



The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

Issue 11-10

March 14-18, 2011

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COMMITTEE REPORTS AND CHAMBER CROSSOVERS

The number of bill introductions for 2011 has reached 993 in the Senate and 1,352 in the House. There are also 6 Senate Joint Resolutions and 11 House Joint Resolutions.

At this time in each session, committee and floor action begins to take on increased significance as bill deadlines approach next week:

- March 22, the 70th day of the session, is the committee reporting courtesy date. Each chamber's committees are to report to the other chamber those bills it intends to pass favorably; and
- March 28, the 76th day of the session, is the opposite chamber bill crossover date. Opposite chamber bills received after this date are subject to referral to the Rules Committees.

COURTS AND CIVIL PROCEEDINGS

Domestic Violence - Protective Orders

The House amended and passed [HB 1018](#), which expands the relief available in a final protective order by allowing a judge to order the respondent to remain a specified distance away from a person eligible for relief.

With passage by the Senate, [SB 747](#) allows an interim, temporary, or final protective order to order a respondent to remain away from a certain pet or service animal, to refrain from cruelty or aggravated cruelty toward the pet or service animal, or in certain circumstances, to give the pet or service animal to a certain person.

Committees rejected legislation that would have:

- required a court to order a person charged with a violation of an interim, temporary, or final protective order to undergo a mental health evaluation ([SB 587](#), failed);
- required a petition for a protective order to be filed within 30 days after the alleged act of abuse on which the petition is based, conforming it with the

time limit for filing a petition to obtain a peace order ([HB 805](#), failed); and

- expanded the definition of abuse as it applies to petitions for protective orders to include harassment, trespassing, and the malicious destruction of property, making the acts for which a protective order can be issued the same as the underlying acts for a peace order ([HB 416](#), failed).

CRIMES, CORRECTIONS, AND PUBLIC SAFETY

Death Penalty

Legislation to repeal the death penalty ([HB 1075](#)) received testimony in the House this week. A Senate committee has not yet scheduled a hearing for the companion bill, [SB 837](#). Current law enacted in 2009 limits use of the death penalty to cases where a murder conviction is based on biological or DNA evidence that links the defendant to the murder; a video-taped, voluntary confession; or a video recording that conclusively links the defendant to the murder. A *de facto* death penalty moratorium has existed since December 2006, when execution protocols were invalidated because they had not been adopted in compliance with the Administrative Procedure Act. Proposed lethal injection protocols were withdrawn last month for further review after a drug used in executions, sodium thiopental, became unavailable for purchase in the United States. Five men are currently on death row in Maryland.

Sexual Offenses

A Senate committee heard testimony this week on sex offender legislation that:

- includes in the definition of a "Tier I sex offender" for purposes of the sex offender registry a person who has been convicted of the common law offense of indecent exposure if the victim was a minor and the act was committed for the purpose of sexual gratification ([SB 134](#)). A Tier I sex offender must register every six months for 15 years;

- makes it a felony to attempt to commit a sexual offense in the third degree, with a maximum penalty of imprisonment for up to 10 years (SB 135);
- increases the statute of limitations for any fourth degree sexual offense from one year to three years and retains the three year statute of limitations currently applicable to a fourth degree sexual offense committed by a person in a position of authority (SB 196);
- alters the definition of “sexual act” to include certain actions that under current law are included in the definition of “sexual conduct” (SB 204). Generally, offenses involving a “sexual act” carry more severe penalties than offenses involving “sexual contact”;
- requires electronic tracking of certain sex offenders (SB 208). A bill with similar requirements (HB 594) failed a House committee vote;
- allows evidence of prior acts of sexual misconduct involving a minor to be admitted into evidence in the trial of a defendant charged with an act of sexual misconduct involving a minor under certain circumstances (SB 447);
- requires that a sentence imposed for a violation of specified sexual offenses in which the victim is a minor be served consecutive to any other sentence imposed for any crime based on the act establishing that violation (SB 507);
- prohibits a plea agreement from providing for concurrent sentencing for a defendant charged with multiple counts of specified child sexual offenses (SB 508); and
- establishes civil commitment procedures by which some sexually violent offenders may be placed in the custody and facilities of the Department of Health and Mental Hygiene until they are not likely to engage in a predatory sexual act if released. The Attorney General must determine whether such persons meet a statutory definition of a sexually violent offender in need of commitment prior to their release from Division of Correction custody. The actual commitment must be made through specified circuit court proceedings (SB 533).

