



# The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

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Issue 04-14

April 2004 - *Sine Die*

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## **SINE DIE**

The 2004 session of the General Assembly of Maryland ended at midnight on Monday, April 12. Out of 1,548 House bills and 934 Senate bills introduced, 706 passed along with one joint resolution. The legislature passed the State Budget Bill, [SB 125](#) on *sine die* Monday, thus eliminating the necessity to extend deliberations.

The next step is consideration by the Governor. Bill signings were held on March 29, and on April 13 (traditional *sine die* ceremony). Future bill signings will be April 27, May 11, and May 26. Under the Maryland Constitution, the Governor may sign or veto legislation or allow it to become law without his signature.

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## COURTS AND CIVIL PROCEEDINGS

### *Judges*

As passed by the General Assembly, the Judicial Compensation Commission Report ([HJ 1](#)) retains current salaries for all State judges for fiscal 2005 and 2006, and subjects judges to any cost-of-living salary increase that may be awarded to other State employees. Other bills that passed ([SB 78/HB 148](#)) remove the requirement that the surviving spouse of a judge who retired on a disability pension must be 50 or older to receive the 50% benefit from the Judges' Retirement System.

[SB 490/HB 80](#) (passed) give a judge the authority to decide whether to jail or release a defendant while awaiting the result of a prosecutor's pretrial appeal of the judge's decision to throw out vital evidence in a case. Failed legislation would have limited a judge's power to revise a criminal sentence ([SB 333/HB 812](#), [HB 464](#), and [HB 1234](#)).

### *Children*

Under [SB 163/HB 511](#) (passed), a child may waive assistance of counsel in a juvenile court proceeding only after the child has consulted with a lawyer and the court deems the decision was made knowingly and voluntarily. A parent or guardian is barred from waiving the child's right to counsel.

The General Assembly approved the Maryland Uniform Child Custody Jurisdiction and Enforcement Act ([SB 269/HB 400](#)) that addresses the jurisdiction of Maryland courts over child custody matters vis-à-vis courts of other states and the enforcement of child custody orders, including visitation provisions.

[SB 602/HB 1092](#) (both failed) would have established the status of "de facto custodian" and set out factors to be considered by a court when a person who is the primary caregiver and financial supporter for a child seeks custody of the child.

### *Legal Services, SLAPP Suits, and Bail Bonds*

[SB 316](#) (passed) increases funding for the Maryland Legal Services Corporation through surcharges assessed in court civil actions. With regard to SLAPP suits, [SB 464/HB 930](#) (passed) establish that a strategic lawsuit against public participation (SLAPP) is an action brought in bad faith, materially related to the defendant's communication with a government agency or to the public at large, and intended to inhibit the exercise of free speech rights. The bills grant immunity from civil liability to a defendant in a SLAPP suit and allow the defendant to move to dismiss the suit or to stay all court proceedings until the matter about which the defendant communicated is resolved.

[HB 1030](#) (passed) allows a defendant to post a bail bond by executing it in the full penalty amount and depositing the greater of 10% or \$25 with the clerk of court or District Court commissioner, but only if expressly authorized to do so by the court or District Court commissioner.

### *Failed Legislation*

Bills failed that would have proposed a constitutional amendment to define marriage as being between a man and a woman ([SB 673/HB 16](#)) and that would have declared that a same-sex marriage validly entered into in another state or country is not valid in Maryland and that same-sex marriages are against the public policy of Maryland ([SB 746/HB 728](#)).

Rejected immigrant rights legislation bills:

- would have prohibited the use of a consular registration card as proof of identity for foreign residents unless accompanied by a valid visa or permanent resident card ([HB 7](#));
- would have required police officers to detain undocumented aliens taken into custody pursuant to the performance of the officers' normal duties and hold them until they can be transferred to federal immigration agency custody ([HB 89](#)); and
- would have prohibited a requirement that police enforce federal immigration laws, and prohibited police from detaining an undocumented immigrant without meeting current warrantless arrest requirements or from searching for undocumented immigrants for the sole purpose of detaining them ([HB 579](#)).

Other unsuccessful legislation includes:

- [SB 627](#) that would have altered how a delay in presentment of a defendant before a court officer affects the court's view of the voluntariness of the defendant's confession; and
- [HB 1346](#) that would have established that a cause of action for damages for personal injury in a latent disease or latent injury case arises on the earlier of the diagnosis or the manifestation of symptoms, thus reestablishing a cap on noneconomic damages for these types of actions.

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

### *Drug Offenders and GPS Monitoring*

Administration proposals ([SB 194/HB 295](#)) passed to establish a statewide diversion program for treatable nonviolent drug offenders who are to be sent to drug treatment facilities and their criminal charges placed on an inactive docket, with expungement possible after successful completion of the diversion program. County Alcohol and Drug Abuse Councils are to develop a local plan for drug and alcohol evaluation and prevention and treatment services for the public and the criminal justice system, and to review and recommend for approval local grant applications for substance abuse treatment services.

[SB 783/HB 1242](#) (both passed) establish a Task Force to Study Criminal Offender Monitoring by Global Positioning Systems, with reports due this December and next.

### *Juvenile Justice Reform*

Juvenile justice system reform proposals that passed:

- require step-down aftercare for each youth discharged from a committed residential placement ([SB 767](#));
- establish the Department of Juvenile Services (DJS) Education Program to provide year-round programs for youths in DJS custody, and require the Department of Education to develop and implement educational programs at all DJS residential facilities by July 2012 ([HB 1139](#)); and
- require DJS to create by January 15, 2006, a Facilities Master Plan that provides for services delivered through operational regions, detention and committed facilities that do not contain more than 48 children, and detention facilities that are geographically, physically, and operationally separate, remote, and distinct from committed facilities. The aim is for children awaiting committed placement after disposition not be held in a facility with children awaiting disposition. DJS is required to operate all currently existing facilities by July 1, 2007 ([SB 543](#)).

### *Identity Theft*

[SB 257/HB 457](#) (both passed) allow the prosecution of identity theft, or any crime arising out of identity theft, to take place in any county in which an element of the crime occurred or where the victim resides, and authorize the Attorney General to investigate and prosecute these crimes with all the powers and duties of a State's attorney.

Failed legislation would have created a Task Force to Study Identity Theft ([SB 325/HB 191](#)) and would have allowed the victim of identity theft to expunge the victim's court or police record that resulted from the illegal use of the victim's identity ([HB 190](#) and [HB 255](#)). Another failed bill, [HB 255](#), would have created a procedure for a victim to request a consumer reporting agency to block the reporting of erroneous information due to identity fraud and would have authorized the Attorney General to issue an identity fraud passport to

prove a victim's identity to police and others who may challenge it.

### *Specific Crimes*

The legislature passed additional legislation:

- [HB 194](#) applies the current criminal theft provisions and penalties to theft by use of an interactive computer service. (A State's attorney may prosecute a violator in any county in which the victim resides or the electronic communication originated or terminated);
- [HB 613](#) increases the penalties for crimes of visual surveillance, with prurient intent and without consent, of a person in a private place and using a camera for deliberate surreptitious observation of a person inside a private residence;
- [HB 923](#) allows the prosecution of a person for committing first or second degree rape or a third degree sexual offense against the person's spouse when the person uses the threat of force and acts without the spouse's consent;
- [SB 720/HB 1208](#) require a Maryland interactive computer service provider, at the request of police, to remove child pornography from its server and report the location of the pornography to the State Police; and
- [SB 837](#) makes it a felony to counterfeit with fraudulent intent a check or other negotiable instrument, and creates the crime of possession of a counterfeit instrument with fraudulent intent. The crimes may be prosecuted in any county where an element of the crime occurred, where the victim resides, or in the case where the victim is not an individual, where the victim conducts business.

### *Failed Legislation*

Failed bills related to specific crimes:

- would have expanded crimes relating to victim, witness, or juror intimidation and stiffened penalties ([SB 185/HB 296](#) and [HB 263](#));
- would have allowed a charge of a crime against a fetus, if certain crimes against a pregnant woman resulted in the harm or death of her fetus ([SB 349/HB 802](#) and [HB 520](#));

- would have expanded the State's hate-crime law to include offenses motivated by the victim's sexual orientation ([SB 698/HB 365](#));
- would have increased the maximum penalties for motor vehicle theft ([SB 588/HB 1344](#)), and would have prevented anyone other than the owner of a car from duplicating the car's ignition key, except by duplicating another key ([SB 342](#) and [SB 719/HB 1131](#));
- would have subjected convicted child abuse offenders to longer sentences ([HB 1099](#) and [SB 599/HB 1235](#)), and would have criminalized the failure of a health care practitioner, police officer, educator, or human services worker to report suspected child abuse ([SB 98/HB 510](#));
- would have expanded the definition of criminal stalking to include stalking by mail, the Internet, telephone, telecommunications device, or fax ([HB 623](#));
- would have prevented a criminal who enters a person's home or place of business with the intent to commit burglary or a crime of violence from suing for damages for personal injury or death at the hands of the intended victim ([HB 1463](#)); and
- would have increased the damages that can be awarded for the tortious injury or death of a pet ([HB 1145](#)).

