

# Pennsylvania Legislative Update

From the Buchanan Ingersoll & Rooney State Government Relations Group

**Buchanan Ingersoll & Rooney PC**  
Attorneys & Government Relations Professionals

## Inside This Issue

Tort Reform Passes House	1
Sprinkler Requirements Repealed	1
Governor Appoints Transportation Advisory Commission	2
DEP Calls on Natural Gas Drillers to Stop Giving Treatment Facilities Wastewater	2
"Marcellus Works"	2
Senate Democrat Budget Proposal	3
Education Mandate Relief	4
Nemacolin Awarded Casino Resort License	4
Schwank Receives Committee Assignments	4
Judge McEwen to Head Reapportionment Commission	4
Committee Actions	5
Executive Nominations	7
Political Grapevine	7

## Tort Reform Passes House

The House passed its tort reform bill, **H.B. 1** (Schroder, R-Chester), by a vote of 112-88. The bill would change the state's "joint and several liability" law to a "comparative negligence" law.

Under current law, a defendant can be held 100 percent liable for damages, even if that defendant is only partly responsible for the cause of action. H.B. 1 would change the law to allow for proportional liability, where a defendant who is less than 60 percent at fault would only be required to pay an amount that is in proportion to his/her liability to the amount of liability attributed to all defendants.

A similar measure has passed twice before. The first time, the law was struck down by the Pennsylvania

Supreme Court for technical reasons. After its second passage, former Governor Ed Rendell vetoed it.

Governor Tom Corbett has said he supports the bill, as well as additional tort reform measures. The Senate is expected to take up the issue sometime before the summer recess, though it is unclear if they will move H.B. 1 or **S.B. 2** (Corman, R-Centre), which is basically the same as H.B. 1, or if all or some provisions of **S.B. 500** (Greenleaf, R-Montgomery) will be considered. S.B. 500 adds comparative negligence and provides that the fact that a plaintiff may be guilty of contributory negligence does not bar recovery if the negligence was not greater than 50 percent.

## Sprinkler Requirements Repealed

Governor Tom Corbett signed into law **H.B. 377** (Everett, R-Lycoming), a measure repealing a mandate to require automatic sprinkler systems in most new homes/construction.

Governor Corbett called the new law, Act 1 of 2011, a "common sense" measure that will help to keep new home prices within the reach of Pennsylvania's working families.

According to building industry groups, the mandate would have boosted home construction costs by thousands of dollars. They also noted that the construction code already requires hard-wired smoke detectors.

Act 1 relieves builders of one-family and two-family dwellings of the automatic fire sprinkler system requirement of the International Residential Code of 2009.

However, builders must still:

- Offer buyers the option to install an automatic fire sprinkler system.
- Provide buyers with information that explains the initial and ongoing costs of such a system.
- Furnish buyers with information on the possible benefits of installing an automatic sprinkler system.

The measure also makes technical changes to Pennsylvania's Uniform Construction Code.

## Governor Appoints Transportation Advisory Commission

Governor Corbett has named a 36-member Transportation Funding Advisory Commission composed of state government leaders and industry experts to explore innovative solutions to the state's ongoing challenges of supporting transportation investment.

The first meeting of the commission was Monday, April 25. Additional meetings will be held May 16, June 6 and June 27 in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg. The commission is expected to issue its findings, including possible legislative and regulatory changes, in July 2011.

Seating at the commission's public meetings is limited. Individuals planning on attending are requested to contact Mr. Nolan Ritchie at 717 787 2913 or [nritchie@state.pa.us](mailto:nritchie@state.pa.us) so that the Pennsylvania Department of Transportation can anticipate the level of public attendance. There is no reserved seating for guests.

## DEP Calls on Natural Gas Drillers to Stop Giving Treatment Facilities Wastewater

Department of Environmental Protection Secretary Michael Krancer called on all Marcellus Shale natural gas drilling operators to cease delivering wastewater from shale gas extraction to treatment facilities by May 19. Currently, 15 facilities accept the wastewater under special provisions of last year's total dissolved solids (TDS) regulations.

Krancer said the order comes because conditions have changed since the implementation of the TDS regulations, including more definitive scientific data, improved technology and increased voluntary wastewater recycling by the industry.

