

LEGISLATIVE UPDATE
“FINAL GAVEL”

2nd SESSION OF THE
151st GENERAL ASSEMBLY

AS OF: 19 July 2022

EXECUTIVE SUMMARY

“Point of Order Madame President.”

Sen. Colin Bonini

The Second Session of the 151st General Assembly started with Covid waning and all members of the Assembly returning to the building for in-person Session. What remained from Covid was that the Senate would remain in virtual committee meetings and in-person Session until June, but the House went to in-person Session in January and then went to committee meetings in-person by April.

As the Session progressed, many of the social issues that had not been acted upon or failed to get traction - were once again back on the schedule for debate and votes. And while the public had more access than last year – it was still a difficult environment to petition your government. And given the majority of Senate Committees would not meet in-person but only virtually, allowing some bills to move through the system quickly.

Like last year, some were unclear how Delaware’s economy would fare, given some segments of the economy got hammered. And like last year, the early DEFAC numbers presented a revenue picture for the coming ’23 FY showing Delaware’s economy was strong and again estimates for a very large surplus. By the June DEFAC revenue estimate – Delaware was facing a budget surplus of again nearly \$800 to \$900 million, with another record-breaking Bond Bill of \$1.4 billion and a General Operating Budget of \$5.1 billion. And like last year, this Assembly passed a supplemental spending bill on one times for state employees, contingency spending for bills that if they passed would get state money.

This Session saw efforts to fully legalize marijuana for recreational use (again), the passage of mandated family leave FMLA for all businesses, passage of a mandated state-run retirement program for all employees without these programs from their employers, a bill introduced to allow doctor assisted suicide, passage of

numerous controversial gun bills, REALTORS seeking to reduce the 4% realty transfer tax, 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 that election moved the Chambers further left, and this continued to drive the introduction and passing of some very controversial bills.

Specifically – in the House, because of the last election and then the horrendous evil that was Uvalde, Texas, almost every gun bill passed both chambers and were signed by the Governor as package on 30 June. These bills were joined by FMLA, a veto-override attempt by the House over recreational marijuana, additional protections for abortion access in Delaware, and changes to allow same day registration along with absentee voting without reason.

To the Senate, and of particular note, was during one of the closing days of Session Sen Colin Bonini, who remained concerned about the ongoing attempt by the Senate to pass changes to the absentee voting process, began a parliamentary process to make his point. The majority sought to allow for “no excuse absentee ballots” that will allow voters to mail-in their ballots without any reason. On some routine Consent agendas, he began to object to every vote and every bill that was on that agenda. Within about 20 minutes, he had managed to bring to halt the normal Senate process and was heard declaring “Point of Order Madam President” and “I Object”. By his actions, all within the Senate rules, the Chamber stopped functioning for more than an hour. And only after a negotiated amendment to the voting bill – did Sen Bonini stop his procedural objections.

As to the money bills, the Assembly passed Budget Bill SB 250 by Tuesday 28 June with the two remaining money bills, Bond Bill HB475 and Grants-in-Aid SB252 both passing the Senate and House by 30 June.

However, it was during the closing hours of Session this year, and with expectations of getting out of the building around 8:00 PM, then finishing via zoom after midnight, that both Chambers came to a grinding halt. The money bills were done and had been signed earlier in the evening when Senate Leadership indicated a specific housing bill, which had not been acted upon by the House, had to be voted on before any more House bills would move. The House went into recess, then the Senate went into recess, both for two hours. Coming into Session just before mid-night, both Chambers procedural moved to Special Session, when

finally – the House took up the bill. It failed on 23 N 16 Y votes, and the House adjourned around 12:40 AM and the Senate finishing around 1:10AM.

Here are some spending highlights from this year.

The FY'23 Budget is \$5.091billion.

This year's budget showed increases in spending for virtually all agencies and employees to include in one-time of \$500 per employee, and pensioners getting a 3% increase. The Assembly increased monies in the Budget Stabilization Fund (budget smoothing); numerous one-times for the Fire Companies, Kent County Tourism, and the Town of Smyrna USMC War Memorial getting \$65,000. Budget growth was about 6.8% from last year.

