



The Legislative Wrap-Up

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GREEN BAG APPOINTMENTS

Green Bag appointments, as required by the Maryland Constitution, were submitted to the Senate and the House on Friday, February 20 (although the official day, the 40th calendar day of session, is Sunday, February 22). The Governor's Appointments Secretary delivers the list of gubernatorial appointments in the official Green Bag of Maryland to the President of the Senate at the morning session. 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 at the State Archives.

- [HB 213](#) allows a judge who issues a final protective order to order the respondent to pay reasonable attorney's fees of the person who sought the order; and
- [HB 118](#) requires the Administrative Office of the Courts to maintain a Domestic Violence Central Repository, a State database of protective orders that police could call up from their cruisers.

Nearing approval by the House, [SB 307](#) freezes the salaries of judges of the Maryland Court of Appeals, Court of Special Appeals, circuit court, and District Court for a year and requires the Judicial Compensation Commission (JCC) to meet this fall and every four years thereafter, allowing the JCC to recommend salary increases next year for the General Assembly's consideration.

After a discussion on the floor, the House passed on a preliminary vote [HB 45](#) to prohibit tattooing, branding, or body piercing of a minor without the prior written informed consent of a parent or legal guardian. As amended, an individual who performs any of these acts without written consent, which must take place in the presence of the individual or his or her employee, is subject to a civil penalty rather than a misdemeanor, as the bill was originally drafted.

Legislation that would have extended by 25 years the statute of limitations for civil actions by victims of child sexual abuse ([SB 238](#)) failed a committee vote this week.

COURTS AND CIVIL PROCEEDINGS

A House committee received public testimony this week about legislation that addresses the safety of domestic violence victims:

- [HB 296](#) requires the surrender of firearms by a respondent in a final protective order (the companion bill, [SB 267](#), and a similar bill, [SB 210](#), were before a committee last week);
- [HB 302](#) and [HB 214](#) allow a court, when issuing a temporary protective order, to order the respondent to surrender any firearm in the respondent's possession (the companion bill, [SB 268](#), and a similar bill, [SB 144](#), were heard last week);
- [HB 1247](#) requires a person charged with violating a protective order to undergo a lethality assessment evaluation and possible tracking by global positioning satellite as a condition of pretrial release or probation in jurisdictions that implement a global positioning satellite tracking system program (the companion bill is [SB 801](#));
- [HB 359](#) gives a person who has been issued a temporary or final protective order the qualification of having a "good and substantial reason" to wear, carry, or transport a handgun, so that the person is eligible to receive a handgun permit, after meeting the other statutory requirements (the companion bill is [SB 586](#));

CRIMES, CORRECTIONS, AND PUBLIC SAFETY

Death Penalty

Governor O'Malley and others testified before a closely divided Senate committee this week on the Administration's proposal to repeal the death penalty and all provisions relating to it ([SB 279](#)). Under the proposal, a person found guilty of murder in the first degree must be sentenced to imprisonment for life or imprisonment for life without the possibility of parole. In a report released last December, a gubernatorial commission studying the issue urged the repeal of

capital punishment, citing the possibility of executing an innocent person, high financial costs, and racial and jurisdictional biases. The companion bill, [HB 316](#), will be heard in the House next month.

A de facto moratorium on executions has existed since December 2006, when the Maryland Court of Appeals ruled that lethal injection regulations had not been properly adopted. [HB 1109](#), to exempt the protocols governing the administration of the death penalty from the requirements of the Administrative Procedure Act, will also be heard next month.

Cyber-bullying

Legislation heard this week on the issue of cyber-bullying includes:

- [SB 194](#) that makes a communication that is transmitted by means of an electronic device with the intent to terrify, intimidate, or harass a minor, or threaten to injure or physically harm a minor or minor's property a misdemeanor charge. An electronic device includes a telephone, mobile phone, computer, personal digital assistant, pager, or fax machine; and
- [HB 509](#) that expands the scope of current prohibitions against stalking and harassment via electronic mail to apply to chat rooms or postings to web pages such as *myspace.com*.

