



The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

Issue 09-8

March 2-6, 2009

(Click on Issue above for previous Wrap-Ups)

BILL INTRODUCTIONS AND DEADLINES

The number of bills introduced in the Senate has reached 1,035. The House bill count is 1,525. Monday, March 9, as the 55th day of the 2009 session, is the final date for the introduction of bills without suspension of the Rules, which requires a two thirds vote of senators or delegates.

COURTS AND CIVIL PROCEEDINGS

Two domestic violence bills have moved from the House to the Senate. [HB 971](#) extends from one to two years the maximum duration of a final protective order that is issued for abuse committed within one year after the expiration of a prior final protective order issued against the respondent, and the prior order was for a period of at least six months. Under current law, a judge may issue a temporary protective order that is effective for a maximum of 7 days, extendable for up to 30 days to allow additional time for service of the order before the final protective order hearing. The House passed [HB 98](#) to increase the maximum extension to six months. Companion bills are [SB 811](#) and [SB 601](#), respectively. [HB 213](#), which failed in committee, would have allowed a judge who issues a final protective order to order the respondent to pay the abuse victim's reasonable attorney's fees.

CRIMES, CORRECTIONS, AND PUBLIC SAFETY

The Administration's proposal to repeal the death penalty ([SB 279](#)) emerged from a Senate committee with an unfavorable report. On the chamber floor, using a procedural move that was last used 30 years ago to reinstate the death penalty, senators narrowly approved motions to substitute the bill for the unfavorable committee report and to place the bill on second reading. The action created the opportunity for senators to offer amendments to the bill and to hold a floor debate on the death penalty issue and the merits of the bill before putting it to a final recorded vote. The Senate eventually passed a compromise bill that retains the death penalty with added restrictions that give a greater degree of certainty that an innocent person will not be put to death.

[SB 279](#), as amended, prohibits the death penalty in a case in which the State relies solely on eyewitness evidence and restricts the death penalty to a case with biological or DNA evidence or a video recording that links the defendant to the murder or a videotaped voluntary confession. In these cases, instead of a death sentence, a sentence of life or life without the possibility of parole is required. The Senate bill now goes to the House for consideration, where the original House companion measure ([HB 316](#)) is scheduled for a committee hearing on March 17.

Senate and House committees heard testimony this week on proposals to restrict police surveillance operations involving activists and protest groups. The legislation is a response to a covert surveillance program conducted by Maryland State Police in 2005 and 2006:

- [SB 256/HB 182](#), The Freedom of Association and Assembly Protection Act, prohibits police from keeping files on the political, religious, or social views of activists and conducting undercover activities against protest groups unless there is a prior written finding of a "reasonable, articulable suspicion" of current or planned criminal activity; and
- [SB 266/HB 311](#), allow State police investigations involving First Amendment activities if the investigations are in the interest of a "legitimate law enforcement objective," and require a covert investigation to be based on a reasonable suspicion of planned or current criminal activity. In addition, the collection and dissemination of information on persons or groups engaged in First Amendment activities are restricted, and requirements for the maintenance of databases are added.

A Senate committee has examined a proposal to better monitor the use of police agency special weapons and tactics (SWAT) teams. [SB 447](#) requires law enforcement agencies that maintain a SWAT team to report to the Attorney General each month the number of deployments and each deployment's location, reason, legal authority, and result. The Attorney General must prepare an annual analysis and summary of these reports. The companion bill is [HB 1267](#).

Also heard by a committee recently, [SB 501](#) requires the Governor to withhold approval of the transfer of the National Guard to federal control in the absence of an explicit authorization for the use of military force, or a declaration of war, adopted by the U.S. Congress. If such an authorization expires or is no longer valid, the Governor must request the return of the National Guard units to the State. The companion bill is [HB 907](#).

[SB 151](#) gained Senate approval to expand existing hate crime laws to include homeless persons as a protected class. Crimes based on a person's race, color, religious beliefs, sexual orientation, or national origin are covered under current law.

The House passed a revised [HB 299](#) that makes it illegal for a person under 21 to consume alcohol, adding to the current prohibition on underage possession. Misdemeanor penalties are established for adults who knowingly obtain or attempt to obtain an alcoholic beverage for persons under 21, or who furnish it for their consumption. The sanction of a mandatory six month driver's license suspension for an underage person who illegally possesses or consumes an alcoholic beverage was cut from the bill. The companion bill is [SB 261](#).