A breakdown of spending for the last number of years as compared to the new FY2023 budget is as follows:

FY2017 - 6 years ago

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

FY2018 - 5 years ago

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

FY2019 - 4 years ago

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

FY2020 – 3 years ago

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

FY2021 – 2 years ago

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

FY2022-last year

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

FY2023

General Operating Budget	\$5.09 billion
Bond/Capital Improvement Bill	\$1.40 billion
Grants-in-Aid	\$69.4 million

As a result of the ongoing post-Covid political environment, a more progressive Assembly, and again more money in the history of the State, and with advocacy limited to electronic forms for Senate Committees, this remained a demanding and difficult year. There was legislation impacting virtually every small business employer (FMLA), potential wide swaths of the economy impacted through DE's Climate Action Plan (SB305), and very difficult bills for residential real estate and multi-family property owners.

Delaware's revenue picture was record setting for FY'23. While inflation is now (8%+) as of this writing, 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, still seem to indicate the out-year projections could be very different. And given there were NO tax cuts (again) for any segment of businesses and citizens, our economic position 2-3 years from now is unknown. Yet, Delaware's small and large business owners are flexible and resilient, and if we can get people to work, we should remain competitive with our surrounding states and attract the talents of those seeking to live and work here.

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

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

OPPOSED

The bill, leftover from the First Session, again was dominating discussions in the Senate this April and then in the House as it moved through the various committees.

Essentially, it strikes language that was inserted by the multi-family housing industry 3 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.

In April, the sponsor attached SA#1 to the bill, which delays implementation by 5 months after signing, and it and the bill passed along party lines 14 Yes, and 7 No. Assigned to the House Housing committee, the bill was heard on 18 May, and after tremendous efforts, it was tabled. The bill was again heard on 22 June, where this time, along party line votes, it was released to the floor for action. The House

sponsor, learning not one R would support the bill, and not having enough D's supporting the bill, did not bring it to the floor.

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 of '21, 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 '21, 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.

One of the positions held by CLASI was landlords got to use Form 50 Agents and they did not. On 28 January 2022, the DE Supreme Court announced rule 57.1 allowing non-lawyers to represent tenants in JP Court. This was a significant achievement and brings parity for tenants. Yet, on 23 March this year, it was again heard in Housing and along party lines, released. It was then assigned to the House Appropriations Committee because of the FN. In June, a hearing was held, and it

was tabled 4 to 2. Finally on 1 July, a MTSR was made, and the bill, along with the amendment, were defeated with 23 N, 16 Y, and 2 NV.

No Further Action Taken.

SS#1 to 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. Like SB90, this bill passed in the Senate earlier this year and moved over to the House. It was released at the same time as SB90 and since that bill failed to advance, it was never placed on the floor for a vote.

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 released on 15 June 2021. It was finally placed on an agenda on 23 June 2022, then defeated along party lines on 24 June.

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 last year, it was heard this June, released, and then passed the Senate on 14 June. Released from Sunset in the House on 21st, it did not make it to the floor for a vote.

No Further Action Taken.

SS#1 to SB240 – Sen Sturgeon and Rep Johnson – Bed Bugs

NEUTRAL

Introduced in April, the bill reflects meetings held between the sponsor, DAA and GWHP to address issues in the original legislation. The bill seeks to ensure property owners do not rent units with active infestation, and to notify tenants of adjacent units that are currently infected. The bill also discusses records that must be kept and duties of a tenant that does not inform the landlord of bedbugs. Once DAA went neutral, the bill easily passed through the process with a positive vote in the House on 29 June.

Awaiting Governor's Signature.

SB311 – Sen Townsend and Rep Chukwoucha – Sheriff's Sale and Land Bank

OPPOSED

The bill will allow Wilmington's Land Bank to bundle unimproved or vacant properties that are going to sheriff's sale by asserting an "Apex Bid". This means the City can pay for the outstanding liens 5 days prior to the sale, indicate these are "apex bids", which then closes out the sale of the property to any other purchasers. Generally opposed by the real estate community, it was introduced early in June, assigned to Senate Housing, but did not have enough votes to be released.