### *Assault Weapons and Gun Legislation*

The unsuccessful Maryland Assault Weapons Ban of 2004 ([SB 288/HB 1298](#)) would have expanded the 1994 ban on the sale and possession of assault pistols in Maryland to include the 45 semiautomatic weapons that can currently be purchased legally in the State, as well as any copycat weapons, after the expiration on September 12 of the current federal ban. Other failed gun control legislation would have made carrying or possessing an assault weapon or other firearm in a polling place a misdemeanor ([SB 925](#)) and would have imposed a 10% tax on the sale and use of an assault weapon in addition to the current sales and use tax ([SB 927](#)).

Legislation to loosen controls on handguns also failed. Bills would have eased gun lock requirements ([SB 547](#)); repealed the requirements for integrated mechanical safety devices ([HB 414](#) and [HB 652](#)); repealed the requirement for external safety locks ([HB 414](#)); and

eliminated the requirement that a handgun permit applicant have a “good and substantial reason” to have a handgun (SB 137).

### *Death Penalty*

Legislation failed that would have repealed the death penalty (HB 521); would have established a Maryland Commission on Capital Punishment to address disparities in the application of capital punishment and other issues (SB 744); and would have required police interrogations in connection with a capital case to be electronically recorded (HB 118).

Under other unsuccessful bills, an expanded list of aggravating circumstances for considering the death sentence would have included murder of an off-duty law enforcement officer (HB 250) or off-duty law enforcement or correctional officer (SB 658) in retaliation for the officer’s actions while on duty; commission of more than one first-degree murder within a three-year period (SB 287/HB 244); commission of three or more first-degree murders within a four-year period (HB 947); and murder committed during the commission of the crimes of victim or witness intimidation (HB 248) or intimidation of a witness, victim, or juror (SB 181/HB 301). Other bills listed the murder of a prosecutor (HB 1081) and murder of a person who is under a protective order (HB 1231).

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## **ECONOMIC AND BUSINESS ISSUES**

### *Minority Business Enterprises*

Under current law, the State has a goal of awarding 25% of State contracts to certified minority business enterprises (MBEs). Certification requires that the person, or majority owner of a business, be socially and economically disadvantaged. Qualifying individuals are citizens or lawfully admitted permanent residents of the U.S. who are African American, American Indian/Native American, Asian, Hispanic, physically or mentally disabled, women, or otherwise found by the certification agency (Maryland Department of Transportation, or MDOT) to be socially and economically disadvantaged. An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished credit and capital opportunities compared to other individuals in the same or similar line of business who are not socially disadvantaged. An individual with a

personal net worth of more than \$750,000 is not an economically disadvantaged individual.

This session the General Assembly approved several proposals to enhance the State’s MBE program:

- SB 323/HB 806 require local jurisdictions and private entities that receive assistance under the Economic Development Opportunities Program Fund and the Maryland Economic Development Assistance Authority and Fund to comply with certain minority business enterprise procurement goals;
- HB 483 increases the maximum net personal worth from \$750,000 to \$1.5 million for an individual who otherwise meets the criteria to be considered a socially and economically disadvantaged individual;
- HB 721 requires the certification agency (MDOT) to develop and make accessible on the Internet a directory of minority business enterprises in the State; and
- SB 324/HB 415 establish a task force to develop criteria for evaluating MBE access to credit and capital from financial institutions that provide or wish to provide depository services to the State. A December interim report precedes a 2005 final report.

SB 904 directs designated State agencies to award 10% of the total dollar value of their contracts directly to small businesses including MBEs if they also meet specified criteria.

### *Brownfields and Microenterprises*

The Administration’s brownfields legislation to expedite cleanup and reuse of contaminated properties passed. SB 186/HB 294 make changes in the brownfields redevelopment program (Voluntary Cleanup Program) established in 1997 to clean up and redevelop abandoned or underutilized industrial or commercial properties that are contaminated by hazardous materials. The bills expand eligibility to properties contaminated with oil and to some sites under active enforcement. Other provisions allow an expedited application process, require notices of all applications for brownfields status to be posted on the property, expand the Department of the Environment’s enforcement authority, and broaden eligibility of sites for financial assistance. Some

jurisdictions receive additional authority under the measure.

Also ready for the Governor's signature, [HB 905](#) extends below-market interest rate loans under the current Neighborhood Business Development (NBD) program in the Department of Housing and Community Development (DHCD) to microenterprises. A "microenterprise" is a business with not more than five employees that requires no more than \$35,000 in start-up capital and does not have access to commercial banks. Other provisions permit DHCD to sell or otherwise dispose of any NBD loans and expand the source of funds for the program to other programs in DHCD.

#### *Wineries and Bed and Breakfasts*

Successful legislation ([SB 27/](#)[HB 393](#)) increases the number of winery special event permits that allow the 12 affected wineries in Maryland to display and discuss their products with consumers, eliminate the requirement that the events be organized by a nonprofit or government entity, and reduce the permit fee for charity wine auctions, from \$500 to \$10.

[SB 839/](#)[HB 1468](#) (passed) exempt bed and breakfast establishments with eight or fewer rooms for rent from food service regulations related to the installation of commercial grade kitchen equipment, but require a B&B that serves hot meals to be licensed as a food establishment. Failed legislation would have set up a task force on health regulations and the B&B industry ([SB 100/](#)[HB 1128](#)).

#### *Workplace Concerns*

The legislature approved 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 is to issue interim and final reports ([SB 250](#)).

Two measures addressing women in the workforce are on track. [SB 917](#) (passed) and [HB 1538](#) (passed) establish a task force to develop a statewide women and information technology plan with implementation and promotion strategies.

Workers' compensation legislation that would have reversed the effects of a recent court opinion overturning the "unusual activity" precedent set in 1927 failed. In failing to move [SB 113/](#)[HB 13](#), the legislature let stand the court ruling that in order to be compensable, a work-

related injury does not have to result from an activity that is somewhat "unusual." The court noted that the "unusual activity" requirement was unique to Maryland, not applied consistently, and contravened the purposes of the workers' compensation law.

Other failed legislation would have prohibited 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](#) did not apply to every employee and could not be applied to abridge any right in a collective bargaining agreement.

#### *Agriculture, Elderly, and Historic Preservation*

[SB 589](#) and [HB 1179](#) (both passed) establish a public corporation to provide financing for development of agriculture and resource-based industries and for commercialization of processes and technology. Financing and other assistance is to alleviate the shortage of capital and credit at affordable interest rates with funding through resources from State agencies.

If the Governor signs [SB 122/](#)[HB 966](#) (both passed), a task force will study the dynamics of elderly and retiree migration into and out of Maryland this year. The study is to review the impact of tax policies, State and county expenditures on the elderly and retired, and benefits of the elderly and retired to State and local communities.

Another successful bill, [HB 663](#) expands the uses of the Historic Preservation Loan Fund of the Maryland Historical Trust (MHT) to include the authorization of loans for refinancing historic properties. Under current provisions, MHT loans may be used for acquiring, rehabilitating, or restoring historic properties.

#### *Failed Legislation*

For the third year, measures ([SB 716/](#)[HB 659](#)) failed that would have repealed the authority of the Maryland Economic Development Corporation (MEDCO) to acquire real property or rights or easements by condemnation. Although authorized to use eminent domain, MEDCO has never used this authority in its 20-year history.

Other rejected measures would have established a task force to study the automobile industry to determine why there are so few minority-owned dealerships ([HB 342](#)) and would have created a program to provide capital investment by the State Retirement and Pension System in qualified technology or bioscience businesses ([SB 214](#)).

### *Insurance*

After similar legislation failed in previous sessions, the legislature approved a measure, [SB 439](#), that requires viatical providers and viatical settlement brokers to register with the Maryland Insurance Commissioner. A viatical settlement broker or provider facilitates the sale of a life insurance policy from an AIDS victim or other terminally ill patient to an investor at a discount. The investor recovers the policy's face value after the policyholder's death.

Under the bill, a viatical settlement broker owes a fiduciary duty to a viator (insurance policy owner), and a viatical settlement provider must provide the viator with required disclosures. Providers must also institute antifraud plans.

Also winning legislative approval this session, [SB 586/HB 15](#) amend current insurance law regulating public adjusters to allow business entities to be licensed as public adjusters, to alter qualifications for licensure, to include provisions regarding licensing of nonresidents, and to add penalties for failure to obtain a license. Public adjusters handle claims for property, but not for motor vehicles. Also approved, [SB 584/HB 177](#) require anyone licensed to sell real property and casualty insurance, who also sells flood insurance, to receive continuing education related to flood insurance.