The 2010 revised regulations require publicly owned treatment works and centralized waste treatment facilities to treat new or increased discharges of TDS with more stringent standards.

Removing TDS from water also removes bromides. Though bromide itself is non-toxic, once it is combined with chlorine for disinfection at water treatment facilities it turns into a combination of potentially unsafe compounds called Total Trihalomethanes. Recent surface water sampling has found elevated levels of bromide in rivers in the Western portion of the state, where the majority of natural gas drilling is taking place.

## "Marcellus Works"

Members of the House Republican Caucus unveiled a package of bills to promote the state's emerging natural gas industry through tax credits, loan programs and other incentives.

The legislative package would offer \$30 million in tax credits and \$17.5 million in grants and low-interest loans to offset the costs of purchasing natural gas vehicles. It also provides incentives

for building and operating natural gas filling stations. The bills in the package are:

- H.B. 1083 (Saylor, R-York) which establishes tax credits for private fleet vehicles to lessen incremental cost of natural gas vehicles.

"Marcellus Works", continued on page 3

## Committee Meeting Calendar

**Editor's Note:** For the most up-to-date listing of the standing committee meeting schedule, please contact Buchanan Ingersoll & Rooney's State Government Relations Center at 717 237 4800 or log on to <http://www.legis.state.pa.us/cfdocs/legis/home/session.cfm>.

### Monday, May 2

#### House Children and Youth Committee

10:30 a.m., Room 60, East Wing

The committee will hold a meeting on the Department of Public Welfare's policies and procedures, quarterly payments to counties for children and youth services, and juvenile legal services.

#### House Finance Committee

11 a.m., Room 205, Ryan Office Building

The committee will hold an informational meeting on **H.B. 326** (amends the Taxpayer Relief Act to further provide for adoption of preliminary budget proposals and for public referendum requirements and for requirements for increasing certain taxes) and **H.B. 1383** (amends the Taxpayer Relief Act to further provide for adoption of preliminary budget proposals and public referendum requirements for increasing certain taxes, and tax relief in cities of the first class).

#### Joint Legislative Conservation Committee

12 p.m., Room G-50, Irvis Office Building

The committee will hold an environmental issues forum. Reclamere will present a program on the effects of Pennsylvania's new electronic recycling law on e-recycling and data security and will discuss the proper ways to carry out data destruction and security as old electronic items are replaced and recycled.

### Tuesday, May 3

#### House Environmental Resources and Energy Committee

9 a.m., Room 60, East Wing

The committee will hold an informational meeting with Department of Environmental Protection Secretary Krancer on a variety of environmental topics important to Pennsylvania.

Committee Meeting, continued on page 3

*Committee Meeting, continued from page 2*

### House Transportation Committee

9:15 a.m., Room G-50, Irvis Office Building

The committee will consider **H.B. 8** (amends Title 75 (Vehicles) to further provide for schedule of convictions and points and to prohibit the operation of motor vehicles while using interactive wireless communication devices), **H.B. 9** (amends Title 75 (Vehicles) to further provide for junior driver's license, for learners' permits, for suspension of operating privilege and for restraint systems), **H.B. 170** (amends Title 75 (Vehicles) to further provide for driving on right side of roadway, for overtaking vehicle on the left, for no-passing zones, for required position and method of turning and for minimum speed regulation), **H.B. 896** (amends Title 75 (Vehicles) to further provide for the offense of careless driving), **H.B. 849** (amends Title 75 (Vehicles) to provide for regulation and operation of neighborhood electric vehicles) and **H.B. 1219** (designates a bridge in Monroe Township, Bedford County, as the Donald H. Clark Memorial Bridge).

### House Aging and Older Adult Services Committee

9:30 a.m., Room B-31 Main Capitol

The committee will consider **H.B. 511** (amends The Insurance Company Law, in health and accident insurance, to provide for access to community pharmacy services) and **H.B. 1052** (establishes an independent informal dispute resolution process for long-term care nursing facilities to dispute Department of Health survey findings).

### House State Government Committee

9:30 a.m., Room 140, Main Capitol

The committee will consider **H.B. 1021** (amends Title 62 (Procurement) to further provide for competitive selection procedures for certain services).