No Further Action Taken

HOUSE

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

OPPOSED

Amending Title 6 and Title 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 2021 and assigned to the House Judiciary Committee, a hearing was not held before the close of Session in '21. This year, a hearing was held in June and was tabled in Committee. Then on 30 June, the sponsor "walked" the bill out and placed it on the Ready List.

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. The bill remained in committee for the duration of 2022 since Rep Brady had resigned his seat in January.

No Further Action Taken.

HB337 – Rep Bush and Sen Mantzavinos – Jointly Held Real Estate Affidavits

SUPPORT

It seeks to make it easier to clear title to real property after a person dies if that person held real property jointly with the right of survivorship, and that person dies in a county other than where the property is located. Introduced without controversy, the bill moved through the system easily, finishing in the Senate on 28 June with 21 Y.

Awaiting Governor’s Signature

HB338 w/HA#1 – Rep Bush and Sen Mantzavinos – Satisfaction of Mortgages

SUPPORT

This bill provides an automatic satisfaction of a mortgage 10 years after the maturity date as stated in the mortgage or any recorded extension of the mortgage. It also provides that in the absence of a stated mortgage maturity date, it is 40 years after the recording of the mortgage. The amendment removes any mortgages held by the DE Housing Authority. Like the bill above – there were no issues, and it passed through the system by 30 June.

Awaiting Governor’ Signature

HB339 w/HA#1, #2 – Rep Bush and Sen Mantzavinos – Real Property

Lien/Criminal Judgements

NEUTRAL

The bill provides protection to new homeowners from sellers that have misled buyers regarding a criminal judgement that is attached to the real property. Essentially, it seeks to protect the homeowner from liens that are attached for more than 7 years after settlement. HA#1 makes clear the 7 year period for the expiration of the lien runs from the date the convicted person sold, transferred, or lost the property, not the date of the criminal conviction. HA#2 seeks to ensure

that any conflict with HB244 of this Session does not conflict with Section 1 of this bill. Again, with no controversy, it passed both chambers by 28 June.

Awaiting Governor's Signature.

HS#1 to HB349 – Rep Lambert and Sen McBride – “Lease Lock”

NEUTRAL

Introduced in March, the bill seeks to allow landlords to use a third-party company to collect security deposits from tenants that do not have the money to pay the deposit and rent up front. Because Delaware's statute is silent on this insurance product (it is not a bond), the company sought these changes. The substitute represents changes made on behalf of the tenant organizations, and it was heard in Committee and released in June. However, CLASI and others moved to block the bill from advancing and it failed to get to the floor.

No Further Action Taken.

HB418 – Rep Mathews and Sen Hansen – Rights of Way Plans/Notifications

NEUTRAL

Introduced in May, and with support from DelDOT, the bill allows for right of way acquisitions to commence upon the approval of final right of way plans on a parcel by parcel basis. The bill also adds a requirement of notification to adjoining property owners with minimal independent utilities are available for disposal.

Without any opposition, the bill passed the Senate on 30 June.

Awaiting the Governor's Signature

HB420 – Rep Bush and Sen Mantzavinos – Land Use Planning

SUPPORT

The bill – as part of the “Ready in 6” program as outlined by the Administration will help speed up the process by exempting projects that meet local zoning requirements and located in Levels 1 or 2 under the PLUS process from the pre-application process. Strongly supported by the building community and others, it easily passed the House Banking Committee and House floor vote but failed to get heard in the Senate before the close of Session.

No Further Action Taken

HB458 – Rep Chukwoucha and Sen Brown – Real Property Acquisition

OPPOSED

Introduced late in the Session on 7 June, the bill allows the City of Wilmington to define what is abandoned or vacant property and to condemn that property for City use. Hotly contested by various civic groups in Wilmington, the bill was placed on

the agenda after getting out of the House Administration Committee but was never brought up for a vote.

No Further Action Taken.