[SB 460/HB 486](#) (both passed) require an automobile insurer to offer 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.

Failed bills would have established a People's Insurance Counsel ([SB 546](#)) and a mediation process ([SB 582](#)) in the Maryland Insurance Administration. Other unsuccessful bills would have required homeowner's insurance policies to offer coverage for loss from mold ([HB 816](#)), would have required written notice to a homeowner if the insurance company intends to cancel or not renew a policy, to increase the premium, or to reduce coverage ([HB 999](#)), and would have allowed a homeowner to ask the Insurance Commissioner to review an insurance premium amount under certain conditions ([SB 805](#), [HB 1326](#)).

Also defeated was legislation that would have prohibited an insurer, who considers claims history in canceling or refusing to renew coverage, from considering an inquiry that does not result in a claim for benefits by a policyholder ([SB 241](#)), and the Homeowner's Insurance Policyholder Bill of Rights ([SB 585/HB 1071](#)) that would have required insurance companies to supply homeowners with a statement that clearly summarizes coverages and exclusions.

Rejected measures linked to automobile owners would have created a pilot program for a mileage-based rating plan for automobile insurance ([SB 691](#)), would have required an automobile insurer to file the condition inspection guidelines that it uses in settling claims involving the total loss value of a automobile with the Insurance Commissioner ([SB 735](#)), and would have prohibited an automobile insurance company from considering an accident in which the insured was not at fault in assigning a new classification that involves a higher premium ([SB 205/HB 132](#)).

### *Real Estate and Home Improvement*

As passed, [HB 1249](#) makes adjustments to Maryland real estate regulations by expanding current licensing requirements to include a course in real estate ethics. The bill also makes other changes in continuing education requirements and requires the commission to provide a list of continuing education classes.

The General Assembly rejected [HB 883](#) that would have permitted the Commission of Real Estate Appraisers and Home Inspectors to impose a civil penalty of up to \$5,000 for each violation, in addition to or instead of reprimanding a home inspector licensee or suspending or revoking a home inspector license. Also failed, [HB 1241](#) would have required home improvement contractors or subcontractors to be trained in lead abatement and to meet accreditation requirements for lead abatement. [SB 244/HB 461](#) (both failed) concerned unlicensed home improvement contractors.

### *Bay Pilots*

[HB 884](#) (passed) transfers licensing of docking masters to the State Board of Pilots and abolishes the State Board of Docking Masters. The bill includes provisions for the transfer of current docking master licensees to pilot licensees, authorizes the board to establish training, experience, and education requirements for bay pilots and docking masters to perform tasks now performed by each other, and establishes an Incident Committee.

Amendments prohibit licensed pilots from participating in port-wide job actions or strikes.

#### *Cosmetology, Tanning Facilities, and Cigarettes*

Bills related to cosmetologists included [HB 405](#) (failed) that would have established a six-hour continuing education requirement for license renewal, and [HB 463](#) (failed) that would have required licensed cosmetologists including make-up artists, esthetic service providers, and nail technicians to be affiliated with a beauty salon that has a permit. [SB 209](#) (failed) would have required regulation of tanning facilities.

[HB 48](#) would have raised the fees for cigarette manufacturers, retailers, and storage warehouse operators. [HB 499](#) would have prohibited anyone from another state from selling or distributing cigarettes directly to a consumer or unlicensed recipient in Maryland including cigarettes ordered or purchased via telephone, internet, or another electronic network. [HB 500](#) would have given the Comptroller disciplinary authority over a cigarette licensee who is liable for or convicted of selling tobacco to minors.

#### *Renewable Energy*

The General Assembly passed legislation ([SB 869/HB 1308](#)) that requires the Public Service Commission (PSC) to establish a renewable energy portfolio standard that applies to retail electricity sales in Maryland beginning in 2006, to encourage the use of alternate energy resources in the generation of electricity. At least 13 states, including Pennsylvania, now use a renewable energy portfolio standard. Benefits from renewable energy resources include decreased emissions, healthier environment, increased energy security, and decreased reliance on imported energy.

The bill groups renewable energy resources into two tiers. Tier 1 renewable energy resources include wind, geothermal, solar, ocean, qualifying biomass, methane from landfills or wastewater treatment plants, some fuel cells, and some hydroelectric power. Tier 2 resources include waste to energy, some hydroelectric power, and possibly poultry litter. The passed legislation requires any electricity supplier to include specified amounts of renewable energy as part of its portfolio of generating fuels for retail sales beginning in 2006, with 1% from Tier 1 and 2.5%, each year through 2018, from Tier 2 renewable energy resources. By 2019 the amount of renewable energy resources from Tier 1 should reach 7% and zero from Tier 2 energy resources. The requirement does not apply to retail electricity sales to all customers.

The House failed to support [SB 654](#) that would have established an Energy-Saving Investment Program consisting of energy efficiency programs and renewable energy projects. Renewable energy projects use one or more sources of energy such as geothermal, wind, solar electric biomass, and some forms of hydropower. The bill also would have created an investment fund to increase the opportunities to save energy and reduce energy costs and pollution, with funding from a charge to residential electric and gas customers.

Winning final approval, [HB 1269](#) expands the net energy metering program to include wind electric generating facilities, as well as solar generating facilities. The bill further expands net energy metering by removing the limitations that restrict it to single-family residences, schools, or institutions of postsecondary education.

#### *Electric Deregulation*

Competition for residential electric customers has not developed as expected following Maryland's electric deregulation in 1999. None of the bills addressing competition in the electric and telecommunications industries made it through the legislative process ([HB 311](#), [HB 744](#), [SB 387](#), [SB 739/HB 1056](#), [HB 1082](#), and [SB 12/HB 23](#)).

Other electricity industry-related proposals failed:

- [HB 81](#) would have required electric companies to create and maintain a list of customers that need special medical equipment for life support or to live independently;
- [SB 622](#) would have created a pilot program for underground conversion of overhead electric and communication lines along U.S. Route 1 ([SB 622](#)); and
- [SB 491](#) would have allowed the PSC to order an electric company to compensate customers for some losses due to power outages of more than 24 hours.

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## EDUCATION

### *Higher Education*

Given the State's budget climate, [HB 1188](#) (passed) provides additional support to the University System of Maryland and Morgan State University through a

special, nonlapsing Higher Education Investment Fund that contains proceeds from a 10% surcharge on corporate income taxes to be imposed from calendar 2004 to 2006. The bill requires the Governor to include in the fiscal 2006 and 2007 State budgets increases of 5% in aggregate general fund and Higher Education Investment Fund support for the University System and Morgan State. If the funding increases in the bill are realized, increases in tuition and fees at University institutions and Morgan State are limited to 5% per year for the academic year beginning in the fall of 2004 through the fall of 2006. A commission is to study the coordination, funding, delivery, and State commitment to higher education in Maryland.

**HB 1307** (passed) establishes the William Donald Schaefer Scholarship Program for students who demonstrate outstanding potential for public service with mandated funding from the 2005 and 2006 State budgets in an amount not to exceed \$250,000.

Military personnel benefit from passed legislation that requires a public institution of higher education to allow a student who is in the National Guard and whose unit is activated to withdraw without negative consequences for the student's academic standing (**HB 1314**). Also, **HB 172** (passed) exempts specified military personnel from paying nonresident tuition at public institutions of higher education beginning with the fall of 2004. A related bill, **HB 256**, failed.

Generating debate this session, **HB 1171** (failed) would have allowed undocumented immigrants who attended and graduated from Maryland high schools to pay resident tuition at public institutions of higher education. In 2003 the Governor vetoed a similar bill, and in 2002 another bill, as introduced, would have had the same effect.

Funding legislation that did not make the final cut includes bills that would have restricted tuition increases to bills that would have required the Governor to provide mandated annual increases for public colleges and universities and for teacher scholarships (**HB 1129**, **SB 112/HB 1103**, **SB 473/HB 66**, **SB 882**, and **SJ 9**).

Other failed measures would have altered eligibility and service requirements related to Edward T. Conroy Memorial Scholarships, Maryland Teacher Scholarships, senatorial or delegate scholarships, and nursing scholarships (**HB 17**, **HB 630/SB 266**, **SB 17/HB 1164**, **HB 1169**, **SB 934**).

### *Administrative Measures*

**SB 738** (passed) provides that the Board of Regents of the University System of Maryland has all the powers and duties that have been assigned to it, except where the powers are limited by specific reference to the University System. The bill also repeals the law that requires presidents of University System institutions to stay within limits set by the annual State budget when creating new positions at University System of Maryland institutions.

Other bills of interest change the name of Coppin State College to Coppin State University (**HB 893** (Ch. 63)) and establish the Maryland Digital Library, operative since 2000, as part of the Maryland Higher Education Commission (**SB 615/HB 1167**). The Digital Library encompasses the academic libraries of public and private nonprofit institutions of postsecondary education.

