

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 39 (Senator Haines)
Education, Health, and Environmental Affairs

State Government - Meetings of Governing Bodies - Actions Before Convening

This bill recognizes the first amendment right of freedom of speech for expressions made by a member of a governing body or of the public during the time prior to the convening of business of that governing body.

Fiscal Summary

State Effect: Any change in State activities would not materially affect State finances.

Local Effect: Any change in local government activities would not materially affect government finances.

Small Business Effect: None.

Analysis

Current Law: In addition to the freedom of speech rights granted to individuals under the first amendment to the U.S. Constitution, the Maryland Declaration of Rights provides that every citizen of the State ought to be allowed to speak, write, and publish his/her sentiments on all subjects and prohibits a court from restricting the freedom of speech and debate during proceedings in the legislature.

The Maryland Senate invites members of the clergy as guests to perform a prayer before convening the body for business. Visiting clergy are given guidelines that direct a speaker to avoid specific references to a specific deity and use vocabulary that allows persons of different faiths to give assent to what is said. The House does not invite clergy

to perform an opening prayer but allows a member to perform a prayer using the same guidelines.

Background: The issue of prayer in public places, in particular during legislative proceedings, has frequently arisen in the context of the interplay between freedom of speech rights and constitutional provisions prohibiting a government from establishing a religion. Prayer in legislative proceedings has been recognized by the Supreme Court as a “deeply embedded tradition” in this country. A survey of legislative prayer practices by the National Conference of State Legislatures found that most states begin their daily legislative sessions with prayer and most use visiting clergy who are provided with guidelines to inform them of the appropriate content for the prayer. Most guidelines advise speakers to give prayers that are nonsectarian and cultivated for a general audience.

In 2004, the Fourth Circuit Court of Appeals limited prayer in legislative proceedings in *Wynne v. Town of Great Falls* 376 F.3d 292 (2004). In this case, the court held that the prayers and invocations used to open town council meetings in Great Falls, South Carolina violated the Establishment Clause of the First Amendment to the U.S. Constitution because they improperly advanced one religion over others by making explicit references to a deity in whose divinity only those of one faith believe. In effect, the decision required formal prayers used to open government meetings to be nonsectarian, meaning that such prayers may contain references to a supreme being but may not invoke a particular faith.

Additional Information

Prior Introductions: SB 1000 of 2005 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

Cross File: None.

Information Source(s): Caroline, Howard, Montgomery, and Prince George’s counties; Cities of Annapolis and Bowie; Department of Legislative Services

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mlm/hlb

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