

LEGISLATIVE UPDATE
“FINAL GAVEL”

1st SESSION OF THE
151st GENERAL ASSEMBLY

AS OF: 12 July 2021

EXECUTIVE SUMMARY

“It was extraordinary.”

Sen. Jack Walsh

“If you want to spend money, put women in charge.”

Sen. Gerald Hocker

The First Session of the 151st General Assembly started with Covid still raging in the country, numerous Freshmen Legislators having defeated D moderates in primaries, two Senate Republicans defeated in the General, and the Governor’s state of emergency with multiply revisions in place. Faced with numerous uncertainties and conducting all meetings outside of the building – the Assembly again passed a series of resolutions that changed how Session and Committee meetings would work for the foreseeable future... all via Zoom and no one allowed inside Legislative Hall.

As the Session progressed and the many Covid restrictions remained in place, coupled with various controversial bills introduced, it was increasingly apparent that lack of access by the lobbying corps and the public was making this Session one of the most difficult in memory. The Majority had earlier indicated they would not take up minimum wage, or legalization until the public had access to the building, however, both bills among others, were introduced and worked. At no time was anyone from the public allowed access to the building, even as vaccines and immunity approached 68% by June.

One of the greatest unknowns was Delaware’s economy. As last year’s Session ended and many restaurants, hotels and those in the hospitality sector facing a loss of visitors and income – coupled with a loss in general business across the state, the expectation was Delaware’s revenue would also suffer. As Christmas gave way to Spring 2021, DEFAC presented their revenue picture for the coming ’22 FY showing Delaware’s economy was strong and estimates for a very large surplus. By the June DEFAC revenue estimate – Delaware was facing a budget

surplus of near \$800 to \$900 million, with another record-breaking Bond bill of \$1.35billion and a General Operating Budget of \$4.771billion. Additionally, a supplemental spending bill was created HB251 that captured a lot of one-time spending in technology, one-times for state employees, as well as placing contingency spending for 4 bills in the Assembly, such that if they pass, money was in the budget. This supplemental is another \$221mm.

Unlike the close of last year – **this Session did see** efforts to fully legalize marijuana for recreational use, mandated family leave FMLA for all businesses, mandated state-run retirement program for all employees without these programs from their employers, increased the minimum wage to \$15/hr., a bill introduced to allow doctor assisted suicide, two highly controversial gun bills, REALTORS seeking to reduce the 4% realty transfer tax, Clean Water Fund passing and getting funded, and numerous bills impacting both the multi-family and manufactured housing codes.

Of special significance were the 2020 “Covid” elections and its impact upon both the House and Senate. Many observers feel the election moved the Chambers further left, and this drove the introduction and passing of some very controversial bills.

Specifically – in the House there were 4 new members elected – three by way of defeating more moderate D’s in a primary, and the fourth winning in a general election victory to take Rep. Quinn Johnson’s seat in the Middletown area. All four winners, by their own postings and now voting history, are very progressive. Their individual support for higher taxes, minimum wage and repeal of the training and youth wages, are an indication of what the business community may be facing in the months and years ahead.

To the Senate – one of the more shocking results of the ’20 election was the primary defeat of the longest serving member in State history, Senator Dave McBride in the 13th District by a political new-comer Marie Pinkney. Replacing a center left legislator with a much more progressive Legislator, this election, along with the defeat of long serving Sen. Cathy Cloutier and Anthony Delcollo by Kyle Evans-Gay (D) and Spiros Mantzavinos (D) respectively, gave the Majority 14 total votes and moved the Chamber to the progressive column. This election also gives the majority the ability to pass all bills except the Bond Bill and Grant-in-Aide without a single Republican vote.

As to the money bills, the Assembly passed both Budget and Supplemental (HBs 250 and 251) by Thursday 24 June with the two remaining money bills, Bond Bill

passing the Senate and House by the end of the day on 29 June, with Grant-in-Aid completed on 30 June. However, it was during the Senate’s discussion of the Bond bill on Tuesday afternoon that Sen Walsh made the comment of how extraordinary it was in being the largest ever in spending, and Sen. Hocker then adding that if you really need to spend money, women can do it... followed by laughs across the Chamber. By Wednesday night, everything was done, the Senate closing their Special Session via zoom at 12:09AM, and the House ending at 12:01 AM 1 July.

Here are some spending highlights from this year.

The FY'21 Budget is \$4.771billion.

