

# UPCOMING ISSUES 2010

December 2009



## AGRICULTURE

### Raw Milk

During the 2010 Session, legislation may be introduced changing distribution standards for raw milk. Raw milk, which is unpasteurized milk, cannot legally be sold for human consumption in Georgia. The USDA and the CDC condemn drinking of raw milk by humans because of the possibility of serious illness. According to testimony presented to a 2008 House study committee created to review organic farming and the sale and consumption of raw milk, it is being sold at farm sites and farmers markets to consumers who reportedly are using it for human consumption. It is currently being legally sold in Georgia for "pet consumption." Proponents of raw milk consumption cite to eight states where it is legally sold for human consumption.

## APPROPRIATIONS

### A Look at the Fiscal Year 2009 Budget

The original FY09 budget was \$20.4 billion in State General Funds and Motor Fuel Funds. In February of 2008, the Governor lowered the revenue estimate to \$20.1 billion, the final number for HB990, the FY09 General budget. This figure was 7.5% over FY08 audited revenues.

In January 2009, the Governor lowered the revenue estimate to \$17.9 billion for the FY09 Amended budget, or 4.40% below FY08 audited revenues and 11.07% below HB990. In February 2009, again the Governor lowered the revenue estimate to \$17.5 billion, or 6.8% below FY08 and 13.3% below HB990.

After signing the FY09A budget, the Governor lowered the revenue estimate in May to \$17.1 billion, 8.26% below FY08 and 14.7% below HB990. Unaudited final revenue collections for FY09 came in at \$16.8 billion, 10.5% below FY08 revenues and 16.7% below HB990.

### A Look at the Fiscal Year 2010 Budget

In January, the Governor proposed a FY10 budget based on \$18.5 billion in revenues, 3.23% over the original FY09 Amended revenue estimate and 8.20% below HB990; however, this revenue estimate would have been 10.23% over the final FY09 revenues.

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In February, the Governor lowered the estimate to \$16.99 billion, and this estimate formed the basis of HB119, the FY10 General budget. It was 2.64% below a reduced FY09 Amended revenue estimate and 15.6% below HB990. This revenue estimate is 1.36% over the final FY09 revenues.

In August 2009, the Governor projected revenues to come in at around \$16.1 billion, a \$4 billion shortfall from the original HB990 (3.81% below FY09 actual revenues and a 20% decline from HB990).

In November 2009, the state bond documents show a revised draft revenue estimate of \$15.7 billion, a \$4.4 billion shortfall from the original HB990 (6.2% below FY09 actual revenues and a 22% decline from HB990). This revenue estimate would require \$1.26 billion in additional cuts to the FY10 amended budget.

As of November 2009, state revenues are tracking at 2005 levels, equivalent to a \$15.8 billion revenue estimate; however, Dr. Rajiv Daiwan with the GSU Economic Forecasting Center estimates that revenues will fall by seven percent over FY09, equivalent to a \$1.4 billion shortfall.

In July, the Governor's initial proposed FY10 cuts included:

- 1) Three days of furloughs (\$45 million/day): \$135 million;
- 2) Use of OPEB Trust Fund Reserves: \$142 million;
- 3) Five percent in across the board agency reductions (three percent from DOE and Peach-care/Medicaid): \$552 million.

Much of this initial proposal will likely be re-worked in the Governor's budget submission based on dialogue with the agencies. Currently, agencies have requested over \$100 million in new funds in FY10 to cover the state match for federal emergency flood assistance, additional funds for state mental health hospitals, and growth in K-12 enrollments.

#### A Look at the Fiscal Year 2011 Budget

Currently, state bond documents show a state revenue estimate of 3.8 percent growth in FY11, equivalent to \$614 million in additional funds. Dr. Daiwan estimates growth will be closer to two percent, equivalent to around \$300 million in additional funds.

In FY11, the state will have to cover over \$1 billion in stimulus, reserves and one-time funds that will no longer be available. Depending on where the Governor sets the revenue estimate, FY11 will require between \$400-\$700 million in additional cuts on top of cuts already made in FY10. Currently, Congress is considering further assistance to states which could be used in part to address this shortfall.

Also, in FY11, agencies have requested over \$450 million in new funds to cover growth in Medicaid, K-12, and higher education and to cover the needs of the state mental health hospitals.

## BANKING & FINANCIAL INSTITUTIONS

Georgia has been hit hard by the economic recession. Many parts of the state have experienced high residential foreclosure rates, and commercial foreclosures are becoming more common. In addition, Georgia currently leads the nation in the number of bank failures. Legislation may be introduced to mitigate the number of foreclosures and bank failures in Georgia.

