



# The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

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## BILL SIGNING CEREMONY

On March 1, 2012, Governor O'Malley signed [HB 438](#), the Civil Marriage Protection Act, now Chapter 2, Acts of 2012. The law, which is not effective until January 1, 2013, legalizes same-sex marriages, making Maryland the seventh state along with the District of Columbia to take that step. However, plans are moving forward to petition the law to referendum at the next general election. If the petition drive is successful, Marylanders will approve or disapprove this law on the ballot for the November 2012 Presidential Election.

## Convicted Perjurers

Under current State law, a convicted perjurer may not testify in court proceedings. [SB 673/HB 926](#) authorize a convicted perjurer to testify if the testimony relates to events in which the perjurer is an alleged victim.

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## CRIMES, CORRECTIONS, AND PUBLIC SAFETY

### District Court Commissioners

[SB 422](#) and [HB 261](#), as amended and passed to opposite chambers this week, require the Office of the Public Defender (OPD) to provide representation to indigent individuals at bail hearings before a District Court or circuit court judge, effective upon the bill's enactment in [SB 422](#) and June 1, 2012, in [HB 261](#), but do not require representation to be provided to indigent individuals at an initial appearance before a District Court commissioner. The bills prohibit a statement made during the course of a defendant's initial appearance before a District Court commissioner from being used as evidence against the defendant in a criminal proceeding. Unless otherwise noted, the bills' provisions take effect immediately upon enactment.

Amendments to [SB 422](#):

- modify the authority of a District Court commissioner to issue arrest warrants;
- require a police officer to charge a person by citation for any misdemeanor or local ordinance violation for which there is no jail time or a maximum jail time of 90 days or less, with certain exceptions, and for possession of marijuana; and
- require an immediate bail review hearing before a District Court judge if the court is in session or, if not, at the court's next session, after a District Court commissioner denies pretrial release or determines conditions of release after which the defendant remains in custody, with the proviso that a defendant may not remain in custody more than 48 hours without receiving a bail review hearing, effective October 1, 2012.

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## COURTS AND CIVIL PROCEEDINGS

### Mediation

The Maryland Mediation Confidentiality Act ([SB 856/HB 762](#)) establishes that, with certain exceptions, communications made in a mediation in which the parties are required to mediate by law or are referred by an administrative agency or arbitrator, or in which the parties agree in writing that the mediation will remain confidential, must be kept confidential. Current Maryland court rules establish confidentiality in mediations only for civil actions in circuit court. The bills had recent hearings.

### Discrimination

Testimony was presented this week on [SB 212](#), which prohibits discrimination based on "gender identity" in public accommodations, employment, and housing, as well as by persons licensed or regulated by a unit of the Department of Labor, Licensing, and Regulation. The bill also prohibits discrimination based on gender identity and sexual orientation in State personnel actions and in the leasing of property for commercial use.

A House committee voted down [HB 183](#) (failed), which would have extended the law related to discrimination by a place of public accommodation to the website of a business entity that is a place of public accommodation or provides goods, services, entertainment, recreation, or transportation to any person in the State through the Internet, and has gross revenue of at least \$1 million. The companion bill is [SB 278](#).

Amendments to [HB 261](#):

- prohibit *ex parte* communications between a District Court commissioner and a State's Attorney, defendant's attorney, or law enforcement officer; and
- require an immediate bail review hearing before a District Court judge if the court is in session or, if not, at the court's next session, after a District Court commissioner denies pretrial release or determines conditions of release after which the defendant remains in custody.

Amendments to both bills create a task force to study the laws and policies relating to representation of indigent criminal defendants by the OPD. An interim report is due by November 1, 2012, and a final report a year later.

The bills are in response to a January 4 Court of Appeals ruling that Maryland statute requires the OPD to provide indigent representation at District Court commissioner bail hearings and initial appearances in District Court and circuit court and at bail review hearings. Implementation of the ruling has been delayed by the court for an indefinite time.

Failing a committee vote, [HB 338](#) (failed) would have prohibited a District Court commissioner from authorizing the pretrial release of a defendant charged with murder, manslaughter, sexual offense in the first, second or third degree or assault with intent to commit such a sexual offense, sexual abuse of a minor, or carjacking, and would have set out the conditions under which a judge could authorize the pretrial release of these defendants.