This year's budget showed increases in spending for virtually all agencies and employees, to include in the Supplemental for state employees and state pensioners, and a contingency for the “27th” Pay of \$72.7million. The Assembly replaced the Budget Stabilization Fund (budget smoothing) with approximately \$223m; Provided \$7.2million for the Redding Consortium (Wilmington schools); numerous one-times for the Fire Companies, Kent County Tourism, and the Center for the Inland Bays getting a one-time of \$50,000. Budget growth was about 4.7% from last year.

A breakdown of spending for the last number of years as compared to the new FY2022 budget is as follows:

FY2017 - 5 years ago

General Operating Budget	\$4.084 billion
Bond/Capital Improvement Bill	\$501 million
Grant-in-Aid	\$45.9 million

FY2018 - 4 years ago

General Operating Budget	\$4.11 billion
Bond/Capital Improvement Bill	\$590 million
Grant-in-Aid	\$37.2 million

FY2019 - 3 years ago

General Operating Budget	\$4.27 billion
Bond/Capital Improvement Bill	\$816 million
Grant-in-Aid	\$52.1 million

FY2020 – 2 years ago

General Operating Budget	\$4.57billion
Bond/Capital Improvement Bill	\$863million
Grant-in-Aid	\$55million

FY2021 – last year

General Operating Budget	\$4.525billion
Bond/Capital Improvement Bill	\$707 million
Grant-in-Aid	\$54.4 million

FY2022

General Operating Budget	\$4.771 billion
Bond/Capital Improvement Bill	\$1.350 billion
Grant-in-Aid	\$63.2 million

As a result of the post-Covid political environment, more progressive Chambers, seven Freshmen Legislators, more money in the history of the State, and advocacy limited to electronic forms, this was a demanding and difficult year. There was legislation impacting virtually every small business employer, retailers who use plastic shopping bags, the energy industry (solar power and the RPS standards dramatically increasing), residential real estate industry, multi-family property owners, and the manufactured housing community owners.

In summary, Delaware's revenue picture was record setting for FY'22. While some analysts feel certain that once the Federal Covid Relief monies (Cares Act and the American Rescue Plan) have “washed” through the system with all this liquidity, inflation and some of the persistent issues that have long plagued Delaware as to an aging and elderly population, in-migration of retirees, a lack of diversified production-based economy, indicate the out-year projections could be very different. And given there were no tax cuts for any segment of the tax-paying public, our economic position 2-3 years from now is unknown.

However, normalcy is at hand. The Governor has declared ALL SOE's that have been in place since last year will be lifted on 13 July 2021. While many in the business community felt these restrictions should have been lifted many months ago, there is optimism that if they can get employees to work, those in business believe Delaware will remain a strong and resilient State.

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.

SENATE

SJR#2 w/SA#1 – Sen Hansen and Rep Heffernan – Directing DNREC to review Non-Tidal Wetlands Regulation

OPPOSED

Introduced back in April, the Resolution directs DNREC to review and determine if they should create an isolated wetlands program for Delaware. This a result of last year's attempt through SB233 that sought to bring all of Delaware's private non-tidal isolated wetlands that are not currently protected through federal oversight under Natural Resources protection. Opposed by a number of private land-owners and others within the farming community because the resolution did not specify which "stakeholders" would be consulted by DNREC as they begun this process, the amendment then struck any consultation by DNREC of the land owning community.

Passed (Does not require Governor's Signature)

SB10 – Sen Hansen and Rep Brady – Stormwater Management Districts in NCC
NEUTRAL

Introduced on 2 June, the bill follows Kent County language that will allow NCC Government to set up new Stormwater Maintenance Districts that includes the collection of fees from the homeowners. This enabling language requires NCC Council to pass an ordinance that implements the bill. It also allows these districts to be set-up in municipalities, but only when that city or town agrees. Easily passing both chambers by 24 June.

Awaiting Governor's Signature

SB90 – Sen Lockman and Rep Moore – Source of Income/Required HCV’s Participation

OPPOSED

The bill strikes language that was inserted by the multi-family housing industry 2 years ago that ensured landlords would not have to participate in housing choice voucher programs (WHA, Fed Section 8 etc.). The bill removes this language, such that all private landlords would now be mandated to accept any tenants with a voucher. The bill was strongly opposed by DAA and others, arguing that instead of increasing the supply of affordable units – it would simply drive those landlords out of the business by conversion, or they would seek to raise rents by way of improvements/renovations, again lowering the supply. Additionally, there were many questions around how many units had to be certified for HCV’s, how the inspections would work, timing of the units being compliant, and the costs to run a subsidized housing voucher program.

