



# The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

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Issue 09-9

March 9-13, 2009

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## FIRST CITIZEN AWARD

Annually, the Senate's *First Citizen Award* is given to Marylanders who have been dedicated and effective participants in the process of making government work for the benefit of all. This week, the 2009 awards went to three distinguished sitting senators:

- Senator Norman R. Stone, Jr. (D, District 6, Baltimore County) is the Senate President Pro Tem Emeritus. Senator Stone's service in the Senate began in 1967, and he was a member of the House from 1963 to 1967;
- Senator Nathaniel J. McFadden (D, District 45, Baltimore City) is Senate President Pro Tem and, from 2003 to 2007, was the Senate Majority Leader. He has served since 1995; and
- Senator J. Lowell Stoltzfus (R, District 38, Somerset, Wicomico & Worcester Counties), a former Minority Leader, has been a member of the Senate since 1992 and was a member in the House from 1991 to 1992.

*First Citizen* was the name that Charles Carroll of Carrollton signed to a series of articles that formed a strong defense of an independent legislature and were among the earliest arguments for a concept of government based upon traditional community rights and liberties that protected its citizens from arbitrary rule.

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## COURTS AND CIVIL PROCEEDINGS

As amended on second reading, [HB 1181](#) allows a respondent in a domestic violence protection order proceeding to request expungement of all court records relating to the proceeding if the petition requesting the protection order was denied or dismissed at the interim, temporary, or final protective order stage of the proceeding. After spirited floor debate this week, the House voted against the bill on third reading, but subsequently moved to reconsider the vote and sent the bill back to committee for possible further amendment. The companion bill is [SB 467](#).

Several other domestic violence measures were amended and passed preliminary floor votes in the House:

- [HB 359](#) allows the Secretary of the State Police to consider whether an applicant for a gun permit is a person eligible for relief under a final protective order when determining if the applicant has the necessary good and substantial reason to wear, carry, or transport a handgun. The companion bill is [SB 586](#);
- [HB 464](#) authorizes a District Court Commissioner or a judge, when awarding temporary custody of a child to the petitioner under an interim or temporary protective order, to order a law enforcement officer to use all reasonable and necessary force to return a minor child to the custodial parent after the protective order is served on the respondent. The companion bill is [SB 714](#);
- [HB 302](#) allows a judge who issues a temporary protective order to order the respondent to surrender any firearm in the respondent's possession for the duration of the order if the abuse by the respondent consisted of the use or a threat to use a firearm against the petitioner or serious bodily harm or a threat to cause serious bodily harm to the petitioner. A similar bill, [HB 214](#), died in committee; and
- [HB 296](#) requires a final protective order to order the respondent to surrender any firearm in the respondent's possession for the duration of the order.

Both [HB 302](#) and [HB 296](#) also require police to transport and store surrendered firearms in a certain manner and provide information to respondents on how to retake possession of their firearms. The crossfiled bills are [SB 268](#) and [SB 267](#), respectively.

The Lilly Ledbetter Civil Rights Restoration Act of 2009 ([SB 368](#)) passed a preliminary Senate floor vote this week. Following the recent passage of the federal Lilly Ledbetter Fair Pay Act, the bill provides that an employee is authorized to recover back pay for up to two years preceding the filing of a complaint for employment discrimination based on an unlawful employment practice that occurred outside the statute of limitations for filing, but was similar or related to an unlawful pay discrimination practice that occurred during the

complaint filing period. The House heard the companion bill, [HB 288](#), last month.

Marriage bills were discussed in Senate and House committees this week. Under current law, only a marriage between a man and a woman is valid in Maryland. Repealing that provision, the Religious Freedom and Civil Marriage Protection Act ([SB 565/HB 1055](#)) specifies that only a marriage between two individuals who are not otherwise prohibited from marrying is valid in the State, and religious leaders may not be required to perform marriage ceremonies that are inconsistent with their faiths. Other legislation ([SB 647/HB 913](#)) establishes by constitutional amendment that a marriage between one man and one woman is the only domestic legal union valid or recognized in Maryland.

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## **CRIMES, CORRECTIONS, AND PUBLIC SAFETY**

Failing a committee vote, the Freedom of Association and Assembly Protection Act ([HB 182](#)) would have prohibited police from keeping files on the political, religious, or social views of activists and from conducting undercover activities against protest groups unless there was a prior written finding of a “reasonable, articulable suspicion” of current or planned criminal activity. The companion bill, [SB 256](#), and similar Administration bills, [SB 266/HB 311](#), remain under committee consideration.

