

LEGISLATIVE UPDATE

# **“FINAL GAVEL”**

## **2<sup>nd</sup> SESSION OF THE 152<sup>nd</sup> GENERAL ASSEMBLY**

AS OF: 18 July 2024

### **EXECUTIVE SUMMARY**

**“I am not doing this anymore.”**

**Sen. Eric Buckson**

The Second Session of the 152nd General Assembly started with numerous bills left over from the 1<sup>st</sup> Session and the coming election cycle – which always adds more pressure to what became one of the most demanding and difficult Sessions in recent memory for the business and real estate/housing community.

To add to this “mosh pit” of pressure, social issues, and the expectations from freshmen legislators to get their bills done, as well as a newly elected Speaker, were the time requirements for members of the public to testify during the committee hearing process.

As mentioned last year, and a hold-over from Covid, the Majority has held constant the time limits on speakers during committee. Even with the allotted 2 minutes, (and in some cases just 1 minute) this is not enough time to present technical or difficult arguments. And while the “hearing” remains open for written comments for an additional 24 hours, many agree the members never read the submitted comments, and to make matters worse, they have taken action on the bill. While zoom offered seemingly more public access – it was still a difficult environment to petition your government since the ruling party allows them the ability to pass any legislation they wish. The speed at which things happen in the building remains high.

Once again, social and environmental issues took a prominent positions in the debate. Some were left over from the 1<sup>st</sup> Session such as the “Death with Dignity” or doctor assisted suicide bill and numerous climate change bills. However, new for this year were bills related to wind power, and environmental justice notification, and rent control for multi-family.

Overall, the Assembly worked on more adjustments to the MJ legalization bill passed last year, a small adjustment to mandated family leave FMLA, a bill to allow DNREC to increase virtually all their fees, the EARNNS act becoming effective 1 July 2024, environmental “justice” notification legislation, a bill to allow individuals to self-identify as “pan-sexual”, final passage of the doctor assisted suicide bill, passage of the natural organic reduction/human remains legislation, passage of a bill that will establish a government oversight board for all the state’s hospitals, passage and signature by the governor of the “permit to purchase” for all firearms, a new short-term rental tax, efforts by the REALTORS to seek some relief from the 4% realty transfer tax, lead paint bills, mandatory Housing Choice Voucher (HCV) legislation, the failure of the escrow bill in the House, and numerous bills impacting both the multi-family and manufactured housing codes.

Of special significance this Session were the debates and actions around the hospital bill and one bill from the Corporate and Delaware Bar addressing changes to keep Delaware’s Chancery Court in its premier position as the national court of equity. For some in the business community, these two singular events continue to showcase Delaware’s move to the left, and away from what many had called “The Corporate Capital of the World”.

In the House and as example, HB350 was introduced in the House to address the rising, and from the Administration’s point of view, extremely high health care costs for current and retired state employees. The bill creates a Governor appointed Oversight Board to review the financial and budgetary decisions of all hospitals, rehab and specialty care facilities in the state. Additionally, the legislation called for the claw-back of monies from the hospitals if the Oversight Board found they were making too much money, and it limited all their charges to 250% of Medicare. While the bill was amended to remove the rehab and mental health facilities along with the two most onerous issues, the 250% and the claw-back provisions, the bill requires each hospital to submit their financials for review and acceptance by the government. To note – there was one state in the nation that did this, Vermont, and their Assembly just repealed this type of oversight board in early 2024.

Another example, and mentioned above, there were a series of socially focused bills to include HB275 that defines sexual orientation to include the words “asexuality” and “pansexuality” to the Delaware Code. It was during the debate in the Senate when Sen. Eric Buckson made his comments.

During the debate in the Senate on HB275, Sen Buckson explained his recognition of individuals that do not recognize either the male or female gender and noted his support over the years of their efforts to seek some level of equality. However, when the issues and the complete inability of the advocates to explain exactly what “pansexual” means, and for those that claim this identity, where are the examples of systemic and widespread abuse or discrimination, all went unanswered. He said “I am not doing this anymore.” His frustration, and those shared by the other R Senators was – when does this all stop? At what point do we stop creating labels, or placing people in categories, but simply treat folks with fairness and respect. These and his other comments went unanswered. The bill passed and along party-line votes and awaits the action of the Governor.

Both the House and Senate adjourned within 45 mins of each other, with no real last-minute issues, given the overwhelming majority held by the Democrats in the Senate at 15 to 6 R’s, and in the House of 26 to 15 R’s. Any legislation they wish to move forward, did so without delay. However, in the Senate was the first time a complete and whole agenda was published the day before June 30<sup>th</sup>, and when it was complete, they adjourned around 9:15PM.