### *Bridge to Excellence Act (Thornton Plan)*

One of the most prominent issues this session and last was discussion and concern over the funding of the 2002 Bridge to Excellence in Public Schools Act, also known as the Thornton Plan after the commission that generated the basic tenets of the legislation. The Bridge Act essentially reworked the State's education funding formulas to add an estimated \$1.3 billion in State aid annually by fiscal 2008, with average increases in aid during the six-year phase-in period of nearly 10% per year. Because of the large increases that would be required under the Act and an unsure budget outlook, the 2002 legislation also contained a trigger provision that required the General Assembly to pass a joint resolution by the fiftieth day of the 2004 session in order to proceed with full implementation of the Act.

**HB 345** (Ch. 6) repealed the trigger, thus eliminating the need for the General Assembly to pass the joint resolution in order to continue with full implementation of the Thornton funding formulas. Funding of Thornton will remain in the forefront without new or enhanced revenue streams such as slots or increased taxes, neither of which were agreed to in the 2003 or 2004 sessions.

Thornton-related legislation that failed includes **HB 1477** that would have established a Task Force on the Role of Alternative Providers to support requirements of the Act and **HB 922** that would have extended the phase-in of the State funding formulas by four years. Other failed bills related to the full-day kindergarten requirements (**SB 123/HB 711**, **HB 428**, and **HB 1442**).

Legislative measures that would have instituted education lotteries or used portions of lottery proceeds for public education all failed. (HB 319, HB 253, HB 254, HB 320, and HB 315). Another unsuccessful bill, HB 992, would have required the State budget to include \$47.4 million to reflect regional differences in the cost of education.

### *Local Accountability*

The Education Fiscal Accountability and Oversight Act of 2004 (passed) establishes procedures to ensure fiscal accountability of local school systems by requiring quarterly financial reports, prohibiting school budget deficits, and providing for regular legislative audits. Failure to comply would result in the withholding of State education funds (SB 894).

Before the Baltimore City Council acted to alleviate the fiscal crisis in the Baltimore City school system, legislation representing a consensus plan was prepared for introduction but was never actively considered. HB 1524 would have provided for a State loan and would have replaced the Baltimore City Board of Schools Commissioners by the Baltimore City Public School System Authority consisting of three members appointed by the Governor and two by the Mayor of Baltimore City, with the State Superintendent as the nonvoting member.

### *Public School Construction*

Successful proposals:

- require the Board of Public Works to include modular construction as an approved public school construction or capital improvement cost (HB 199); and
- require implementation of many of the recommendations of the Task Force to Study Public School Facilities to include additional State and local funding for public school construction and alternative methods to finance school construction projects (SB 787/HB 1230).

### *School Safety, Behavior, and Diplomas*

HB 130 (passed) allows a local board of education to authorize a public school teacher to make a reasonable search of a student on a school-sponsored trip when the teacher has a reasonable belief that the student possesses an item in violation of State law or of a rule or regulation of the local board.

The Safe Schools Reporting Act of 2004 (passed) requires each local board of education to create a program for reporting incidents of harassment or intimidation against public school students that occur on public school property, at a school activity or event, or on a school bus (HB 740).

Under HB 358 (passed), the State Department of Education must establish procedures for the administration of the Youth Risk Behavior Surveillance Survey developed for the Centers for Disease Control and Prevention. The department may omit up to a maximum of one-third of the survey questions, if the department considers the content of the questions inappropriate.

An elementary school with a suspension rate in excess of 18% must implement a Positive Behavioral Interventions and Support Program adopted by the State Board of Education or, in collaboration with the State Board, an alternative behavioral modification program (HB 1288, passed).

HB 474 (passed) allows an individual honorably discharged from military service to apply to a local board of education to obtain a high school diploma, if the individual withdrew from a regular full-time public or private school to enlist in the armed forces during the Vietnam conflict. Another bill, HB 318 that failed would have established a task force to study differential diplomas for high school graduates.

### *Nutrition and Physical Health*

HB 346 would have established a school nutrition program to encourage local public school systems to serve more fresh fruits and vegetables, eliminate fried foods, and review portion sizes. SB 559, the Student Health Promotion Act, would have required the State Board of Education to explore the feasibility of enhancing physical education programs for public school students and to draft and disseminate a model policy regarding vending machines.

### *Teachers*

Numerous bills were introduced that directly address the teaching profession, though none of the following were successful. HB 25 would have required that employers, including State and local government agencies and private employers, to provide up to 16 hours of unpaid leave annually to employees for certain school-related activities related to the employee's child or foster child. HB 302 would have prohibited a "person in a position of

authority” from engaging in enumerated sexual activities with a minor, who at the time of the activities, is a student enrolled at a school where the person is employed.

Several failed bills addressed circumstances under which retired teachers, principals, supervisors of principals, and health care practitioners could have been rehired ([HB 1153](#), [HB 1254](#), and [SB 8](#)).

[HB 1275](#) would have proposed a tax credit to nonpublic school teachers of up to \$750 of the graduate school tuition paid by the individual that is not otherwise reimbursed by the teacher’s employer during the year. [SB 650](#) would have allowed a county board to use a bonus, stipend, or other salary enhancement not exceeding \$500 to recruit or retrain a teacher who teaches in a critical teacher shortage subject area in a public high school.

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## ELECTIONS AND ETHICS

### *Polling Places – Access by Minors*

[SB 95](#) (passed) and [HB 18](#) (passed) raise the age of a minor accompanying a voter in a voting room and into a booth. Both bills allow an individual under the age of 13 to accompany a voter into a voting room, provided the individual is in the care of the voter and does not disrupt or interfere with normal voting procedures. No more than two individuals under the age of 13 are allowed to accompany the voter. Additionally, with certain exceptions, an individual over the age of 12 may not accompany a voter into a booth. Current law provides that a person over the age of 10 may not accompany a voter into a voting booth, with certain exceptions for voters who require assistance.

### *Campaign Residency, Financing, and Voting Machines*

[HB 383](#) (passed) allows, under specified circumstances, a registered voter, who is a resident of the district or other geographic area in which a candidate is seeking office, to file a petition with the circuit court for that district or area to challenge the candidate’s residency.

Legislation ([SB 846/HB 733](#)) that crossed the finish line, related to campaign finance, removes the \$100 per transaction limit on credit card campaign contributions and permits contributions of up to \$1,000 to be made with a credit card. The widespread use of the Internet for political campaign activity has encouraged the use of

credit cards as a cheaper and convenient means of soliciting and contributing money. Other states, such as Virginia and New Jersey, allow credit card contributions to candidates without any added limitation on the amount that may be contributed.

One of the findings from a study of Maryland’s new Diebold Accuvote-TS Voting System found that the units were susceptible to various physical security threats involving tampering with the inner components and periphery devices such as encoded cards used to operate individual units. [HB 1390](#) (passed) substantially increases the penalties for destruction, tampering, or removal of voting equipment. The bill increases the penalty for willfully concealing, damaging, removing, or destroying voting equipment used or intended to be used in an election from imprisonment for one to five years to a fine of up to \$10,000 and/or imprisonment for up to three years.

The quest for the addition of voter-verifiable paper records to the Diebold voting system will continue. [HB 53](#) failed because legislators could not reconcile Senate and House differences. The original companion bill, [SB 393](#), passed the Senate, but did not emerge from a House committee.

### *State Ethics Commission*

The State Public Ethics Law requires an official and a candidate for office as a State official to file an annual financial disclosure statement. Following a State Public Ethics Commission recommendation, the legislature passed [HB 608](#) that provides, under certain circumstances, that an individual is not required to include a listing of a minor child’s employment or business entity of which the child is a sole or partial owner, but also clarifies that all secondary employment of the individual or member of the individual’s immediate family be reported. Additional bills also recommended by the commission as too onerous or as providing little insight into possible conflicts, were rejected ([HB 650](#), [HB 610](#), [HB 609](#), and [HB 716](#)). A committee also killed a measure that would have changed procedures related to examination of ethics files ([HB 611](#)).

Another bill, [HB 298](#) (passed) alters the process concerning final orders issued by the State Ethics Commission. The successful measure repeals provisions requiring a final order of the State Ethics Commission to be stayed until final disposition by a court if a timely appeal has been filed, and provides that the enforcement of a final order by the commission may be stayed at the

discretion of the commission or the reviewing court. An amendment directs that the bill may be construed to apply only prospectively and may not be applied to have an effect on a final order concerning a matter or violation that occurred before the effective date, October 1, 2004, of the bill.

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## ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

### *Maryland Waterways*

Bills introduced this year to protect Maryland waterways took several forms. Measures that passed will reduce the amount of pollution caused by nitrogen from sewage, run off from farmland, and toxic waste in landfills.