Child Abuse

HB 864 passed in the House, expanding the list of persons who can be convicted of the felony of first degree child abuse to include a family member or household member. The bill is similar to Justice’s Law (SB 295/HB 968), which remains under committee

consideration, but it does not include that legislation’s provisions for increased penalties.

Serious Physical Injury - Strangulation and Suffocation

The Senate gave approval to SB 593, which expands the definition of “serious physical injury” to include strangulation and suffocation with respect to provisions of law concerning first degree assault, reckless endangerment, abuse or neglect of a vulnerable adult, and local domestic violence fatality review teams.

ECONOMIC AND BUSINESS ISSUES

Employment

The Job Applicant Fairness Act (SB 132) passed in the Senate with amendments, while its companion bill remains in committee (HB 87). The measure prohibits an employer from using an individual’s credit report or credit history as a basis to deny employment, fire an employee, or help determine compensation for employment, with specified exceptions. Bill amendments clarify the exemptions and add disciplinary procedures for employers.

Another proposal, SB 971, prohibits employers from requesting user names or passwords for specified Internet sites or Web-based accounts from employees or employment applicants. Employers are also prohibited from threatening employees with disciplinary action or failing to hire employment applicants for refusing to disclose user name or password information.

Unions

HB 743 (failed) received an unfavorable committee vote. The measure would have prohibited employers from requiring, as a condition of employment, an employee or employment applicant to join or remain a member of a labor organization, pay dues to a labor organization, or make a charitable contribution in lieu of payment to a labor organization. A related measure, SB 660, remains in committee.

Public Utilities

Public utilities are the topic of numerous bills undergoing the legislative process. Among them, SB 459 makes it the primary objective of the Public Service Commission (PSC) to obtain the lowest rates for consumers when setting a just and reasonable rate of an electric company or gas company. Another measure, SB 460, requires that nuclear generating facilities disclose certain financial information to the PSC and other information regarding storage of spent nuclear waste and plans to mitigate any increases in temperature of the

water flowing through the facility into the Chesapeake Bay and its tributaries.

Legislation related to service quality and reliability that was recently heard by committees addresses:

- requiring electric companies to submit long range plans for meeting their electricity needs ([SB 734](#)) and requiring electric companies to submit electrical service restoration plans to the PSC ([SB 749/HB 1171](#));
- establishing service quality and reliability standards for electric and gas utilities ([SB 341](#), [SB 692/HB 391](#));
- setting penalties and ratepayer compensation for extended service disruption ([SB 804](#)); and
- reregulating the electric market ([SB 521](#)).

Bills passed by the House related to public utility consumers include:

- [HB 597](#), requiring the PSC to educate consumers about competitive electric supply options. Its companion bill, [SB 244](#), remains in committee; and
- [HB 596](#), requiring electric and gas companies to provide customer account information to competitive suppliers for marketing purposes.

This week a committee took testimony on another bill to aid consumers. The Renewable Energy for All Act ([HB 829](#)) establishes a Residential Biomass Heating System Grant Program in the Maryland Energy Administration. The program awards grants to individuals to help cover the costs of installing certain biomass heating systems. It is funded by a sales and use tax applied to packaged firewood. Another proposal, [HB 1080](#), adds consumer protections to residential supply contracts for electricity.

On the topic of public utility surcharges, pending legislation includes:

- [SB 332/HB 856](#) that implement an infrastructure replacement surcharge by gas companies; and
- [SB 648/HB 662](#) that establish a renewable energy surcharge for retail electric customers.

[SB 304](#) (failed) would have established a surcharge on surplus electricity consumption to fund a Maryland Renewable Energy Benefit Fund.

Both Administration measures on offshore wind energy have garnered public testimony ([SB 861/HB 1054](#)). The legislation requires the PSC to order the State's four investor-owned electric companies to enter into a long-term power purchase agreement with one or more "qualifying offshore wind generators." PSC must

establish a nonbypassable surcharge or other mechanism to ensure costs or savings associated with a PPA are shared equitably among all customers across all distribution territories, with some exceptions.