*Telecommunication Devices - Prisoners*

Two bills, recently heard in committee, address telecommunication devices in prisons. [HB 587](#) changes the knowing possession or receipt of a device by a prisoner from a misdemeanor to a felony and increases penalties. Also changed from a misdemeanor to a felony is a subsequent offense of delivering or attempting to deliver a device to a prisoner when signs prohibiting such actions are posted, and increases penalties.

[SB 669](#) requires revocation of diminution credits, also known as good-time credits, of inmates caught with a device in prison and prohibits the credits from being restored. The companion bill is [HB 1086](#).

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## **ECONOMIC AND BUSINESS ISSUES**

*Retail Pet Stores*

[HB 131](#) passed the House with amendments, while the companion bill, [SB 317](#) remains in committee. The bills

institute remedies available to consumers who purchase a dog from a retail pet store that is found to have an undisclosed disease, illness, or prior condition. Among the amendments to the House bill is a change to the conditions under which a customer is eligible for a remedy and a cap on the amount of a remedy. As amended, violators of the bill's provisions are no longer subject to civil penalties, but are instead subject to the penalties outlined under the Maryland Consumer Protection Act.

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## **EDUCATION**

*Interscholastic Athletics*

[SB 557](#) establishes the Maryland Interscholastic Athletic Association (MIAA) in the Maryland State Department of Education (MSDE). MIAA is to carry out the functions regarding interscholastic athletics that are currently carried out by the Maryland Public Secondary Schools Athletic Association, which is not formally established in State law or regulation. MIAA's goals include preserving and promoting the educational significance of interscholastic athletics, providing for fair competition between member schools, promoting sportsmanship and ethical behavior, and protecting the physical well-being of athletes.

*Dating Violence Prevention*

A Senate committee recently considered [SB 863](#), which adds "dating violence" to the list of incidents that must be reported by a local board of education to MSDE. MSDE must create a standard form for victims of dating violence and the State Board of Education (State board) must include dating violence in its model policy prohibiting bullying, harassment, and intimidation. Local boards must update their policies accordingly, as well as create educational materials to prevent dating violence in schools. The companion bill, [HB 1110](#), will be heard later this month.

*Maintenance of Effort (MOE)*

Under Maryland's MOE requirement, each county government and Baltimore City must provide at least as much funding per pupil for the local school system as was provided in the prior fiscal year. If a county does not comply with MOE in a given year, then any increase in State funding is withheld in the second following year. A county may apply to the State board for a one-year waiver of the MOE requirement. A county's failure to provide at least the full MOE amount is subject to a certain penalty unless the county receives a waiver from the State board. Several bills address MOE this session:

- [HB 1412](#) makes complex changes to the MOE funding and waiver process. In addition, the bill legislates that, should a county not receive a waiver from the State board, it must fund the full MOE amount or the State will intercept the county's local income tax revenues in the amount by which the county is below MOE and forward the funds to the local school board. The bill also gives counties the authority to exceed county charter limitations on local property taxes and the State limit on the local income tax rate for the purpose of funding the approved budget of the local school board. If a local property or income tax rate is set above the limit, the county governing body may not reduce funding provided to the school board from any other local source and must appropriate to the school board all of the revenues generated from any increase beyond the existing limits. A three-year limit is placed on local income tax rates set in excess of the State's 3.2% cap;
- [SB 848](#) requires a county that is impeded in its ability to meet MOE to apply to the State board for a waiver, which may be required under certain circumstances. Certain criteria are set for the State board to consider when determining whether to grant a MOE waiver if the applying county does not qualify for a mandatory waiver. If a county fails to apply for a temporary or partial waiver and fails to meet MOE, the bill requires the assessment of a specified penalty; and the minimum appropriation of local funds required for the next fiscal year is calculated based on the greater of the per pupil local appropriations from the prior and second prior fiscal years; and
- [SB 851](#) waives the fiscal 2012 county MOE penalty for public education, preventing imposition of the penalty in fiscal 2013.

