



# The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

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## FIRST CITIZEN AWARD

Charles Carroll of Carrollton (1737-1832) became a member of the Maryland Senate in 1777 and served as its President from 1782 to 1783. A seal of the commemorative medal, commissioned in 1826 to celebrate Carroll's 90<sup>th</sup> birthday, is used by the President of the Senate for the First Citizen Award. This annual 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 year, on the 20<sup>th</sup> anniversary of its first presentation, the President bestowed the First Citizen Award on three recipients:

- Michael E. Busch, the current and longest-serving Speaker of the House of Delegates, who has been a member of the House since 1987, served as Chair of the Economic Matters Committee from 1994 to 2003, and was elected Speaker in 2003;
- Senator Joan Carter Conway, who has been a member of the Senate since 1997 and, since 2007, has served as Chair of the Education, Health, and Environmental Affairs Committee, one of the Senate's four principal standing committees; and
- Ms. Joy Ruth Walker, Administrator to the President of the Senate, who has worked tirelessly and successfully to address the administrative tasks and responsibilities for each of the Maryland Senate's 47 members and their staff. Her service dates to 1988.

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## CORRECTIVE AND CURATIVE BILLS

Two bills that passed the General Assembly this week are very technical in nature and are introduced annually as emergency legislation:

- The corrective bill ([SB 379](#)) corrects errors and omissions in various articles of the Annotated Code and in uncodified laws. The bill also clarifies language, corrects obsolete references, reorganizes sections of the Code, and validates and ratifies corrections made by the publishers of the Code; and
- The curative bill ([SB 380](#)) cures previous acts of the General Assembly with possible title defects.

## COURTS AND CIVIL PROCEEDINGS

After rejecting an amendment to freeze judges' salaries, the Senate passed [SJ 3](#) with an amendment that reduces the proposed increase in judges' salaries from 6% to 3% in each of the fiscal years 2014 through 2016. The amended resolution maintains current judicial salaries for fiscal 2013 and phases in over the next three fiscal years a \$14,081 salary increase for each judge of the Court of Appeals, Court of Special Appeals, District Court and circuit court. Current salaries range from \$181,352 for the Court of Appeals Chief Judge to \$127,252 for an associate judge of a District Court.

The 6% increase takes effect automatically unless by March 15 the General Assembly passes an amended resolution to decrease the salaries or the resolution is rejected.

[SB 335](#), also passed in the Senate, increases the contribution rate for members of the Judges' Retirement System from 6% to 8% of the member's earnable compensation starting on July 1, 2012, for judges who become a member on or after that date, and July 1, 2013, for all member judges. After 16 years of service as a member, a judge makes no further contributions.

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## CRIMES, CORRECTIONS, AND PUBLIC SAFETY

### *Caylee's Law*

The House passed [HB 20](#), which prohibits a parent or other person who has permanent care or custody or responsibility for the supervision of a child under the age of 13 from recklessly or willfully failing to report within 24 hours that the child is missing. The bill also requires a parent or other person responsible for a minor to report the minor's death within five hours of becoming aware of it.

Violation of the bill's provisions is a misdemeanor punishable by up to three years in prison. Similar legislation, known as "Caylee's Law" ([HB 18](#) and [HB 122](#), both failed), received unfavorable committee votes.

### *Misdemeanor Citations*

[HB 119](#), as amended and passed by the House, expands the authority of a police officer to charge a person by citation. An officer must charge by citation for any misdemeanor or local ordinance violation that carries no prison penalty or a maximum prison penalty of 90 days or less; and may charge by citation for a misdemeanor or local ordinance violation that carries a maximum prison penalty of three years or less, with the exception of 36 specific crimes. The bill adds a policy and reporting requirement relating to the issuance of citations based on race or ethnicity. If passed, the measure would decrease the number of initial bail review hearings held by District Court commissioners.

### *Gun Legislation*

The House passed [HB 618](#), which establishes a Task Force to Study Access of Individuals with Mental Illness to Regulated Firearms to consider further limiting gun access by individuals with a history of mental illness and expanding access of law enforcement officers to certain mental health records.

[SB 640](#), which passed a preliminary Senate floor vote, prohibits a person from possessing a regulated firearm or a rifle or shotgun if the person was previously convicted of a federal charge or an offense in another state that would constitute a disqualifying crime of violence or drug crime if committed in Maryland. Companion bill [HB 209](#) had a House committee hearing this week.