As to spending, early DEFAC numbers presented a revenue picture for the coming FY ’25 budget as a slow-down in growth. Yet, by the June DEFAC revenue estimate – Delaware was again looking at increased revenues, allowing for another banner year with near record-breaking Bond Bill of \$1.116 billion and a General Operating Budget of \$6.129 billion. And like last year, this Assembly passed a supplemental spending bill of one-times of \$168.3m that covered state retirees at \$51mm, a \$150,000 wetlands study in DNREC, as well as monies to fund the DHS for more police and staffing around the permit to purchase legislation.

The Assembly passed the Budget Bill SB 325 by the third week of June, followed by the Bond Bill HB475 the last week of Session – with Grant-in-Aid passing the House and Senate respectively on 30 June.

Here are the spending highlights from this year.

The FY'25 Budget is \$6.129 billion.

This year's budget showed increases again in spending for virtually all agencies and employees, to include OEC raises for teachers. The Assembly increased monies in the Budget Stabilization Fund (budget smoothing), and numerous one-times in the Supplemental SB326 bill. This year the JFC moved many spending

categories once in the budget to Grants-in-Aid, boosting that spending bill to \$98.4million. Budget growth was 9% from last year.

A breakdown of spending for the last number of years as compared to the new FY2025 budget is as follows:

**FY2017 - 8 years ago**

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

**FY2018 - 7 years ago**

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

**FY2019 - 6 years ago**

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

**FY2020 – 5 years ago**

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

**FY2021 – 4 years ago**

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

**FY2022-3 years ago**

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

**FY2023-2 years ago**

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

**FY2024- last year**

General Operating Budget	\$5.606 billion
Supplemental/One-times	\$ 194 million
Bond/Capital Improvement Bill	\$1.409 billion
Grants-in-Aid	\$ 70 million

**FY2025**

General Operating Budget	\$6.129 billion
Supplemental/One-times	\$ 168 million
Bond/Capital Improvement Bill	\$1.116 billion
Grants-in-Aid	\$ 98 million

The growth in Delaware's budget is unmatched in recent memory. Spending is growing faster than is prudent, with inflation becoming the "hidden tax" on virtually all services and products the state consumes. The Assembly is becoming more progressive, which will mostly likely drive more programing/spending, that means the potential when an economic slowdown occurs.... more taxes.

Delaware's revenue picture remained strong for FY'25. However, inflation also remains high around 6-7%, and many of the persistent issues that have long plagued Delaware as to an aging population, in-migration of retirees, a lack of diversified production-based economy, help-wanted signs, all continue to show Delaware's economic base may not keep pace with its spending. There were NO tax cuts (again) for any segment of businesses or Delaware's citizens.

However, the open-ended question remains – Who is going to pay for all this stuff?

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

# REVIEW OF LEGISLATION

## I. 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

#### SS#1 to SB22 Sen Huxtable and Rep Bush – Workforce Housing Program SUPPORT

The bill establishes the Delaware Workforce Housing Program that allows qualified workforce housing invertors to be reimbursed through a grant of up to 20% of the capital costs associated with the housing units they create in their developments. The bill outlines requirements and these investments must be in Level 1 and 2 areas of the state and cannot be combined with state or federal housing credits. Supported in a bipartisan fashion, unanimously passing the House on June 30<sup>th</sup>.

*Awaiting Governor's Action*

#### SS#1 to SB23 Sen Huxtable and Rep Harris – ADU Requirements for Counties OPPOSED

The act requires the local and municipal governments to allow the construction of Accessory Dwelling Units (ADU) within their jurisdictions without prohibitive barriers or zoning requirements. Opposed by the League of Local Governments and DAR because it drives zoning/land use decisions to the state level and removes authority, the bill's intent was supported but an outright mandate was considered the wrong approach. Assigned to the Senate Housing Committee on 20 May, it never got a hearing before the close of Session.

*No Further Action Taken.*

#### SB25 w/SA#1 Sen Huxtable and Rep Baumbach – Realty Transfer Tax SUPPORT

The bill simply exempts contracts for the construction of affordable housing units from the state's 2% portion of the RTT, as along as these units are financed using funding provided by government sources that support affordable housing unit.

Broadly supported in a bi-partisan manner, it easily passed both Chambers by June 30<sup>th</sup>.