#### *Financial Literacy – Graduation Requirement*

A Senate committee reported unfavorably on [SB 307](#) (failed), which would have required the State board to develop curriculum content for a semester-long high school course in financial literacy that would have been a graduation requirement. The companion is [HB 191](#).

#### *Social Media Privacy Protections – Higher Education*

[HB 746](#) (failed), which would have prohibited a higher education institution from requiring a student or applicant to provide an institution of higher education with access to the student's personal Internet electronic accounts such as Facebook, Twitter, or other social or electronic media accounts, was withdrawn. Its

companion bill, [SB 434](#), was recently heard by a committee. [HB 310](#) is a similar bill.

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## ELECTIONS AND ETHICS

### *Online Disclosure*

The Senate Special Committee on Ethics Reform was established in January 2012 by the President of the Senate to conduct a comprehensive review of the State ethics law. Based on the special committee's recommendations, the Ethics Online Disclosure Act of 2012 ([SB 920](#)) includes provisions that:

- require the legislature's Joint Committee on Legislative Ethics to determine the propriety of a legislator's participation in legislative action where the legislator has sought to participate in a matter that involves an apparent or presumed conflict of interest. If participation is determined to be improper, the legislator is disqualified from participation;
- require that statements and reports relating to conflicts of interest of legislators and financial disclosure statements filed by public and State officials be filed electronically;
- require statements and reports filed on or after January 1, 2013, to be freely available to the public by prompt posting on the Internet;
- require, beginning July 1, 2013, that required financial disclosure statements filed on or after January 1, 2013, by public and State officials and candidates for State office be made freely available to the public by prompt posting on the Internet; and
- require, beginning July 1, 2015, that all financial disclosure statements filed on or after January 1, 2015, be made available to the public on the Internet.

Additionally, the bill exempts local governments and school boards from having to follow similar electronic filing and Internet posting procedures.

### *Financial Disclosure by Local Officials*

[SB 948](#) authorizes local governments and school boards, when enacting financial disclosure provisions applicable to local elected officials and school board members, and candidates for those offices, to limit the disclosure of an interest in a corporation, partnership, limited liability partnership, or limited liability company to include only those entities that do business with or are regulated by the county, municipal corporation, or school system.

Current law generally requires local governments and school boards to enact conflict of interest and financial disclosure provisions that are at least as stringent as State requirements, which require disclosure of each interest held, whether or not the entity does business with the State.

#### *Ethics Counsel*

Under current law, the counsel to the legislature's Joint Committee on Legislative Ethics must meet individually with each member of the General Assembly each year to advise the member of any applicable ethics law, rule, or standard of conduct and assist the member in preparing statements and reports relating to conflicts of interest that are required to be filed with the committee. State law specifies that the counsel's assistance to the members is subject to the attorney client privilege and specified confidentiality.

[SB 951](#) requires the counsel, at the end of each calendar year, to provide to the President of the Senate and Speaker of the House a list of the members from the presiding officer's respective chamber who have met with the counsel pursuant to the existing requirement.

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## **ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE**

### *State Development Plan (PlanMaryland)*

Over the past four years, the Maryland Department of Planning (MDP) has worked with State agencies, local governments, private industry, and the general public to develop a new State comprehensive development plan, known as PlanMaryland. In December 2011, the Governor accepted PlanMaryland and filed Executive Order 01.01.2011.22, which outlines a process for implementing the plan.

However, there is concern that PlanMaryland may lead to efforts to weaken local government planning and zoning authority and reduce State aid to some local jurisdictions. Bills addressing PlanMaryland or the State Development Plan (Plan) process were discussed in committee this week:

- [SB 532](#) prohibits the Plan from being used to create or establish a new cause for State denial of specified projects, permits, or approvals or to deny State funding mandated by statute, regulation, or in the annual State operating or capital budgets. The bill provides that when there is a conflict between MDP and a local government in the Plan that is not resolved, a local government's comprehensive plan, zoning laws, and local ordinances govern with

respect to the identification of a growth, preservation, or other planning area. The crossfiled measure is [HB 1201](#);

- [HB 654](#) repeals the statutory requirement for MDP to develop a State Development Plan, as well as all provisions and requirements associated with developing, coordinating on, and implementing the Plan; and
- [SB 819](#) gives a cause of action to a private property owner against the State if the application of a regulation by the Maryland Department of Agriculture (MDA), Maryland Department of the Environment (MDE), the Department of Natural Resources (DNR), or the MDP restricts, limits, or otherwise infringes on a right to the private property that would exist absent the application of the regulation. The companion is [HB 35](#).