Gun bills that received unfavorable committee votes would have:

- altered penalty provisions for gun possession by convicted felons and people with mental disorders ([HB 1100](#), failed);
- reclassified the use of a firearm during the commission of a felony or a crime of violence from a misdemeanor to a felony ([HB 1104](#), failed);
- made the possession or sale of a stolen firearm a felony ([HB 1113](#), failed); and
- extended current prohibitions applicable to regulated firearms to all firearms with regard to possession, sale, rental, or transfer by or to a person convicted of certain crimes, and applied current prohibitions against possession of a regulated firearm by a person previously convicted of a crime of violence or drug felony to all firearms ([HB 1114](#), failed).

### *Telecommunication Devices - Prisoners*

[HB 587](#) (failed) would have changed from a misdemeanor to a felony the possession or receipt of a telecommunication device by a prisoner, and as a

subsequent offense, delivery or attempted delivery of a telecommunication device to a prisoner when signs prohibiting such actions are posted.

### *Death Penalty*

Legislation to repeal the death penalty received testimony in a Senate committee this week. [SB 872](#) provides that a person found guilty of murder in the first degree must be sentenced to imprisonment for life or imprisonment for life without the possibility of parole and requires, beginning in fiscal 2014, that the Governor include \$500,000 in the annual budget for the State Victims of Crime Fund. The \$500,000 is to be redirected from general fund savings resulting from repeal of the death penalty. Companion bill [HB 949](#) is scheduled for a March 20 hearing.

Under current law, the death penalty may be sought only in cases where there is DNA evidence, a videotaped confession, or a video recording linking the defendant to the murder.

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## **ECONOMIC AND BUSINESS ISSUES**

### *Labor and Employment*

Two “right to work” bills received testimony this week. [SB 715](#) prohibits employers from refusing to employ or continue employing an individual based on membership or nonmembership in a union and prohibits employers from requiring individuals to pay dues or other charges to a union.

The other bill, [HB 91](#), contains similar prohibitions for employers, and additionally repeals provisions of law that authorize employers, including the State and units of government, to require payment of fees by employees to a union to which an employee is not a member.

The Senate passed an amended [SB 433](#), which prohibits employers from requesting user names or passwords for Internet sites or electronic accounts from employees or prospective employees. The bill allows employers to require information from individuals that provides access to devices and information systems owned by the employer. As amended, the bill prohibits employees from downloading unauthorized employer information or obstructing investigations by employers regarding the inappropriate use of personal email or Internet sites.

### *Utilities – Telephone Companies*

[HB 677](#) requires the Public Service Commission to authorize telephone companies to impose charges for directory assistance calls subsequent to the first two calls per month. Charges are not to be imposed on customers

that have a disability that prevents them from using a telephone directory.

#### *Alcoholic Beverages Licenses*

The Senate amended and passed [SB 579](#), which creates a farm brewery manufacturer's license. Under the measure, a license holder may sell and deliver beer manufactured in a facility on the licensed farm or in another facility to certain persons. Additionally, a licensee may give or sell beer samples, sell certain foods, and store, brew, and bottle beer. As amended, the beer must be produced from a Maryland agricultural product produced on the farm.

#### *Other Tobacco Products*

[HB 570](#) passed the House with amendments. Prior to the amendments, the measure repealed licensure requirements for other tobacco products (OTPs), which are cigars or any rolled tobacco, other than a cigarette, that is consumed by smoking, chewing, or as snuff. As amended, the measure excludes premium cigars and pipe tobacco from provisions of law that prohibit holders of OTP licenses from selling or shipping other tobacco products purchased via Internet or phone to consumers, as well as excluding these from provisions of law regulating the amount of OTPs that may be delivered directly to consumers. The measure further excludes out of State sellers from provisions of law regarding the sale, shipping, and delivery of premium cigars and pipe tobacco.

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## EDUCATION

#### *Auto-injectable epinephrine*

More sponsors have signed on to [SB 621](#), a bill to require local boards of education to establish a policy for public schools within their jurisdiction to authorize the school nurse and other personnel to administer auto-injectable epinephrine. The bill was amended to require the policy to allow a school nurse to obtain and store auto-injectable epinephrine to be used in emergency situations. The companion is [HB 497](#).