In an effort to reduce underage drinking by linking it to the sanction of driver's license suspension, [SB 261/HB 299](#) establish a mandatory 6-month driver's license suspension for a person under 21 who commits the code violations of possessing, consuming, or consuming and exhibiting the effects of consuming an alcoholic beverage. The bills also establish misdemeanor penalties for adults who knowingly obtain or attempt to obtain an alcoholic beverage for a person under 21, or who furnish an alcoholic beverage for consumption by a person under 21.

Child Pornography

The House passed [HB 9](#), which changes from a misdemeanor to a felony a subsequent conviction of the crime of possession of child pornography, expands the list of prohibited actions under the crime, and increases the maximum jail time.

ECONOMIC AND BUSINESS ISSUES

A Senate committee heard [SB 270](#) this week, which gives an individual whose availability to work is restricted to part-time work the eligibility to receive

unemployment benefits. Under this emergency measure, a person who has worked predominantly on a part-time basis for at least 15 hours weekly throughout the year is entitled to receive these benefits. Currently, eligibility for unemployment benefits only applies to full-time work, though this restriction is not explicitly stated in the law.

A recent federal report found that low-wage workers were over twice as likely to be unemployed as higher wage workers, but were half as likely to receive unemployment benefits. Currently, 30 states allow unemployment insurance benefits for part-time workers. Similar legislation in 2008 did not pass. The companion bill is [HB 310](#).

ELECTIONS AND ETHICS

Election Day Registration

A growing number of state legislatures are considering election day registration (EDR) which permits eligible individuals to register and vote on election day. The reform is intended to boost participation in elections by giving people an opportunity to register or correct their current registration after the voter registration deadline. In EDR states, approximately 15 to 21% of voters register on election day.

This session [SB 514](#) and [HB 476](#) seek to amend the Maryland Constitution to give the General Assembly the power to provide by law a process to allow a qualified voter to register and vote on election day at the polling place in the precinct in which the voter resides. If the legislation is enacted, the proposed amendment will be before the voters on the 2010 general election ballot.

Nine states currently permit EDR. Wisconsin, Minnesota, and Maine implemented EDR in the 1970s. Idaho, Wyoming, and New Hampshire followed in the 1990s. More recently, Montana, Iowa, and North Carolina have implemented EDR. Additionally, there is legislation before Congress requiring EDR for all federal elections.

Lobbying by Former Executive Branch Officials

[SB 695](#) and [HB 475](#) prohibit lobbying for compensation in a matter that is the subject of legislative action by former officials of the Executive Branch for one year after the official leaves employment. The prohibition does not apply to a former official's representation of a governmental entity.

Under current law, former State officials or employees other than General Assembly members are prohibited from assisting or representing a party, other than the

State, in a case, contract, or other specific matter that involves State government and that the former official or employee participated significantly in the matter while employed by the State.

State law also prohibits former members of the General Assembly, until the conclusion of the next regular session that begins after a member leaves office, from assisting or representing another party for compensation in a matter that is the subject of legislative action. The prohibition does not apply to a former member's representation of a governmental entity.

ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

Smart, Green, and Growing

Testimony was heard this week by a House committee on the Administration's proposals that address Maryland's local government comprehensive planning procedures and goals. The bills directly respond to the recent recommendations of the Task Force on the Future for Growth and Development in Maryland:

- [SB 280/HB 297](#) (Smart and Sustainable Growth Act of 2009) express legislative intent to overturn the 2008 Court of Appeals ruling relating to the *Terrapin Run* case, where the court held that a special exception could be granted to a local comprehensive plan even if it did not strictly conform to the plan, which could then be interpreted to mean that local land use ordinances and regulations need not be consistent with the locally adopted comprehensive plan. The new legislation requires local governments to enact, adopt, amend, and execute specific planning documents and to take actions that are consistent with the plans. The legislation also clarifies that special exceptions must be consistent with a local government's comprehensive plan and defines "consistent";
- [SB 273/HB 294](#) (Local Government Planning - Planning Visions) amend the State's planning visions and require local planning commissions to take these into consideration when developing planning documents. The aim is to modernize the visions to include public participation, economic development, housing, sustainability, and multimodal transportation, as well as broader resource conservation and environmental protection goals; and
- [SB 276/HB 295](#) (Annual Report - Smart Growth Measures and Indicators and Implementation of Planning Visions) require local planning

commissions or boards to submit an annual report identifying which ordinances or regulations were adopted or changed to implement the State's planning vision, using measures and indicators that were recommended by the Task Force.