[HB 504](#), which would have allowed a sexual offender registrant to add to the registry an approved personal statement that described the facts of the crime, conviction, and punishment, also died in committee.

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## **ECONOMIC AND BUSINESS ISSUES**

### *Slaveholder Insurance Policies*

Heard this week by a Senate committee, [SB 751](#) requires a State-regulated insurer to submit a report on slavery era insurance policies to the Maryland Insurance Commissioner, who then must make the information public via the Insurance Administration’s website. A slaveholder insurance policy is a policy issued to or for the benefit of a slaveholder that insured against a slave’s injury or death. Similar legislation did not pass the General Assembly in 2008, but has been enacted in California, Illinois, and Iowa.

### *Liquefied Natural Gas Facilities*

[HB 1123](#) prohibits the construction or operation of a liquefied natural gas (LNG) facility regulated by the Public Service Commission (PSC) without the commission’s approval. Similar legislation did not pass in 2006 or 2008.

### *Utility Regulation and Assistance*

Bills addressing the increased cost of electric and gas services and the termination of these services due to nonpayment are in various stages of the legislative process:

- [SB 188](#), passed by the Senate, adds low-income renewable energy programs to the list of programs eligible to receive funding from the Maryland Strategic Energy Investment Fund;
- [HB 453](#), examined by a committee last month, adds restrictions on when a public service company can terminate electric or gas service to residential customers for nonpayment. These restrictions are based on certain low temperature or high heat index readings. The companion bill is [SB 1057](#);
- [HB 1002](#), an emergency bill before a committee this week, requires the PSC to limit the authority of a public service company to terminate gas or electric service to residential customers when the threat of termination of service is due to nonpayment for the first time in a calendar year and requires a public service company to offer residential customers of any income level an alternative payment plan before the termination of service; and
- [HB 1285](#), also an emergency bill heard in committee this week, prohibits the PSC from allowing a gas or electric company to impose a surcharge or any other additional fee on residential customers as part of a cost recovery in addition to the adopted rate. Under current law, cost recovery charges (for implementation of programs and services that promote energy conservation) are already included in the adopted rate.

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## **EDUCATION**

### *Pre-Kindergarten*

[HB 184](#), regarding universal access to preschool, has passed the House. Currently only four-year-olds from families living at or below 185% of the federal poverty guidelines receive access to preschool in local public school systems. In response to a Task Force on Universal Preschool Education, the Maryland State

Department of Education (MSDE) submitted a draft business plan and cost estimates for expanding access to preschool for all four-year-olds in the State. The proposed legislation requires MSDE to consult with and accept comments on the draft from county superintendents and local governing bodies before publishing a final version of the business plan, which is due late this year. The Senate companion bill is [SB 234](#).

#### *Military Transfers*

The Senate amended and passed on second reading [SB 257](#), the Interstate Compact on Educational Opportunity for Military Children. The amended bill clarifies that a Military Family Education Liaison shall be in place for each state in the compact, and that Maryland's liaison will be under the purview of the MSDE. The House bill is [HB 306](#).

#### *Financial Literacy*

Bills to increase the membership and staffing of the Task Force to Study How to Improve Financial Literacy ([SB 140](#) and [HB 120](#)) have moved to opposite chambers. The aim of the Task Force is to investigate the utility of a financial literacy curriculum in primary and secondary education environments. Originally with the same language as the House companion measure, the now amended Senate bill, [SB 140](#), adds more Task Force members, including a representative from the Maryland Parents and Teachers Association and a nonprofit credit counseling service, among others.

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## ELECTIONS AND ETHICS

Several bills related to early voting are waiting for a committee vote. [SB 557](#) and [HB 1179](#) are similar bills that allow early voting in the voter's county of residence beginning the second Friday before a primary or general election through the Friday before the elections, but excluding Sundays. The State Board of Elections, in collaboration with each local county board, is charged with designating each early voting place or center in that county. Another measure, [SB 197](#), requires a local board to designate early voting places in the voter's assigned precinct. Under the bill, the State Board, in collaboration with the local boards, designates not more than 10 days for conducting early voting during the two-week period immediately preceding an election.

