

LEGISLATIVE UPDATE
“FINAL GAVEL”

2nd SESSION OF THE
150TH GENERAL ASSEMBLY

AS OF: 8 July 2020
EXECUTIVE SUMMARY
"Is it solar powered Harris?"
Governor John Carney

The second Session of the 150th General Assembly, begun like most recent years – with another substantial surplus pushing some \$400 million for FY’21 in January 2020, Delaware's overall economy improving (still lagging the Country), and the Governor had submitted a budget that was going to spend money for Wilmington schools, clean water and a record-breaking Bond Bill of some \$970million. Then it happened.

The virus and resulting pandemic put a stop to everything. By 13 March 2020, and faced with so many unknowns as to how the disease was spreading, who gets it, who gets sick, and who is most vulnerable, the Governor declared a sweeping State of Emergency (SOE) on 16 March. This closed almost the entire economy, our schools, and the General Assembly. After some 23 Modifications to the original SOE, much of what was expected as to legislation, debate on issues, and surpluses being spent on various projects, never came true.

This Session did not address efforts to fully legalize marijuana for recreational use, did not increase the minimum wage to \$15/hr., no attempt to repeal the death penalty, or conversely, pass doctor assisted suicide, no gun issues, no reduction in the 4% realty transfer tax, no action on establishing the Clean Water Fund and its structure, and no changes to the manufactured housing code.

The Assembly’s Leadership declared that any work would be completed by electronic means (zoom) and passed a Joint Resolution to codify those actions. They also said the coming work before 30 June was to pass bills only related to the Covid-19 pandemic, various charter changes, Corporate Bar bills, two bills related to social justice (Sen Brown’s Constitutional Amendment and Rep Chukwuocha banning the use of chokeholds by police) and the money bills.

Essentially, the virus focused the Assembly's efforts to only what is necessary or non-controversial, passing a budget that maintained as best as possible spending, with no new expenditures or initiatives getting funded.

Of special note, however, was the known retirement of Senator Harris McDowell (D) of the 1st District in Wilmington (he had announced this last June). During the many accolades and speeches made by the Senators, the Governor joined the zoom near midnight on June 30th and thanked Senator McDowell for his tremendous service to the Delaware. Upon Senator McDowell's opening of gifts from his peers, the Governor saw a large mantel clock being unwrapped and quipped – "Is it solar powered Harris?"

This a direct reference to the recent attempts by Senator McDowell to pass his new Renewable Energy Portfolio Standard bill SB250, that would dramatically change how much renewable energy is purchased by DP&L, the Co-op and DEMEC organizations – and as a result, cause significant increases in energy costs for rate payers. The bill did not get worked, however.

Also notable in the Senate was the recognition of Ms. Joy Bower retiring as the Secretary of the Senate, and for her overall 32 years of state service, and Mr. David Burris leaving as the Senate Minority Chief of Staff.

Over in the House – there was also a very notable retirement – Representative Quinn Johnson made his announcement on Monday 29 June, declaring it was time to return to his family and give them his undivided attention. He leaves after 12 years, the last 4 serving as the Co-chair of the Joint Finance Committee. This is the same committee that Senator McDowell serves, and was the co-Chair for many years. Clearly, we will have a new Senator and a new Representative, but who will become the JFC Chairs remains a significant question for January 2021.

As to the money bills, the Assembly passed the Budget by Thursday 25 June with the two remaining money bills, Bond and Grant-in-Aid, voted on in the Senate by the 25th, but not getting to the House until Monday the 29th. By Tuesday night, everything was done, the Senate closing their Special Session at 12:33, and the House ending nearly 15 minutes prior at 12:14 AM.

Here are some highlights from this year:

The FY'21 Budget is \$4.525billion.

Included in this year's budget were increases in spending for contract negotiated state employees of approximately 2%; No increases for other state employees;

They took about \$63m from the Budget Stabilization Fund (budget smoothing) with \$63m remaining; No cuts to schools; No layoffs of state employees; Some new construction and renovations are delayed. Budget growth about 1.6% from last year.