Oyster Restoration and Aquaculture

Restoring the State's oyster population and promoting the production of aquaculture-grown shellfish for commercial purposes in the State were on a hearing agenda this week. The discussion related to:

- [SB 271/HB 312](#), which make changes to the State's shellfish leasing program and call for the creation of Aquaculture Enterprise Zones for shellfish;
- [SB 168](#), which modifies procedures for issuing public notices on blue crab regulations, clarifies procedures for reclassifying natural oyster bottom and clam bottom, and alter the State's authority to adopt regulations to name and close oyster sanctuaries after a public hearing and close natural oyster bars via public notice; and
- [SB 175/HB 103](#), which alter from December 1, 2008, to July 1, 2009, the date by which the Department of Natural Resources (DNR) is required to apply for permits to dredge buried oyster shells under certain circumstances.

An additional proposal that has also been discussed, [HB 177](#), repeals a 25 cent per bushel limit on DNR oyster shells purchased and requires DNR to consult with the Oyster Advisory Commission and the Tidal Fisheries Advisory Commission on fresh oyster shell, placement, and transportation rates and to establish an annual payment rate for transportation and placement of fresh oyster shells. The crossfiled measure is [SB 810](#).

Other oyster-related bills include [HB 584](#), authorizing the harvest of oysters by dredge in specified areas of the Patuxent River; [HB 927](#), prohibiting DNR from dredging buried oyster shells on Man-O-War Shoals (the companion bill, [SB 125](#), has been withdrawn by the sponsor); and [HB 862](#), requiring DNR to keep tidal waters of the State open for oyster harvesting under specified circumstances.

Fertilizers and the Health of the Bay

Several proposals address the use of specialty fertilizers, which are commercial fertilizers distributed primarily for nonfarm use, such as home gardens, flowers, golf courses, municipal parks, and nurseries and may include commercial fertilizers used for research or experimental purposes:

- [HB 136](#) imposes a surcharge at a rate of \$2 on each ton of specialty fertilizer distributed in the State but exempts commercial fertilizer used for research or experimental purposes from the surcharge. Specified distributors are required to pay the surcharge before distributing specialty fertilizer, with the surcharge revenue to be allocated to the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund;
- [HB 49](#) prohibits the use, sale, manufacture, or distribution for use or sale within the State of any specialty fertilizer intended for use on specified “urban turf,” unless it is a “no phosphate fertilizer,” which contains phosphate levels equal to or less than 0.5%. “Urban turf” means nonagricultural land planted in closely mowed, managed grasses except golf courses, parks, and athletic fields;
- [SB 917/HB 929](#) require the Department of Agriculture to adopt regulations relating to the reporting on the release of fertilizers and pesticides, including requiring those who release fertilizers and pesticides to report to the department; and
- [SB 553/HB 609](#) establish labeling requirements for lawn fertilizer, prohibit selling or distributing lawn fertilizer that is not low phosphorous fertilizer, require specified manufacturers to reduce specified phosphorous levels, and institute reporting requirements.

Ammonia Reporting

[HB 395](#), heard last week by a House committee, requires poultry farms to submit a report to the Maryland Department of the Environment (MDE) every six months on ammonia emissions from animal waste. The bill also requires MDE to make these reports available to the public.

Environmental Permits and Statute of Limitations

Several bills make changes to the environmental permitting process to increase public participation:

- [SB 47](#) requires MDE to send notice by mail to the addresses of residential property owners within a two-mile radius of the activity for which the permit is sought, at the expense of the applicant. The crossfiled measure is [HB 1078](#); and
- [HB 420](#) extends to political subdivisions the 3-year statute of limitations for suits instituted seeking a civil penalty for violations of provisions of the Environment Article or any rule, regulation, order, or permit adopted or issued under the Article.

Another measure, [SB 120](#) (failed), received an unfavorable committee vote. The bill would have established an Environmental Leadership Group within MDE to consider and act on environmental matters, including activities that require permit approval from local, State, and federal agencies. The bill also would have required that the public hearings, informational meetings, and published notice required of MDE are to be located in the zip code of the proposed project.