The “flush tax” bill, [SB 320](#), establishes the Bay Restoration Fund to provide financial assistance to upgrade wastewater treatment plants. Beginning January 1, 2005, a \$2.50 per month restoration fee will be added to individual water or sewer bills for each residential dwelling. For users of septic systems or holding tanks who do not receive individual water or sewer bills a fee of \$30 per year will be collected as of October 1, 2005. Local governments, public school systems, and community colleges are exempt from the fee. Sixty percent of the funds collected from septic and holding tank users will be available for grants and loans for projects that will enhance nitrogen removal from those systems, while 40% will fund cover crop activities. A newly created Bay Restoration Fund Advisory Committee will evaluate the program.

[SB 320](#) also makes several changes to the Water Quality Improvement Act (WQIA) of 1998. Those changes are found in [SB 182](#), as well. The two bills repeal the current right-of-entry authority of the Maryland Department of Agriculture (MDA) and establish provisions governing farm site visits, ease paperwork requirements for farmers, reduce the administrative burden on MDA relating to certifying and licensing nutrient management consultants, establish a certification process specific to farmers, and increase flexibility for MDA regarding standards for plan development and the use of private nutrient management consultants to develop plans.

[HB 136](#) (passed) requires a specific label for products containing elemental mercury or a mercury compound that has been added to the product for any reason

including dyes or pigments, electric switches, fluorescent lamps, and thermostats.

[HB 109](#) (passed) requires the Department of the Environment to study the establishment and implementation, by January 2006, of an electronic waste collection system in the State for the collection and recycling of electronic waste, including cathode ray tubes.

Other water-related bills include:

- [SB 694/HB 1009](#) (both passed) clarifies the variance application process and enforcement requirements for local jurisdictions under the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program; and
- [SB 795/HB 1345](#) (both passed) clarifies the original intent of the 1-in-20 acre density calculation under the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program and provides for consistency across local programs.

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## FINANCIAL INSTITUTIONS AND COMMERCIAL LAW

The Senate concurred with House amendments to pass [SB 88](#), the Maryland Telephone Protection Act, that makes violation of the National Do Not Call Registry an unfair or deceptive trade practice under the State’s Consumer Protection Act. The Attorney General is to report to legislative committees on the bill’s enforcement by July 1, 2005.

Both chambers adopted conference committee amendments to approve [SB 117](#), legislation imposing privacy protections on social security numbers. This bill prohibits specified disclosures of an individual’s Social Security number (SSN). Violation is an unfair or deceptive trade practice under the Maryland Consumer Protection Act. The legislation is effective January 1, 2005, and sunsets December 31, 2007, with no further action by the legislature.

Given wide play by the national media, the new Maryland Spam Control Deterrence Act ([SB 604/HB 1320](#)) prohibits a person from sending multiple commercial e-mail messages under specified circumstances from a protected computer.

- using a protected computer of another to relay or retransmit multiple commercial e-mail messages with the intent to deceive or mislead recipients or an e-mail service provider as to the message's origin;
- materially falsifying header information in multiple commercial e-mail messages and intentionally initiating the transmission of the messages;
- registering, using false information, for 15 or more e-mail accounts or online user accounts or two or more domain names and intentionally initiating the transmission of multiple commercial e-mail messages from one or any combination of accounts or domain names.

Violation of the bill's provisions is generally a misdemeanor with maximum penalties ranging from one year's imprisonment and/or a \$5,000 fine to five years' imprisonment and/or a \$10,000 fine. The Attorney General may institute a civil action against a violator or seek an injunction.

[SB 172/HB 455](#) (both passed) repeals a sunset provision for legislation enacted in 2000, regarding late fees for consumer contracts including a cap on the imposition of such fees.

A House committee rejected [SB 173](#) a prohibition on selling a gift card or certificate that contains an expiration date or service fees, unless specified criteria are met.

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## **FISCAL MATTERS**

### *Budget Bill and Supporting Legislation*

The \$23.8 billion Budget Bill, [SB 125](#), passed the General Assembly on the last day of the 90 day session, following the adoption of the conference committee report. The General Assembly reduced the Governor's proposed appropriations by \$288 million. As passed the Budget Bill increases appropriations by \$710.5 million or 3.1% for fiscal 2005 over the current fiscal year, but the budget is \$6.1 million below the Spending Affordability Committee recommendations.

The Budget Bill is balanced by reductions to the Governor's requests, transfers to the General Fund from other funds, increased fees, and changes in taxes. The legislature did not rely on revenue from slot machines or

from a sales tax increase to bring the fiscal 2005 Budget Bill into balance.

The Budget Bill becomes law immediately upon passage with no further action by the Governor. The Budget Bill is the only bill other than constitutional amendments over which the Governor has no veto. He may veto revenue-enhancing bills and bond bills.

Among the highlights of the Budget Bill, as passed, are appropriations of:

- \$3.7 billion for public schools and libraries, a 9.3% increase. (The Teacher Salary Challenge Grant Program is being terminated a year early for a savings of \$20.9 million);
- \$3.4 billion for the state's universities and colleges plus an additional \$158.8 million in community college grants;
- \$2.9 million in aid for textbooks and computer hardware and software for nonpublic schools;
- \$3.8 billion for Medicaid plus an additional \$124.9 million for the Maryland Children's Health Program;
- \$1 million for community placements for Crownsville patients ready for discharge and provisions for the closure of Crownsville Hospital Center;
- \$438 million for community mental health services for Medicaid recipients plus an additional \$105.4 million for community mental health services;
- \$30.6 million for the Electricity Generating Equipment Property Tax Grant to local jurisdictions;
- \$19.9 million for the Hickey School education program;
- \$51.3 million for the Education Excellence Awards funding;
- \$130.1 million funding of the Alcohol and Drug Abuse Administration requiring \$3 million to be used for substance abuse treatment as an alternative to incarceration programs; and

- \$752 per State employee cost-of-living adjustment and funds for merit increases and salary adjustments.

Part of the balanced budget package, [SB 508](#), the “Budget Reconciliation and Financing Act,” (BRFA) transfers \$255.7 million from special fund accounts to the General Fund, including \$51.2 million in local highway aid, \$81 million in surplus reserve local income tax revenues, \$57 million in Program Open Space revenues, and \$13.1 million in agricultural land preservation funds. Among the bill’s fee increases are those for the Departments of Agriculture and Assessments and Taxation for pest control applications and processing and filing fees. The Department of Health and Mental Hygiene is authorized to increase fees in an amount sufficient to recover administrative costs and a 6% provider fee on the income of facilities for the developmentally disabled.

The final version of BRFA does not include the income and sales rate increases, the sales tax expansion, snack tax, and motor vehicle titling tax rate increase in earlier versions. However, the bill does include revenue from the decoupling from the federal depreciation deductions for large sport utility vehicles, from federal accelerated depreciation, and from estate tax unified credit exemption increases. For fiscal 2004, \$126.1 million in appropriations are withdrawn in recognition of additional federal assistance for that year. Lastly, [SB 508](#) establishes a formula for the geographic cost of education index provisions of the Bridge to Excellence Act (Thornton). As well, the General Assembly incorporated provisions of related bills transferring funds, increasing fees, and making other statutory changes to balance the budget ([SB 509/HB 870](#) and [SB 510/HB 871](#) all failed) into [SB 508](#).

Another component of the budget package, [HB 297](#), a business tax bill, authorizes 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. A corporation is required, in determining Maryland taxable income, to add-back interest expenses or intangible expenses paid to related members under the bill, but the bill includes provisions to prevent double taxation. The companion bill, [SB 187](#), as amended, now just provides for a settlement period from August 1 through November 1, 2004, for corporate income taxes resulting from certain State court cases. Penalties will be waived for settlements made during this period. This is

contingent upon [HB 297](#) taking effect. Other corporate tax bills ([SB 156](#), [SB 727](#), [HB 1037](#), and [HB 1206](#)) died.

#### *Heritage Tax Credit Program*

The legislature approved a substantially amended Heritage Structure Rehabilitation Tax Credit Program bill. As passed, [HB 679](#) extends for both commercial and residential projects the current Heritage Structure Rehabilitation Tax Credit Program until July 1, 2008. This program is currently scheduled to terminate June 1, 2004. The bill imposes a \$50,000 tax credit limit for residential rehabilitations which have no limits at present, and continues the \$3 million limit for commercial projects with a prohibition against more than 50 percent of all of the credits for a fiscal year being used in any one jurisdiction. To fund these tax credits, the Governor is required to appropriate to a Heritage Structure Rehabilitation Tax Credit Reserve Fund at least \$20 million for fiscal 2006 and at least \$30 million each year in fiscal 2007 and 2008. The current calendar year 2004 tax credit limit is \$15 million which the bill increases to \$25 million, the additional \$10 million being subject to a competitive award process ensuring geographic diversity and an allocation to projects consistent with the State’s growth and development policies. The bill takes effect June 1. Two other bills that would have extended the tax credit died ([SB 190](#) and [HB 289](#)).