*Awaiting Governor's Action.*

**SB130 – Sen Sturgeon and Rep Phillips – Restrictive Covenants/Clotheslines  
OPPOSED**

A holdover from the 1<sup>st</sup> Session, the bill seeks to strike any HOA covenant or deed restriction that prevents a homeowner from setting up/installing a clothesline to dry clothes, all in the name of reducing that person's carbon foot print. Pushback from DAR and some other property organization's – the bill was heard in Senate Elections and Gov Affairs Comm but was not released in June 2023. There was no further action taken in 2024.

*No Further Action Taken.*

**SB213 Sen Hocker and Rep Gray – Lodging Tax for Millville  
OPPOSED**

As in keeping with all charter changes, they are typically only enabling legislation to allow the municipality to do, as in this case, impose a new 3% lodging tax for short-term rentals located within the city limits. DAR has long opposed the implementation of new short-term or lodging taxes, but it passed by June 30<sup>th</sup>.

*Awaiting Governor's Action.*

**SB214 Sen Hocker and Rep Gray – Lodging Tax for Millsboro  
OPPOSED**

Another charter change but for Millsboro, it too seeks a 3% lodging tax on short-term rentals within the city limits. It passed by June 30<sup>th</sup>.

*Awaiting Governor's Action.*

**SB230 Sen Hoffner and Rep Baumbach – Community Canvassing  
OPPOSED**

The bill seeks to ensure that all elected officials have access and can engage in constituent relations as well as candidates and their staffs may not be prevented from engaging in election-related activities within residential communities. The arguments centered upon private property rights and the authority of HOA's to restrict access to their communities by others that are not residents, or a guest/contractor/employee of the resident. It was released in March, but never brought to the Senate floor for consideration.

*No Further Action Taken.*

SB244 Sen Huxtable and Rep K Johnson – County Taxes

NEUTRAL

The bill will allow the counties that impose a lodging tax the proceeds from the tax may be spent on workforce and affordable housing programs within their respective counties. Easily passing both chambers by June 30<sup>th</sup>.

*Awaiting Governor's Action.*

SB246 w/SA#1 and HA#1 Sen Huxtable and Rep Parker-Selby – Housing Repair and Modification Fund

NEUTRAL

Another in a series of housing bills – this seeks to codify the DSHA's home repair program that has existed for 30 years and add to it some language to ensure the use of monies collected remain with the program. HA#1 allows manufactured housing to be eligible for the fund. SA#1 says the DSHA may use monies collected in the fund for administrative expenses related to the program. Easily passing both Chambers on 21 and 41 votes in the Senate and House respectively.

*Awaiting Governor's Action.*

SS#1 to SB245 Sen Huxtable and Rep K Johnson – the Office of Mortgage Foreclosure

SUPPORT

Next in the series of housing bills, this removes the sunset provisions of the Office of Foreclosure Prevention and Financial Education program that was started in 2008 at the height of the financial crisis. The program has been extended multiply times by the Assembly – this makes permanent the office, its duties and responsibilities. The substitute adds language that any intent to foreclose, the notice includes the phone number of AG's Foreclosure Hotline, along with contact information for the DSHA foreclosure prevention program, and finally, directs the consumer to the HUD's Certified Housing Counselors program for assistance.

*Awaiting Governor's Action.*

SS#1 to SB247 Sen Huxtable and Rep Harris – Community Safety

NEUTRAL

Originally opposed by FSMHA, it was not until after the new bill was released that added a significant amount of clarification that the industry went neutral. The Act creates a clearer and workable system for ensuring that manufactured home communities with health and safety violations cannot continue to raise rents on residents without fixing the conditions and providing a safe community for its residents. SS#1 does the following: (1) Adds definitions to § 7003 for the whole chapter. (2) Creates a section that provides requirements for what a community owner must do when it receives a citation or experiences a failure of services



related to water, sewer, or utilities distributed by the community owner, including having to fix the problem within 10 days or give detailed reasons why it cannot be completed in that timeframe as well as provide a surety bond for 150% of the estimated cost if it cannot be done in that timeframe. (3) Specifies that a community owner cannot impose a rent increase if it does not comply with the requirements of new section governing such repairs. (4) Changes the court in which community owners may dispute a citation for purposes of receiving a rent increase from Superior Court to the Justice of the Peace Court.

*Awaiting Governor's Action.*

#### SB274 Sen Pettyjohn and Rep Yearick – Access to State Maintained Highways NEUTRAL

The bill allows developers who are building in Level 1 or 2 areas and are building affordable housing lots as defined in the bill to recover a portion of credit for off-site improvements that are equal to a percentage of the affordable lots they are offering. It passed the House on June 30<sup>th</sup>.