### Senate Environmental Resources and Energy Committee

9:30 a.m., Room 156, Main Capitol

The committee will consider the nomination of Richard J. Allan as Secretary of the Department of Conservation and Natural Resources and will also consider **S.B. 292** (amends the Flood Control Law to further provide for contracts and acquisition of property and to provide for adjustment and for evasion of advertising requirements),

## "Marcellus Works" continued

- H.B. 1084 (Moul, R-Adams) which establishes a grant program for smaller mass transit agencies to cover the incremental cost of natural gas buses.
  - H.B. 1085 (Watson, R-Bucks) which establishes a revolving loan program for large mass transit agencies to cover the incremental cost of natural gas buses.
  - H.B. 1086 (Marshall R-Beaver) which requires 25 percent of all new bus purchases made by large mass transit agencies (SEPTA, PAT, Lehigh) in 2012-16 to run on natural gas; 50 percent in 2017-2021; 75 percent in 2021-2026; and 100 percent in 2027.
  - H.B. 1087 (Denlinger, R-Lancaster) which creates a natural gas corridor tax credit to encourage the construction of natural gas fueling stations along travel corridors.
  - H.B. 1088 (Pickett, R-Bradford) which dedicates the Alternative Fuel Incentive Fund to provide grants to municipalities, schools and the private sector for the purchase of natural gas vehicles.
  - H.B. 1089 (Perry, R-York) which repeals California Air Resources Board (CARB) section 2030 to eliminate costly duplication of EPA and CARB certifications for natural gas vehicles.
- The package of bills is expected to be voted on by the full House this fall.

## Senate Democrat Budget Proposal

Senate Democrats responded to Governor Corbett's budget plan with one of their own. The counter-proposal includes \$1.14 billion in savings, new revenues and efficiencies in order to restore funding for basic and higher education, health care and human services.

Presented by Senate Democratic Leader Jay Costa (D-Allegheny) and Democratic Appropriations Chairman Vincent Hughes (D-Philadelphia) the plan would produce \$1.14 billion in savings, revenues and efficiencies through:

- \$750 million in savings from fiscal responsibility initiatives in public welfare, corrections, procurement and revenue maximization
- \$290 million in savings generated through a tax fairness plan that includes a Marcellus Shale tax levy but eliminates other tax breaks suggested by the governor
- \$100 million from higher state stores revenues

Senate Democrats said the new revenue and savings can be used to restore key funding lines that were not included in the Corbett budget plan. Senate Democrats would use the funds to:

- Restore basic and higher education funding to fiscal 2010-11 levels.
- Restore critical county programs such as the Human Services Development Fund.
- Save the HEMAP (Homeowners' Emergency Mortgage Assistance Program) and mortgage foreclosure assistance programs.
- Ensure that the Tobacco Settlement funds are used for healthcare.
- Fund the adultBasic program with Tobacco Settlement dollars.
- Maintain core programs that create jobs and provide training.

*Committee Meeting, continued on page 4*

## Education Mandate Relief

The Senate Education Committee reported a package of 17 bills to reduce state-imposed mandates on schools.

Among the measures approved by the committee were a bill to require a two-thirds vote by a school board to pass school tax increases (S.B. 537), a bill that allows school districts to furlough teachers for economic reasons (S.B. 612), a bill which suspends teacher

continuing professional education requirements for two years (S.B. 871), and a bill that would allow districts to hire certain registered nurses as their primary nurses, rather than only nurses with a school certificate (S.B. 802).

The bills are poised for consideration by the Senate Appropriations Committee before being considered by the full Senate.

## Nemacolin Awarded Casino Resort License

The Pennsylvania Gaming Control Board awarded a resort casino license to the Nemacolin Woodlands Resort and Spa in Farmington, Fayette County. The casino will be operated by Isle of Capri Casinos, Inc.

The casino, Lady Luck Nemacolin, will include 600 slot machines and 28 table games. The project is anticipated to cost approximately \$50 million which

is to be funded by Isle of Capri Casinos. It is expected to be complete within 9 months of the commencement of construction, which is planned to begin immediately upon the formal issuance of the gaming license.

The resort casino license awarded to Nemacolin is the state's final Category 3 resort gaming license available.