#### *Capital Bond Bill*

The “Maryland Consolidated Capital Bond Loan of 2004,” [SB 191](#), authorizes the borrowing of \$628.3 million for State and local projects. The bill also includes prior year authorizations of \$30.4 million in legislative projects for local governments and nonprofit organizations, \$5 million for the Tobacco Transition Program, and a reduction in previous authorizations of \$8.7 million. Among the highlights are:

- \$114.2 million for public school construction with an additional \$2.4 million in special funds in the Budget Bill;
- \$166.1 million for the State’s universities and colleges;
- \$61.7 million for community colleges including Baltimore City Community College;
- \$108 million in bonds, special and federal funds for environmental programs, including \$92 million for

various wastewater treatment plant programs and \$500,000 for small creek and estuary control;

- \$15 million for Program Open Space in bond money, plus an additional \$2 million in federal funds, \$3 million in bond money for the GreenPrint Program and \$5 million in bond money for Community Park and Playground programs, \$2 million in bond money for the Rural Legacy Program, and \$17.1 million for agricultural land preservation in bond, special and federal funds;
- \$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, and \$15.3 million for local jails; and
- \$6 million for the Partnership Rental Housing Program and \$5 million for the Community Legacy Program.

#### *Changing Budgetary Authority*

A constitutional amendment that would have increased the General Assembly's budgetary powers (if approved by voters) made it to third reading in the Senate. Although receiving more yeas than nays, the bill, [SB 370](#) (companion [HB 1247](#) failed), did not receive the necessary three-fifth's vote for a constitutional amendment and thus died. Other bills dealing with the authority of the Board of Public Works (BPW) to reduce appropriations failed to gain approval as well ([SB 261](#)/[HB 622](#)).

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## GAMING, RACING, AND SPORTS

### *Hunting*

[HB 1335](#) (passed) exempts nonresident owners of farmland and their spouses, children, and children's spouses from the requirement to obtain a hunting license to hunt on that land if the parcel is located in Maryland and an adjacent state, the owner's primary residence is on the parcel of farmland, and the adjacent state extends similar privileges to a resident of Maryland. [HB 451](#) (failed) would have prohibited the Department of Natural Resources from establishing an open season to hunt black bears and from reducing the black bear population in any area of the State before July 1, 2010.

### *Slot Machines (Video Lottery Terminals) and Gambling*

Receiving the same fate as did the bills from 2003, all slots legislation failed this session. [SB 197](#), the Administration bill, was rejected by a House committee on *sine die* Monday. The bill, as approved by the Senate, would have authorized up to 15,500 video lottery terminals (slot machines) in the State at six locations--three racetrack locations (one of which would have been in a rural area) and three nonracetrack locations. The bill also provided for one-time application fees, created an Education Trust Fund, increased State aid for primary and secondary education, and continued the current prohibition on additional forms of commercial gambling. Other rejected slots legislation includes:

- [HB 742](#) that would have repealed the geographic limitation on where slot machines may be owned and operated by eligible organizations;
- [HB 818](#) that would have authorized up to 11,500 slots at up to four horse racing tracks;
- [HB 1089](#) that would have authorized a maximum of 12,000 slots. (Licenses would have been competitively awarded based on the estimated net revenue that would be generated by the State);
- [HB 1257](#) that would have authorized up to 10,000 video terminals consisting of 5,000 slot machines and 3,000 keno terminals at a maximum of three locations; and
- [HB 1497](#), a constitutional amendment, that would have authorized expanded forms of gambling up to a maximum of 13,000 slot machines.

The following related measures failed:

- [SB 496](#) would have created a Compulsive Gambling Treatment Program;
- [SB 734](#)/[HB 722](#) would have provided for the transfer of the name of the Preakness Stakes, copyrights, trademarks associated with the Preakness, along with the transfer of the Woodlawn Vase trophy to the State, if any form of gambling, other than pari-mutuel betting is authorized for the Pimlico Race Course;
- [HB 921](#) would have established a Maryland Gaming Commission as an independent unit of State government, incorporating the State Lottery

Commission, Maryland Racing Commission, and Maryland Stadium authority;

- [HB 1013](#) would have excluded from any licensed gaming facility a Maryland resident who owes child-support payments or past due taxes, receives Medicaid or similar public assistance, or has declared bankruptcy within the last five years; and
- [SB 530/HB 1201](#) would have required the Department of Health and Mental Hygiene to contract with an independent researcher to conduct a pathological and problem gambling study every five years.

### *Athletics*

[SB 354/HB 633](#) (both failed) and [HB 480](#) (failed) related to commercial athletic contests and specifically would have broadened language prohibiting interference with these contests. Also rejected, [HB 1322](#) would have established a 17-member Medical Advisory Committee on Physical Evaluations for Student Athletes. The committee would have advised the Maryland Public Secondary Students Athletic Association on the content and use of a pre-participation physical evaluation form and review pre-participation physical evaluation procedures at least every three years. Referred to interim study, [HB 277](#) would have required the Board of Physicians to license and regulate “athletic trainers.” The companion bill, [SB 411](#), died.

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## HEALTH CARE AND INSURANCE

### *Health Care*

[SB 332/HB 398](#) (both passed) await the Governor’s signature. The bills require hospitals in Maryland to allow pregnant women to arrange for the donation of umbilical cord blood from their newborns to a certified public cord blood bank. The hospital or its employees are not required to collect the blood donation if doing so crosses religious boundaries or endangers the health of the mother or newborn child. The bills are modeled after a new law in Illinois that views the donations as a less costly alternative to bone marrow transplants to combat leukemia and other blood diseases.

Also passing both chambers, [SB 389/HB 384](#) allow pharmacists to administer influenza vaccinations with fees to be set by the State Board of Pharmacy and

regulations to be developed by the Pharmacy Board and the Boards of Physicians and of Nursing.

[HB 475](#) (passed) provides respite care for families who care for individuals with developmental disabilities. The bill requires State residential centers to reserve a percentage of total beds for respite care and allows families caring for the individuals to have a choice of obtaining care at a State residential center or in a community setting. The measure also contains mandated funding and directs the Department of Health and Mental Hygiene (DHMH) to study the demand for respite care in State centers. The bill terminates after three years. [HB 1079](#) (failed) would have required DHMH to close the Rosewood Center, one of the State’s residential facilities, and transition the residents to community-based services.

In response to the proposed closing of the Crownsville Hospital Center, [HB 1351](#) (passed) prohibits the State from selling a cemetery located on the grounds of a State-owned facility maintained by the Mental Hygiene Administration or the Developmental Disabilities Administration, as well as prohibits the selling of an easement or right of entry to a cemetery, unless the deed contains a restrictive covenant requiring any future owner to maintain the cemetery. Other bills related to the closing of the center, [HB 680](#) and [HB 1459](#) (both failed) would have halted the sale, while [SB 373](#) (failed) would have given the Center’s employees an early retirement allowance.

[HB 1284](#), the Medical Decision Making Act of 2004, passed in the House, but received an unfavorable Senate committee vote. The bill would have allowed same-sex and heterosexual partners to register with the Secretary of DHMH as life partners who may make medical decisions for each other regarding treatment, organ donation, and funeral arrangements.

Abortion-related bills failed this session. Related to licensing regulation of facilities that provide abortion services were [HB 1156](#), [SB 265](#) and [SB 471](#). The bills would have altered the definition of a free-standing ambulatory care facility to include abortion service facilities. Also failing were bills regarding parental notification by a physician prior to an unmarried minor having an abortion ([SB 351/HB 621](#)).

Other health-related bills that failed to move this session include:

- [HB 114](#) that would have banned the sale, distribution, prescription, or dispensing of dietary

supplements containing “ephedrine group alkaloids” except under certain circumstances;

- [SB 140/HB 260](#), the Clean Indoor Air Act of 2004, that would have prohibited a person from smoking in all indoor areas open to the public and places of employment, including restaurants and bars;
- [SB 247/HB 203](#) and [SB 248/HB 204](#) that would have allowed pharmacists to dispense emergency contraception under an approved arrangement with a physician. (Similar legislation in past sessions also failed);
- [HB 309](#) that would have created a State Advisory Council on Obesity in Youth;
- [HB 1198](#) that would have required a Certificate of Need (CON) to be issued before a health care facility establishes an advanced cardiac health care service and prohibits a facility from performing certain procedures unless the facility also performs open heart surgery at that location; and
- [HB 1293](#) that would have allowed a minor of at least 14 to donate bone marrow with a parent’s written consent.