State law does not currently contain a process for early voting at designated polling places, but with the recent voter approval of a constitutional amendment, the Maryland Constitution now authorizes the enactment of such a process. Over 30 states offer no-excuse, in-person early voting in some form.

Additional proposals related to election law include:

- [HB 1352](#) to move the date of the Maryland gubernatorial primary election from the second Tuesday after the first Monday in September to the second Tuesday after the first Monday in June; and
- [SB 663](#) and [HB 1353](#) to add public campaign financing for candidates for the General Assembly.

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## ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

#### *Smart, Green, and Growing*

One of the Administration's proposals that address Maryland's local government comprehensive planning procedures and goals has received preliminary approval. [SB 273](#) revises the State's planning visions and requires local planning commissions to take these into consideration when developing planning documents. As amended in committee, the bill allows for the transfer of development rights within a priority funding area to assist in the purchase of land for the construction of recreation, transportation, or educational facilities. The crossfiled measure is [HB 294](#).

#### *Energy Efficiency and Renewable Energy*

The Senate passed legislation that authorizes the Maryland Environmental Services (MES) to engage in additional types of energy projects and services, such as the production, generation, or distribution of energy from renewable sources, the undertaking of energy conservation measures, and engaging in research and development studies. As amended, [SB 14](#) also clarifies that MES has authority to undertake recycling and other solid waste disposal projects, and requires MES to report any complaints that activities undertaken by MES compete with private investment in a similar energy activity. The companion bill is [HB 314](#).

A Senate committee listened to testimony recently on [SB 686](#), which requires community college capital projects that receive State funds to meet High Performance Building Standards. The crossfiled measure is [HB 541](#).

#### *Crabs*

The Department of Natural Resources' (DNR) hearing requirements for blue crab regulations has been expanded with preliminary approval of [SB 168](#). As amended, the bill requires that public hearings be held in Southern Maryland and on the Eastern Shore before adoption of a final regulation.

### *Environmental Permitting and Critical Areas*

Bills heard by committees this week included:

- [HB 1053](#), which makes extensive changes to standing requirements in environmental cases, authorizes private citizens to bring legal action under specified circumstances, and expands the availability of judicial review of certain decisions by governmental entities. Testimony on the crossfiled measure, [SB 824](#), will be heard next week;
- [HB 1054](#), creates the Commission on Environmental Justice and Sustainable Communities, which in consultation with the Department of Environment (MDE) and the Department of Planning, must develop criteria and maps that identify environmentally stressed communities in the State. The bill requires an Environmental Justice Review as a condition of issuing or renewing specific permits. The crossfiled measure is [SB 4](#);
- [HB 1078](#), requires MDE to send notice by mail to the addresses of property owners within a two-mile radius of the activity for which the permit is sought, at the expense of the applicant. The crossfiled measure is [SB 47](#); and
- [HB 729](#), requires the Chesapeake and Atlantic Coastal Bays Critical Area Commission to establish comprehensive standards and procedures for critical area inspections performed by local jurisdictions and actions required to remedy critical area violations, and also requires local jurisdictions to perform inspections at the request of a prospective land purchaser. The bill exempts the property owner from critical area violation penalties under certain circumstances.

Another measure, [HB 1058](#), requires MDE to provide notice to the legislative body and elected executive of a county or municipal corporation of an application for a sewage sludge utilization site located within its boundaries or within one mile. [SB 432](#) (failed) would have prohibited MDE from issuing a sewage sludge permit for a site unless the site meets all county zoning and land use requirements or ordinances.

### *Pollution and Recycling*

Committee members have collected information from the public on two bills that address litter and recycling. [HB 1210](#) requires stores to charge and collect a fee of 5 cents per carryout bag provided to a customer, with most of the funds collected going to the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund. [HB 1306](#) requires owners of restaurants and bars to recycle

aluminum, glass, and plastic bottles unless granted a waiver, and establishes fines from \$100 to \$500.

[HB 1305](#) requires MDE to adopt regulations regarding the transportation and permissible beneficial uses of coal combustion byproducts, including fly-ash, by December 31, 2009.

[SB 553](#) prohibits the sale of lawn fertilizer that contains more than 5% of available phosphoric acid and establishes labeling and reporting requirements. The crossfiled bill, [HB 609](#), is also in committee, while a similar bill, [HB 49](#) (failed), has received an unfavorable committee vote.