A breakdown of spending for the last number of years as compared to the new FY2021 budget is as follows:

FY2016 - 5 years ago	
General Operating Budget	\$3.985 billion
Bond/Capital Improvement Bill	\$ 456 million
Grant-in-Aid	\$43.005 million
FY2017 - 4 years ago	
General Operating Budget	\$4.084 billion
Bond/Capital Improvement Bill	\$501 million
Grant-in-Aid	\$45.9 million
FY2018 - 3 years ago	
General Operating Budget	\$4.11 billion
Bond/Capital Improvement Bill	\$590 million
Grant-in-Aid	\$37.2 million
FY2019 - 2 years ago	
General Operating Budget	\$4.27 billion
Bond/Capital Improvement Bill	\$816 million
Grant-in-Aid	\$52.1 million
FY2020 – last year	
General Operating Budget *	\$4.57billion
Bond/Capital Improvement Bill	\$863million
Grant-in-Aid	\$55million
FY2021	
General Operating Budget	\$4.525billion
Bond/Capital Improvement Bill	\$707million
Grant-in-Aid	\$54.4million

With virtually no legislation getting worked, the impact on the commercial and residential real estate industry, multi-family housing property owners, manufactured housing, the Central Delaware Chamber of Commerce, and various other business organizations remains status-quo.

In summary, Delaware's economic position is unknown. The Covid-19 virus has shut down, and continues to keep shutdown, large portions of Delaware's economy. The tourism industry as of this writing, is operating at 60% capacity for restaurants, amusement/attractions and hotels, and on 1 July 2020, the Governor declared the state would not move to Phase 3 prior to the July 4th weekend. The long-term damage to the small business community, retailers, and the service economy could be devastating. While Delaware's budget got passed – with few changes - many are very concerned about the rest of the year and FY'22. The big questions remain such as: Will the State increase its demand for money (taxes and fees) because of a lagging economy and loss of jobs; will schools open in September; will customers return to the economy before a vaccine is produced; will there be a renewed push for the social issues left undone this past Session, and; what new bills as a result of the protests and riots will emerge to address justice reform and the perceived or real ills of Delaware's police departments. The answers are unknown at the moment.

Respectfully Submitted;
C.S.KIDNER ASSOCIATES/CAPITOL STRATEGIES
C. Scott Kidner

REVIEW OF LEGISLATION

I. LAND USE/ENVIRONMENT/ REAL ESTATE/HOUSING

The following bills and positions noted represent the overall commercial and residential real estate, multi-family, and manufactured housing industry, along with the business community as it relates to their private property rights, how they conduct their business, and their ability to use/transfer real property within the state of Delaware.

SB233 – Sen Hansen and Rep Heffernan – Wetlands Protection OPPOSED

Introduced in May, the bill seeks to bring all of Delaware’s private non-tidal isolated wetlands that are not currently protected through federal oversight under Natural Resources protection.

The bill immediately garnered opposition and concerns from virtually all the development and farming communities, and even some environmental groups because of the broad definitions used as to what will be called a wetland, the level of restrictions imposed upon the landowner, and some new technical changes as to how the Secretary informs the property owner of their decision as to this delineation.

Based upon numerous conversations with the sponsor, a working group will be formed after the end of Session to gain better insight into specific issues with the bill and its impact upon private property owners.

SB250 w/ SA#1 - Sen McDowell – Renewable Energy Portfolio Standards OPPOSED

The RPS bill essential does two things as it relates to renewable energy in Delaware – it requires the use of solar, wind, and other renewables as defined in the bill as part of the overall energy purchases made by DP&L, DEMEC and the Co-Op to increase to a cumulative total of 40% by 2035, with a minimum from solar power of 10%, and secondly, it creates what is referred to as “community solar” projects. While there are a couple of other significant issues within the bill, the business community remains opposed because it will drive up costs for all electric users. Additionally, by allowing community solar to exist within residential developments, it adds power generation that is completely unregulated by the PSC. However, based upon the opposition from the DE Municipal Electric

Corporations (the local city electric companies), SA#1 removed them and the Co-Op from the bill, leaving only DP&L's rate payers bearing the increase energy costs as the percentages increased year over year. Eventually, there was simply too much opposition and little time, the bill did not get a formal hearing, and did not advance beyond introduction and assignment to a Senate committee.

No Further Action Taken.