After two significant conversations with the sponsor outlining concerns, and discussions with other Senators, the bill has remained on the Senate Ready List since June.

No Further Action Taken

SS#1 to SB101 w/HA#1 – Sen Townsend and Rep Minor Brown – Right to Counsel/Diversion Program/CLASI

OPPOSED

Of the numerous bills introduced this Session impacting property owners, this is one of the more aggressive bills in how it impacts the LLT Code, and the changes to how landlords run their properties.

The bill would require that for virtually every eviction case, an attorney must be provided for the defense of that tenant. A Coordinator would be hired through the AG’s office to contract with CLASI or other legal services who would provide the defense counsel. The bill also establishes a legal floor that you cannot evict unless one-month’s rent is owed, and right of redemption for tenant to pay all monies due, which then stops the proceedings. Finally, it creates a “Diversion Program” for tenants facing eviction to facilitate payment programs or other solutions prior to landlord proceeding to an eviction writ.

Introduced in May, the DAA, in concert with the REALTORS and GWHP, provided testimony in the Senate Housing Committee and on the Senate floor during the vote. While some changes were made by the Senate sponsor in SS#1 to SB101 that included shorter time for filings and extended the effective date, among others, the principal issues of a mandatory Diversion Program and a lawyer provided to every tenant facing eviction were not changed. This included very real

concerns around language in the bill that did not address “irreparable harm” caused by the tenant and ability of landlord seeking immediate eviction.

Passing the Senate on 8 June, 13 Y, 7 N, 1 NV, it was assigned to the House Housing Committee. Again, the property and landlord communities offered concerns with the bill, eventually being tabled with 7 votes yes on 15 June. Based on additionally feedback from the landlord community, HA#1 was introduced on 25 June seeking to address those issues. However, at a 2nd House committee meeting that was set to get the bill released, it never got a motion to “lift the bill from the table”, and it remains there currently.

No Further Action Taken.

SB167 w/SA#1– Sen Lockman and Rep Baumbach – Landlord Mitigation Fund SUPPORT

The bill was a direct result of one argument presented by DAA and DAR as to landlords unable to collect for damages caused by a tenant in HCV enrolled units during the SB90 debate. A fund will be created through and administered by DSHA that will reimburse landlords that suffer damages or other liquidation issues from tenants who receive vouchers for housing. The intent is to increase the number of property owners that will enroll their units into these programs. Released from the Senate Housing Committee it was Laid on the Table on 22 June because of issues raised from the Administration as to funding.

No Further Action Taken.

SB170 – Sen Lawson and Rep Carson – Display of Flags NEUTRAL

The bill removes any restrictions a developer may have placed on properties as to the placement of a flagpole to display the American flag – even if there are HOA or other deed restrictions/covenants preventing the installation of a flagpole. Assigned to the Senate Elections and Gov. Affairs Committee, it was release on 15 June and placed on the Senate Ready List.

No Further Action Taken.

SB180 – Sen Brown and Rep Moore – Real Estate Service/Broker Regulations NEUTRAL

The bill simply seeks to adjust Title 24 by revising when an applicant can be denied a real estate license, changing the time for eligibility for a waiver of a felony conviction for crimes against a person from 5 years to 3 years, and does the same for all other felonies from 5 years to 3 years. Assigned to the Sunset Committee on 10 June and awaiting a committee hearing.

No Further Action Taken.

HOUSE

HB57w SA#1 – Rep Smyk and Sen Ennis – Rules for Single Room Leases

NEUTRAL

This was a holdover from last year's bill HB293 and like 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. SA#1 allows for more time for a tenant to seek housing if the lease is oral. Easily passing both Chambers by 29 June.

Awaiting Governor's Signature

HB60 – Rep Smyk and Sen Ennis – Tenant's Remedies

NEUTRAL

Like the previous bill HN 296 from last year, 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. Also like last year, the DE Apartment Association took no position on the bill. It finally passed the Senate on 30 June with 21 yes.

Awaiting Governor's Signature.

HB112 w/HA#2 – Rep K Johnson and Sen Townsend – Common Interest

Ownership

SUPPORT

A lengthy bill introduced in March, it makes numerous technical changes to the Condo Code from the Real Property Section of the DE Bar that includes voting proxies, how to deal with surplus funds and pre-payments, pre-existing document and how they are resolved, correcting typographical errors by Councils and boards, definitions of members, termination periods, expansion for owners voting, and many others. Placed in the House Housing Committee on 15 March, it eventually passed the Senate with 21 yes on 23 June.