## Schwank Receives Committee Assignments

Senate Democrat leaders announced that newly-elected State Senator Judy Schwank (D-Berks) will serve as Democratic Chair of the Senate Agriculture and Rural Affairs Committee. Schwank will also serve on the Senate

Aging and Youth, Public Health and Welfare, Local Government and Intergovernmental Affairs Committees. Schwank won a special election to complete the term of the late Senator Michael O'Pake.

## Judge McEwen to Head Reapportionment Commission

Superior Court President Judge Emeritus Stephen J. McEwen, Jr., has been appointed by the Supreme Court of Pennsylvania to chair the Legislative Reapportionment Commission.

Judge McEwen began service on Superior Court in 1981 and served a five-year term as that court's president judge. He was named president judge emeritus in 2001 and has been a Superior Court senior judge since 2003.

The Supreme Court's appointment authority is derived from the Pennsylvania Constitution if the

other commission members are unable to reach consensus in naming a chair. This is the second consecutive time that a jurist from the Superior Court has been appointed to chair the Reapportionment Commission. In 1991, Superior Court Senior Judge Frank J. Montemuro, Jr., was appointed to that post by the Supreme Court.

During his period of service as commission chair, Judge McEwen's service as a senior judge will be suspended.

*Committee Meeting, continued from page 3*

**S.B. 308** (amends the act to provide for and regulate plans for sewage disposal systems and for construction, improvement or replacement of sewage disposal systems and to further provide for definitions and for expenditure of funds), **S.B. 367** (an act to provide for indigenous mineral resource development and to impose powers and duties on the Department of General Services), **S.B. 460** (amends an act regulating the terms and conditions of certain leases regarding natural gas and oil, adding definitions, to provide for payment to those interested in proceeds and for nonpayment of royalties and effects), **S.B. 469** (amends an act encouraging landowners to make land and water areas available to the public for recreational purposes by limiting liability in connection therewith, and repealing certain acts, providing for a short title, definitions and changes), **S.B. 618** (amends The Administrative Code to further provide for the Environmental Quality Board), **S.B. 791** (amends the Bluff Recession and Setback Act to further provide for definitions) and **S.B. 898** (amends the Noncoal Surface Mining Conservation and Reclamation Act to further provide for temporary cessation and for local ordinances).

### House Judiciary Committee

*10 a.m., Room 205, Ryan Office Building*

The committee will consider **H.B. 135** (amends Pennsylvania Commission on Crime and Delinquency Act to further provide for PCCD powers and duties, for duties of public agencies and officers in reporting criminal statistics, for powers and duties of JJDCP, Crime Prevention Advisory Committee), **H.B. 267** (amends Title 42 (Judiciary and Judicial Procedure) to further provide for installment payment plans), **H.B. 815** (amends Title 18 (Crimes and Offenses) to further provide for the offense of sexual abuse of children and to define the offense of sexting by minors), and **H.B. 1352** (amends the Public School Code to further provide for background checks of prospective employees and conviction of employees of certain offenses).

### House Professional Licensure Committee

*10 a.m., Room G-50, Irvis Office Building*

The committee will hold a public hearing on **H.B. 646** (amends the act empowering the General Counsel or his designee to issue subpoenas for certain licensing board activities and providing for hearing examiners).

*Committee Meeting, continued on page 5*

*Committee Meeting, continued from page 4*

### Senate State Government Committee

10:30 a.m., Hearing Room 1,  
North Office Building

The committee will hold a public hearing on Open Records Law issues and will consider **S.B. 247** (amends the Right-to-Know Law to further provide for definitions, for Pennsylvania Interscholastic Athletic Association, for access, requests, record, public record exceptions, for agency response and filings, and for the Office of Open Records).

### Wednesday, May 4

#### House State Government Committee

9 a.m., Room B-3, Main Capitol

The committee will hold a public hearing on **H.B. 726** (an act providing for accountability in Commonwealth agency program performance).

#### House Veterans Affairs and Emergency Preparedness Committee

9 a.m., Room G-50, Irvis Office Building

The committee will hold an informational meeting on the current emergency preparedness and response capabilities for emergencies involving nuclear power plant facilities and their surrounding areas.

#### Senate Finance Committee

9 a.m., Hearing Room 1,  
North Office Building

The committee will hold a public hearing on the requirements for collecting sales tax on transactions made over the internet.