HB477 – Rep Dorsey-Walker and Sen Brown – Tenant Remedies

OPPOSED

As a result of recent issues in Wilmington relating to a specific landlord and condemnation of his rental units, the bill seeks to hold landlords responsible for units in disrepair by giving tenants ability to withhold rent, and to encumber rent in an escrow account within the JP Court system. After several discussions with the sponsor, DAA with others, provided a redraft for consideration after it was heard and released from the House Housing Committee on 15 June. However, given the amount of work needed to fix the bill, it was never brought forward for a vote.

No Further Action Taken.

Manufactured Housing:

SS#1 to SB312 – Sen Walsh and Rep Wilson-Anton – Potable Water

SUPPORT

In simple terms, it requires the community owner that all new and renewing lot rental agreements where the lots are served by any private water systems, must contain yearly reports of water quality reported to the tenants and the DHSS. For those communities with septic systems, this requires the owner to service, empty, and inspect the septic system every 2 years and to report those findings to the tenants and DNREC. Supported by the owners and tenants, it easily passed both Chambers by 30 June.

Awaiting Governor's Signature.

SS#1 to SB9 w/SA#1 – Sen Walsh and Rep Baumbach – Safe Harbor/Omnibus Manufactured Housing Bill

SUPPORT

SB317 w/HA#1, 2 – Sen Walsh and Rep Baumbach – Safe Harbor/Omnibus

SUPPORT

A number of years in the making, the bill represents the tireless efforts from landlord and tenant organizations to deal with numerous aspects of the Manuf. Housing Code. Specifically, it makes changes around rent, calculations of rent, notifications, rent increases for multi-year leases, duties and responsibilities by landlord for safety and health violations, lot rental assistance program, and many other provisions. Originally introduced as SB9, a substitute was introduced

dealing with some technical changes in the bill. Passing the Senate in early June, it was assigned to the House Committee on Manufactured Housing, when on 8 June, it was tabled by the Chair on 3 to 3 vote. Seeing this as a road block, the sponsors introduced SB317, an exact copy of SS#1 to SB9 on 9 June.

Clearing the Senate with 18 Y, the new bill was assigned to the House Administration Committee, where it was promptly released. HA#1, 2 were the final attempts by Rep Kowalko to strip out significant portions of the bill – and all were considered unfriendly by the supporters and the sponsors. Finally heard on the floor, both amendments failed in roll-call votes, with the bill passing 37 Y, 3N on 30 June.

Signed by Governor 30 June 2022

HB374 w/HA#1, SA#1 – Rep Wilson-Anton and Sen Ennis – RV’s and Manufactured Housing Code

OPPOSED

Introduced in April on behalf of the DOJ, the sponsor seeks to make RV’s, used as homes, and placed on lots within manufactured housing communities to fall under Chapter 70, thereby affording these individuals protections from eviction. The bill mixes two very different products that are built with two different purposes.

Opposed by the RV Association and FSMHA, and after some discussions, HA#1 was added that made further clarifications that RVs cannot be considered a manufactured home for zoning and taxation purposes. SA#1 was added to prohibit any placement of RV’s in communities in the future, provides for treatment of RV’s that are abandoned under a change of use by the community owner, and makes sure RV’s in parks currently do qualify under this bill. The bill remained controversial, but ultimately passing the House on 26 Y, 15N after returning from the Senate 30 June.

Awaiting Governor’s Signature

II. TAXES

SENATE

HOUSE

HB284 – Rep Dorsey-Walker and Sen Poore – Neighborhood Tax Credit
NEUTRAL

The bill introduced in the January, increases the aggregate amount of the Assistance Tax Credit administered by the DE State Housing Authority that can be approved in one fiscal year from \$1mm to \$2mm a year. Re-assigned to House Appropriations Committee after released from Revenue and finance on 14 June, it never got a second hearing.

No Further Action Taken

HB287 – Rep Hensley and Sen Lopez – Elderly Property Tax Credit
NEUTRAL

The bill will increase the Senior Property Tax Credit to \$750 from the current \$500. Introduced in January, it was assigned to the House Administration Committee, and with a \$12.7mm FN, it never got a hearing.