Denied by a committee vote, [SB 194](#) (failed) would have made it a misdemeanor to communicate 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. Another cyber-bullying bill ([HB 509](#)) remains viable.

ECONOMIC AND BUSINESS ISSUES

Utility Regulation and Assistance

Late this week, two Senate committees held a joint briefing on the spike in electric rates and the use of federal stimulus funds to promote weatherization/energy efficiency and help ratepayers. Testimony was taken from the Chairman of the Public Service Commission and the Director of the Maryland Energy Administration, as well as from an electric company panel that included representatives of BGE, SMECO, and Pepco. Several bills are also before the Assembly:

- [SB 795/HB 1312](#) direct the State to take action to return to a regulated electric market for all customer classes that results in a reliable electric system at the best possible price for ratepayers. The bills require that every new electric generation facility built in the State on or after July 1, 2009, be owned by an electric company in the State or a consortium, and that procedures be established for an electric company in the State to acquire an existing electric

generation facility in operation before July 1, 2009, that is not currently owned by an electric company in the State. Similar legislation, [SB 844](#), also directs that the State return to a regulated electric market and requires that all new electric generation facilities built in the State be owned by an electric company in the State or a consortium, exempting certain facilities; and

- [SB 897/HB 737](#), emergency measures, specify that if a person seeks to acquire, directly or indirectly, the power to exercise any substantial influence over the policies and actions of an electric, gas, or combined electric and gas company through means other than acquisition of voting interest, such as through the purchase of assets, the transaction requires prior authorization of the Public Service Commission. The bill would affect transactions executed on or after June 1, 2008.

Other measures alter the State's electric universal service program (EUSP) by removing restrictions on how benefits may be provided for low-income energy bill assistance through EUSP ([SB 703/HB 736](#)).

Mountaintop Removal Mining

[HB 743](#) (failed) received an unfavorable committee vote this week. The bill would have prohibited electric companies that operate coal-fired generating stations in Maryland from using or purchasing coal extracted from mountaintop removal mining.

Labor and Employment

Under current law, employers must pay half of an employee's Social Security and Medicare taxes and pay premiums for worker's compensation and unemployment insurance. However, independent contractors pay their own Social Security and Medicare taxes and they are not covered by worker's compensation and unemployment. Additionally, some employees may also enjoy workplace protections from their employers that independent contractors do not. The Department of Labor, Licensing and Regulation has concluded, through random and targeted audits of employers over the last three years, that misclassification of employees in Maryland may be as high as 20% to 25%. Several bills address these issues:

- [SB 909/HB 819](#), Administration bills, establish a presumption that work performed by an individual paid by an employer creates an employer-employee relationship, subject to certain exemptions. The bills prohibit construction companies, landscaping businesses, and package-delivery services from failing to properly classify an individual as an

employee, and establish investigation procedures and penalties for noncompliance in three areas of State government: labor and industry, workers' compensation, and unemployment insurance;

- [SB 912/HB 1070](#) establish penalties for knowingly and willfully misclassifying an employee as an independent contractor and authorize the Commissioner of Labor and Industry to investigate suspected misclassification violations; and
- [SB 1006/HB 649](#) define an independent contractor as a person who is not an employee for the purposes of the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act, based on the application of the 20 factors set forth by the Internal Revenue Service.

Commercial Law

Heard by a House committee this week, [HB 1100](#) places restrictions on refiners of gasoline products when selling, transferring, or assigning a fee simple or leasehold interest in a "marketing premises" (such as a retail filling station) that is leased to a dealer (the retail seller of gasoline products). The crossfiled bill is [SB 858](#).

Unemployment Insurance

At the end of the week, the Senate passed [SB 270](#). The emergency measure extends unemployment benefits to individuals whose availability to work is restricted to part-time work. As amended, the bill requires that individuals receiving these benefits work predominantly throughout the year on a part-time basis for at least 20 hours per week, changed from 15 hours per week in the bill's first version. The companion bill is [HB 310](#).

EDUCATION

Religious Speech

Student speech on religious issues is the subject of [HB 936](#), a bill recently heard in committee. The bill creates a model policy that allows for the treatment of a student's voluntary expression of a religious viewpoint to be the same as the treatment of the expression of a secular viewpoint. In order to be in compliance, each local school board must adopt the model policy or create substantially similar policy.