SB255 – Sen McDowell and Rep Viola – Summary Possession

OPPOSED

As the pandemic exploded, the Governor issued a number of Modifications to his original SOE issued on 16 March. One of these Modifications gave tenants significant protection from eviction and other landlord actions if they lost income or jobs, or reduction in employment and could not pay their rent. The Delaware Apartment Association began in late May seeking to “un-wind” these various protections and getting the JP Court system up and running during Phase 2. There was tremendous fear of loss in rent payments, tenants not vacating when their tenancy ended, and those tenants that were served with a writ of possession, but the Courts would not allow the order to be completed, would remain in effect indefinitely. Unfortunately, this bill would capture all these protections and place them in law, that was originally created by Executive Order. After numerous discussions with the Governor's office and the sponsors – one of whom removed his name from the bill – it would not be worked. In Modification 23, the JP court system was opened, tenant actions can resume with some requirements by both parties to include arbitration.

No Further Action Taken.

HOUSE

HB120- Rep Mathews and Sen McDowell - Rental Tax Credit for Low Income and Elderly Renters

NEUTRAL

The bill seeks to increase affordable housing by creating new rental assistance for those qualified low income or elderly tenants, but not already getting some government housing benefits. This rental assistance comes from a percentage back to the tenant based upon an assumed property tax on that rental unit. Upon a series of questions and concerns from the Delaware Apartment Association to the sponsor, the bill was not heard in committee in 2019 and did not see any action in 2020.

No Further Action Taken.

HB200 - Rep Longhurst and Sen McBride - Clean Water Act

OPPOSED

Introduced on 30 May, this is the latest version of establishing a new Clean Water Fund and the taxes to support this fund. Money will be taken from the various four sources - \$10million from the PIT; \$5million from gross receipts revenues; \$5million from the realty transfer tax, and; \$5million from corporate taxes. Concerns range from no public members on the Board to raiding these tax sources - which would then need to be replaced with higher taxes. The Fund would be managed by a 5 member government board that would be able to issue revenue bonds and take on debt. Initially heard in the House Environment Committee in 2019, it was re-assigned to the House Revenue Committee. When the Governor presented his FY'21 budget in January 2020, he included \$25million to fund this program. This was removed from the budget as a result of the pandemic, waiting until 2021.

No Further Action Taken.

HB293 – Rep Smyk and Sen Lawson – Single Room Lease

NEUTRAL

Like the legislation below – this came out of the JP courts and seeks to add a 15 day lease notification to a single room tenant prior to termination of the rental agreement for any reason other than material violation. DAA sought some background on the need for the bill, eventually taking a neutral position. It failed to get a hearing in Committee.

No Further Action Taken.

HB296 – Rep Smyk and Sen Lawson – Tenant’s Remedies

NEUTRAL

It increases the amount of money the tenant may deduct from rent relating to necessary work done if the landlord fails to do said work from \$200 currently to \$400. The DE Apartment Association sought a number of clarifications from the JP Court and the sponsor, eventually taking no position on the bill. Like many other bills – this did not see committee action in 2020.

No Further Action Taken.

II. TAXES

SENATE

SS#2 to SB178 - Sen Paradee and Rep Lynn - Kent County Lodging Tax
NEUTRAL

Strongly supported by the Delaware Turf organization in 2019, the bill enables Kent County Levy Court to enact a maximum 3% lodging tax that once collected will be used by the DE Turf to promote the facility, create youth programs, reduce costs for schools, and to cover other operating expenses. The bill was introduced late in the Session on 26 June, and with no recognized opposition from the local hotel industry, the bill passed both Chambers by 30 June. However, after a series of articles in the local and state papers in the fall of 2019, the sponsor would introduce a new bill in January 2020, striking this language in total. SB 198 introduced in December and passed both Chambers easily by the close of Session in January.

Signed by Governor 10 February 2020

SB236 – Sen Lopez and Rep Schwartzkopf – Dewey Beach Lodging Tax
NEUTRAL

This bill introduced on 9 June, like many other municipal lodging taxes, allows Dewey Beach to impose a tax of up to 3%, but not before April 2021, rental properties will pay either the lodging tax or the state’s accommodations tax but not both, and the initial rate cannot exceed 1.5%. The bill easily passed both chambers before 30 June.