### *Hydraulic Fracturing in Marcellus Shale*

The Marcellus Shale formation in the Appalachian Range has recently attracted significant attention from the energy industry for its rich natural gas deposits now accessible using horizontal drilling and high-volume hydraulic fracturing processes. In Maryland, the formation is located in Allegany, Garrett, and Washington counties; however, the only anticipated areas of gas production are in Garrett and Western Allegany counties.

As the use of hydraulic fracturing in other states has increased, so has concern about its potential impacts. In response, Governor O'Malley established the ongoing Marcellus Shale Safe Drilling Initiative by executive order (01.01.2011.11) in June 2011 to ensure that, if drilling for natural gas from the Marcellus Shale proceeds in Maryland, it is done in a way that protects public health, safety, natural resources, and the environment.

MDE is authorized to issue permits for oil and gas exploration and production and is required to coordinate with DNR its evaluation of the environmental assessment of any proposed oil or gas well. Current regulations apply to all gas wells in Maryland and are not specific to the practice of hydraulic fracturing. They were written prior to the use of hydraulic fracturing and have not been revised since 1993. Part of a very complicated issue, a number of bills related to gas and oil leases were before committees recently:

- [SB 773/HB 732](#) require a person that enters into a gas or oil lease to record the lease in the land records of the county in which the land affected by the lease is located within three months of executing the lease,

and specify the information that must be contained in the lease;

- [HB 1040](#) requires a person that holds a gas or oil lease to record the lease in the land records of the county in which the land affected by the lease is located and prohibits the recording of a memorandum of lease instead of recording the lease in its entirety;
- [HB 1172](#) requires MDE to establish and maintain a Gas and Oil Lease Registry and requires a person that holds a lease that grants gas or oil rights on property located in the State to register and pay a \$5 fee for each registered lease, among other provisions;
- [HB 1033](#) requires a leasing agent to provide a written notice describing the rights of the landowner before presenting to the landowner a lease for the right to drill a well for the exploration, production, or underground storage of gas or oil. Included in the notice must be the landowner's rights to contact an attorney and to negotiate the terms of the lease; and
- [HB 1034](#) prohibits a person from entering into a lease for the drilling of any well for the exploration, production, or underground storage of gas or oil in the State unless specified language as to the risks of drilling is provided to the lessor and stated conspicuously in the lease.

Related bills include:

- [HB 1123](#), which establishes a presumptive impact area that applies to areas around a deep shale deposit gas well for which MDE has issued a gas exploration or production permit. The bill establishes the conditions under which a permittee must restore property or compensate a property owner and provides exceptions to the presumption. The crossfiled bill is [SB 636](#);
- [HB 1170](#), which requires the holder of a permit to drill for natural gas to keep and maintain specified records relating to drilling for each individual well, including a list of any chemicals used, the amount of water used, and the amount of flow back or drilling waste generated, among other things. The records must be updated weekly and made publicly available on the permit holder's website; and
- [HB 1204](#), which establishes fee and filing requirements that apply to any gas interest in real property underlain by the Marcellus Shale that was acquired between January 1, 2007, and either August 1, 2014, or before the completion of the study required by Executive Order 01.01.2011.11. The

fees and any administrative penalties collected must be deposited into the existing Oil and Gas Fund and used to pay for the study. The bill also alters the amount of a performance bond which a holder of a permit to drill for gas or oil must post, among other provisions. [SB 798](#) is a similar measure.

#### *Disposable Carryout Bags*

Bills meant to discourage the use of disposable carryout bags include:

- [SB 511](#), which requires a store to collect a fee of 5 cents for each disposable carryout bag the store provides to a customer, among other provisions. [HB 1247](#) is similar;
- [HB 169](#), which requires store operators to establish an at-store recycling program for plastic carryout bags and requires manufacturers of plastic carryout bags to develop educational materials to encourage the reuse, recycling, and reduction of plastic carryout bags; and
- [SB 164/HB 229](#), which require MDE to establish a registration program for plastic carryout bag manufacturers in order to promote the recycling of plastic carryout bags. The bill terminates September 30, 2020; and
- [HB 895](#), which authorizes Prince George's County to impose, by law, a fee on the use of disposable bags.