No Further Action Taken

HB298 – Rep Briggs-King and Sen Bonini – Realty Transfer Tax
SUPPORT

This bill like a number of bills to reduce the TTax, would reduce it for seniors who have been in the state for at least 10 years by a ½% to a maximum of \$400,000 of the transaction. Assigned to House Revenue Committee shortly after introduction, it never got a hearing.

No Further Action Taken.

HB358 – Rep Bush and Sen Walsh – Transfer Tax Reduction
SUPPORT

Long sought after by DAR and others within the housing community, the bill reduces the TTax from its current 4% to 3% for all real estate sales, effective for documents recorded after 1 July 2022. The bill was assigned to the House Administration Committee, and eventually heard on 22 May. After debate, the bill was released and promptly reassigned to the House Appropriations Committee where it remained until the close of Session. Notable, while this bill had broad bipartisan support, the Speaker of the House, in a conversation with the REALTORS after the hearing, discussed his concerns and the tax was “...never considered temporary...” DAR will again pursue reducing this temporary tax to 3% next year.

No Further Action Taken.

HB445 – Rep Ramone and Sen Hocker – Lowering Gross Receipts Tax
SUPPORT

Introduced in early June, the bill simply reduces the state’s gross receipts tax by 50%. Assigned to the House Revenue Committee, a hearing was never conducted prior to adjournment on the 30th.

No Further Action Taken.

HB470 – Rep Smyk and Sen Wilson – Realty Transfer Tax and Trust Fund
OPOSED

Introduced on 9 June the legislation increases the amount of TTax funds transferred to the Land and Water Conservation Trust Fund in the amount of \$2.5mm from \$1mm, also increases the rolling average of the endowment that can be used from 5% to 7.5%, and finally, the bill increases the Open Space funding to \$17.5mm a year. DAR and others remain concerned bills that further encumber the TTax will make reducing this tax much more difficult in the future. Like the previous tax bills, it too was assigned to House Revenue Committee and failed to get a hearing prior to the close of Session.

No Further Action Taken.

III. BUSINESS ISSUES

SENATE

SS#2 to SB1w/HA#1 – Sen McBride and Rep Heffernan – Mandated Family and Medical Leave; FMLA

OPPOSED

The substitute was introduced on March 4, 2022 with numerous changes proffered by the business community. It was signed by the Governor May 10, 2022.

The bill imposes 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 employ 10 to 24 employees - who shall be required to offer parental leave, and those employing 25 or more – who shall be required to offer all three parental, medical, and family leave. Those with less than 9 employees are exempt from the bill. HA1 states those employers that are closed at least 30 consecutive days per year are also exempt. The employee is eligible for FMLA after 12 months and 1250 hours of work. The bill’s definition of family is defined by federal definitions. The bill struck wages that included holiday pay, commissions, dismissal payments and back-pay awards, and now pay is defined

federally. Employer and employee benefit taxes will be collected starting in 2025 with the first year of eligible use in 2026. Controversial issues remain such as 80% of the wage rate, and while capped at \$900 a week, may become an inducement to use more frequently, and 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. Though the bill does layout notice provisions, the employee is given wide latitude such they need to provide as little as one day notice.

Once the bill had received the Governor's overall support, it moved through the House and Senate on virtually all partisan votes.

Signed by the Governor May 10, 2022.

SS#1 to SB35 w/SA#1 – Sen Walsh and Rep Osienski – Wage Theft

OPPOSED

The bill sought to include “independent contractors” in the definition of workers and therefore be accountable to the employer under wage theft laws. The bill created numerous issues for the business and insurance communities and after discussions with the sponsor and the Dept. of Labor, the bill was re-introduced that clearly exempted out insurance and others regulated by the state that are truly independent contractors from the provisions of the bill. Still not without controversy, and a 2/3rds bill, it eventually passed both Chambers by 28 June.

Awaiting Governor's Signature

SS#1 to SB208 SA#1 – Sen Walsh and Rep Osienski – Employers Failure to Pay

OPPOSED

Originally introduced in January of this year... the bill seeks to hold employers responsible to pay all wages and failure to do so would result in fines and other actions by the Dept. of Labor. Objected to by the business community, SS#1 and the amendment represented a number of changes that allowed reasons for the employer to not pay final wages on reasonable grounds and man-made or natural catastrophe. It also refined the language to not be in conflict with current statutes. Passing both Chambers easily by June 29th.