#### *Core Content and Accountability*

An amended version of [SB 293](#) came to the Senate floor this week. Some of the amendments to this core content accountability program bill:

- specify that assessments addressed in the bill must include written responses;
- expand the scope of the bill beyond only a social studies assessment;

- remove a requirement for assessments in elementary school;
- require the State Board of Education to determine whether the assessments adequately measure the skills and knowledge set forth in the State's adopted curricula for the core content areas and, if not, require the Maryland State Department of Education (MSDE) to develop and implement a State-specific assessment; and
- provide that if funding for the Government High School Assessment is not provided in this year's budget, it must be provided in the next.

#### *Virtual Learning*

A number of bills addressing online education opportunities were heard by committees this week:

- [HB 1079](#) requires MSDE to conduct a survey of the local boards of education to determine each local system's current use of virtual learning. MSDE must use these results to adopt guidelines that enhance the use of virtual learning for all students in the State;
- [SB 689](#) and identical [HB 745](#) establish within MSDE the Maryland Advisory Council for Virtual Learning to support the education of students in accordance with national and State standards pertaining to online learning;
- [HB 1215](#) authorizes MSDE or a local board of education to procure online courses and services that have been approved by a state determined to have curriculum content standards consistent with the Maryland content standards. MSDE currently has a backlog of 17 courses that need to be reviewed. A Senate committee has heard a similar bill, [SB 736](#);
- [HB 1219](#) authorizes a local board of education to procure online courses and services that the local board has approved as high quality and in alignment with the Maryland Content Standards and other appropriate standards. Identical language may be found in [SB 674](#), heard last week; and
- [HB 1222](#) allows the State Board of Education to set reasonable fees for processing approvals for online courses and services. Its companion is [SB 735](#), also heard last week.

## ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

### *Plastic Bags - Reduction of Litter*

Now moving to the opposite chamber, [SB 164](#) requires the Department of Environment (MDE) to establish a registration program for plastic carryout bag manufacturers in order to promote recycling. [HB 229](#) is the crossfiled measure and remains in committee.

### *State Development Plan*

The impact of the State Development Plan (Plan) on the planning and zoning authority of local governments was the topic of hearings again this week. Among the bills discussed were measures that address specific aspects of the Plan and seek to restrict or limit the State's role or use of the Plan in the denial of local projects, permits, or approvals. The bills weigh in on the side of local plans, zoning laws, and ordinances as the governing factors in the identification of a growth, preservation, or other planning area ([SB 692](#), [HB 931](#), [HB 932](#), and [HB 1201](#)).

### *Watershed Implementation Plan*

In December 2010, the Environmental Protection Agency (EPA) established the Total Maximum Daily Load for the Chesapeake Bay (Bay TMDL), which sets the maximum amount of pollution the Bay can receive and still attain water quality standards, and identified specific pollution reduction requirements. Each Bay jurisdiction was required to submit a Watershed Implementation Plan (WIP) that details how the jurisdiction will achieve its individual pollution reduction goals under the Bay TMDL.

Testimony was heard this week on some of the bills that address the State's WIP. Under these measures, the State, before implementation of the WIP, must complete a full assessment of the environmental impacts of the opening of the Conowingo Dam floodgates in September 2011 following Hurricane Irene and Tropical Storm Lee ([SB 695](#)); complete a cost assessment for implementing the WIP through 2017 ([SB 821](#)); and may not require a local jurisdiction to implement activities or strategies of a State WIP unless specified funding is provided ([SB 822](#); the companion is [HB 487](#) (failed)).

Additionally, MDE must annually create and update a list that ranks best management practices relating to a WIP based on cost and expected pollution reduction value. MDE must also publish the list on its website and mail in a printed copy to each county ([SB 823](#); the companion is [HB 486](#)).

A withdrawn bill ([HB 464](#), failed) would have prohibited the adoption of regulations to help the State meet the agricultural sector requirements of the Bay

TMDL unless New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia meet certain standards related to nitrogen and phosphorus. The companion [SB 330](#) (failed) received an unfavorable report last week.