### *Bears*

A committee voted unfavorably on [SB 293](#) (failed), which would have directed fees collected by DNR for the black bear hunting permit lottery to be used to satisfy claims for reimbursement for black bear damage.

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## **FINANCIAL INSTITUTIONS AND COMMERCIAL LAW**

### *Fur Labeling*

The General Assembly is considering [HB 208](#) that prohibits a merchant from selling, displaying, or offering for sale an article of clothing made of animal fur unless an identifying label or tag is attached to the clothing. The crossfiled measure is [SB 342](#).

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## **FISCAL MATTERS**

The Budget Bill, [HB 100](#), is scheduled to be reported to the House floor on Monday evening, March 16, but the reporting will probably be delayed a week while the budget committees consider additional reductions and other steps necessary to maintain a balanced budget. The Board of Revenue Estimates on Wednesday provided revenue estimates of \$445 million less revenue for the remainder of fiscal 2009 and \$716.5 million less revenue for fiscal 2010, than was estimated last December.

[SB 258/HB 309](#), Administration bills, extend the Maryland Heritage Structure Rehabilitation Tax Credit Program, convert the commercial program to a conventional tax credit program that is not subject to an annual appropriation, and make several other changes to the law.

Legislation before the Assembly to increase the alcoholic beverages tax includes [SB 729/HB 791](#) that increase the alcoholic beverage tax on distilled spirits from \$1.50 per gallon to \$6.00 per gallon, the tax on

wine from \$.40 per gallon to \$1.60 per gallon, and the tax on beer from \$.09 per gallon to \$.36 per gallon. A portion of the added revenue is dedicated to help individuals with developmental disabilities and addiction.

Another measure, [HB 1160](#) increases the alcoholic beverage tax on distilled spirits from \$1.50 per gallon to \$4.00 per gallon, the tax on wine from \$.40 per gallon to \$1.00 per gallon, and the tax on beer from \$.09 per gallon to \$.25 per gallon. A portion of the increased revenue is dedicated to community-based services for the developmentally disabled and for victims of domestic violence, sexual assault, and sexual or physical child abuse.

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## HEALTH CARE AND HEALTH INSURANCE

### *Health Insurance and Health Facility Reforms*

Two measures aimed at amending existing provisions related to health insurance have been passed unanimously by the House:

- [HB 32](#), as amended, alters preexisting condition provisions for individual health insurance policies by reducing the maximum preexisting condition exclusion period and reducing the length of time prior to coverage (known as the “look back” period) an insurer may inquire about potential preexisting medical conditions, under certain circumstances; and
- [HB 39](#), as amended, requires certain insurance carriers that offer out-of-state association contracts to make disclosures to a Maryland resident applying for coverage under an out-of-state association contract. The disclosures include the notification that coverage is conditioned on association membership, of the health insurance benefits otherwise mandated in Maryland that are not included in the contract, and that the contract is not regulated by the Maryland Insurance Commissioner. Additionally, the Commissioner may require a carrier that offers coverage under an out-of-state association contract to report the number of Maryland residents covered in the preceding calendar year.

A House committee heard testimony this week on legislation that requires each health insurer to notify the State’s Insurance Commissioner when its Risk Based Capital (RBC) level exceeds a specified product. Under [HB 972](#), a health insurer must report to the Commissioner, on the filing date, if its RBC level exceeds a certain recommended level. The insurer must then file a comprehensive financial plan, known as an

RBC reduction plan, aimed at affecting a reduction in its RBC level. The Commissioner must approve, deny, or modify the plan.

The Senate approved [SB 231](#), concerning reporting requirements by health care facilities. The bill, as amended, requires a health care facility to report certain information to the Health Services Cost Review Commission including: a balance sheet that details its assets, liability, and net worth; a statement of income and expenses; the most recent Form 990 (Return of Organization Exempt from Income Tax) filed with the Internal Revenue Service; and any other report that the Commission requires concerning costs incurred in providing services. The original bill required specified health care facilities to submit to the Commission annual reports of the compensation of officers, directors, and executives of the health care facilities and of regulated lobbyists engaged by those facilities. The crossfiled bill is [HB 487](#).