Awaiting Governor's Signature.

HB113 – Rep Briggs King and Sen Hocker – Forthwith Summons

SUPPORT

Amending Title 25 and introduced in March the bill helps to determine when the Court should issue a forthwith summons to hear a case on an emergency basis, such that when harm is threatened by a tenant, not just when harm has been caused. Released from House Housing Committee on 15 June, it remains on the Ready List.

No Further Action Taken.

HB170 – Rep Schwartzkoph and Sen Lopez – Re-assessment/County Taxes
OPPOSED

Amending Title 9, it will allow all three counties to use the Realty Transfer Tax to pay expenses related to costs for a reassessment in an ongoing fashion, not just for those planned in the coming year. DAR remains concerned that by encumbering the TTax for these purposes, it will further make difficult the ability of the State and or Counties to reduce that tax. Assigned to the House Administration Committee – it was advanced to the House floor passing quickly and then passing the Senate on 24 June.

Awaiting Governor's Signature

HB200 w/HA#2 - Rep Longhurst and Sen Townsend - Clean Water Act
NEUTRAL

Unlike the previous editions of the bill, this version did not contain any tax increases for property owners, or small businesses, or took monies from other tax sources, but is a simple general fund appropriation of \$50million. The bill creates a “Trust” that will receive the monies appropriated to it, and a new oversight “Committee” will make the decisions on which funding projects will get supported – all of which is based on the existing WIAC who will provide the initial recommendations for funding. Having received full funding in the Governor’s recommended budget and HB250, the Budget Bill, it easily passed both Chambers by 22 June.

Awaiting Governor's Signature

HB235 – Rep Lynn and Sen Pickney – Homeless Bill of Rights
OPPOSED

Amending Title 6 and Tile 31, the bill – like many versions before it, seeks to establish a new protected class for those that are defined as homeless in the bill. And like the previous version, this one is also opposed by DAA and DAR because of the negative impact it will have the ability of the property owner to determine if the potential tenant can meet the requirements of tenancy. Some issues are how homeless is defined, the new rights afforded to these people, that includes their ability to “stay” in cars or in public spaces without intervention from police, and what happens to the landlord if they are accused of violating the provisions of this new fair housing claim charged against them by a tenant. Introduced on 8 June and assigned to the House Judiciary Committee, the sponsor did not respond to any request for a meeting prior to a committee hearing. However, no hearing was held before the close of Session on 30 June.

No Further Action Taken.

HB252 – Rep Brady and Sen McBride – Assessment of Real Property

OPPOSED

Amending Title 9 and introduced on 21 June – the bill seeks to change the actual definition of value assigned to properties during a reassessment to a term “present fair market value” instead of “true value in money.” Technical in nature, how counties define real property can have a tremendous impact on the eventual tax paid by the owner. Within the commercial field, market rent vs. contract rent is the closest example of how definitions impact value. Assigned to House Housing Comm., it was not heard before the close of Session.

No Further Action Taken.

Manufactured Housing:

HB5 w/HA#1 – Rep Williams and Sen Walsh – Attending Rent Justification Meetings

OPPOSED

The first in a series of aggressive bills from the Assembly to change the laws around manufactured housing, this allows any state elected official and DMHOA to attend these private meetings between owners and tenants. Resulting from a meeting where two elected officials were asked to leave because they were not a “party” to the contract negotiations, this would now allow them to attend. The amendment adds the Relocation Trust Authority as an authorized party that may attend. Moving through both the House and Senate on mostly party line votes, it finished in the Senate on 29 June.

Awaiting Governor’s Signature.

HB14 – Rep Briggs King and Sen Pettyjohn – Rental Assistance Program

OPPOSED

Introduced in December, the bill, like HB126, does two basic things; Tenant’s income cannot exceed 40% of the DSHA Factbook to qualify for this program and moves those eligible from 2006 to 2009 for establishing residency to qualify for rental assistance. Assigned to the House Manufactured Housing Committee, it was never placed on a committee agenda for action.

No Further Action Taken.

HB126 w/HA#1 – Rep Briggs King and Sen Pettyjohn – Rental Assistance Program

OPPOSED

Doing essentially the same as the previous bill above – this moves the threshold to 30% for a resident household income as defined in the DSHA Factbook, but does not move the residency date, keeping the same of July 1 2006. HA#1 moves it

back to 40%, thus making it virtually identical to HB14. It was stricken by the sponsor on 23 March '21.