In 2009, the Georgia Senate passed Senate Bill 57, sponsored by Senator Bill Hamrick, which changes provisions of the "Georgia Fair Lending Act" related to subprime home loans. This legislation places limitations on when late payments on mortgages may be charged and restricts how late payments are assessed. The bill would allow borrowers to prepay their subprime loans without facing penalties. In addition, creditors would only be allowed to make a home loan to a borrower after determining the borrower would be able to afford the monthly payment on the loan. This bill also designates that the mortgage broker would be considered an agent of the borrower. As an agent of the borrower, the broker must make certain disclosures to the borrower and make reasonable efforts to secure a loan that is in the best interest of the borrower. While Senate Bill 57 did not ultimately pass the House, it is available for House consideration in the 2010 Legislative Session.

## EDUCATION

### School Choice

The issue of school choice has found its way to the forefront of educational policy decisions in many states across the nation, including Georgia. In the past two years, the Georgia General Assembly has passed legislation that created a charter school commission, provided scholarships to special needs students, and offered state income tax credits to individuals and couples who donate money to non-profit organizations that provide scholarships to public students to attend private schools.

Two bills, House Bill 251 and Senate Bill 90 were introduced in the 2009 Session that addressed the issue of school choice within school districts and statewide. House Bill 251, signed into law, now allows parents to send their child to a public school of their choice that is located within their school district. Senate Bill 90, available for consideration in the 2010 Legislative Session, provides a statewide voucher program available to all parents that allows tax dollars spent on education to follow the student to the public or private school of their choice.

### High School Graduation

The high school graduation rate is a priority that the General Assembly addressed aggressively in previous Legislative Sessions. With Georgia recently achieving a state record graduation rate of 79%, there is still room for improvement. In the 2009 Legislative Session, the General Assembly passed the "Move on When Ready Act" which allows high school students with initiative the ability to complete their high school education on their own terms, by allowing those who are in their last two years of high school to complete their secondary education at community colleges or other types of technical schools.

Additionally, Senate Bill 278 was introduced late in the 2009 Session. It provides ninth grade stu-

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dents a curriculum that will allow them the opportunity to graduate high school in three years and become eligible to receive a graduate tuition grant in an amount up to \$5000.

### Charter School Funding

Georgia has seen exceptional growth in the number of charter schools in the state, growing from 35 in 2004 to 122 in 2009. In 2009, 81 percent of charter schools met Adequate Yearly Progress (AYP) goals versus 79 percent of traditional public schools. Charter schools have achieved this success, operating with funds well below the traditional public school level. In fact, charter schools are generally not included in capital outlay or facilities funding, requiring the schools to rely on operational funding to secure facilities.

Recently passed legislation such as House Bill 881, which established the Georgia Charter Schools Commission allows the Commission to seek additional funding and grants for charter schools. Additionally, House Bill 555 passed in 2009, which allows commission charter schools to receive allocations for facilities funds and allows start-up charter schools to access any school building not being used by the local board of education within the district. The Commission was recently sued by school districts in Georgia, challenging the Commission's power to send supplemental funds to the charter schools in these districts.

## ETHICS

### "Pay-to-Play" Legislation

In 2009, the Georgia Senate passed Senate Bill 70, sponsored by Senator George Hooks, which aims to increase disclosure of campaign contributions by state contractors and regulated businesses. This legislation would require a business's contribution relating to a public office having supervisory authority over an agency to be reported if: the business has had or sought a contract or grant from the agency within the past two years; or the business is regulated by the agency or public office. Both the person making the contribution and the business in question would have a duty to file a report to the extent that they knew or reasonably should have known of the contribution. Senator Hooks has stated this bill was inspired by recent ethics scandals in Illinois and the "pay-to-play" legislation passed in that state last year. While Senate Bill 70 did not pass the House, this legislation may be taken up again in 2010.

## FINANCE

### Local Sales Tax Collection

Currently, the Georgia Department of Revenue (GDOR) collects all local sales tax revenue; the funds are then disbursed back to the respective local government entity. There has been debate about whether the local governments should have the ability to collect the revenue in-house or by an independent third party. All Georgia local governments rely upon ad valorem property tax as a primary revenue source; however, sales tax collections are authorized for local government use through Local Option Sales (LOST), Special Purpose Local Option Sales (SPLOST), and Educa-

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tion Local Option Sales Taxes (ELOST). The GDOR receives these collections from retail vending locations and sends a check back to the respective county which then drafts a check to the various municipalities in that county per the controlling inter-governmental agreement.<sup>[1]</sup> Thirty two states operate in the same vein as Georgia—the state department of revenue collects both state and local portions of the sales tax. The GDOR requires online sales tax reporting for certain high-profit businesses; however, paper filing is still acceptable for most small business venders.<sup>[2]</sup> The online filing operation was made available in June 2006. The GDOR reports that the state has 74 sales tax auditors who completed over 1,180 audits in Fiscal Year 2008 attributing to over \$71 million in payments.