### *State Health Facilities - Closures*

Two bills were heard this week related to health facility closures:

- [HB 1043](#) provides that the Secretary of Health and Mental Hygiene is not permitted to close a facility, including a hospital, that is located in Baltimore City, is operated or owned by the Department of Health and Mental Hygiene (DHMH), and was in operation January 1, 2009; and
- [HB 1044](#) requires DHMH to ensure that specified State employment is offered to employees of the Walter P. Carter Center if the Department closes the inpatient psychiatric unit. The bill also requires the DHMH to ensure that specified community-based services are offered under certain circumstances. Additionally, the bill includes provisions that require the University of Maryland, Baltimore to perform specified duties if the Walter P. Carter Center is transferred to the University.

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## REAL PROPERTY, ESTATES, AND TRUSTS

Starting to move through the legislative process are [SB 929/HB 1006](#), which exempt community land trusts from existing prohibitions on the creation of new ground leases and subleases. Any ground lease of which a community land trust is the lessor may not require the payment of a periodic ground rent.

The Senate passed [SB 150](#), the Maryland Uniform Power of Attorney Act, which establishes a clear and comprehensive set of rules governing powers of

attorney. A similar measure, [HB 852](#), has also been before a House committee.

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## STATE GOVERNMENT

### *Medevac Program*

Recent recommendations from a House of Delegates work group on the State's emergency medical services system support the continuation of the public system under the direction of the Maryland State Police. The work group recommended accelerating the purchase of new helicopters, increasing certification standards in accordance with the phasing-in of additional co-pilots and paramedics on flights, and establishing a new joint legislative oversight committee. The report runs counter to several companion bills that are before the Assembly. This week a Senate committee examined the Senate bills, while House hearings on its bills are set for next week:

- [SB 649](#) authorizes the use of the Maryland Emergency Medical System Operations Fund for the reimbursement of private helicopter companies for the transport of patients from the scene of an out-of-hospital medical emergency to a health care facility under certain conditions. The companion bill is [HB 1151](#);
- [SB 650](#) requires that there be two fleets of helicopters operating in the State, one for law enforcement, homeland security, and search and rescue to be operated by the Maryland State Police and one for emergency medical services, for which a request for proposals (RFP) to operate must be issued. The companion bill is [HB 1356](#); and
- [SB 764](#) reorganizes emergency services in the State by establishing a new Department of Emergency Services to include the functions of the Maryland Institute of Emergency Medical Systems Services (MEIMSS) and the State Emergency Medical Services Board. The companion bill is [HB 1146](#).

Another related proposal ([SB 1041](#)) requires the Maryland Health Care Commission in conjunction with MEIMSS to study emergency medical services and prohibits the purchase of new helicopters before their report is submitted to the General Assembly in February 2010. A hearing has not been scheduled for this measure.

## TRANSPORTATION

### *Drunk and Drugged Driving*

[HB 307](#) (failed) has received an unfavorable committee vote. The bill would have required a police officer to request a driver involved in a motor vehicle accident resulting in life-threatening injury or death to voluntarily submit to a preliminary breath test for alcohol.

### *Smoking in Motor Vehicles with Young Children*

House and Senate committees have taken testimony on [SB 288/HB 966](#), legislation that prohibits a driver of a motor vehicle from smoking a tobacco product if a child younger than age eight is a passenger in the vehicle. The bills also prohibit the driver from allowing vehicle passengers to smoke in the presence of the child, but specify that breaking the prohibition is not a moving violation for which points may be assessed.

### *Texting and Cell Phones*

After several days of discussion, the Senate passed [SB 98](#) on a preliminary vote, which as amended prohibits the use of a hand-held text messaging device to write, send, or read a text message while operating a motor vehicle in motion or in the travel portion of the roadway.

Two bills received unfavorable committee votes this week:

- [SB 103](#) (failed) would have prohibited the use of handheld telephones while driving by certain drivers, with certain exceptions, with penalties only enforceable as a secondary action; and
- [SB 143](#) (failed) would have prohibited the use of a wireless communication device while driving for specified drivers and would have prohibited any other driver from using the driver's hands to use a wireless communication device, with specified exceptions, while driving.

### *Young Drivers*

[HB 444](#) (failed) was withdrawn this week. The bill would have increased the age limit for issuance of a learner's instructional permit, provisional driver's license, and driver's license, prohibited young provisional license holders from carrying other young passengers, prohibited the MVA from issuing a learner's permit to minors with excessive school absences, and required the MVA to obtain criminal history records and fingerprints from driving instructor applicants.