### *Health Insurance*

Several bills introduced this year address the issue of Maryland’s nearly 700,000 citizens currently without health insurance coverage. [SB 737/HB 1008](#), the Public-Private Partnership for Health Coverage for All Marylanders (both failed), was a proposal of the Maryland Citizens’ Health Initiative. [HB 1271](#), the Community Health Care Access and Safety Net Act of 2004, also failed. The measure would have been funded through a 1% premium tax imposed on HMOs and MCOs as well as funds from the Cigarette Restitution Fund. A Senate committee amendment increased the premium tax to the full 2% imposed on other insurers, but the Senate rejected the House legislation on third reading.

As amended and approved, [SB 570](#) requires the Maryland Health Care Commission to establish a limited health benefit plan that may be sold in the small group health insurance market.

As passed, [SB 131/HB 845](#) require the Maryland Health Care Commission (MHCC) and the Maryland Insurance Administration (MIA) to conduct studies of the

affordability of health insurance in Maryland. MHCC and MIA must develop recommendations on ways to make private health insurance more affordable for State residents, and must report on their findings and recommendations by providing an interim report by January 1, 2005, and a final report by January 1, 2006.

The Senate took no action on the House’s response to rising medical malpractice insurance premiums and awards ([HB 1299](#)) resulting in failed legislation. Both chambers rejected earlier in the session the Administration’s initiative to cap medical malpractice awards for noneconomic damages at \$500,000 ([SB 193/HB 287](#)).

The State’s health insurance mandate for morbid obesity is modified as the Senate concurred in House amendments to [SB 868](#). This clarifies that a health insurer, nonprofit health service plan, or HMO must cover the surgical treatment of morbid obesity that is recognized by the National Institutes of Health (NIH) as effective for the long-term reversal of morbid obesity and consistent with guidelines approved by NIH. House amendments added additional members to the bill’s creation of a Task Force to Study Utilization Review of the Surgical Treatment of Morbid Obesity. The companion bill, [HB 1410](#), also passed.

During the 2003 session, the legislature addressed the attempted conversion of the State’s largest nonprofit health service plan, CareFirst BlueCross BlueShield, to a for-profit entity and proposed acquisition by WellPoint Health Networks. Bills passed this session regarding nonprofit health service plans include the following. [HB 127](#) requires, at the request of the Insurance Commissioner, a nonprofit health service plan or HMO (carrier) to file a copy of its underwriting standards, including any amendments or supplements, with the Commissioner. A carrier may request that its underwriting standards be considered confidential commercial information. [SB 29/HB 350](#) repeal the Insurance Commissioner’s authority to approve compensation guidelines for all officers and executives of a nonprofit health service plan. A nonprofit health service plan’s board is required to provide a copy of compensation guidelines to the Insurance Commissioner on or before September 1, 2004 and annually thereafter. This legislation codifies actions taken by the Insurance Commissioner in response to a federal consent decree modifying legislation enacted in 2003. [SB 4/HB 341](#) make various changes to the current State regulation of nonprofit health service plans.

A proposal ([SB 167](#)) requiring DHMH to request waivers from the federal government to allow a State program to purchase and import prescription drugs from Canada and certify the safety and efficacy of any Canadian imported drugs failed. DHMH was also to develop a plan to implement a Canadian Mail Order Plan to be operative within 30 days after required federal approvals.

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## STATE GOVERNMENT

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### REAL PROPERTY, ESTATES, AND TRUSTS

#### *Hurricane Isabel*

Several bills were introduced this session to assist people affected by the devastation of Hurricane Isabel. [SB 415/HB 3](#), the Hurricane Isabel Disaster Relief Act, was passed and signed by the Governor as Chapters 7 and 8 of the 2004 *Laws of Maryland*. The Act 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, as well as providing credit enhancements for private market loans. The Act also includes coverage for the repair or replacement of water and sewer systems, including septic systems.

Other bills passed by both chambers include:

- [HB 435](#), to extend the special assessment of damaged or destroyed residential real property to all real property, other than that used for commercial purposes. (The assessment on the repair or replacement of similar value may not be greater than on the original property until the next assessment period); and
- [HB 1447](#), to prohibit a lender from requiring a borrower, as a condition of securing a loan, to provide flood insurance coverage for more than the replacement value of the improvements on the real property.

Isabel-related legislation that failed includes [HB 1144](#), [SJ 6/HB 10](#), [SB 579](#), [SB 583](#), and [SB 834](#).

Legislation also failing to move through the process this session, [SJ 7/HJ 3](#) urged the Governor, by joint resolution, to make funds available for the Transitional Emergency Medical and Housing Assistance Program (TEMHA). The State had a freeze for the remainder of fiscal 2004 on new applicants to the program which provides medical, housing, and other services to low-

income disabled adults who are eligible for other assistance. Funding was urged to be made available by transferring money from other programs or by including a deficiency appropriation for fiscal 2004 in the fiscal 2005 budget.

#### *Open Meetings Act*

Dating from 1977, the Open Meetings law requires with certain exceptions, that public business be performed in an open and public manner, thus allowing citizens to observe the performance of public officials and the making of public policy. Before meeting in a closed or open session, a public body must give advance written notice of the meeting. The general public is entitled to attend meetings in open session, although an individual may be removed for disruptive behavior. Closed session meetings of public bodies are permitted under limited circumstances.

Successful 2004 bills change the Open Meetings law by:

- authorizing anyone, not just the person adversely affected, to file with a circuit court that has venue, a petition asking the court to determine the applicability of open session requirements ([SB 87/HB 73](#)); and
- broadening 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 and requires a public body to include specified information when filing a response to a complaint and to retain specified documents ([SB 111](#)).

[HB 1243](#) (failed) would have required the State Open Meetings Law Compliance Board to study the use of the executive function exclusion under the Open Meetings Act and to issue a report by December 1, 2004.

#### *Department of Disabilities*

Approved legislation seeks to empower individuals with disabilities so that they may achieve their personal and professional goals in the communities where they live when provided with the right support, training, and opportunities. [SB 188](#) (passed) creates a new Department of Disabilities as the principal staff agency

responsible for developing, maintaining, and enforcing statewide disability policies and standards throughout the units of State Government. The Americans with Disabilities Act defines disability as a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment.

The bill abolishes the Governor's Office for Individuals with Disabilities and transfers those positions and assets to the new department. However, the Office for the Deaf and Hard of Hearing will remain a separate agency. It is the intent of the General Assembly that the new department be funded with existing resources or federal or special funds, unless funding is provided for the department in the State budget.

#### *Minority Affairs*

**SB 903** (passed) establishes the Office of the Special Secretary of Minority Affairs whose duties replace those of the current Director of the Office of Minority Affairs. The bill requires agencies to include a statement of the expected level of minority business participation in the specifications of invitations for bids and requests for proposals. The Board of Public Works is required to adopt regulations that an agency must identify the specific commitment of certified minority business enterprises at the time of submissions of bids or proposals.

Growing out of legislative initiatives over the last several years, **SB 177/HB 86** (both passed) establishes an Office of Minority Health and Health Disparities in the Department of Health and Mental Hygiene. The office has a broad ranging mandate to research, identify, and coordinate efforts in the public and private sectors directed toward improvement of minority health care with an emphasis on preventative health and healthy lifestyles. Approximately 23 other states have programs with a similar focus. It is the intent of the General Assembly that the office be funded from federal and special funding sources.

#### *Procurement*

Currently, there is no "living wage" requirement for State contractors. Legislation, **SB 621**, passed after much discussion, generally requires contractors or subcontractors with a State contract for services valued greater than \$100,000 to pay a living wage of at least \$10.50 an hour. Specified employers are not required to pay the living wage under certain circumstances.

Not later than 90 days after the start of each fiscal year, the Commissioner of Labor and Industry is to adjust the wage rate by the annual average increase, if any, in the consumer price index for all urban consumers for the Washington-Baltimore Metropolitan area for the previous calendar year. If there is a new wage rate, it will be published on the Division of Labor and Industry's website. Legislative staff is to study the fiscal and economic impacts of the Act on the public and private sectors and report by January 2006.

Another bill dealing with State procurement was successful. **HB 1044** (passed) prohibits private sector employers performing under State contracts from taking or refusing to take personnel actions against an employee as a reprisal for whistleblowing.

#### *Miscellaneous*

Although a number of bills proposed additions to Maryland's official State symbols, holidays, or special dates, only **SB 428** cleared the final hurdle. The bill originally designated lacrosse the State team sport and, by amendment, also now names the Patuxent River stone as the State gem.

With final legislative approval, **SB 164** (Ch. 29) pumps up current law by adding specific provisions regarding the temporary inability or unavailability of Maryland's Attorney General to serve in office. The measure codifies a procedure to name the senior Deputy Attorney General as Acting Attorney General in that event.

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## **TRANSPORTATION**

### *Transportation Trust Fund and Homeland Security*

The General Assembly passed the House version of the Governor's transportation financing measure. As passed, the proposal was reduced by \$83 million per year, but it is still expected to generate \$165.5 million. **HB 1467** (Ch. 9) increases car registration fees by \$23.50 per year and truck registration fees by \$36.00 per year. However, the House deleted the surcharges on moving violations and drunken driving offenses.