Awaiting Governor’s Signature.

HOUSE

- There were no tax bills introduced during the 2nd Session because of the Covid-19 pandemic, however the following bills introduced in 2019 remained “live” until June 30th.

HB14 - Rep Kowalko and Sen Sokola - PIT Tax Brackets
OPPOSED

This creates new tax brackets of \$125k at 7.7%, and \$250k at a rate of 7.85% while it also creates a tiered reduction of current allowable itemized reductions. This like a series of bills that increase taxes or creates new tax brackets was opposed by the Chamber and others in the business community. Assigned to the House Revenue

and Finance Committee, it remains tabled with little expectation of action next Session.

No Further Action Taken.

HB15 - Rep Kowalko and Sen Sokola - PIT Tax Brackets

OPPOSED

This bill simply creates new tax brackets of \$125k at a rate of 7.10% and \$250k at a rate of 7.85%, but does not change the itemized deductions. This bill did get a favorable report, on a party line vote, released it out of the Revenue Committee in April, and was placed on the House Ready List.

No Further Action Taken.

HB32 - Rep Ramone and Sen DelCollo - Reduce Transfer Tax

SUPPORT

The bill takes the 4% Transfer Tax back to the original 3% from 1 August 2017. Supported by the real estate industry and others within the business community - it was assigned to the House Revenue Committee, and after a lengthy hearing - tabled on party-line vote in March of 2019.

No Further Action Taken.

HB80 w/HA#1, 2, 3 and 4- Rep Baumbach and Sen Paradee- Retirement Exclusion and Eligibility

SUPPORT

This legislation from last year is seeking to raise the eligibility age from 60 to 65 over a five year period up to a total of \$12,500 retirement income exclusion, and also creates an extra \$110 age based personal credit. Overall, this reduces taxes for our senior citizens and may allow more of them to remain in the state as their retirement income is not taxed as heavily as currently. After its release from committee in March a series of amendments were added that require means testing for individuals, brings limitations on specific subtractions for pensions and makes a series of significant changes to the calculations of the benefit. It remains on the House Ready List throughout 2020.

No Further Action Taken.

HB129 - Rep Jaques and Sen Sturgeon - School Taxes without Referendum

OPPOSED

Like the Del Tech bill previously discussed - this would allow school districts the ability to raise property taxes without going to referendum. It would allow the districts to raise money that does not exceed the higher of the change in CPI-W or by 2% annually. The bill also describes if the district wishes to raise monies more than 2% for operating expenses, they may do so by referendum. Strongly opposed

by the apartment and commercial real estate property owners along with others in the business community, the bill was heard in the House Education Committee and did not receive but one vote for release in 2019.

No Further Action Taken.

III. BUSINESS ISSUES

SENATE

SB71 w/SA# 2, 3, 4, and HA# 1- Sen Decollo and Rep Bennett - Pharmacy Ownership and Pharmacy Benefits Managers

OPPOSED

Introduced back in April of 2019, the bill only caught the attention of the commercial real estate community after it had passed the Senate when it was understood that any pharmacy in Delaware can only be operated by a licensed pharmacist, and would bar corporate owned pharmacies such as Walgreens or Rite Aid. After numerous conversations with the prime House and Senate sponsors - an agreement was reached that Section 2 of the bill would be amended out - which contained the requirements for ownership. The Senate amendments created some exemptions as well as discusses that pharmacy benefits managers are not in violation when the product is in extremely limited distribution. With HA#1 attached by the House on 30 June, the bill returned to the Senate, but did not see action in 2020.

No Further Action Taken.

SB105 - Sen Brown and Rep Brady - \$15/hr Minimum Wage

OPPOSED

Like previous editions of increasing the minimum wage this one takes the boldest step yet by moving Delaware's wage rate to \$15.00/ hour by 1 January 2024, and then all subsequent increases would go up automatically starting in January 2025 by any increase in the CPI-W as calculated by the Federal Government. There were over 20 small business owners from the Central Delaware Chamber of Commerce and other Chambers who testified in strong opposition to the bill in 2019. Released from the Senate Labor Committee, it was promptly reassigned to Senate Finance Committee with no hearing scheduled and never got a hearing in 2020.

No Further Action Taken.