Bears

Testimony has been heard on [HB 327](#), which requires permit application fees collected by DNR for the black bear hunting permit lottery to be used to make up any difference between the balance in the Black Bear Damage Reimbursement Fund and the amount of money sufficient to satisfy all claims for reimbursement for eligible black bear damage. The companion bill is [SB 293](#).

FINANCIAL INSTITUTIONS AND COMMERCIAL LAW

A bill that would have required that 70% of unused gift card or gift certificate balances are remitted to the State Comptroller after a specified period of inactivity has been reported unfavorably by a House committee. [HB 126](#) (failed) would have determined that a gift certificate or gift card is presumed to be abandoned if it has been inactive for a period of four years after the date of purchase, or one year after the date of last activity, whichever is later.

FISCAL MATTERS

A number of measures are aimed at promoting the use of alternative energy sources and reducing energy consumption:

- [HB 699](#) exempts wind-powered electricity generating equipment from the sales tax and from the property tax;
- [HB 1171](#), the “Alternative Energy Tax Incentive Act of 2009,” exempts residential wind-powered electricity generating equipment from the sales tax and property tax and also exempts from the property tax “methane digesters,” equipment which converts animal waste to methane gas. The bill also clarifies that solar energy equipment is exempt from the property tax;

- [HB 700](#) provides a renewable energy credit for the owner of a solar hot water system, which may then be sold to an electricity provider; and
- [HB 320](#) provides an income tax subtraction modification for voltage regulation technology that reduces energy consumption, increases grid efficiency, or raises or lowers voltage dynamically.

non-member's financial contribution to an employee organization to offset costs attributable to the collective bargaining process such as negotiating contracts and representing employees in grievances. Generally, this fee is less than the fee charged for union dues.

HEALTH CARE AND HEALTH INSURANCE

Genetic Testing

Measures related to genetic testing have been withdrawn from their respective committees:

- [HB 1](#) (failed) would have prohibited insurers, nonprofit health insurance plans, and HMOs from using a genetic test or genetic information to discriminate in decisions relating to disability insurance. The crossfiled measure is [SB 2](#);
- [HB 2](#) (failed) would have prohibited providers of life insurance or annuity contracts from using a genetic test or genetic information to deny or limit life insurance coverage or benefits under an annuity contract or charge a different rate for the same life insurance or annuity contract. The crossfiled measure is [SB 1](#);
- [HB 11](#) (failed) would have authorized an individual who is injured by an insurer's violation of genetic nondiscrimination laws the right to sue for specified equitable relief, damages, attorney's fees, and court costs. The crossfiled measure is [SB 57](#); and
- [SB 54](#) (failed) would have prohibited a person from knowingly collecting a DNA sample from an individual, performing an analysis on that sample, retaining the sample or the results of the analysis, or disclosing the results of the analysis unless prior written informed consent of the individual or the individual's legal guardian or authorized representative is obtained. The crossfiled measure is [HB 12](#).

TRANSPORTATION

Young Drivers and Driving Instructors

Recently, a House committee heard testimony on [HB 444](#), which imposes greater restrictions on young drivers and increases standards for the hiring of driving instructors. The bill increases the minimum age for learner's permits, provisional licenses, and driver's licenses, restricts drivers under 18 from carrying young passengers, and prohibits applicants younger than 16 years, 3 months with excess absences from school, or who have dropped out, from obtaining a learner's permit. The Motor Vehicle Administration (MVA) is also required to obtain criminal history records and fingerprints from driving instructor applicants.

Drunk and Drugged Driving

This week both Senate and House committees listened to testimony on a number of companion Administration bills addressing drunk and drugged driving. Restrictions on the period in which a prior conviction for specified alcohol- and/or drug-related driving offenses disqualifies a person from eligibility to be placed on probation before judgment (PBJ) are expanded under [SB 259/HB 301](#). In addition, if a defendant is ordered into treatment as a condition of probation, the bills increase the period during which a court cannot strike or stay the entry of judgment and places the defendant on probation if, in that time, the defendant has been convicted or was placed on PBJ after being charged with a drunk or drugged driving offense.