### *Protection from Nuisance Actions*

Companion bills ([SB 706/HB 915](#)) expand existing provisions related to protection from nuisance actions that now apply to agricultural and silvicultural (forestry) operations to commercial fishing or seafood operations, if the operations comply with specific requirements. Additionally, except in cases where an action is brought by a government agency, a person may not bring a nuisance action against an operation in any court until the person has filed a complaint with the local agency and the local agency has made a decision, which then may be appealed to a circuit court.

### *Reduction of Lead Risk in Housing*

Reflecting continuing concern about the adverse effects of lead, especially in older buildings, and the burden placed on owners of rental units, a number of bills that modify the State's Lead Poisoning Prevention Program received comment from constituents this week.

[HB 472](#) establishes a fund to compensate individuals who have suffered injuries due to lead poisoning and to provide liability coverage to residential rental property owners for injuries arising from lead poisoning. The companion is [SB 873](#).

Another proposal ([HB 1013](#)) establishes a fund to be used for specified costs in MDE and the existing Lead Poisoning Prevention Commission and to provide grants to eligible recipients for lead poisoning primary prevention activities. [HB 21](#) eliminates a \$10 processing fee currently required for an owner of a rental dwelling unit who submits a report to MDE that the dwelling unit is lead-free.

Other legislation ([SB 947/HB 644](#) and [HB 955](#)) makes extensive changes to the Reduction of Lead Risk in Housing Law and Program administered by MDE. Still other measures require an activity that disturbs more than three square feet of painted surface in an owner-occupied residential dwelling unit built before 1978 or a residential rental unit built before 1978 to pass the test for lead-contaminated dust ([HB 977](#)) and require manufacturers of lead pigment to reimburse specified persons for damages caused by lead-based paint ([HB 1134](#)).

## FISCAL MATTERS

### *Budget Considerations*

The Senate Budget and Taxation Committee (B&T) is making its decisions concerning the Budget Bill, [SB 150](#), which is scheduled to be brought to the Senate floor on Monday, March 12. Decisions are also in progress for the Budget Reconciliation and Financing Act of 2012 (BRFA), [SB 152](#), which makes the changes in law necessary for Maryland's constitutionally required balanced budget.

### *Doomsday Budget*

As requested, this week the nonpartisan staff of the Department of Legislative Services presented options to B&T to balance the State budget without revenue increases. These options, called the "doomsday budget," reduce appropriations by \$794.9 million. Some of the options include, in addition to reducing Medicaid by \$100.8 million:

- *education* - eliminating funding for the Geographic Cost of Education Index and reducing the pupil foundation aspect of education aid from \$6,694 to \$6,650;
- *other local aid* - reducing disparity grants to less wealthy counties and Baltimore City by 10%, eliminating the supplemental disparity grant, and eliminating Police Aid grants;
- *higher education* - eliminating Senatorial and Delegate scholarships, reducing public higher education funding by 10%, eliminating State aid to nonpublic institutions of higher education, and reducing community college aid by an additional 10%;
- *tax credits and environmental programs* - eliminating the Stem Cell Research Fund, Biotechnology Tax Credit, Sustainable Communities Tax Credit, and Chesapeake and Atlantic Coastal Bays 2010 Trust Fund programs; and
- *State agencies* - eliminating 500 State employee positions and the proposed State employee January 1, 2013 2% COLA, reducing agency operating expenses by 8%, and increasing employee share of health insurance costs.

### *Taxation*

This session legislation that changes Maryland taxes:

- *imposes the State sales and use tax on certain services* effective January 1, 2013, including a barber or beauty service, motor vehicle maintenance or repair, a tanning, massage, or physical fitness

service, an exterminating service, a dieting service, a management or other business consulting service, a real property management service, a docking or landing service, or a tax preparation service ([HB 1051](#));