Awaiting Governor's Signature.

SB211 w/SA#1, 2 – Sen Mantzavinos and Rep Griffith – Employment Practices/Age

NEUTRAL

Introduced in January, it says employers cannot ask the age, date of birth or dates of educational experience on an initial employment application. Based upon discussion with the business community, the two amendments clarify that if an

applicant's is a regulated profession, dates of certification and education must be requested, and allows the employer to seek age information but must establish age is an essential component of the work to be done. The bill easily passed the Senate and House on mostly partisan votes by mid-June

Awaiting the Governor's Signature

SB305 w/SA#1, HA#1 – Sen Hansen and Rep Heffernan – Climate Action Plan
OPPOSED

The bill reflects the Delaware's 2021 Climate Action Plan that seeks to reduce CO2 emissions from any generating source by certain levels in 2030 and 2050. It further mandates that all state agencies shall consider and address these new reduction standards in all aspects of decision making and regulatory actions they take. It will place DNREC as the sole decision maker as to whether the state meets these goals and what more steps must be taken to meet the goals established in the bill. This bill impacts virtually every aspect of the economy in the state. The Chambers along with numerous business organizations and the agricultural community outlined their direct opposition to the sponsors, the Secretary and the Governor's office. Introduced on 8 June, it passed the Senate on 9 June along party lines, and assigned to House Natural Resources Committee in the House on 10 June. After much work, a hearing was held on 27 June to a packed crowd. When public testimony was completed, the bill sponsor got a 2nd to be released, but that vote failed with 6 members voting No. The bill remains in the House Natural Resources Committee.

No Further Action Taken.

SB308 w/SA#1, HA#2 – Sen Mantzavinos and Rep Mitchell – Fire Resistance
Construction
NEUTRAL

The bill seeks to update the state's fire code with the use and inspection of "fire dampers" that are used in HVAC systems. Some initial concerns from the building owners and construction industry, it became clear systems installed before this requirement were grandfathered, and in general terms, the commercial building community was already installing and inspecting this equipment. The amendments say the Muni and State Fire Marshalls shall have jurisdiction, and further expands the grandfathering and inspection process. HA#2 also delays implementation by one year to allow the State Fire Marshall to create the training programs.

Passing both chambers by June 29th with no opposition.

Awaiting Governor's Signature.

HOUSE

HB205 W/HA#3 – Rep Lambert and Sen Poore – State Run Savings Plans
OPPOSED

Introduced last year on behalf of the State Treasurer’s office, the bill establishes 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. HA#3 seeks to address these issues on eligibility of certain employees, gives more detail on the Board’s functionality, and creates a grant program for small business that cannot afford the computer upgrades to establish this retirement program.

Awaiting Governor’s Signature.

HB262 w/HA#1, 2 – Rep Griffith and Sen Hansen – Data Brokers
OPPOSED

Strongly opposed by the technology companies along with numerous Chambers in its original form, it gives 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. Eventually, the sponsor agreed to exempt out those industries already regulated by state or federal law, such as banking, telecommunications, health care and insurance with HA#1. The bill passed in the House on May 5th along party lines and assigned to the Senate Banking Business Committee. A hearing was held in June where it failed to gain enough votes to be released.

No Further Action Taken.

HS#1 To HB288 w/HA#1– Rep Morrison and Sen Gay. Paid Time off to Vote.
OPPOSED

Introduced in January 2022, the original bill requires employers to pay employees for up to 2 hours to vote, and the time is at the choosing of the employee. The bill also established new fines and regulations for DOL to implement and enforce the bill. It was immediately opposed by the Chambers. A substitute was introduced in April and assigned to House Administration, where in a June hearing it was tabled.