**HB 19** (failed) would have amended the Maryland Constitution to place restrictions on transfers from the Transportation Trust Fund (TTF) and allow the TTF 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 purposes.

In response to the federal Department of Homeland Security's new regulations that require detailed background investigations and fingerprinting of applicants for new and renewed commercial driver's licenses with a hazardous materials endorsement, the legislature approved [HB 855](#) that requires holders of commercial driver's licenses to obtain not only national criminal records background checks, but also State records checks before receiving a hazardous materials endorsement. An amendment to the bill offered on the House floor would have prohibited the Motor Vehicle Administration 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 amendment, which was defeated, was originally the subject of [HB 41](#), a bill that was killed by another committee.

[HB 381](#) (passed) clarifies that a person without lawful authority "may not interfere" with the operation of any traffic control device or any railroad sign or signal. The amendments also prohibit, without lawful authority, possession "with an intent to use" a device capable of transmitting an infrared, electronic, or other signal to a traffic control device or railroad sign or signal for the purpose of altering or interfering with the operation of the device or sign or signal.

#### *Driving Violations*

[SB 280/HB 1223](#) (both passed) increases the maximum fine from \$500 to \$1,000 for failure to stop or remain stopped for a school vehicle that is stopped with activated alternately flashing red lights.

[HB 376](#) (passed) clarifies that if the court stays a judgment for various alcohol- or drug-related driving offenses, then before imposing a period of probation, the court may order the Department of Health and Mental Hygiene (DHMH) to evaluate the defendant to determine if the defendant is in need of and may benefit from an alcohol or drug treatment or education program. If an evaluation was ordered, the court must review the evaluation before imposing a period of probation. Another measure, [HB 373](#) (passed) increases the criminal penalties for driving or attempting to drive while impaired by a controlled dangerous substance.

#### *Failed Drunk Driving Bills*

Several other proposals related to drunk and drugged driving laws were defeated:

- [HB 371](#) would have imposed stiff penalties for causing a death or life threatening injury by driving a vehicle or vessel while impaired by a controlled dangerous substance per se;
- [HB 372](#) would have expanded 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 374](#) would have required the imposition of consecutive sentences for multiple violations arising out of the same incident if the person was 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; and
- [HB 375](#) would have made 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.

#### *Failed Legislation Related to Other Violations*

- [SB 628/HB 482](#) (both failed) would have required a driver in the far left lane of a road with two or more lanes moving in the same direction to yield the left lane to faster moving vehicles when it was safe and practicable to do so. Other legislation, [SB 218/HB 173](#) (both failed) would have created the offense of homicide by aggressive driving, and [SB 293](#) (failed) would have created the offense of homicide by motor vehicle or vessel while fatigued.

#### *Licensing and Registration*

Under [SB 35](#) (passed), an applicant who is at least 21 years old, but less than 40 years old, and who has passed a vision test as prescribed by the Motor Vehicle Administration (MVA) within the previous six years, is

not required to take a vision test to renew the applicant's driver's license.

**SB 233** (failed) would have prohibited a licensed driver under the age of 18 from driving with a passenger under the age of 18 for 181 days after the issuance of the driver's license. The restriction would not have applied to a passenger who was a spouse or a family member of the licensee;

**HB 94** (failed) would have charged a fee established by the MVA for a missed appointment to take a driver's license examination.

**SB 32** (Ch. 12) eliminates the 15-day limit on temporary vehicle registrations, and authorizes the MVA to determine the duration of the temporary registrations. In addition, the measure eliminates the need to purchase paper registration tags, but issues permanent metal plates instead, with a short-term registration sticker.

#### *Motorcycle Helmets*

**SB 611** (failed) would have exempted certain individuals from the current requirements to wear a helmet when riding on a motorcycle. The measure passed the Senate, but died in a House committee.

#### *Surcharges Linked to Convictions*

Measures failed that would have imposed a surcharge against individuals who were convicted of certain violations:

- **SB 900** would have created a Medical Assistance Program Fund to be supported by additional license renewal fees assessed against individuals who had certain convictions including drunk and/or drugged driving violations and the accumulation of five or more points for nonalcohol-related infractions within three years; and
- **HB 1508** would have imposed a surcharge of \$200 on a defendant convicted of DWI or a DUI offense, including cases in which they waived their rights to a trial and would have imposed a \$50 surcharge on a defendant convicted of a moving violation, where the defendant waived the right to a trial.

#### *Driving Privileges for Noncitizens*

Two bills failed that related to noncitizens:

- **HB 40** would have prohibited a person from knowingly permitting the person's motor vehicle to be driven on a highway by an individual that the person knew was not lawfully admitted into or otherwise lawfully present in the U.S.; and
- **HB 41** would have prohibited 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.

#### *Cell Phones and Drivers*

Concern increased over the use of hand-held telephones and other devices by drivers, but all of the bills on this subject were defeated. **HB 189** and a similar measure, **HB 5**, would have imposed a restriction on each provisional license and each learner's instructional permit to prohibit the licensee or permit holder from using a cell phone, a text messaging device, a personal digital assistant that sends or receives messages, or a laptop computer while operating a motor vehicle. **HB 29** would have prohibited, with certain exceptions, all drivers of a motor vehicle that is in motion from using a hand-held telephone. Similar legislation has failed for the last five years. **HB 275** would have provided that evidence of a motor vehicle driver's operation of a hand-held telephone at or near the time of an accident may be considered in determining whether the driver was negligent.

#### *Miscellaneous Failed Legislation*

**SB 159/HB 1527** would have submitted a question at the next general election to determine if voters were willing to fund and build a third Chesapeake Bay bridge crossing.

**SB 97/HB 30** would have expanded the types of energy-efficient vehicles that would have been allowed to use high occupancy vehicle (HOV) lanes at all times to include hybrid vehicles.

## **VETOES AND LEGISLATIVE OVERRIDES**

The 2004 General Assembly voted to override the following gubernatorial vetoes of bills passed during the 2003 session:

- Retirement and Pensions - Baltimore City Child Support Enforcement Employees (SB 78 and HB 812 became Chapters 1 and 4 of 2004, effective 2/19 and 2/20/2004). The chapters provide service credit, under certain circumstances, to specified members of the State Retirement and Pension System for the time the members were employed by a private vendor to provide child support enforcement services in Baltimore City;
- Maryland Energy Efficiency Standards Act (SB 394 and HB 747 became Chapters 2 and 5 of 2004, effective 2/19 and 2/21/2004). The chapters direct the Maryland Energy Administration to establish minimum energy efficiency standards for specified new products to be sold in Maryland after March 1, 2005, or installed in Maryland after January 1, 2006. The new standards specifically apply to nine household and commercial products: (1) torchiere lighting fixtures; (2) unit heaters; (3) certain types of low-voltage dry-type distribution transformers; (4) ceiling fans and ceiling fan light kits; (5) traffic signal modules; (6) illuminated exit signs; (7) commercial refrigeration cabinets (excluding walk-in refrigerators or freezers); (8) large packaged air-conditioning equipment; and (9) commercial clothes washers. The Acts specify minimum efficiency standards for those products and prohibit, with the exception of commercial clothes washers and ceiling fan light kits, the sale of nonconforming new products on or after March 1, 2005, and the installation of such products after January 1, 2006. Efficiency standards for commercial clothes washers and ceiling fan light kits become effective March 1, 2007; washers and kits that do not meet the standards may not be sold beginning on that date and may not be installed beginning January 1, 2008.
- Baltimore City - Alcoholic Beverages - Licensed Premises Near Churches or Schools, SB 532 (Emergency Bill, Chapter 3 of 2004, effective 1/20/2004). The chapter alters the application of a prohibition against the granting of a new alcoholic beverages license within 300 feet of the nearest church or school from the 47th Legislative District to be the 46th or 47th Legislative Districts as listed

in the Baltimore Directory of 1986 issued by the Board of Supervisors of Elections of Baltimore City.

These bills are chaptered as enacted. Effective dates of chapters are determined by Article II, sec. 17(d) of the Maryland Constitution:

Any Bill vetoed by the Governor shall be returned to the House in which it originated immediately after the House has organized at the next regular or special session of the General Assembly. The Bill may then be reconsidered according to the procedure specified in this section. Any Bill enacted over the veto of the Governor, or any Bill which shall become law as the result of the failure of the Governor to act within the time specified, shall take effect 30 days after the Governor's veto is overridden, or on the date specified in the Bill, whichever is later. If the Bill is an emergency measure, it shall take effect when enacted. No such vetoed Bill shall be returned to the Legislature when a new General Assembly of Maryland has been elected and sworn since the passage of the vetoed Bill.