No Further Action Taken.

HB127 – Rep Briggs King and Sen Lopez – Forwarding Address

OPPOSED

Simple in nature, it will require the landlord to use the “forwarding address” as provided by the tenant for the returning of any damage deposits. The bill was never heard in the Committee before the close of Session.

No Further Action Taken.

HB176w/HA#1, SA#1 – Rep Kowalko and Sen Walsh – Maintenance in Communities

OPPOSED

The bill adds a new definition of “Maintenance” or “Maintain” in the code and thus the duty of the community owner to repair. Most troubling, the bill added “Tree” which includes the root system, limbs and trunk or stem. The amendment removed some outdated language on arboriculture, but added drainage systems, tidal and water recharge areas that were previously exempt. Passing the House in June on a mostly party-line vote, it was assigned to the Senate Housing Committee. A hearing was held on 29 June, yet with numerous issues raised, the bill was released with an expectation from the Chair to seek a compromise on this bill and HB180 below. After significant effort from the various community owners and the Chair, SA#1 was drafted. However, the House sponsor did not agree, and both this bill and HB180 were Laid on the Table on 30 June.

No Further Action Taken.

HB179 w/HA#1 – Rep Williams and Sen Walsh – Rental Assistance

OPPOSED

This will change the structure of the current rental assistance program by expanding eligibility to just 5 years as a resident, expanding what can be considered income, and allows for this assistance after a rent increase. Because it would greatly expand who could be eligible for assistance, costs would sky-rocket, and for smaller community owners, if just 15% of their tenants were paying reduced rents, it could be devastating financially. The Amendment was technical in nature. Like virtually all bills assigned to the House Manufacture Housing Committee, this too was released on a party-line vote, but remains on the House Ready List, not seeing any action before 30 June.

No Further Action Taken.

HB180w/SA#1 – Rep Wilson-Anton and Sen Pinkney – Right of First Offer
OPPOSED

As discussed above, this bill was one of the two that the Senate Housing Chair sought to seek amending language for both parties. SA#1 adds language that further defines what a bona-fide purchaser means, when the community owner does provide the name of that bona-fide purchaser, and defines the notice to the tenants of the sale/transfer within 15 business days, if when the owner is not required to give notice. Passing the House on 23 June with just 22 votes, it was assigned to the Senate Housing Committee and heard on 29 June. However, the House sponsor did not accept any language changes, and it remains Laid on the Table in the Senate.

No Further Action Taken.

SB110 – Sen Ennis and Rep Kowalko – Capital Improvements
OPPOSED

Introduced in April, the bill seeks to change how community owners can recover their costs for capital improvements (through rent increase, for how long, and when they can take effect) and what can be considered a capital improvement. The bill also allows for tenants or homeowner associations to dispute a capital improvement assessment fee under existing rent increase dispute resolution process. Finally, the bill repeals the definition of “market rent”. After a lengthy hearing with numerous questions raised by the community owners and some of the technical problems with the bill, it remains in the Senate Housing Committee since early June.

No Further Action Taken

SS#1 to SB132 – Sen Ennis and Rep Kowalko – Rent Increases
OPPOSED

Originally filed as SB132 and very much like SB110 above, the Substitute goes further by adding utility charges as a factor that may justify a rent increase above CPI-U, changes the notice requirements, allows the HOA and individual tenants to get income and operating statements from the community owner for more than 3 years when showing good cause (which is not defined) and like SB132, it redefines what is lot rent, CPI-U, and what is “maintenance”. Of note is how some of these definitions are in conflict with the House bills above. Heard in the Senate Housing Committee, the bill did not get enough votes to be released before 30 June.

No Further Action Taken.

SB146 – Sen Walsh and Rep Dorsey Walker – Home Lot Rental Agreements
OPPOSED

This bill says that community owners must provide their rental agreements, all rental forms, including any changes to those forms, in both English and Spanish. The bill is very prescriptive and is applicable to only those within Chapter 70, such that no other rental agreement for any other form of housing would be under this requirement. Heard in Committee on 25 June, it remains on the Senate Ready List.
No Further Action Taken.

