insurance Industry Response to Tropical Storm Isabel. The Task Force will study the response and performance of private insurers and the National Flood Insurance Plan and report back to the Governor and the General Assembly by December 1, 2004.

STATE GOVERNMENT

Senators listened to the public voice their opinions on the establishment of a new Department of Disabilities ([SB 188](#)) and a new Maryland Office of Minority Health ([SB 177](#)). The companion bills are [HB 299](#) and [HB 86](#).

If Maryland's Attorney General, who is elected statewide by the voters, is temporarily unable or unavailable to carry out the duties of the office, [SB 164](#) establishes in law the circumstances under which the senior Deputy Attorney General is to serve as acting Attorney General. This week, the measure came out of a Senate committee with a favorable vote and passed the full body on Friday.

TRANSPORTATION

During the 2003 interim, the House Special Committee on Drug and Alcohol Abuse heard testimony indicating that drivers impaired by drug use constitute a serious, unrecognized problem that is rarely identified or prosecuted. Maryland law imposes no additional penalty if a person tests positive for both drugs and alcohol, and a conviction for drugged driving carries lesser penalties than a conviction for driving while under the influence of alcohol.

Several measures seek to strengthen Maryland laws:

- by specifying that a person may not drive or attempt to drive a vehicle or vessel while impaired by a controlled dangerous substance per se, if the driver is not entitled to use the controlled dangerous substance by law, with stiff penalties for causing a death or life threatening injury ([HB 371](#));
- by expanding the meaning of "test" to not only include a blood test, but also a urine test to determine the drug or controlled dangerous substance content, with refusal to submit to a urine

test for these substances constituting an administrative offense under the Motor Vehicle Law and possible disqualification for a commercial driver's license holder (HB 372);

- by increasing the penalties for driving or attempting to drive while impaired by a controlled dangerous substance by making the penalties commensurate with the penalties for driving or attempting to drive while under the influence of alcohol or under the influence of alcohol per se (HB 373); and
- by requiring the imposition of consecutive sentences for multiple violations arising out of the same incident if the person is convicted of driving or attempting to drive while under the influence of alcohol or alcohol per se, or while impaired by alcohol, and while impaired by a controlled dangerous substance (HB 374).

Still other measures tighten Maryland vehicle laws:

- by providing that if the court stays a judgment for driving or attempting to drive while under the influence of alcohol or under the influence of alcohol per se, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance, then prior to imposing a period of probation, the court must order an evaluation of the defendant to determine if the defendant needs and may benefit from a treatment or education program (HB 376); and
- by making a driver's refusal to take a test for alcohol, drugs, or controlled dangerous substances a criminal offense punishable by up to one year's imprisonment and/or a maximum fine of \$1,000 and an assessment of 12 points against the driver's license. Other provisions repeal the requirement that a person must be involved in an accident resulting in life-threatening injury or death to submit to a test and specifically prohibit a person from refusing to take a test if so directed by a police officer (HB 375).

Since the 2001 terrorist attacks, driver's licenses have become inextricably linked to national security concerns. Several measures seek to address these concerns. HB 40 prohibits a person from knowingly permitting the person's motor vehicle to be driven on a highway by an individual that the person knows is not lawfully admitted into or otherwise lawfully present in the U.S. This

offense is subject to a maximum fine of \$500 and upon conviction the court must order the motor vehicle used in the violation be forfeited to the State. In addition, the Motor Vehicle Administration (MVA) must suspend the license of anyone who has been convicted of this crime for one year. HB 41 prohibits the MVA from issuing a driver's license to an individual who is not lawfully present in the U.S. in accordance with federal law and regulations.

The MVA may issue special plates for any geographical, historical, natural resources, or environmental commemoration of statewide significance. In addition to the normal registration fee, applicants must pay a one-time fee to recover costs and an additional fee when the plates are issued and every time they are renewed.

This session proposals for new plates include:

- HB 473, honoring Maryland's western counties known as "Mountain Maryland";
- SB 723/HB 468, honoring the diamondback terrapin with the words "Fear the Turtle" in order to support student scholarships at the University of Maryland, College Park; and
- SB 632, honoring veterans of Operation Iraqi Freedom. Only veterans of the Iraqi war are eligible for this plate.

HB 88, expressing support for education, received an unfavorable committee report.

A measure heard by a committee this week increases from three to five the number of points assessed against a driver who fails to stop for a school vehicle that is stopped with activated flashing red lights. SB 280 also increases from two to five the number of points assessed against a driver who fails to remain stopped and increases the maximum fine for both violations from \$500 to \$1,000. A companion bill HB 1223 is still pending.

NEXT WEEK

Friday, February 27, is the 45th day or the midpoint of the 2004 session. Budget and bill hearings will continue at full strength. Adjournment *sine die* is April 12.