#### *Chesapeake Bay Watershed*

The health of the Bay continues to be a major issue this session:

- [SB 614/HB 987](#) require each county and municipal corporation, by July 1, 2013, to adopt local laws or ordinances necessary to establish an annual stormwater remediation fee and a local watershed protection and restoration fund to provide financial assistance for the implementation of local stormwater management plans;
- [HB 464](#) prohibits MDA, MDE, and DNR from adopting regulations to help the State meet the agricultural sector requirements of the Chesapeake Bay Total Maximum Daily Load unless New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia achieve or exceed the percentage reduction of nitrogen and the percentage reduction of phosphorus that the State has achieved from 2009 levels under specified circumstances. The crossfiled [SB 330](#) (failed) received an unfavorable committee vote; and

- [SB 594](#) establishes specific prohibitions and requirements relating to the application of animal manure or biosolids to agricultural land at various times of the year.

#### *Fishing Nets*

[SB 385](#) (failed), which would have required DNR to remove and dispose of any abandoned fishing net in State waters within one day of the net being found or reported, received an unfavorable committee report. The companion bill is [HB 478](#).

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## FINANCIAL INSTITUTIONS AND COMMERCIAL LAW

The "Lend Local Act of 2012" ([SB 792/HB 571](#)) was heard recently in Senate and House committees. The bills require the State Treasurer to consider whether a financial institution (1) is operating in the State with total assets of less than \$5.0 billion; and (2) commits to make loans to small businesses in the State totaling at least 200% of the incremental funds that are deposited by the Treasurer, when designating a financial institution for banking services or as a depository for the State.

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## FISCAL MATTERS

#### *Budget Bill and BRFA*

A Senate committee is completing its hearings on the Budget Bill, [SB 150](#), and will make their recommendations on amendments next week. The bill is scheduled to be reported to the Senate floor on March 12.

Senate and House committees took lengthy testimony on the Budget Reconciliation and Financing Act of 2012, also known as the BRFA ([SB 152/HB 87](#)), which makes changes in law to balance the budget.

#### *Millionaire's Tax*

[SB 249/HB 784](#) permanently reinstate the 6.25% individual income tax rate that was previously imposed on taxpayers with net taxable income in excess of \$1 million in tax years 2008 through 2010. The bill takes effect July 1, 2012, and applies to tax year 2012 and beyond.

#### *Regional Transit Authorities*

Several measures concern the imposition of additional transportation taxes to support public transit in metropolitan counties:

- [SB 696/HB 1250](#) establish a Red Line Transit Authority to include Baltimore City and Baltimore County, and a Purple Line Transit Authority to include Montgomery and Prince George's Counties. Each authority is required to finance, construct, operate, repair, and maintain in good order its rail transit facilities and transit services and is given general and exclusive jurisdiction over its transit facility and service. Each authority may, within its limits, tax to the same extent as the State and collect that revenue;
- [SB 589](#), [SB 325](#), and [SB 766](#) all impose various taxes upon Anne Arundel, Baltimore, Montgomery, and Prince George's Counties and Baltimore City, with the additional revenue being used to fund various transit facilities; and
- [SB 971/HB 1302](#), the Administration's Maryland Transportation Financing and Infrastructure Investment Act of 2012, establish a workgroup to study the advisability of creating regional transit financing authorities to raise additional funds for major transit projects, among other provisions.

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## GAMING, RACING, AND SPORTS

#### *Gaming*

The Senate amended and passed [SB 11](#), which permits the Maryland State Lottery Agency to issue a license for up to five pull tab machines to an eligible veterans' organization in all but the nine Eastern Shore counties already authorized to allow eligible nonprofit organizations to license up to five slot machines. The amended bill defines a pull tab machine and replaces references to "instant ticket lottery" machines with "pull tab" machines to clarify which types of machines may be licensed by veterans' organizations.