II. TAXES

SENATE

HOUSE

HB71 – Rep Ramone and Sen Hocker – Decrease Realty Transfer Tax
SUPPORT

Based upon the previous HB32 in the 150th GA by Rep Ramone, introduced on 8 January, the bill simply reduces the State’s portion of the transfer tax (TTax) by 1%, taking it back to prior to December 2017 levels. Strongly supported by the REALTOR and general real estate community, the bill finally got a hearing on 16 June in the House Revenue and Finance Committee. After significant testimony and a commitment by the Sponsor NOT to ask for it to be run if DEFAC surplus numbers were less than \$40 to \$50million, it was released and promptly assigned to House Appropriations Committee. Interesting to note, the last DEFAC numbers for June showed approximately \$85million in surplus for the coming ’22 budget. However, the Majority did not release the bill before 30 June.
No Further Action Taken.

HB172 – Rep Yearick and Sen Lopez – Realty Transfer Tax
SUPPORT

Different than an outright reduction in the TTax, this seeks to eliminate in total the State’s portion of the tax for first time home buyers purchasing under \$250,000. It further qualifies who can take advantage of this tax reduction by stating gross income cannot exceed \$45,000 per individual, and \$75,000 for joint purchasers.

Assigned to the House Revenue and Finance Committee on 6 May, it never got a hearing before the close of Session.

No Further Action Taken.

HB256 – Rep Kowalko and Sen Sokola – Increase Personal Income Tax Brackets
OPPOSED

The bill would increase virtually every tax bracket beginning for those taxes filed after December 31, 2021, with the highest tax bracket moving from 6.6% to 6.95% for those individuals earning in excess of \$250,000 a year. Assigned to the House Revenue and Finance Committee, it did not get a hearing before the close of Session.

No Further Action Taken

III. BUSINESS ISSUES

SENATE

SB1 – Sen McBride and Rep Heffernan – Mandated Family and Medical Leave
OPPOSED

Long awaited since January and considered the “signature” legislative priority for the Majority, the bill was finally introduced on 5 May with almost every D Legislator in the building as sponsors.

Specifically, the bill would impose upon the private sector mandated paid family and medical leave for up to 12 weeks per employee. This is applicable to all employers whether they are a start-up or major corporation that employs one or more people, and that person earns \$2500 in wages or more per year. The employee is eligible for this FMLA after only 90 days of work. The bill’s definition of family is extremely broad to include step-siblings and “.....with whom a covered individual has a significant personal bond that is or is like a family relationship...”. The bill further outlines what is considered wages that includes holiday pay, commissions, dismissal payments and back-pay awards that count towards the \$2500 threshold. Also highly controversial, is the benefit amount of 80% of the employee’s average wage, and while capped at \$900 a week, for some lower wage earners could become an inducement to use more frequently. Finally, and while not the last, notification by the employee to the employer when they choose to use their medical or family leave is without precedent. It simply requires a 24 hour notice to the employer as to the date and length of the leave, which can be as little as one day.

Assigned to the Senate Health Committee, chaired by the Senate sponsor, some believed a hearing would be held, released, and placed on the Ready List prior to June 30th. However, it is now expected the sponsor will seek input from the many stakeholders and may consider dropping an amendment or a substitute for January 2022.

No Further Action Taken.

SB15w. SA#1 – Sen Walsh and Rep Brady - \$15 Minimum wage

OPPOSED

Released on 3 March, the bill sets-up the minimum wage at \$10.50 on 1 January '22, with more than dollar increases until \$15.00 an hour on 1 January 2025.

Notable about the debate was the sponsor's insistence that it cannot be amended or any relief given to small employers, or slowing the rate of increase, or even starting the increases one year from the lifting of the Governor's SOEs. As a result of that position, not one amendment offered by Republicans garnered any D votes to become part of the bill. SA#1 simply makes clear the wage rate remains \$9.75 an hour until 1 January 2022. It passed both Chambers on strict party-line votes by 17 June.

Awaiting Governor's Signature.

SB29 – Sen Ennis and Rep Bennett – State Lottery Fund

SUPPORT

Introduced on behalf of the horse racing industry, and supported by the Administration, the bill reduces the state portion of lottery proceeds to make matching amounts to the Delaware Certified Thoroughbred Program and Delaware Standardbred Breeder's Program, with an additional \$250,000 and \$500,000 respectively for those programs. Introduced in January, and as part of the Governor's proposed budget from last year and this FY, the bill eventually passed through 2 committees in each Chamber, finally passing the House with 39 Yes, 1 N and 1 Absent. SA#1 makes the bill effective on 1 July of the year of its enactment.

Awaiting Governor's Signature.

SB33 – Sen Hanen and Rep Osienski – Renewable 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 that increases to a cumulative total of 40% by 2035, with a minimum from solar power of 10%.