*Awaiting Governor's Action.*

#### SB289 Sen Hansen and Rep Heffernan – “Stretch Codes” for New Construction. NEUTRAL

This Act relates to energy conservation identified in county and municipal building and plumbing codes. It will require a threshold that counties and municipalities must, at minimum, meet as adopted by the Delaware Energy Office (“DEO”). The Act authorizes counties and municipalities to go above the threshold adopted by the DEO. This Act also amends Title 29, Chapter 80 of the Delaware Code by charging the Energy Efficiency Advisory Council and the Sustainable Energy Utility to collaborate to design programs to promote and support the development and construction of energy efficient housing, including programs to alleviate the potential increased upfront costs caused by the adoption of local stretch codes.

What remains unknown is the practical impact upon the housing industry. Will this require the use of only electric furnaces or ranges for all new construction or renovations? What costs will be incurred by the builder or the homeowner?

*Awaiting Governor's Action.*

#### SS#1 to SB293 w/HA#1 Sen Lockman and Rep Moore – Housing Choice Vouchers NEUTRAL

This bill has had a long history in the building with the RELATORS and DAA fully engaged throughout the process over the last many months. This version essentially does the following:

It builds upon SB293 by adding whereas clauses that explain the process Delaware's 5 PHA's (Public Housing Authorities) are undertaking to streamline the procedures for landlords accepting vouchers; Requires the DSHA to provide a report to the Assembly of their progress by 1 March 2028 of the streamlining process and data comparing utilization of vouchers before and after the effective date; Provides an effective date of 1 January 2026, and; It provides a sunset of December 31 of 2028 unless repealed or extended by a subsequent Assembly. HA#1 goes further by requiring the PHA's to adopt and implement the recommended standardized sequences of processing a "Request for Tenancy Approval" and the landlord may deny the rental applications of the PHA has not done this. The amendment also changes the effective date to immediately, however, it cannot be implemented until the PHA's have completed all of the short-term recommendations in the consultant's May 2024 report, or January 1, 2026. Passing along party lines even with DAA going neutral upon the attachment of HA1, it passed late on June 30<sup>th</sup>.  
*Awaiting Governor's Action.*

## **HOUSE**

HS#1 to HB191 w/SA#4 w/SA#1 (previous versions HB37, HB191) – Rep Dorsey-Walker and Sen Brown – Tenant Remedies/Escrow  
OPPOSED

Like HB477 from the last year, and all the various forms of the bill this Session, the bill seeks to address issues in Wilmington relating to a specific landlord and condemnation of his rental units in 2022, by giving tenants ability to withhold and/or escrow rent into an account within the JP Court system. DAA maintained throughout the months of debate that creating an escrow account does nothing to help tenants that are facing life and safety issues. After numerous meetings last year, HS#1 to HB191 was introduced.

Each subsequent version made incremental changes that help clarify the problems with the bill, however, the multi-family housing community remained steadfast in their opposition. Assigned to the House Appropriations Comm (Fiscal Note) – it was released late on the 21 June 2023, then passing the House 22 Yes, 1 N, 1 NV and 16 Absent (this was the night the R's walked out) and assigned to Senate Housing

After more work in 2024 and two separate Senate Housing hearings, the bill was believed to be lacking support. During the last week of Session, the bill was

released from committee and a series of amendments were presented. Ultimately, SA#1 to SA#4, and SA#4, which essentially re-writes the entire bill by removing the escrow provisions, passed along party-line vote in the Senate. During the closing minutes of the House Session, the bill was never lifted from the table, and died in the House on June 30<sup>th</sup>.

*No Further Action Taken.*

HS#1 To HB203 w/HA#1, #2, #3 Rep Hilovsky and Sen Mantzavinos – School Financial Literacy

#### **SUPPORT**

Introduced in February after a great deal of work by the sponsor, the bill seeks to add ½ credit course to all public and charter high school student's course work before graduation. Opposed by various public education organizations, and facing an uncertain future, a number of amendments were added to gain support, but the bill never got to the House floor.