#### House Consumer Affairs Committee

10 a.m., Room 39, East Wing

The committee will consider **H.B. 247** (amends the Telemarketer Registration Act to further provide for definitions to include text messages, for unlawful acts and penalties and for unwanted telephone solicitation calls) and **H.B. 382** (amends the Telemarketer Registration Act further providing for unwanted telephone solicitation calls).

### Thursday, May 5

#### House Human Services Committee

9 a.m., Room 60, East Wing

The committee will hold a meeting on public health management.

*Committee Meeting, continued on page 6*

## Committee Actions

*For the latest information regarding the status of bills and resolutions, please contact Buchanan Ingersoll & Rooney's State Government Relations Center at 717 237 4800.*

### School Choice

The Senate Appropriations Committee reported **S.B. 1** (Piccola, R-Dauphin) which amends the Public School Code to provide for school choice/vouchers. The bill received second consideration and was re-referred to the Senate Education Committee.

### Mobile Classrooms

The House Education Committee reported **H.B. 139** (Godshall, R-Montgomery) which amends the Public School Code to provide for reimbursement for mobile classroom facilities. The bill received first consideration and is on the House Tabled Bill Calendar.

### Higher Ed Background Checks

The House Education Committee reported **H.B. 45** (M. Baker, R-Tioga) which creates the College and University Criminal History Background Investigation Act to give colleges and universities the discretionary authority to require a criminal history background investigation prior to hiring an individual for a full-time faculty or staff position. The bill received first consideration and is on the House Tabled Bill Calendar.

### Local Taxes

The Senate Finance Committee reported **S.B. 405** (Browne, R-Lehigh) which amends the Local Tax Enabling Act to address a 2007 Pennsylvania Supreme Court ruling reversing the court's previous position that a municipality cannot tax an entity that lacks a permanent base of operations within its borders. The bill is on second consideration on the Senate Calendar.

### Taxpayer Relief Act

The Senate Finance Committee reported **S.B. 330** (Scarnati, R-Jefferson) which amends the Taxpayer Relief Act to require the school directors in school

districts of the second, third and fourth classes to adopt a resolution allowing the payment of property taxes by small businesses to be made in installments. The bill received first consideration and was re-referred to the Senate Appropriations Committee.

The committee also reported **S.B. 911** (Brubaker, R-Lancaster) which amends the Taxpayer Relief Act to eliminate exceptions that permit a school district to increase property tax rates by more than the index authorized in the act without approval by a voter referendum. The bill received second consideration and was re-referred to the Senate Appropriations Committee.

### Ratepayer Cause of Action

The Senate Local Government Committee reported **S.B. 375** (Pileggi, R-Chester) which amends Title 53 (Municipalities Generally) to prohibit a municipal authority from using any money of the authority for any purpose not directly related to its mission or purpose and to give a ratepayer standing to bring an action to seek recovery of any money expended in violation of this prohibition. The bill received first consideration and was re-referred to the Senate Appropriations Committee.

### Regulatory Review

The Senate State Government Committee reported **S.B. 263** (Erickson, R-Delaware) which amends the Regulatory Review Act to require the promulgating agency to submit to the Independent Regulatory Review Commission any data on which the information in the regulation is based and how that data was used. The agency has the burden of proving the acceptability of the data and the commission must consider whether the regulation is supported by acceptable data in its determination of whether to approve the regulation. The bill is on second consideration on the Senate Calendar.

*Committee Actions, continued on page 6*

## Committee Actions continued

### PACE and PACENET Eligibility

The House Aging and Older Adult Services Committee reported **H.B. 463** (Brooks, R-Mercer) which amends the State Lottery Law to extend the moratorium on eligibility for PACE and PACENET for individuals who receive a Social Security COLA which places them over the income limits. The current moratorium expired on December 31, 2010, and the bill extends this date to December 31, 2013. The bill received first consideration and is on the House Tabled Bill Calendar.

### RBC Reports

The Senate Banking and Insurance Committee reported **S.B. 118** (D. White, R-Indiana) which amends The Insurance Department Act to add a trend test component to risk-based capital requirements for health organizations. The bill is on second consideration on the Senate Calendar.