EDUCATION

Public Institutions of Higher Education - Tuition Rates

This week, after extended floor debate, the Senate passed its amended version of [SB 167](#) that exempts certain undocumented students who attended and graduated from a Maryland high school from paying out-of-state tuition at a community college in the State and then at a public senior higher education institution. Specified conditions must be met in order to receive the tuition break.

ELECTIONS AND ETHICS

Military and Overseas Voter Empowerment Act (MOVE Act)

To comply with the federal 2009 MOVE Act, [SB 820/HB 671](#) shift the Maryland gubernatorial primary election to the last Tuesday in June from the second Tuesday after the first Monday in September. The bills also move the presidential primary election to the first Tuesday in April from the second Tuesday in February. Also, the Republican and Democratic National Committees recently adopted rule changes that prohibit states from holding their presidential primary elections and caucuses prior to the first Tuesday in March, with exceptions made for Iowa, New Hampshire, Nevada, and South Carolina to hold their primaries/caucuses in February.

Citizens Who Have Not Lived in the United States - Right to Vote

The House passed amended legislation that establishes that a citizen of the United States born abroad who has never lived in the United States, but who has a parent who is a registered voter in the State, is considered a resident of the State for purposes of qualifying to register to vote in federal elections only, provided the individual has not established a domicile outside the State ([HB 348](#)). [SB 788](#), a similar bill, was heard by a Senate committee this week.

Voter's Rights Protection Act of 2011

The House gave preliminary approval to an amended [HB 31](#) that authorizes the Attorney General to institute an action in a circuit court for injunctive relief to prevent violations of election law from affecting a pending election. The bill responds to the Attorney General's

Task Force on Voting Irregularities that, among other things, recommended that the Attorney General put in place an ongoing procedure to investigate acts of voter intimidation and to take legal action where appropriate.

ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

Oysters and Fishing

Several bills that regulate harvesting seafood have moved to the opposite chamber:

- [SB 414](#), as amended, authorizes Natural Resources Police (NRP) officers to issue electronic citations, modifies recreational and commercial fishing license hearing requirements, and clarifies and expands the Department of Natural Resources (DNR) authority to conduct tidal fish license-related inspections. The crossfiled bill, [HB 396](#), remains in committee;
- [SB 538](#), as amended, prohibits DNR from designating more than 25% of the available quality oyster habitat in the waters of the State as oyster sanctuaries unless there is scientific evidence of a significant increase in the harvestable oyster population. The crossfiled bill, [HB 1340](#), will be heard next week;
- [SB 635](#), as amended, provides for the revocation of certain tidal fish license authorizations for knowingly and unlawfully taking striped bass or crabs and requires adoption of regulations that establish grounds for the revocation and an appeals process. Testimony was heard on the crossfiled bill, [HB 1154](#); and
- [SB 655](#) establishes enhanced penalties for a person who commits a commercial fisheries violation while the person's commercial fishing license or authorization is suspended or revoked or who engages in commercial fishing activities without an appropriate license or authorization. Testimony was heard on the crossfiled bill, [HB 1225](#).

[HB 966](#) has received a favorable preliminary floor vote. As amended, the bill sets specific criteria that the Department of the Environment (MDE) must use to test waters of the State used for shellfish production and requires MDE, by December 31, 2011, to reconsider the designation of waters that are currently restricted from shellfish harvesting.

Bills heard in committees this week include:

- [HB 1238](#), which prohibits DNR from placing tracking devices on vessels without a court order and defines the scope of the order;
- [HB 1240](#), which expands to all counties the authority to regulate harvesting seafood and operating a seafood business;
- [HB 1244](#), which expands the area on the Patuxent River where patent tongs may be used to harvest oysters;
- [HB 1249](#), which expands the area on the South River where hand tongs may be used to harvest oysters; and
- [HB 1252](#), which establishes an additional penalty for illegally taking more than \$20,000 worth of striped bass.