While there are significant issues within the bill, the business community remains

opposed because it will drive up costs for all electric users, and those costs can never be lowered by DNREC, and finally, it allows the large electrical users to opt-out. As with many “climate change” bills, it easily moved through the committee system, and was passed by the House on 28 January 2021.

Signed by Governor on 10 Feb. 2021.

SB93 w/SA#1 – Sen Poore and Rep Longhurst – Evergreen Consumer Contracts
OPPOSED

The sponsor was seeking to more fully explain how companies that have ongoing contracts must notify their customers of those provisions, and how customers can cancel these “evergreen” contracts, such as gym memberships and self-storage facilities. With feedback from certain Chamber’s and those in the communications industry, the sponsor amended the bill to redefine “clear and conspicuously” that will allow audio disclosures and removes that requirement that automatic renewal provisions must be in writing. With those changes, opposition was dropped, and the bill was passed by the House before June 30th.

Awaiting Governor’s Signature.

SB140 – Sen Paradee and Rep Brady – Banning Polystyrene Products.
NEUTRAL

Introduced on 17 May, the bill eliminates the use of defined plastics by prohibiting the sale of containers, food service products or packing material made from expanded polystyrene, and further restricts the use of single service plastic items in food establishments. It does allow the implementation to be extended for schools into the 2022-2023 school year, but for all other businesses, it is effective on 1 July 2022. Assigned to the Senate Environment and Energy Committee, a hearing was held in June, and with some opposition from the hospitality industry and others, it was not released to the Senate Floor.

No Further Action Taken.

HOUSE

HB18 – Rep Osienski and Sen Lockman – Complete Community Enterprise Districts.

SUPPORT

Introduced in a pre-file on 3 December, the bill expands the ability to use enterprise districts by removing the minimum lot sizes, one or more parcels must be within half mile of a bus or rail stop, requires the District to include adjacent neighborhoods, and these CCED must be part of a master development plan.

Supported by the Chambers and some local developers in the New Castle County area, it easily passed through the system finishing in the Senate on 25 March, with 21 Y votes.

Signed by Governor on 3 June 2022.

HB91 w/HA#1 – Rep Bentz and Sen Paradee – Prohibited Trade Practices
OPPOSED

Related to a draft bill circulated pre-Covid in January 2020, the bill seeks to give significant new powers to the AG's office to sue businesses that are not acting ethically towards their customers. Specifically, the Office of Consumer Protection re-defines unfair practice to "...mean any practice which may be construed as any of the following.." and lists new definitions. Strongly opposed by the Chambers and numerous other business organizations, the bill was finally introduced in January on behalf of the AG's office. After numerous zoom meetings with the Consumer Affairs Division, an amendment was drafted tailoring the definition of unfair practice by using the definition currently used by the Federal Trade Commission. Once this was approved, the bill passed the Senate on 15 June.
Awaiting Governor's Signature.

HS#1 To HB94 – Rep Williams and Sen Walsh – TIP Wage
OPPOSED

As controversial as SB15 that increased the minimum wage – this HS#1 would move the wages paid to tipped and gratuity paid workers to 65% of whatever the minimum wage rate is for all other employees in the state. The original bill was strongly opposed by the restaurant industry and the Chambers, this bill was just introduced on 30 June and Assigned to the House Banking and Insurance Committee with no hearing conducted prior to the close of Session.
No Further Action Taken.

HB97 – Rep Brady and Sen Lockman – Trade Practices and Pay with Cash
NEUTRAL

Introduced in March, the act prohibits the seller of consumer goods or services from refusing to accept cash payment. Enforcement against the business owner includes civil penalties and provides the consumer a private right of action to recover double damages from the business. The bill was stricken by the sponsor shortly after its introduction.
No Further Action Taken.

HB150 w/HA#1, #2, #3, #4, #5, #6, #7, #8 - Rep Osienski and Sen Paradee-
Legalization of Recreational 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. 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 Health Committee – it got released on 24 March. Re-assigned to the House Appropriations Committee, it was again released easily on 4 June. However, in an attempt by the Sponsor to gain 28 votes (it has fees and taxes) a series of amendments were introduced. While one or two of these amendments gained the support of a couple of R's (striking the project labor agreement requirement for construction of the facilities), it lost too many votes and the Sponsor declared he would not run the bill this year.

No Further Action Taken.