- *authorizes the county council of a charter county* that has either a property tax revenue or rate limitation, effective June 1, 2012, to set a higher property tax rate or to collect more property tax revenues than authorized under the charter for the sole purpose of funding the approved budget of the county board of education. A charter county is prohibited from reducing revenue from any other local source for the county board of education and must appropriate all property tax revenues resulting from the increased rate to the county board of education ([SB 740](#));
- *increases the tobacco tax rate*, effective July 1, 2012, from \$2 to \$3 per pack and the other tobacco product (OTP) tax rate from 15% to 95% of the wholesale price. In addition, there are minimum and maximum tax rates for certain OTPs. OTP tax revenue is redistributed from the general fund to a special fund to ensure that tobacco cessation programs receive at least \$21 million in annual funding beginning in fiscal 2014. Any additional money in the special fund is to be used to support specified health care programs ([SB 526/HB 1153](#)). The BRFA, [SB 152](#), also includes provisions to increase, effective July 1, 2012, the OTP tax rate from 15% to 70% of the wholesale price, and to impose a floor tax on any person possessing OTPs for sale at the start of business on July 1, 2012; and
- *provides a sales and use tax-free period* for the sale of required university and college textbooks purchased by students of the University System of Maryland, Morgan State University, or St. Mary's College during specified times during the academic year in 2012 and 2013 and in subsequent years ([SB 809/HB 933](#)).

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## HEALTH CARE AND HEALTH INSURANCE

### *Medical Marijuana*

Medical marijuana was the subject of several bills heard by a House committee this week. The Maryland Medical Marijuana Act ([HB 15](#)) authorizes the medical use of marijuana under certain circumstances, allowing for "compassion centers" to acquire, possess, cultivate, manufacture, deliver, transport, supply or dispense marijuana or related supplies and educational materials

to qualifying patients and designated caregivers, as defined in the bill and as regulated by Department of Health and Mental Hygiene (DHMH).

Two other bills with extensive provisions create Medical Marijuana Commissions:

- under [HB 1024](#), a Medical Marijuana Commission will develop requests for applications for academic medical centers to operate programs related to medical marijuana; approve or deny applications or renewals; and monitor and oversee the approved programs. An academic medical center is a hospital that operates a medical residency program for physicians and conducts research overseen by DHMH that involves human subjects. Among other provisions, DHMH is required to license medical marijuana growers to operate in the State to provide marijuana only to an academic medical center approved to operate a program; and
- under [HB 1158](#), an independent Medical Marijuana Oversight Commission with broad powers detailed in the bill has responsibility for oversight, regulation, and registration of academic centers and for certifying physicians, growers, dispensing centers, and dispensing pharmacies. The Oversight Commission is also empowered to adopt regulations, create subcommittees, appoint advisory committees, and other related activities. [SB 995](#), the crossfiled measure, will be heard later this month.

### *Chemotherapy*

The Kathleen A. Mathias Chemotherapy Parity Act, [SB 179](#), passed the Senate. The amended legislation prohibits insurers, nonprofit health service plans, and health maintenance organizations (HMOs) that provide coverage for certain cancer chemotherapy under certain policies or contracts from imposing certain limits or cost sharing on coverage for orally administered cancer chemotherapy that are less favorable to an insured or enrollee than the limits or cost sharing on coverage for cancer chemotherapy that is administered intravenously or by injection.

The bill applies to insurers, nonprofit health service plans, and HMOs that provide coverage for both orally administered and intravenous or injected cancer chemotherapy treatments. The bill now heads to the House for consideration. The crossfiled measure, [HB 243](#), remains in a House committee.

### *Medical Assistance Programs – Fraud and Abuse Prevention*

Heard recently, [HB 792](#) requires, for purposes of the Medicaid Program and the Maryland Children’s Health

Program (MCHP), that DHMH implement a prepayment provider verification and screening system, a prepayment predictive modeling and analytics system, and a prepayment fraud investigative service.

Uncodified language states that it is the intent of the General Assembly that the savings achieved through the bill must cover the costs of implementation and that the services used in implementing the bill must be secured using a shared savings model in which the State’s only direct cost will be a percentage of actual savings achieved.

In a program as large as Medicaid, even small efforts to improve program integrity such as preventing errors in payment and eligibility and service utilization review can yield substantial savings. A greater emphasis on program integrity is one focus of the federal Patient Protection and Affordable Care Act (ACA), and recent State audits of Medicaid have focused on the same issue. An independent review of current Medicaid program integrity efforts detailed a significant level of activity, as well as numerous additional strategies to reduce claims and eligibility errors.

### *Health Care Malpractice Claims – Expert Witnesses*

[HB 507](#) (failed) would have prohibited a party in an action against a health care provider for an alleged medical injury from presenting testimony from more than two experts in a designated specialty. The court, for good cause shown, could have allowed additional experts. The bill has failed a committee vote. The crossfiled measure, [SB 924](#), will be heard later this month.