Hunting

[SB 763](#), which allows any person who is serving in the armed forces and has a service-connected disability to hunt on public property without a hunting license, has moved to the House.

Sewage Sludge

[HB 24](#), as amended, requires the Department of Agriculture to establish criteria for the timing of the winter application of sewage sludge that are the same as or substantially similar to the criteria adopted for the timing of the winter application of animal manure. The bill has moved to the Senate.

Marcellus Shale Formation

[HB 852](#) has received a favorable committee report. As amended, the bill requires MDE and DNR to convene an advisory commission to study the extraction of natural gas from shale formations in the State, including the Marcellus Shale formation found in parts of Western Maryland, and publish a final report by August 1, 2013. The crossfiled bill, [SB 634](#), remains in committee. [HB 411](#) (failed) would have required MDE to create regulations for the exploration and production of natural gas in the Marcellus Shale formation by December 31, 2011. The crossfiled bill ([SB 422](#)) remains in committee.

Lead Paint

Testimony has been heard on similar bills that change the lead-risk reduction standard requirements. [SB 840](#) and [HB 1033](#) require that affected rental property both pass the test for lead contaminated dust and have specific lead hazard reduction treatments at each change of occupancy, instead of either of those options.

FISCAL MATTERS

State Budget Bill

[HB 70](#) will be reported to the House floor on Monday, March 21, and will be debated on second reading on Wednesday, March 23.

Biotechnology Investment Tax Credit

[SB 485](#), as amended and passed on second reading by the Senate, alters a defined term for the existing Biotechnology Investment Tax Credit program that extends the number of years that a biotech company can be in active business from a maximum of 12 years to a maximum of 15 years for fiscal 2012 and 2013 only. The bill also makes a technical correction by adding the definition of “Secretary” to mean the Secretary of the Department of Business and Economic Development (DBED). The companion bill, [HB 587](#), had a committee hearing on March 10.

Millionaire’s Tax Extension

Chapter 10 of 2008 established a 6.25% tax rate on net taxable income of more than \$1 million for tax years 2008 through 2010. [HB 1070](#) makes permanent the 6.25% personal income tax rate. The bill takes effect July 1, 2011, and applies to tax year 2011 and beyond. Another proposal, [SB 798](#), extends the 6.25% personal income tax rate to tax years 2011 through 2014.

Film Production Activity Credit

[SB 672/HB 1148](#), heard recently, convert the existing Film Production Rebate Program into a tax credit program. The value of the subsidy to each qualifying company is equal to 25% of the qualified direct costs of a film production activity and 27% of the direct qualified costs of a television series. A maximum of \$15 million in credits may be awarded in each fiscal year. The bill also alters several provisions related to eligibility and program reporting requirements, is effective July 1, 2011, and applies to tax year 2011 and beyond.

Retirees - Income Tax

Several bills were heard this week relating to retirees. [HB 622](#), the Fairness in Taxation for Retirees Act, expands the existing State pension exclusion subtraction modification by allowing income from the following plans to be included within the subtraction modification: individual retirement accounts and annuities under Section 408 of the Internal Revenue Code (IRC); Roth individual retirement accounts under Section 408(a) of the IRC; simplified employee pensions under Section 408(K) of the IRC; and ineligible deferred compensation plans under Section 457(F) of the IRC. The bill also alters the method of calculating the maximum amount of

the pension exclusion. The bill takes effect July 1, 2011, and applies to tax year 2011 and beyond.

[HB 586](#) allows income from a rollover individual retirement account (IRA) or annuity under Section 408 of the IRC to be included within the State income tax subtraction modification (pension exclusion) allowed for retirement income if the contributions to the IRA or annuity consist entirely of the tax-free rollover of distributions from an employee retirement system. The bill also eliminates indexing of the State pension annual exclusion and freezes the maximum value of the annual pension exclusion at \$26,100. The bill takes effect July 1, 2011, and applies to tax year 2011 and beyond.

GAMING, RACING, AND SPORTS

There are over 40 bills that address various aspects of gaming in Maryland. Most of these bills have been heard before committees in recent weeks. While some of the measures are local in scope, including slots legislation related to Allegany County and to Rocky Gap Lodge ([SB 512/HB 565](#), [SB 823/HB 755](#)), the majority of the measures address the expansion of gaming in the State or alteration of the process for approval of gaming venues. Other measures change gaming law as it relates to the horseracing industry.