#### *Horse Racing*

Chapter 412 of 2011 altered the distribution and uses of the Purse Dedication Account (PDA) and the Racetrack Facility Renewal Account, which receive revenues from the State's video lottery terminal program for the purpose of providing operating assistance to the State's thoroughbred and standardbred racetracks. For calendar year 2012, Rosecroft Raceway and Ocean Downs Race Course were eligible to receive up to \$1.2 million from the PDA, subject to specific requirements. One such requirement was that the tracks were to offer a minimum of 40 live racing days to receive the assistance.

[SB 794](#), recently heard by a Senate committee, makes the PDA subsidy permanent, and requires both tracks to

continue to offer a minimum of 40 live racing days annually to be eligible for assistance of up to \$1.2 million annually. The crossfiled bill is [HB 947](#).

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## **HEALTH CARE AND HEALTH INSURANCE**

### *Maryland Health Enterprise Zones*

Administration proposals [SB 234/HB 439](#) (Maryland Health Improvement and Disparities Reduction Act of 2012) were heard this week. The measures establish a process for designating “Health Enterprise Zones” (HEZs) to target State resources to reduce health disparities, improve health outcomes, and reduce health costs and hospital readmissions in specific areas of the State. The bills authorize incentives for “Health Enterprise Zone practitioners,” including tax credits against the State income tax.

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## **HUMAN RESOURCES**

Legislation died in committee that would have required temporary cash assistance applicants and recipients under the Family Investment Program to submit to testing for controlled dangerous substances ([SB 287/HB 560](#), both failed).

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## **TRANSPORTATION**

### *Tolls*

[SB 820](#), which requires the Maryland Transportation Authority to provide public notice at least 30 days before voting to raise bridge tolls, was heard this week in committee. It is the companion bill to [HB 40](#), which had a public hearing in January. Two additional Senate bills, [SB 3](#) and [SB 62](#), which require General Assembly approval of a new toll or a toll increase, were also heard by a committee this week. Other legislation in the same posture of requiring General Assembly approval include [HB 685](#), [HB 1157](#), and [SB 828](#).

### *Distracted Driving*

[HB 552](#), heard this week in committee, prohibits the driver of a motor vehicle from engaging in any “preoccupying activity,” including using a wireless communication device, reading or writing, personal grooming, observing a video display, and adjusting cargo, that distracts the driver’s attention and results in the unsafe operation of the vehicle.

### *Speed Monitoring in Work Zones*

[HB 326](#) (failed), addressing speed control systems in work zones, received an unfavorable committee vote.

The bill would have restricted existing permitted use of speed control systems in highway work zones. Current law allows law enforcement agencies or their contractors to issue speeding citations or warnings in highway work zones regardless of whether workers are present.

### *Historic Motor Vehicles*

Senate and House committees heard testimony on [SB 846/HB 550](#). The bills increase from 20 to 25 years the age at which vehicles may be considered “historic.” The bills also tighten requirements so that the vehicles may no longer be used for “occasional transportation” and must be insured by a special historic vehicle policy.

### *Veterans’ License Plates*

[HB 541](#), heard this week by a committee, requires the Motor Vehicle Administration to make available a license plate honoring the armed forces. Proceeds from the annual \$20 renewal fee will go to the Maryland Chapter of the Disabled American Veterans. The license plate, which includes the words “Support Maryland Veterans,” would be available for cars, motorcycles, trucks, trailers, and multipurpose vehicles. The owner need not be a veteran to purchase the plate.

### *Privatization of Rest Areas*

[HB 1233](#) requires the State Highway Administration to begin the process of requesting proposals from private companies to operate and maintain rest areas and welcome centers. The private company would pay the State a lump sum or an annual payment and in return would be able to retain the profits from the facilities. The State’s income would be paid into the Transportation Trust Fund.

### *Chesapeake Bay Crossing*

[SB 818](#) requires the Maryland Transportation Authority to begin an environmental impact study before January 1, 2013, addressing potential construction of a third bridge spanning the Chesapeake Bay. The bill, heard by a Senate committee last week, addresses concerns about current and future traffic congestion on the Chesapeake Bay Bridge. Similar bills have failed during the three previous legislative sessions.