HOUSE

HB47 - Rep K. Williams and Sen Walsh - Youth and Training Wage

OPPOSED

Introduced in 2019, the bill removes the negotiated positions of the Republicans and the business community by striking both the youth and training wage rates of the minimum wage bill that passed last June 30th in 2018. Strongly opposed by these same groups, it was introduced almost immediately upon the commencement of Session in January 2019, assigned to the House Banking Insurance and Econ Dev Committee. Because of the potential negative impact upon the general "order" of the Assembly and a question of trust between the Caucuses, and the Covid-19 impact on the Session, the bill was never heard in 2020.

No Further Action Taken.

HB110 - Rep Osienski and Sen Paradee- Legalization of Marijuana

OPPOSED

Of the many issues facing business owners - this one seems to carry the most trepidation and concern. While most people look at legalization as a social issue, from a business owner's position - it could dramatically change the employer/employee relationship. Specifically, in Section 1305, line 177, the advocates seek to reassure the employer their policies on drugs in the workplace, or working while impaired known as "zero tolerance policies", will not be affected. However, the language in the bill is weak. There is no discussion about protection from termination lawsuits by employees that are judged impaired by the employer, and the Section says "Nothing in this chapter is intended to affect the ability of employers to do any of the following:". Why the word "intended"? Additionally, there are no reliable tests for THC impairment; there is little legal frame work for employers to know what they can or cannot do, and; this will impact an already difficult hiring environment by taking even more people out of the hiring pool. Assigned to the House Revenue and Finance Committee the bill was released after a 2 hour hearing in 2019. Re-assigned to the House Appropriations Committee given the very extensive fiscal note of some \$3.04 million a year in new spending to administer the act, it never got a hearing in 2020.

No Further Action Taken.

HB251 - Rep K. Williams and Sen Walsh - Minimum Wage/Tip Credit

OPPOSED

Introduced late on 27 June in 2019, the bill will dramatically change how tip credit employees are treated by defining who is classified as a tip credit employee; it will require that all tips on credit cards will be paid to the employee in the month

earned, even if the employer is waiting for re-imbusement from the card company; requires the employer to disclose in writing a series of new parameters surrounding tips, and; it creates a new civil fine of not to exceed \$1000 for the first offense by the employer. Placed into the House Banking Insurance and Economic Dev. Comm., no hearing was held before the close of Session on 30 June, and none held in 2020.

No Further Action Taken.

HB252 - Rep K. Williams and Sen Walsh - Minimum Wage/Tip Credit OPPOSED

Also introduced in 2019, it increases the wage rate for tipped employees from the current \$2.23/hr to a 65% of whatever the minimum wage is for non-tipped employees. Both this bill and HB251 are strongly opposed by the restaurant and small business community. It too was assigned to the House Banking and Insurance Committee, and never received a hearing in 2019 or 2020.

No Further Action Taken

HB303 – Rep Brady and Sen Walsh – Call Centers/Employment Practices OPPOSED

Introduced on 11 March 2020, it will greatly change how call centers operate in Delaware by requiring various notifications to the Secretary of Labor on reduction in workforce, temporary closures, and the closure or transfer of the call center's employees or call volumes. It also creates a list and has penalties for employers that fail to adhere to the requirements in the bill. Facing tremendous opposition from the communications companies and others in the business community, the bill was withdrawn by the sponsor.

No Further Action Taken.

IV. ISSUES FOR JANUARY 2020

Delaware's economy is cloudy at best. Unemployment was down in 2019 and early 2020, yet skyrocketed in the fourth quarter (April to June) and remains extremely high. The money bills got done, however, given so many unknowns as to schools re-opening (which allows working moms and dads returning to the workplace), businesses moving from Phase 2 to Phase 3 and beyond, and consumers spending with confidence in our retail sector, have all created a very unstable picture for 2021 and the out-years.

Will we see returning legislation that did not get done in '19 or '20 such as: legalization of marijuana; the RPS bill; clean water; removal of training and youth wages and potential increase of \$15/hr for the minimum wage; tip credit bills; increases in PIT Taxes; more lodging tax allowances for municipalities; police and justice reforms as a result of the death of George Floyd; more gun bills, and; doctor assisted suicide?

The answers are unknown.