Gaming Expansion

Legislation that addresses the expansion of gaming in the State includes:

- [SB 8](#), [SB 243](#) (constitutional amendment), and [HB 331](#) (constitutional amendment) to allow locations that already hold a license for video lottery terminals (VLTs) to offer table games, including poker, roulette, blackjack and craps;
- [SB 246](#) that requires the Video Lottery Facility Location Commission to conduct a study to assess the financial impact of offering table games in video lottery facilities and to report their findings to the General Assembly by January 1, 2012;
- [SB 4/HB 735](#) that authorize certain bona fide war veterans’ organizations that have been located in the State for at least five years to license up to five slot machines;
- [HB 1010](#) (constitutional amendment) that authorizes expansion to alcoholic beverages licensed establishments such as bars; and
- [SB 707/HB 495](#) (both constitutional amendments) and [SB 706/HB 488](#) to allow VLTs at the terminal building and surrounding area within a secure

perimeter of the Baltimore-Washington International (BWI) Thurgood Marshall Airport.

Alteration of the Gaming Approval Process

Legislation that requires alteration of the gaming approval process includes:

- [SB 441](#) (constitutional amendment) to allow the General Assembly to authorize additional forms or expansion of gaming by a three-fifths vote of both houses; and
- [SB 633/HB 384](#) (constitutional amendments) repeal constitutional provisions authorizing VLT gambling, remove the restriction that the General Assembly may only authorize additional forms or expansion of gaming if approved through a referendum, state that the primary purpose of the operation of VLTs is to raise revenue for certain public educational goals, and require in statutory law that a video lottery facility comply with all applicable planning and zoning laws of the local jurisdiction.

Horse Racing

[SB 848/HB 1039](#) alter the distribution and uses of the Purse Dedication Account (PDA) and the Racetrack Facility Renewal Account (RFRA) that receive revenues from the State's VLT program. Among other provisions and based on additional stipulations that must be met, the bills authorize the distribution of \$1.2 million each to Ocean Downs and to Rosecroft Raceway annually from the PDA for operating assistance and funds from RFRA to Laurel Park and Pimlico Race Course for operating assistance to support a minimum of 146 annual live racing days in calendar 2012, 2013, and 2014. Racing licensees may not receive assistance while the licensee is a party to a proceeding challenging the issuance or denial of a video lottery operation license. The bills do not alter the overall amount of VLT revenue distributed to the funds.

Another measure, [HB 429](#), repeals provisions of law relating to the PDA and requires specified distribution of revenues from VLTs to the Education Trust Fund instead of the PDA.

Additional Legislation

Additional legislation relates to authorization for instant bingo games ([HB 975](#)) and for lottery ticket terminals at eligible veterans' organizations halls ([SB 423/HB 952](#)). There are also bills ([SB 373/HB 868](#)) that prohibit a video lottery operation licensee from interfering with taking any action to delay implementation of a VLT facility. [SB 373](#) has passed in the Senate. Another measure, [HB 882](#), requires two categories of video lottery employee licenses, one for employees who

handle money and one for employees who do not handle money.

HEALTH CARE AND HEALTH INSURANCE

Abortions

Several bills heard in a House committee this week related to abortions address reporting requirements, the location of the procedure, the transport of a patient as a necessity to protect the life or health of the patient, and the nature of the definition of "ambulatory surgical facility" as it pertains to abortion procedures through surgical services.

[HB 18](#) requires any physician who performs an abortion in the State to report the abortion, as well as information on any complications or injury to the patient that occurred during the procedure, to the Department of Health and Mental Hygiene within 30 days of the end of the month in which the procedure was performed. The report may not include any information identifying either the patient or the physician who performed the abortion. Currently, all states except Maryland, California, New Hampshire, and New Jersey require physicians who provide abortions to submit regular and confidential reports to the state. Of these, 27 states require providers to report resulting complications.