### Community-Based Health Care

The Senate Public Health and Welfare Committee and the Senate Appropriations Committee reported **S.B. 5** (Erickson, R-Delaware), the Community-Based Health Care Act, which provides for the establishment of the Community-Based Health Care Program within the Department of Health to provide grants to community-based health care clinics to: (1) expand and improve health care access and services, (2) reduce unnecessary utilization of hospital emergency services and (3) encourage collaborative relationships among community-based health care clinics, hospitals and other health care providers. The bill is on second consideration on the Senate Calendar.

### Medical Licensing

The House Professional Licensure Committee reported **H.B. 48** (Scavello, R-Monroe) which amends the Medical Practice Act to provide for the licensing of prothetists, orthotists, pedorthists and orthotic fitters. The bill is on third consideration on the House Calendar.

### Genetic Counselors

The House Professional Licensure Committee reported **H.B. 332** and **H.B. 333** (Killion, R-Delaware) which amend the Medical Practice Act and the Osteopathic Medical Practice Act to provide the licensing of genetic counselors. The bills are on third consideration on the House Calendar.

### Abortion Facilities

The House Health Committee reported **H.B. 574** (M. Baker, R-Tioga) which amends the Health Care Facilities Act to require the licensure of abortion facilities. The bill received first consideration and is on the House Tabled Bill Calendar.

### Good Samaritan Immunity

The House Judiciary Committee reported **H.B. 1192** (Saccone, R-Allegheny) which amends Title 42 (Judiciary and Judicial Procedure) to expand coverage of the non-medical good Samaritan civil immunity provision. The bill received first consideration and is on the House Tabled Bill Calendar.

### Industry Partnerships

The Senate Labor and Industry Committee reported **S.B. 552** (Brubaker, R-Lancaster) which amends the Workforce Development Act to codify the industry partnership program within the Department of Labor and Industry. The bill received first consideration and was re-referred to the Senate Appropriations Committee.

*Committee Meeting, continued from page 5*

#### House Gaming Oversight Committee

*9:30 a.m., Room G-50, Irvis Office Building*

The committee will hold a public hearing on **H.B. 169** (amends the Local Option Small Games of Chance Act further providing for definitions, permitted games, prize limits, insured games, recordkeeping, use of locations for conducting small games of chance, for enforcement and advertising), **H.B. 1288** (amends the Local Option Small Games of Chance Act to further provide for prize limits) and **H.B. 1323** (amends the Local Option Small Games of Chance Act to further provide for the definition of "games of chance" and to define "coin auction").

#### House Liquor Control Committee

*10 a.m., Room 205, Ryan Office Building*

The committee will consider **H.B. 581** (amends the Liquor Code to further provide for storage by distributors and importing distributors) and **H.B. 421** (amends the Liquor Code to further provide for limited wineries).

#### House State Government and Senate State Government Committees

*11 a.m., Convention Center, Room 105 AB, 1101 Arch Street, Philadelphia*

The committees will hold a joint public hearing on congressional redistricting.

#### Friday, April 13

#### Senate Republican Policy and Senate Game and Fisheries Committees

*10 a.m., Links of Gettysburg, 601 Mason Dixon Road, Gettysburg*

The committees will hold a joint public hearing on innovative clean-up methods for the Chesapeake Bay and Surrounding Watersheds.

## Executive Nominations

The Senate confirmed **Frank Noon** as commissioner of state police, **Sheri Phillips** as secretary of general services, **Barry J. Schoch**, P.E., as secretary of transportation, **C. Alan Walker** as secretary of community and economic development, **Carol Aichele** as secretary of the commonwealth, **Ronald Tomalis** as secretary of education, **Michael Krancer** as secretary of environmental protection and **Michael Consedine** as insurance commissioner.

Governor Corbett nominated former Representative **Katie True** of Lancaster County to lead the Bureau of Professional and Occupational Affairs within the Pennsylvania Department of State. As commissioner, True will oversee the state's professional and occupational licensing boards.

## Political Grapevine

Former Bucks County congressman **Pat Murphy** announced he will run for state attorney general in 2012. Murphy, a Democrat, lost his reelection bid to Republican **Mike Fitzpatrick** last fall.

State Representative **Eugene DePasquale** (D-York) announced he is exploring a 2012 candidacy for Auditor General.

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