The GDOR assesses a statutory 1 percent collection fee to local governments for revenue collection. It is noted that most departments of revenue charge and keep accrued interest. This fee annually garners approximately \$40 million for the GDOR.

States that currently provide local governments the option to collect and audit their own sales/use taxes are: Alabama, Arizona, Louisiana, Colorado, and Alaska. Local autonomy in revenue collection has generally turned on issues relating to auditing, timeliness of payments, and use of information. Legislation may be introduced to authorize local governments to contract with a private third party to collect local sales tax revenue.

Currently, House Bills 356 and 458 address this issue and provide for various methods for private or internal sales tax collection.

Local sales tax collection has received attention by gubernatorial candidates and Atlanta mayoral candidates.

#### Jobs, Opportunity, and Business Success Act

This vetoed legislation from 2009 may return in multiple pieces of legislation. Some components of the vetoed legislation include the following:

There was a provision which suspends filing fees for new businesses and limited liability companies and partnerships as collected by the Secretary of State; the estimated fiscal impact for FY2010 was \$28,700,000.

The Georgia Works Tax Credit is a quarterly credit for amounts between \$25 and \$125 per unemployed individual hired as an employee for up to four calendar quarters; this applies to unemployment insurance tax obligations. The employee had to file an unemployment claim, be likely to exhaust benefits, have no promise of return to employment, and still 8 weeks of eligibility remaining on the current claim at the time of hire. Employment must be for at least 30 hours per week for 24 consecutive months. The credit cannot reduce tax liability to zero, but may be carried forward to a later quarter but not to a subsequent calendar year.

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Further, there was a provision requiring creditable employees to be verified for eligibility to work in the United States; an employer utilizing the “E-Verify” federal system will be eligible to apply for and receive an income tax credit for \$2,400 for each creditable employee at the completion of 24 months of consecutive employment. This credit may be carried forward for two years. The estimated fiscal impact through FY2013 is \$594,700,000.

Certain retail dealers would no longer be required to remit sales and use tax liability that includes estimated tax liability. The estimated fiscal impact was \$186,000,000.

### Real Property Valuation and Appraisals

In 2009, the General Assembly passed several pieces of legislation regarding real property valuation and appraisal. Senate Bills 55 and 240 addressed how to determine fair market value and provided for a quicker avenue to binding arbitration for homeowners when appealing their county property valuation assessment.

The Senate Property Appraisal Study Committee is currently receiving testimony from property tax experts and advocacy groups, property owners—both private and commercial, and local government officials about the current state of property tax collection, valuation and appraisal and the appeals process. Property is assessed at fair market value, and that value must be set uniformly among similarly situated real parcels. The Study Committee desires to determine the merits and demerits of the current system and ascertain whether legislation could amend the process to protect homeowners and maintain efficient and fair appraisals for all parcels.

## HEALTH & HUMAN SERVICES

### Permanent Funding for Georgia’s Trauma Care System

Georgia still needs a coordinated trauma care system with permanent funding. Trauma is the number one killer of Americans between the ages of one and 44, and the number three cause of death across all age groups. Georgia’s traumatic death rate is 20 percent higher than the national average. If Georgia simply achieved the national average, 712 lives would be saved each year. Georgia has only 15 designated trauma centers, or facilities that voluntarily meet guidelines established by the state and the American College of Surgeons’ Committee on Trauma. The current centers are dispersed among 10 counties, and large areas are not adequately served. In addition, several counties still do not have a 911 emergency call system. A trauma patient’s chances of survival increase dramatically if he or she receives care within the “golden hour” immediately following the injury. The “golden hour” makes rapid response critical by EMS technicians on the ground and in the air. Unfortunately, millions of Georgians live and work at least two hours away from an adequate trauma care center, even in urban and suburban areas. According to the Georgia Department of Transportation, Georgians are four times more likely to die in a vehicular crash in a rural area than in an urban area, due to poor access to trauma care.