Other measures, [SB 260/HB 307](#), require a police officer to request a driver involved in a motor vehicle accident resulting in life-threatening injury or death to voluntarily submit to a preliminary breath test (PBT) for alcohol. A person is not subject to any criminal or civil sanctions for refusing to submit to a PBT under these circumstances, and the result may be used only for research and statistical purposes.

The driving privileges of repeat drunk and drugged driving offenders are subject to increased restrictions under [SB 262/HB 293](#). These bills require the MVA to impose a one-year driver's license suspension on a person who is convicted of any alcohol- and/or drug-related driving offense more than once in a five-year period.

STATE GOVERNMENT

This week a House committee heard pros and cons related to the Collective Bargaining Negotiations – Fair Share Act ([HB 298](#)) that changes State law to make it permissible for State collective bargaining negotiations, with the exception of higher education, to include the right of an employee organization to receive service fees. Current law provides that service fees from nonmembers may not be collectively bargained. A service fee is a

Additional proposals, [SB 263/HB 305](#), change a drunk and drugged driving conviction into an incarcerable offense, with a conviction punishable by up to two months imprisonment with or without a fine. The bills also establish that the violation of any restriction imposed on a driver's license or the violation of any rule or regulation under the Maryland Vehicle Law may subject the violator to the same sentence, or if greater, the same penalties authorized by the law or regulation that was violated.

Recently, a House committee heard three bills that also deal with drunk and drugged driving:

- [HB 212](#) creates an exception to the ban on the evidentiary use of the results of a preliminary breath test by the State in any court action by authorizing the State to use the test results as evidence to establish probable cause to arrest a person;
- [HB 853](#) requires the MVA to issue special registration plates to individuals who have been convicted of drunk or drugged driving offenses three or more times; and
- [HB 875](#) prohibits a person who is detained for a suspected alcohol- and/or drug-related driving offense from knowingly refusing to take a blood or breath test if they have been detained previously for a suspected offense of the same type and refused to be tested. A person who refuses the test is guilty of a misdemeanor and is subject to imprisonment and fines. These penalties are imposed in addition to any other related offenses.

Ignition Interlock Systems

The role of Ignition Interlock Systems in drunk and drugged driving offenses is increased under [SB 735](#), which was before a Senate committee this week. The bill requires, rather than authorizes, the MVA to establish an Ignition Interlock System Program, along with minimum standards for all service providers. The bill also requires, rather than permits, participation from drivers who have committed certain kinds of alcohol-driving offenses.

Fleeing or Eluding Police

Committee testimony was heard on [HB 701](#), specifying that if a police officer gives a visual or audible signal to stop, and the officer is in an emergency vehicle used for law enforcement purposes, rather than a vehicle appropriately marked as a police vehicle, a person may not commit the offenses of fleeing or eluding the police officer.

The bill also increases incarceration penalties for instances that result in bodily injury or death to another and subjects a driver who commits this felony that results in bodily injury or death to another person to forfeiture of the motor vehicle used in the offense. The companion legislation is [SB 685](#).

Speed Monitoring Systems

A House committee recently took testimony regarding automated speed monitoring systems. [HB 313](#) extends authorization for the use of speed monitoring systems statewide. Local law enforcement agencies or their agents or contractors may issue citations or warnings to vehicle owners for speeding on a highway in a residential district or in a school zone, as well as work zones on controlled access highways and expressways. The bill includes provisions for participating local governments to submit reports on the program's effectiveness. The companion measure is [SB 277](#).

A similar measure, [HB 396](#), gives Baltimore City the authorization to use speed monitoring systems within the city to identify and issue citations to speeders on highways or school zones. The companion legislation is [SB 388](#).

Transporting Pets

[SB 110](#) (failed), which would have prohibited the transportation of unrestrained pets in or on a truck or trailer while on a highway, failed on second reading on the Senate floor this week. The bill's companion legislation, [HB 546](#), has been heard by a committee but has not yet received a vote. This legislation has been under consideration in previous sessions.

Use of a Signal When Changing Lanes

The House has approved and sent to the Senate legislation that adds to current law by prohibiting a person from moving a vehicle right or left on a roadway to change lanes unless the person gives an appropriate signal. The signal of intent to change lanes must be given continuously during at least the last 100 feet traveled before changing lanes. A violation is a misdemeanor, punishable by a maximum fine of \$500 ([HB 67](#)).