[HB 19](#) requires that, if an abortion procedure is begun in the State, the entire abortion procedure must be performed in the State. The bill further specifies that an abortion patient may be transported across State lines in the event that an emergency exists and the abortion provider determines that transporting the patient across State lines is necessary to protect the life or health of the patient. Currently, Maryland law does not specifically address whether a patient may be transported across State lines during an abortion procedure.

[HB 20](#) specifies that a patient may be transported during an abortion procedure if the physician performing the abortion determines that transporting the patient is necessary to protect the life or health of the patient. The bill further requires that the patient be transported by ambulance. Currently, Maryland law does not specifically address whether or how a patient may be transported during an abortion procedure.

[HB 23](#) alters the definition of "ambulatory surgical facility" as it pertains to licensing to include any entity that provides abortion through the use of surgical services. The bill further alters the definition of "surgical services" to include the use of two types of instruments: uterine curettes and manual vacuum aspirator curettes introduced into the uterus for the purpose of abortion. Currently, 15 states require abortion providers to either

be licensed as ambulatory surgical centers or meet similar requirements.

Mental Health Facilities

[HB 1150](#), heard this week by a House committee, relates to the separation of sexes in mental health facilities. Under the bill, a State mental health facility may not locate male and female bedrooms on the same hallway and must provide a barrier to prevent unauthorized access to the bedroom hallway of the opposite gender. In providing any necessary physical modifications, a facility must maximize the use of existing resources and infrastructure, among other provisions. The bill also establishes training and reporting requirements related to sexual abuse and sexual harassment. The Mental Hygiene Administration is also required to request technical assistance from the National Association of State Mental Health Program Directors to implement the bill's requirements and to convene a committee to advise the administration on the implementation of the bill, reporting to the Governor by June 1, 2012. A Senate committee heard the crossfiled bill, [SB 556](#), earlier this month.

HUMAN RESOURCES

[SB 585/HB 28](#) and [HB 380](#) (all failed) would have required each State unit or political subdivision to verify the lawful presence status of an adult before providing most federal, State, or local public benefits, with specified exceptions and unless the benefits are required under federal law. The bills would have made it a misdemeanor to provide a false, fictitious, or fraudulent statement or affidavit.

REAL PROPERTY, ESTATES, AND TRUSTS

Bills having to do with residential property foreclosure procedures have passed their respective chambers and have moved to the opposite chambers.

As amended, [SB 205/HB 366](#) expand the content of the affidavit that is included with an order to docket or complaint to foreclose on residential property. The affidavit must include a statement, if applicable, that at the time the notice of intent to foreclose was sent, the contents of the notice of intent to foreclose were accurate. The bills respond to concerns that many notices of intent contain inaccurate information, which undermines the primary purpose of the notice requirement, *i.e.*, to provide homeowners with the information they need to contact the proper party to work out an alternative to foreclosure.

[SB 450/HB 412](#), as amended, require the lost note affidavit to identify the secured party and the basis of the

secured party's right to enforce the debt instrument; state why a copy of the debt instrument cannot be produced; and describe the good faith efforts made to produce a copy of the debt instrument.

TRANSPORTATION

Distracted Driving

Testimony on [HB 1288](#) that prohibits drivers from engaging in a preoccupying activity was heard by a committee late this week. Included in the definition of a "preoccupying activity" are reading, writing, personal grooming, using wireless communications, adjusting cargo, eating, drinking, smoking, attending to another passenger, and using a video display. The offense is a misdemeanor and enforceable as a secondary action.

Pedestrian Safety

[SB 12](#), as amended and passed by the Senate, establishes a Maryland Quiet Vehicles and Pedestrian Safety Advisory Committee, tasked with studying the effects of vehicle sound on pedestrian safety and advising the Secretary of Transportation on the minimum safe sound level for vehicles in order to enhance the safety of pedestrians, including those who are blind.

Holocaust Deportations

The Senate passed [SB 479](#), which requires all bidders on a procurement contract for MARC train service to disclose whether they have any records on the deportation or the belongings of prisoners sent to Nazi death camps between January 1, 1942, and December 31, 1944.

Black and White License Plate

[HB 697](#) (failed), which would have allowed car owners to choose the former standard issue black and white license plate instead of the current War of 1812 plate, received an unfavorable committee report.