Ultimately, Georgia needs long-term, sustainable funding to cover existing costs and make improvements to the current trauma care network, as well as to help reduce the number of trauma-

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related deaths by closing gaps in coverage, especially in rural parts of the state. Since 2006, the General Assembly has considered ways to attain permanent funding for trauma care hospitals and EMS providers. In 2007, the General Assembly passed Senate Bill 60, which created the Georgia Trauma Care Network Commission to study the infrastructure of our trauma system and to consider possible funding mechanisms. During the 2008 session, a measure to permanently fund the trauma care network through a \$10 car tag fee was introduced but did not pass; however, Governor Perdue did set aside a one-time \$58.9 million appropriation for our trauma system in FY 2008, which the Commission recently distributed to trauma care providers. 2009's House Bill 160, known as the "super speeder" bill, imposes an additional \$200 fee on drivers convicted of driving at a speed of 85 miles per hour or more on any road or highway or 75 miles per hour or more on any two-lane road or highway. Money collected from these fees will go into the State's general fund with the intent to fund a trauma care system in Georgia. Despite this, Georgia still needs a consistent funding stream. It is expected that the General Assembly will continue to confront this issue in 2010.

#### Patient-Centered Health Care Reform

National health care reform legislation currently being considered by Congress has the potential to substantially change the way many Americans obtain health insurance and to provide new avenues for coverage for the approximately 14 percent of Americans who are currently uninsured. However, such reform may also overstep the boundaries of federal power and unduly interfere with individual control of medical decision making. In particular, lawmakers in several states have expressed concern that the proposed reforms violate the limits on Congressional power under the U.S. Constitution. While Congress is limited to the powers granted to it under Article I of the Constitution, in recent American history Congress has at times used the Commerce Clause as justification to enact health care related legislation.; however, proposals to require all Americans to have health insurance, either through a private plan or "public option," or to, perhaps further down the road, have a nationalized health care system may go beyond federal government's Commerce Clause powers and interfere with the powers granted to the states under the Tenth Amendment.

In reaction to such concerns, Arizona recently passed H.C.R. 2014, which proposes an amendment to the state's constitution that would prohibit any law from compelling a person or employer to participate in any health care program. The amendment would also prohibit government from imposing a penalty or fine on the purchase of health care services directly, as well as guarantee the right to purchase or sale private health insurance. Arizonians will vote on H.C.R. 2014 in the November 2010 election. Recently, similar legislation, Senate Resolution 794, was prefiled by Senator Judson Hill for the 2010 Session. Other states that will be considering such measures include: Florida, Iowa, Louisiana, Minnesota, Missouri, Montana, North Carolina, New Hampshire, Oklahoma, South Carolina, and Utah.

As the national conversation continues on health care reform, lawmakers in Georgia are likely to focus on patient-centered solutions as a means of guaranteeing the highest quality and most affordable health care for all. Such solutions aim to protect the patient-physician relationship by empowering individuals to choose a private health insurance plan, privately contract with the doctor of their choice, and guaranteeing patients the freedom to consult with their physician in deciding what is best for them and their families.

## HIGHER EDUCATION

### Georgia Lottery Corporation and the Georgia HOPE Scholarship Program

While the Georgia Lottery has been immensely successful in funding HOPE Scholarships and pre-K programs, there has been growing concern that lottery revenues will no longer be able to keep pace with growing demands for these programs.

The state's lottery revenue growth using traditional lottery games appears to have reached its apex and has slowed to an annual growth rate of less than one percent. Meanwhile, lottery expenditures for HOPE scholarships and pre-K programs are projected to continue to increase at an annual rate of over six percent and exceed revenue brought in through the Georgia Lottery starting in fiscal year 2010.

Given these projections, Georgia leaders will need to consider ways to address these likely short-falls.

### Merging of Georgia Technical and Two-year Colleges

In 2008, Governor Sonny Perdue's Tough Choices or Tough Times Working Group made several recommendations aimed at better preparing Georgia's education system for the demands of a global economy.

One of these recommendations was the proposal to create a comprehensive community college system by merging the technical colleges and two-year colleges in Georgia. The goal behind this is to establish a single, seamless entry point for all students and to remove all duplication of teaching and administrative resources between the Technical College System of Georgia and the University System of Georgia. This recommendation has been met with some criticism, including some representatives of two-year colleges who fear moving their institutions out of the University System of Georgia would lower their prestige.

While no move has been made to implement this recommendation, it is likely to be a source of debate among lawmakers in the future.

### Medical College of Georgia

This institution is expanding with ongoing construction in Athens. There may be requests for funding or changes made to existing funding efforts due to the state of the budget.

### Carry-Forward of Certain Funds

The University System of Georgia would like to continue to carry over certain surplus funds such as tuition from one fiscal year to the next. They are allowed to do this under a stipulation that expires this fiscal year.

### Georgia Higher Education Facilities Authority

The University System of Georgia may pursue raising the current cap on revenue bonds issued by the Authority.