HB165 – Rep Bennett and Sen Sokola – Human Remains/Composting

OPPOSED

The bill would make Delaware one of only one other state in the union, if passed, allowing the composting of human remains. Specifically related to the funeral business, the industry immediately responded seeking a meeting to discuss issues contained in the bill such as scope, oversight and whether this “natural organic reduction” is appropriate public policy for Delaware. Assigned to the Health and Social Services Comm, the sponsor said she would not run the bill until next year.

No Further Action Taken.

HB205 W/HA#1 and #2 – Rep Lambert and Sen Poore – State Run Savings Plans

OPPOSED

Introduced in May on behalf of the State Treasurer's office, the bill would establish a mandatory state-run retirement plan for all those employees whose employers do not offer retirement plans. Administered by the Treasurer's office, the bill creates an entirely new “EARNs” program by automatically withdrawing money out of the paychecks of those employees enrolled. Small employers who do not offer their own plans must initially enroll their employees into the state

program, however, the employee may opt-out after 30 days. Opposed by the financial services industry and the Delaware Bankers because of the costs the state would incur to run the program and the state becoming a direct competitor for financial advisors along with other problems in the bill, it was re-assigned to the House Appropriations Committee, with more action expected in January.

No Further Action Taken.

HB212 w/HA#1, #2 – Rep Brady and Sen Hansen – Waste Reduction and Plastic Bags/Retail Stores

OPPOSED

Essentially to “fix” the problem the Sponsor believed was occurring with the first plastic bag ban from 2 years ago – this will ban the use of virtually all plastic bags that are 10mm or less in thickness in retail shops, no matter the size of the business, and defines “reusable bag” as anything made of a polypropylene fabric, PET fabric, cloth cotton, jute, hemp or other washable fabric, and some additional requirements. For small businesses, a delayed implementation date was critical – thus the effective date is 1 July 2022. HA#1 added language back into the bill for thin plastic bags for baked goods and prepared foods, and HA#2 makes the provisions of the bill effective for large and small businesses on 1 July 2022.

Passing the Chambers on mostly partisan votes, it was finished in the Senate on 3 June.

Awaiting Governor’s Signature.

HB225 – Rep Morrison and Sen McBride – Paid time off to Vote

NEUTRAL

Introduced on 2 June, the bill sets up a new section of code that will mandate to both public and private employers they must give any employee who works at least 8 hours on election day, up to 2 hours of paid time off to vote, with the employee giving only 2 days-notice they are taking this paid time. Assigned to the House Administration Committee on 3 June, it did not get a hearing before the close of Session.

No Further Action Taken.

HB266 – Rep Williams and Sen Walsh - Minimum Wage/Tips a Gratuities.

NEUTRAL

The bill introduced on 30 June – defines employees that get gratuities are also those that get tips for the purposes of this chapter such that if you receive more than 50% of your salary in gratuities either in cash or by electronic means, they cannot be pooled, and are the property/wages of that service employee who received the gratuity. Action is expected in January, but the Chambers and others within the “gig” economy may be concerned with the impact of this bill.

No Further Action Taken.

HB262 – Rep Griffith and Sen Hansen – Data Brokers

OPPOSED

Originally circulated as a draft bill in April, and strongly opposed by the technology companies along with numerous Chambers, it will give the AG’s office new legal authority to define and regulate who are considered “Data Brokers” and their duties towards the consumer’s information. Specifically, it defines a data broker as any business that retains and uses consumer information, whether their business model is a third-party data broker. Unfortunately, after two meetings with the sponsor via zoom, and a robust written response from the business community as to their concerns of how this will impact small business owners, the bill was introduced without any changes. It was assigned to the House Banking Insurance and Economic Development Committee with action expected in January 2022.

No Further Action Taken.

IV. ISSUES FOR JANUARY 2021

Delaware's revenue picture looks strong. Unemployment has returned to more normal levels, and overall, our larger employers were unaffected by Covid. However, for many of our small retailers and those in the service economy – many have closed their doors permanently. With no tax cuts offered, the State is collecting far more than is needed. How this impacts our economy is unclear.

Returning legislation: Legalization of marijuana; Paid Family and Medical Leave for all employees in the private sector; Some kind of mandated/auto-enrollment retirement program for small businesses; Data Brokers; Transfer Tax Reduction; Source of Income; Homeless Bill of Rights; Tips and Gratuities; Private Right to Counsel/Tenant Diversion Program; Potential Lead Paint Testing/Inspections of Multi-family Housing, and; Police and justice reforms as a result of the death of George Floyd in the summer of 2020.