Military Transfers

The Interstate Compact on Educational Opportunity for Military Children ([SB 257/HB 306](#)) works to facilitate the transition of military children from different states into Maryland Schools, and vice versa. The bill

establishes the timely sharing of educational records, the continuation of schooling at the same grade level and in similar programs, inclusion of extracurricular activities, on-time graduation, and the provision of comparable special educational services for students with disabilities.

High School Assessments

[SB 139](#) (failed), a bill to remove the necessity of passing the Maryland High School Assessment exam in order to complete graduation requirements, was reported unfavorably out of a Senate committee. A similar bill, [HB 505](#), has not received a committee vote.

ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

Oysters

Legislation that allows the Department of Natural Resources (DNR) to pay a more competitive price for oyster shells has passed to the opposite chamber ([HB 177](#)). As amended, the bill allows oyster dealers to retain oyster shells if used in aquaculture. The crossfiled measure is [SB 810](#).

Testimony was heard this week on another oyster-related bill, [HB 862](#), requiring DNR to keep tidal waters of the State open for oyster harvesting unless the Department determines that a specific area of water must be closed for reasons of public safety or homeland security, or as otherwise required by law.

An unsuccessful bill, [SB 125](#) (failed), would have prohibited DNR from dredging buried oyster shells on Man-O-War Shoals in an effort to increase the productivity or utility of the natural oyster bars of the State. The crossfiled bill is [HB 927](#).

Ethanol, Biomass, and Biofuels

Among alternative energy bills heard this week were:

- [SB 220](#), prohibiting the use of State funds to encourage the use and production of ethanol derived from corn, prohibiting the Renewable Fuels Incentive Board from offering production credits for ethanol derived from corn, and excluding it from the definition of Clean Energy as it relates to grants or investments of the Maryland Clean Energy Center;
- [SJ 8](#), urging the U.S. Congress to amend federal law to require that all biofuels eligible for the federal renewable fuel standard (RFS) must create lower lifecycle greenhouse gas emissions than gasoline and not have certain significant adverse environmental

effects, and petitioning the Administrator of the U.S. Environmental Protection Agency to waive the federal RFS as it applies to cornbased ethanol. A crossfiled measure, [HJ 8](#), was introduced this week; and

- [SB 555](#), allowing an electric utility customer engaging in net energy metering that generates electricity from cellulosic feedstock grown on the customer's premises, to recover accrued generation credit for net electricity supplied to the utility at the end of the existing 12-month generation credit accrual period. The bill also includes biodiesel and cellulosic biofuel content requirements for diesel and gasoline, respectively, sold or offered for sale in the State for use in a motor vehicle, that are conditioned upon specific levels of in-state production of biodiesel and cellulosic biofuel. The crossfiled bill is [HB 1379](#).

Environment and Energy Related Bills - Unfavorable

Legislation that received unfavorable committee votes this week included:

- [HB 136](#) (failed), which would have imposed a surcharge at a rate of \$2 on each ton of specialty fertilizer (fertilizer for nonfarm use) distributed in the State, with some exceptions, with the surcharge revenue to be allocated to the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund;
- [HB 395](#) (failed), which would have required poultry farms to submit a report to the Maryland Department of the Environment (MDE) every six months on ammonia emissions from animal waste;
- [HB 814](#) (failed), which would have established a Green Jobs Workforce Training Program to fund workforce training programs that prepare individuals for employment in the energy conservation, energy efficiency, and renewable energy sectors. The crossfiled bill is [SB 856](#);
- [HB 910](#) (failed), which would have required the Maryland Energy Administration (MEA) to consider the needs of low-income and moderate-income seniors when developing and implementing energy efficiency and conservation programs targeted to the low-income and moderate-income residential sectors; and
- [HB 1238](#) (failed), which would have required MEA to adopt regulations concerning energy efficiency standards and labeling standards for televisions sold in the State.

Withdrawn by its sponsors, [HB 804](#) (failed) would have established a permit process for a coal combustion byproduct (fly ash) facility and prohibited such a facility in a Critical Area. A similar bill, [HB 128](#), remains in committee.

FISCAL MATTERS

The House committee with responsibility for the State Budget Bill is completing hearings on the bill, [HB 100](#), and will make decisions concerning amendments next week. The committee will report the bill to the House floor on Monday, March 16. The Senate committee with budget responsibility will complete hearings next week and will make decisions concerning amendments the week of March 16.