## Insurance & Labor

### The Insurance Premium Tax

Traditionally, insurance companies are taxed on the premiums they write. Georgia's insurance premium tax rate is currently one of the highest in the nation and over twice the national average. The revenue from the premium tax has proven to be a great windfall for the state and local governments in Georgia. In 2006 alone, the premium tax generated over \$78,264,085 for the state and over \$82,205,048 for local governments. All state revenue collected from the premium tax is deposited in the state's general fund.

### Tax Rate and Structure

The structure of the insurance premium tax in Georgia is quite simple, and since 1955, there has been no change in the premium tax rate or in the tax base. The tax base is the gross direct premiums received on policies issued in Georgia. Georgia's tax rate is 2.25 percent. The state also collects an additional tax on premiums and disburses it to local governments. These local taxes are an additional 1.0 percent of the life, accident and sickness, and HMO premiums, and 2.5 percent of property and casualty premiums; therefore, the true tax rate on property and casualty premiums is 4.75 percent while life, accident and sickness, and HMO premiums are taxed at 3.25 percent.

### Retaliatory Tax

Authorized under O.C.G.A. §33-3-26, the retaliatory tax essentially penalizes a company domiciled in a state with a premium tax rate that is higher than that of Georgia. Likewise, a Georgia company writing in a state with a premium tax rate lower than Georgia's will have to pay the computed difference to that particular state. For example, if a Tennessee property and casualty company writes a policy in Georgia, it pays Georgia's 4.75 percent tax. If a Georgia company sells a policy in Tennessee, which has 2.50 percent rate, Tennessee collects its 2.50 percent plus the 2.25 percent difference from the Georgia-based company. In the simplest of terms, a Georgia-based insurer writing policies in any state with a lower insurance premium tax than Georgia's will always have to pay Georgia's 4.75 percent rate.

### Possible Action

The reduction or eventual elimination of the state's portion of the premium tax would significantly reduce a Georgia-based insurer's burden of paying the retaliatory tax when writing in other states. A reduced tax would also encourage new insurers to move to Georgia while preventing Georgia-domiciled companies from re-locating to other states. Finally, a reduced tax would benefit the consumer by lowering insurance premiums.

### Prescription Drugs and Prior Approval

Traditionally, insurers use a number of utilization controls on the use of services to control costs and to ensure that only medically necessary services are reimbursed. Consequently, an insurer may apply a cost-saving process on prescription drugs, such as: a requirement for prior approval, exclusion of specific drugs, limits on the number of brand name drugs that can be prescribed for a patient, or a requirement that drugs be on a "preferred" list in order to be covered. Prior approval simply means that the insurer requires the prescribing provider to seek prior approval from the

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insurer for an otherwise covered outpatient drug. The process, however, is an inconvenience to physicians, pharmacists, insurers, and patients.

Based on testimony, the 2007 and 2008 Senate Study Committee on Prior Approvals and Prescription Drugs determined that prior approval is ultimately approved between 87 and 99 percent of the time. This only serves to reinforce the notion that prior approval, in most instances, is not only unnecessary, but it is also an inconvenience, burden, and cost to providers, pharmacists, insurers, and patients. The Committee concluded that the best drug is most often selected by the provider and not by the insurer or Pharmacy Benefit Manager (PBM). Legislation was introduced by Senator Jack Murphy in 2009 that restricts the practice of prior approval in Georgia. Although this legislation never reached the Senate Floor in 2009, it is expected to be readdressed in 2010.

#### Insurance Coverage for Orally Administered Anticancer Medication

In the last days of the 2009 legislative session, Senator Don Thomas introduced Senate Bill 245 which requires individual and group health benefit plans that provide coverage for cancer chemotherapy treatment to provide coverage for a prescribed, orally administered anticancer medication used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits.

This legislation is necessary because the economics and practice of cancer medicine have not caught up with the convenience of oral drugs. The oral drugs can free patients from frequent trips to a clinic for IV chemotherapy treatment. Fewer visits might save the health system money as well as time. And the pills are a step toward making cancer a manageable chronic condition, like diabetes.

However, drugs that are infused at a clinic are typically paid for as a medical benefit, like surgery. Pills, though, are usually covered by prescription drug plans, which are typically much less generous; for expensive cancer pills, patients might face huge co-payments or quickly exceed an annual coverage limit. Although sometimes a single insurer is involved, many times, a separate company — a pharmacy benefit manager (PBM) — provides the prescription drug coverage.

Currently, only Oregon has laws requiring insurance companies to provide equivalent coverage of oral and intravenous cancer drugs.