No Further Action Taken

HB299 w/HA#2 – Rep Cooke and Sen Walsh – Trade Practices and Pay with Cash
NEUTRAL

The bill was a remake of HB97 from last year that seeks to prohibit the seller of consumer goods or services from refusing to accept cash payment. Enforcement against the business owner includes civil penalties. After discussions with the chamber, HA#2 removed the private right of action, exempted sporting and music festivals, and allows stores to have fewer checkout lines for those paying with cash only. Easily passing both the House in unanimous support, and then the Senate in one of its last actions on July 1st.

Awaiting Governor's Signature.

HB371 – Rep Osienski and Sen Paradee – Recreational Legalization of Marijuana
NEUTRAL

HB372 – Rep OSIENSKI and Sen Paradee – Marijuana Control Act
NEUTRAL

As many are aware, HB150 with various amendments never had enough votes to pass. The sponsor then split the bill into two parts, one for straight legalization HB371 which is a simple majority bill, and then a bill that provides all the regulations and taxes to allow for the sale of recreational marijuana.

The business community's overall issues were and remain around dramatically changing the employer/employee relationship. Specifically, the business community sought and got language that insured the employer's policies on drugs in the workplace or working while impaired known as "zero tolerance policies" will not be affected. However, while this was welcomed, 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.

HB371 passed the House with 26 Yes and then passed the Senate on a party-line vote. As many suspected, the Governor vetoed the bill on May 24th, sending the bill to the House for a veto-override which is a 3/5ths vote. On June 7, 2022, the House could not muster enough votes, the legalization bill failing on 20 Yes, 20 No, with one absent. It is expected this bill will not be advanced as long as Governor Carney remains in office.

No Further Action Taken.

HB392 – Rep Postles and Sen Pettyjohn – Regulatory Flexibility Act
SUPPORT

The bill seeks to change the notice provisions of the Administrative Procedures Act by requiring copies of the flexibility analysis and a new economic impact statement that are conducted by the state for the applicant. It also changes and improves the timelines for responding and providing information to the applicant. With no D sponsors the bill was assigned to House Administration Committee and never got a hearing.

No Further Action Taken.

HB409 – Rep Morrison and Sen Pinkney – Earned Sick time and Safety Leave.
OPPOSED

Introduced in May, the bill requires all employers in the state, no matter their size, to provide a minimum of 1 hour paid sick time and safety leave for every 30 hours worked. Employers with 9 employees or less, leave can be un-paid but must still be granted. The bill is overly broad for how “safety” leave and family are defined. Strongly opposed by the Chambers, it was assigned to the House Banking and Insurance Committee and heard on June 21st. After a lengthy debate offered by the advocates, the bill was tabled.

No Further Action Taken.

HB435 – Rep Lambert and Sen Walsh – Community Workforce Agreement Act
OPPOSED

Introduced on June 2nd, the bill basically requires that for every public construction job over \$3 million, it must be done under a Project Labor Agreement, or now referred to as a Community Workforce Agreement. Strongly opposed by the merit shop construction trades and the Chambers, the bill easily passed House Labor Committee, but because of an unknown fiscal note, and opposition by the Administration, the bill was reassigned to the House Appropriations Committee and failed to have a hearing.

No Further Action Taken.

HB448 – Rep S. Moore and Sen Hansen -Accessible Parking Spaces.
OPPOSED

The bill seeks to require the counties and muni’s to implement new and expanded handicap regulations. It also imposes new fines and requires the business owner to create their own permit process to enforce compliance of these standards. Finally, the bill provided no grandfathering of existing parking lots or those already limited by space because of local requirements. Assigned to the House Public Safety Committee, it never got a hearing.

No Further Action Taken.

IV. ISSUES FOR JANUARY 2023

Delaware's revenue picture still looks strong. However, inflation is running over 8% and unemployment remains a mixed bag of high claims, but “Help Wanted” signs indicating employers are unable to find workers. With no tax cuts offered, federal dollars washing through the system in a year, it remains unclear how this impacts our state economy, and what impacts it will have on the recently passed FY ‘23 and out year FY ‘24 budgets.

Returning legislation: Data Brokers; Credit Card Bank Fees preemption; 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 that were not attempted this year.