Companion bills ([SB 979/HB 699](#)) that exempt wind-powered electricity generating equipment from the sales tax and from the property tax are before the legislature. The House bill has been through a committee hearing.

HEALTH CARE AND HEALTH INSURANCE

Loan Assistance Repayment Programs for Medical Professionals

Heard last week by a House committee, [HB 1166](#) establishes a loan assistance repayment program for licensed physicians and nurses who agree to practice in a State, federal, or nonprofit hospital in Maryland for a specified period of time. Funding for the program must be provided in the annual State budget. Other proposals, [SB 627/HB 714](#), also establish loan assistance repayment programs for physicians, by changing the requirements of the Janet L. Hoffman Assistance Repayment Program. [SB 627](#) will be heard next week, while [HB 714](#) was heard last week.

Autism Spectrum Disorders - Insurance Coverage

Bills heard by committees from both chambers address the issue of insurance coverage for autism spectrum disorders (ASDs). [SB 394/HB 273](#) require insurers, nonprofit health service plans, and health maintenance organizations to provide coverage for the diagnosis of ASDs and the treatment of ASDs. The bills also limit coverage to a specified maximum benefit, provide for the annual adjustment of the maximum benefit, and clarify that benefits otherwise available to an individual are not limited by the Act. Currently, there are 43 mandated health insurance benefits that certain carriers must provide to their enrollees.

Health Care Costs and Insurance Plans

A bill to establish the Healthy Maryland Program was heard this week by a Senate committee. [SB 515](#) renames the Maryland Health Insurance Plan to be the Healthy Maryland Program. Under the bill's terms, beginning January 1, 2010, every resident without access to employer-sponsored health care coverage must enroll in the program. Also, employers with nine or more full-time employees that do not offer and contribute to a group health plan must pay a per-employee contribution. Additionally, individuals with incomes over 300% of federal poverty guidelines that do not maintain continuous health care coverage are subject to a tax penalty. Per-employee and tax penalty revenues are used to subsidize lower-income individuals in the program. The crossfiled legislation is [HB 860](#).

Also on a Senate hearing agenda recently, the Maryland Health System Act of 2009 ([SB 881](#)), by focusing on the concept of universal health care, establishes a single payor system to provide to all State residents comprehensive and coordinated health care coverage that is not dependent on employment. The companion bill is [HB 1186](#).

A House measure before a committee this week requires each hospital in the State to develop a financial assistance policy for providing free care and reduced-cost care to specified patients. [HB 1069](#) also requires a hospital to post a notice in its billing office and to develop an information sheet that meets specified requirements. The State Health Services Cost Review Commission must establish uniform requirements for the information sheet and review each hospital's implementation of and compliance with specified requirements. A similar measure is [SB 776](#).

Electronic Health Records

[HB 706](#) requires the Maryland Health Care Commission (MHCC) to adopt regulations by specified dates regarding adoption and certification of electronic health records (EHRs), as well as regulations for the reimbursement of providers by "State-regulated payors" for costs associated with adopting EHRs. By October 1, 2014, every health care provider must use electronic health records that are certified in accordance with standards adopted by MHCC, and the health care provider must have interoperability with, be connected to, and be exchanging data with the health information exchange designated by MHCC. The crossfiled measure, [SB 744](#), will be heard by a Senate committee next week.

Nutrition Information Labeling and Trans Fats

[HB 601](#) requires chain restaurants to provide specified nutrition information for standard menu items including the total number of calories, grams of saturated fat including trans fat, grams of carbohydrates, and milligrams of sodium. Violators of the terms of the bill are subject to monetary penalties. The crossfiled bill is [SB 142](#).

[HB 567](#) prohibits food containing artificial trans fat from being stored, distributed, held for service, used in preparation of any menu item, or served in any food service facility. The legislation, heard by a House committee this week, does not apply to food served directly to patrons in the original sealed manufacturer's package. Violations of the bill's terms do not affect a food service facility's license nor do they face fines or imprisonment for violation. The legislation requires the Department of Health and Mental Hygiene to list on its web site a food service facility that violates the bill. This legislation was previously introduced in the 2007 session.