#### Unemployment Insurance Program

Unemployment insurance (UI) pays temporary cash benefits to workers who have lost jobs through no fault of their own. The UI system is administered as a federal-state partnership. To finance the program, the State levies and collects payroll taxes from employers. The State undertakes most UI administrative activities related to both paying benefits and collecting from employers the payroll taxes that support the program. The funds collected are managed in a trust fund administered by the federal government.

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Georgia now has the lowest unemployment insurance tax rates in the Southeast, while a recent influx of federal stimulus funding has helped keep the trust fund solvent. However, history has shown that the trust fund's solvency is fleeting and can become very unstable during periods of high unemployment. Some of the specific issues the legislature may address in 2010 concerning the unemployment insurance program include the following:

- The UI system operates counter-cyclically, paying out benefits during recessionary times and collecting revenue during recovery times. Is there a better alternative to this pattern which would provide for a more stable trust fund balance in times of recession and recovery periods?
- How many months' worth of benefit payments should Georgia's UI trust fund maintain to provide an adequate reserve of money available to be paid as benefits?
- What is the ratio of Georgia's UI trust fund balance to Georgia's annual total wages in covered employment that would fund an adequate reserve?
- Is Georgia's UI experience rating system and benefit financing model sound and sustainable? Should the system and the model be amended or revamped?

## JUDICIARY

### "Sexting"

New technology often leads to new ways of committing crimes, sometimes with little consequence due to unforeseen loopholes in the law. State legislatures must ensure that their criminal codes can keep up. During the 2010 session, lawmakers will have the opportunity to clarify the law to include "sexting" – which is the sending or receipt of lewd pictures via cell phone text messaging.

Here in Georgia, vulgar text messages either sent or received by a minor could be used to convict someone for child pornography, sexual exploitation of a minor, enticing a minor for indecent purposes, etc, all of which are felonies. Perhaps due to the severity of these crimes, an untold number of sexting-by-minors cases likely never come to court because they are handled instead by parents and schools. If so, then the sexting problem is probably more widespread than currently thought.

Conversely, the lack of a specific sexting definition may lead some prosecutors not to indict or judges and juries not to convict in more serious cases. Sexual predators, on the other hand, are not behind the times when it comes to sexting. In June, the Georgia Court of Appeals ruled that a defendant's sexually explicit text messages to a minor did not violate the statute relating to obscene telephone contact with a minor because text messages are not oral (See Frix v. State, 298 Ga. App. 538). In Albany, Georgia, a high school teacher was fired earlier this year for sending sexual text messages to a female student.; however, no criminal charges were filed.

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Defining what sexting is and how the crime should be treated in Georgia will help judges and attorneys to correctly interpret the law.

### Evidence Code and Juvenile Code Rewrites

Last year, Representative Wendell Willard introduced House Bill 24 for the purpose of bringing Georgia law into compliance with the Federal Rules of Evidence. HB 24 is a massive undertaking that never made it to a vote on the House floor, but will likely be seen again during the 2010 legislative session. The bill may have been slowed down due to its implications for lawyers, judges and court employees as well as its unknown effect on issues like tort reform.

For the most part, HB 24 follows current Georgia evidence law. Certain statutes will be changed significantly in order to comply with the Federal Rules of Evidence, notably those involving witness credibility, evidence in written form, and hearsay. Ultimately, the passage of HB 24 will create conformity between Georgia courts and the federal judicial system, with a goal of greater efficiency and consistency.

The Georgia juvenile code has not been revised in several decades, though the issue has been attempted several times before. The juvenile code governs interactions between minors and the judicial system. The Senate Judiciary Committee set up a subcommittee for the purpose of studying the proposed legislation, and this subcommittee has held meetings throughout the interim to discuss the issues involved. As a result, an amended version of the bill may be presented early next year.

The legislation in question is Senate Bill 292, also known as the Child Protection and Public Safety Act, introduced by Senator Bill Hamrick in April. The current juvenile code is vast and confusing, in addition to being out of sync with several federal initiatives. SB 292 is the result of collaboration between the State Bar of Georgia, juvenile law experts and the Barton Child Law Clinic at Emory University School of Law. It seems likely that the Senate Judiciary Committee will take the opportunity to make improvements to the juvenile code in 2010.

