

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 71 (Senator Kelley, *et al.*)  
Judicial Proceedings and Finance

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**Commission on Surrogate Parenting**

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This bill establishes the Commission on Surrogate Parenting. The commission must (1) study specified issues related to surrogate parenting, including the extent to which the practice is occurring in Maryland and whether it is in the best interest of a resulting child; (2) examine cases of children who were born through surrogacy and evaluate the impact of surrogacy on the children, including any related health or social issues and any other issues the commission determines may be relevant; and (3) if possible, make recommendations to lessen any negative impact on children related to surrogate parenting. The Department of Health and Mental Hygiene (DHMH) must provide staff support for the commission. The commission must report its findings and recommendations to the Governor and the General Assembly on or before December 15, 2012.

The bill takes effect July 1, 2011, and terminates March 31, 2013.

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**Fiscal Summary**

**State Effect:** By using legal and other expertise offered on a volunteer basis, DHMH can staff the commission using existing resources. The cost of expense reimbursements for members is absorbable with existing resources.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Current Law/Background:** Although numerous bills relating to surrogacy have been introduced, mostly between the mid-1980s and mid-1990s, no current statutory provision specifically permits or prohibits surrogacy.

In a 2007 decision, *In re Roberto d.B.*, 399 Md. 267, the Court of Appeals held that the name of a genetically unrelated gestational host of a fetus, with whom the genetic father contracted to carry in vitro fertilized embryos to term, was not required to be listed on the birth certificate when children are born as a result. The court also noted in that case that “surrogacy contracts, that is payment of money for a child, are illegal in Maryland” under § 3–603 of the Criminal Law Article (Sale of minor) and § 5–3B–32 of the Family Law Article (prohibited payments relating to adoption).

**State Expenditures:** DHMH advises that commission members can perform research and other work. Also legal expertise can be provided by the Maryland Resources Center/Public Health Law Network. DHMH staff can use the resources offered on a volunteer basis to complete the work of the commission. Under the circumstances, DHMH can staff the commission with existing resources.

The estimate also assumes that DHMH redirects resources from other projects so it may absorb the cost of expense reimbursements for commission members.

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## Additional Information

**Prior Introductions:** SB 585 of 2010 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 281, its cross file, received a hearing in the House Health and Government Operations Committee, but the bill was later withdrawn.

**Cross File:** HB 120 (Delegate Pena-Melnyk, *et al.*) Health and Government Operations and Judiciary.

**Information Source(s):** Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - February 1, 2011  
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