Certificate of Need Requirements

A bill to alter the certificate of need requirements related to the closure or partial closure of a health care facility has passed unanimously in the Senate. As amended, [SB 71](#) indicates that the MHCC may require a health care facility that plans to close or partially close, to hold a public informational hearing in the county where the health care facility is located and that the hearing should be at least 15 days before the closing or partial closing of the facility. The bill is now in the House.

Health Insurance - Assignment of Benefits

Testimony related to the assignment of benefits by health insurers was heard by a Senate committee this week. [SB 852](#) specifies that a health insurer, nonprofit health service plan, HMO, or dental plan organization (carrier) may not prohibit the assignment of benefits to a health care provider by an enrollee or refuse to directly reimburse a health care provider under a valid assignment of benefits. The measure was also considered during the 2006 session.

Preexisting Condition Limitation

[SB 135](#) (failed), that would have prohibited the Board of Directors of the Maryland Health Insurance Plan from applying a preexisting condition limitation on Plan coverage, was reported unfavorably by a Senate committee this week. The crossfiled measure is [HB 75](#).

Artificial Color Additives - Public Schools and Child Care Centers

SB 100 (failed) was reported unfavorably by a Senate committee this week. The bill would have prohibited public schools and child care centers from purchasing, selling, using, or serving food products containing man-made artificial color additives after July 1, 2010.

STATE GOVERNMENT

Accountability

When submitting their annual budgets to the Department of Budget and Management and in conjunction with the submission of their Managing for Results strategic plans, the Departments of Health and Mental Hygiene, Human Resources, Juvenile Services, and Education must submit descriptions of the use of evidence-based practices that prevent the need for more expensive services (**SB 393/HB 383**). Examples of evidence-based practices include the use of financial incentives that attract principals to challenging schools, strategies that help children safely remain in their homes when parental abuse or neglect is alleged, and financial incentives and other strategies that safely reduce the use of group homes.

State Symbols and Commemorative Days

This session, along with proposals for new official State symbols, there is legislation (**SB 892/HB 1241**) to change the lyrics of *Maryland! My Maryland!*, designated as the State song in 1939. The lyrics of the current song, composed by James Ryder Randall in 1861, would be replaced by the lyrics of *Maryland, My Maryland*, written by John T. White in 1894. Sponsors of the legislation believe that the 1894 lyrics are more appropriate for the 21st century.

Among the bills that seek to add new commemorative days to the State calendar, one bill has moved to the House. **SB 248** designates the second Saturday in May as Negro Baseball League Day in honor of the African American players who formed their own teams because they were unable to play professionally due to racism and Jim Crow laws. Baltimore City was home to two very successful negro league teams. Recruitment of African American players such as Jackie Robinson by Major League Baseball in the mid-1940s led to the decline of the leagues, the last of which dissolved in the 1960s. The companion bill is **HB 84**.

On a broader note, a Senate joint resolution, now in the House, urges citizens and communities to honor the

accomplishments of Abraham Lincoln in the two hundredth anniversary of his birth (**SJ 7**).

TRANSPORTATION

Drunk and Drugged Driving

Two Administration bills passed in the House this week:

- **HB 301** expands restrictions on the period during 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. The companion measure is **SB 259**; and
- **HB 305** changes 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 bill also establishes that the violation of any restriction imposed on a driver's license or the violation of any rule or regulation under 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. The companion bill is **SB 263**.

Testimony was heard this week on **HB 1217**, which requires, rather than authorizes, the Motor Vehicle Administration to establish an Ignition Interlock System Program and to establish minimum standards for all service providers. The bill also requires, rather than permits, participation from persons who have committed specified alcohol-driving offenses. The companion bill is **SB 735**. Additional ignition interlock proposals (**SB 913** and **SB 916**) are scheduled for hearings later this month.

HB 212 (failed) received an unfavorable committee vote recently. The bill would have created an exception to the ban on the use of the results of a preliminary breath test to establish probable cause to arrest a person.

Bay Bridge Safety and Traffic

Further legislation was heard regarding the Chesapeake Bay Bridge in the form of **SB 866**, a bill that establishes a Commission to Study the Impact of Large Truck Traffic on the Chesapeake Bay Bridge.

Eluding or Fleeing Law Enforcement

HB 701 (failed), reported unfavorably by a House committee, would have prohibited fleeing and eluding a police officer, if the 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. The bill's companion legislation is **SB 685**.