## PUBLIC SAFETY

### Driver's License Exams in English Only

Senate Bill 67, introduced by Senator Jack Murphy in 2009, requires all written and oral driver's license exams to be conducted only in English.; however, this legislation will exempt examinations that are administered to persons eligible for a temporary license pursuant to Code Section 40-5-21.1 in a language other than English. Such eligible persons include applicants who present in person valid documentary evidence of:

1. Admission to the U.S. in a valid, unexpired nonimmigrant status;
2. Political Asylum;
3. Refugee status;
4. An approved application for temporary protected status in the U.S.;

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5. Approved deferred action status;
6. Other federal documentation verified by the Department of Homeland Security to be valid documentary evidence of lawful presence in the United States under federal immigration law; or
7. Verification of lawful presence through the Systematic Alien Verification for Entitlements (SAVE) Program established by the United States Bureau of Citizenship and Immigration Services.

Although this legislation was approved by both chambers on Day 40, a last minute amendment prevented it from being approved by the Senate.

#### Driving while Distracted by Cell Phone or Texting

Currently, six states (California, Connecticut, New Jersey, New York, Oregon and Washington), the District of Columbia, and the Virgin Islands prohibit all drivers from talking on handheld cell phones while driving. With the exception of Washington State, these laws are all primary enforcement — an officer may ticket a driver for using a handheld cell phone while driving without any other traffic offense taking place.

No state completely bans all types of cell phone use (handheld and hands-free) for all drivers, but many prohibit cell phone use by certain segments of the population:

- Novice Drivers (Usually under 18): 21 states and the District of Columbia ban all cell use by novice drivers.
- School Bus Drivers: In 17 states and the District of Columbia, school bus drivers are prohibited from all cell phone use when passengers are present.

Text messaging poses an even greater public danger. In response, 18 states and the District of Columbia now ban text messaging for all drivers, while nine states prohibit only novice drivers from text messaging.

In 2009, Senator Horacena Tate introduced Senate Bill 218 which assesses two points on a driving record and imposes a fine of up to \$50 when a driver is convicted of engaging in an action that distracts the driver from the safe operation of a motor vehicle, including the use of a wireless communications device to write, send, or read a text based communication, when such action contributes to an accident resulting in physical injury or property damage. The legislation passed the Senate Public Safety Committee, but failed to be addressed on the Senate Floor.

Similar legislation, House Bill 23, was introduced by Representative Matt Ramsey. His legislation prohibits any driver, under 18 years of age, and who has an instruction permit or a Class D license, from operating a motor vehicle while engaging in wireless communication using a wireless telecommunications device. Such driver will be punished by a fine from \$50 to \$100. If the driver is involved in an at-fault accident at the time of a violation, then the fine will be doubled and the operator's driver's license will be suspended. A first suspension will be for 90 days or until the

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offender turns 18 years of age, whichever is sooner. A second or subsequent suspension will be for six months or until the offender turns 18 years of age, whichever is sooner. House Bill 23 passed the Senate Public Safety Committee, but failed to be addressed on the Senate Floor.

## REAPPORTIONMENT & REDISTRICTING

The United States Census commences counting on January 1, 2010. The 435 U.S. House of Representatives seats are reallocated every 10 years after the decennial Census count of every person in this country which includes non-citizens and illegal immigrants. In 1790, the first Census Act provided that the enumeration of that year would count "inhabitants" and "distinguish" various subgroups by age, sex, and status as free persons. By 1980 there were two census forms. The shorter form went to every person physically present in the country and was used to establish congressional apportionment. It had no question pertaining to an individual's citizenship or legal status as a resident. The longer form gathered various kinds of socioeconomic information including citizenship status, but it went only to a sample of U.S. households. That pattern was repeated in 1990 and 2000.

The 2010 census will use only the short form. The long form has been replaced by the Census Bureau's ongoing American Community Survey. These numbers are important for federal representation, state senate and state house seats, local districts, and for federal funds. The fastest growing states are growing at a slower pace than was projected at the mid-point of the decade, and this is directly related to the state of the American economy.

Of the top 20 fastest-growing states, all but four showed slower growth this year compared with last year and only one of the top 10 (Colorado) grew faster; Utah was the fastest-growing state (by percentage). Current Electoral College allocation predictions show Texas gaining up to four seats, Arizona gaining two seats, with Georgia, Florida, Utah, Nevada, Oregon, Washington and South Carolina each gaining one seat in the U.S. House.

At the national level, the United States is estimated to have 308 million in total population with 283 million citizens. The counting of noncitizens for representation purposes has been controversial. Including the total population, each U.S. House seat would contain about 708,000 persons; however, including the citizen population, each U.S. House would contain about 650,000 persons. These estimates take into account the slowdown in the economy the past two years. It is interesting to note that for the first time since its admission to the Union, California will not gain a seat in the U.S. House of Representatives.