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## **HUMAN RESOURCES**

Defeated in committee, [HB 388](#) (failed) would have required each State unit or political subdivision to verify the lawful presence status of an adult before providing most public benefits and would have made it a misdemeanor to provide a false, fictitious, or fraudulent statement or affidavit.

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## **REAL PROPERTY, ESTATES, AND TRUSTS**

The Senate passed [SB 135](#), which requires a holder of a ground lease to comply with an existing requirement to register with the State Department of Assessments and Taxation (SDAT) before the holder may collect any ground rent payments due under the ground lease; bring a civil action against the leasehold tenant to enforce any rights under the ground lease; or obtain a lien on the property.

The bill also repeals provisions relating to the extinguishment of a ground lease not registered with SDAT prior to September 30, 2010, and voids any extinguishment certificates issued by SDAT for failure to register. The bill is in response to the Court of Appeals decision in *Muskin v. State Department of Assessments and Taxation*, which held that the extinguishment of a ground lease for failure to register is unconstitutional.

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## STATE GOVERNMENT

### *Audits*

**HB 843** requires the General Assembly to reduce the budget of a State agency that has three or more repeat audit findings by up to 5% annually until the Office of Legislative Audits (OLA) determines that the agency has satisfactorily addressed the repeat findings. The companion bill is **SB 1089**.

Other legislation (**SB 615**) requires, rather than authorizes, the legislature's Joint Audit Committee (JAC) to recommend to the Governor and the Comptroller that units of government take corrective actions to correct findings in audit reports of a fiscal/compliance nature and repeals the authority of the JAC to grant a waiver from the recommended actions.

**SB 617** requires that audits and reports and schedules of the Office of Legislative Audits be publicly accessible on the official website of a unit of State government and requires that a unit of State government with five or more repeat audit findings make available its reports on actions taken to address audit findings and a schedule of implementation of actions for electronic public access.

### *Public Officials*

A Senate committee did not approve the proposed constitutional amendment (**SB 284**, failed) that would have established that the "speech and debate" immunity for a senator or delegate does not apply in a prosecution for bribery related to the senator's or delegate's official duties. Also, **HB 413** (failed) would have prohibited public officials, except the Governor and Lieutenant Governor, from requesting or using the State Police or any agency employee to provide chauffeured transportation services.

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## TRANSPORTATION

### *Historic Motor Vehicles*

**SB 25**, one of several bills dealing with registration of historic motor vehicles, passed with amendments in the

Senate and is now under consideration in the House. It establishes criteria for historic motor vehicle registrations for qualifying trucks, tractors, and motor homes.

### *Licensing*

**SB 111**, which allows the Motor Vehicle Administration to make identification cards and drivers' licenses valid for eight years rather than five, moved to the House for consideration after passing the Senate unamended.

### *Smoking in Vehicles*

**SB 559** and **HB 621** ban smoking inside a vehicle if a child younger than age eight is a passenger. Violators can be fined a maximum of \$50. Violation would be a primary offense, so that police would be authorized to stop a suspicious vehicle, but would not be counted as a moving violation. Floor debate on the Senate bill has been continued to Monday, March 12. This week a House committee heard testimony on the House bill.

### *Plug-in Vehicles*

**SB 340** advanced to third reader with amendments. The bill reserves space for electric vehicles near plug-in vehicle recharging stations. As amended, the bill prohibits stopping, standing, or parking a vehicle that is not a plug-in vehicle in a space that provides access to a plug-in vehicle recharging station. It requires the vehicle to be plugged in while it is in the space and to vacate the space when the battery is recharged. Fines for violations are allocated to the Transportation Trust Fund.

As of May 2011, Maryland was one of 28 states that had enacted some form of electric vehicle incentive and was estimated to have 80 electric vehicle charging stations, mostly in parking garages.

### *Failed Legislation*

Two transportation bills received unfavorable committee votes this week. **SB 125** (failed) would have required the driver of a car in the adjacent lane to yield to a public bus, and **HB 282** (failed) would have required local law enforcement officers to give warnings rather than citations during the first 30 days that a new speed monitoring system is in use.