Election Data Services predicts, at a minimum, that Georgia will show 10,016,180 persons in the state during the Census count. Georgia would surpass Michigan to become the 8<sup>th</sup> most populous state. This means that each of Georgia's 14 Congressional seats should have about 715,400 in each district.

Further, using this population estimate, each Georgia State Senate seat would hold about 178,860 persons; each State House seat would hold about 55,645 persons.



## REGULATED INDUSTRIES & UTILITIES

The Senate Regulated Industries Committee retains numerous pieces of legislation for consideration during the 2010 session. House Bill 158 requires that new multi-unit residential structures be equipped to measure water usage by each tenant or unit, and that the owner of that building charge tenants separately for their water usage. The usage must be prorated for common areas. The language was inserted into House Bill 169; however, it failed to pass, as well. House Bill 168 deletes the Universal Access Fund which currently requires certain telecommunication companies to support from their general revenue for the benefit of local exchange carriers. Similar, but not mirror, legislation may be considered by the Senate Economic Development Committee. House Bill 579 authorizes any entity that is granted a general or residential contractor license, and where the qualified agent had died prior to receipt of the license, to remain eligible to receive the license upon submission of a new agent. House Bill 614 created a Prescription Monitoring program which sought to reduce abuse of controlled substances, reducing duplicative prescribing and overprescribing by requiring specific data to be collected and shared electronically. Senate Bill 148 requires periodic review of all existing regulatory boards to ensure its necessity in the current business climate; the language was inserted into Senate Bill 149 which was passed by the House with committee substitute language. Senate Bill 192 requires any authority or persons planning to provide wireless telecommunications to adopt specific planning and zoning regulations for wireless tower site selection and construction. Senate Bill 247 set forth requirements that new home construction must provide accessibility for disabled and senior citizen home owners.

## STATE & LOCAL GOVERNEMENT

### Local Governments

The General Assembly has considered ways to help local governments during tight economic times. One method considered last session was allowing the procurement of vehicles and equipment by local governments at lower than prevailing costs through a state financing authority. This legislation passed both houses but was vetoed by the Governor. Another solution to allow local governments more purchasing or leasing options may be reintroduced this session.

## STATE INSTITUTIONS & PROPERTY

### Cost of Housing Inmates

The Department of Corrections is closely examining the cost of housing state inmates. The rising cost of medical care, as well as the various costs of managing facilities will be examined. The department will also look at ways to reduce costs by housing inmates in private or local facilities. Despite rising costs, the General Assembly and the department are considering steps to mitigate recidivism, and to provide treatment before inmates are released.

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### Probation Management

The Department of Corrections is also reviewing probation management solutions. GPS monitoring for probationers and parolees is an issue that is receiving further study in hopes that some offenders can be monitored outside of an institution with greater reductions in recidivism and at a lower cost to traditional incarceration.

## URBAN AFFAIRS

### MARTA

There is continued discussion over how to grow MARTA without the system becoming cost prohibitive. Facing debt and rising costs, expansion of the system is not likely. Some legislators have considered combining MARTA with GRTA or bringing both under one state agency.

## VETERANS, MILITARY & HOMELAND SECURITY

### Deportation of Incarcerated Illegal Immigrants

Senate Bill 136, introduced by Senator John Douglas, directs the State to establish a process and agreements among multiple state, local, and federal agencies for the implementation of the United States Immigration and Customs Enforcement's (ICE) Rapid Removal of Eligible Parolees Accepted for Transfer (REPAT) Program for the purpose of deporting aliens in the state prison system who are eligible for parole and deportation. The Rapid REPAT program is a federal ICE program that provides for early conditional release of a state alien prisoner to the custody of ICE for deportation only.

The Department of Corrections must include as a part of the prisoner intake process a procedure to identify aliens eligible for deportation. The identity and information regarding aliens eligible for deportation will be provided to the board. The board will then consider such inmate for a parole conditioned on deportation. Alien prisoners who would otherwise be ineligible for parole will not become eligible by reason of eligibility for deportation. No tentative parole release date will be set until the prisoner has served the minimum time for parole. Any grant of parole to an alien prisoner who is subject to deportation must be conditioned upon such prisoner abiding by the deportation order and all immigration laws of the U.S.

The board must notify and obtain acknowledgment in writing that notice was given to each eligible alien that illegal reentry into the U.S. will result in the alien's return to the custody of DOC to complete the remainder of his or her original sentence in addition to serving the entire sentence without parole for the subsequent offense. Prior to granting parole and deportation, the alien must also waive all rights of extradition and right to a parole revocation hearing in the event such alien violates a condition of parole or any immigration law.

This legislation is currently pending in the House and will surely be addressed during the 2010 legislative session.