*No Further Action Taken.*

HS#2 to HB212 w/SA#1 Rep Longhurst and Sen

#### **OPPOSED**

House Substitute No. 2 to House Bill 212 prohibits manufactured home community owners from increasing rent if the rent was increased by 5 percent or more the previous year or rental period, instead permitting an increase capped at 3 percent. This Act does not prohibit a community owner from increasing rent to market rent in phases as called for in current law, even if doing so would otherwise violate the prohibition on increasing rent after a 5 percent or more increase. It also allows a greater increase where more than 50% of the homeowners use the property as a second residence. This Act clarifies that penalties of rent reduction and repayment of excess rent will be imposed for a community owner who increases rent in violation of any provision of Title 25, Chapter 70. It also requires community owners to annually provide certain information relating to the lot rental assistance program to its homeowners and to certify to DEMHRA its compliance with the program requirements, and allows DEMHRA to request further information about the program as needed. It also requires: Enrollment in the lot rental assistance program to remain open year-round; It requires community owners to provide specified contact information to DEMHRA within 60 days of taking ownership/possession of a community; Requires the Manufactured House Ombudsperson Office to hold 2 meetings in each county per year where it offers information about lot rental assistance programs and services for homeowners.

*Awaiting Governor's Action.*

HB241 w/HA#1 Rep Harris and Sen Pinkney – Housing Agreement Advisor  
OPPOSED

It seeks to allow a potential home purchaser or lessor to select any person they choose as an “advisor” to accompany them on the home purchase or rental process, requires the landlord and seller to provide information their right to have an “advisor” during the process, and finally provides for penalties for landlords and their agents who fail to provide this information. It also requires the DSHA to maintain a list of organizations that provide these advisors. Opposed by DAR and DAA, the bill was released on 20 June, but was not heard before the close of Session.

*No Further Action Taken.*

HB318 w/HA#1 and SA#1 Rep Baumbach and Sen Sokola – Exemptions in Bankruptcy Proceedings  
NEUTRAL

Simple in design, the bill increases the exemption in bankruptcy and other debt collection actions of the debtor’s personal residence from \$125,000 to \$200,000. The bill also increases the exemptions for tools of the trade and for a vehicle to \$25,000 from \$15,000. Finally, it exempts worker’s compensation awards from other states as an attachment for debt. The amendments add an effective date upon signature and extends the exemptions to US territories and the District of Columbia.

*Awaiting Governor’s Action.*

HB343 w/HA#1 Rep Yearick and Sen Buckson – Reducing the Transfer Tax  
SUPPORT

Another attempt by members of the Assembly to reduce the TTax on real property, this reduces the tax 25% each year for 4 years for properties that have less than a value of \$500k, and for commercial properties having a value of less than \$1mm, starting January 1, 2025, thereby by 2028, the TTax will be back to the original 3%. Assigned to the House Finance committee and opposed by the Administration and the majority party, the bill was never released to the floor for a vote.

*No Further Action Taken.*

HB348 Rep Schwartzkopf and Sen Huxtable – Lifeguards at Pools  
SUPPORT

Long supported by DAA, the bill removes the requirement for a lifeguard at a pool exclusively serving a residential or apartment community not accessible to the general public. Currently lifeguards are not required at private hotels, motels, and this simply allows private pools to be classified as the same.

*Awaiting Governor’s Action.*

HB363 Rep Morrison and Sen Townsend – Rights of Tenant Employees  
NEUTRAL

The sponsor is seeking to require landlords who, as part of their employment package offer a unit, (only if there is no signed written rental agreement in place), the landlord must offer the tenant employee the opportunity to enter into a written rental agreement of the dwelling where the tenant employee is residing, and to offer this agreement within 5 days of the termination of the employment. Opposed by the DAA, it was not until the current language was agreed to that the bill advanced through the system, passing the Senate on June 30<sup>th</sup>

*Awaiting Governor's Action.*

HB370 Rep Shupe and Sen Huxtable – Buyer Protection Act  
OPPOSED

This bill will add additional requirements for any residential seller of property to provide the buyer a detailed water report for their private or municipal water supply to the buyer before the time of transfer. Opposed by DAR because some of these issues are already dealt with on the current “Seller Disclosure Form” and concerns around validity, the sponsor agreed to not pursue the bill, and has asked the Real Estate Commission to address the matter via regulations.

*No Further Action Taken.*

HB381 Rep Williams and Sen Mantzavinos – Landlord Tenant Guide  
NEUTRAL

This Act requires the Delaware Real Estate Commission to create a comprehensive, statewide rights & responsibilities guide (“guide”) for landlords and tenants. This guide will reference responsibilities that a tenant or landlord must follow, including federal, state, county, and municipal requirements. This guide is to be created with input from other housing-related organizations, as needed. Concerns from the DAA given a form of this already exists in New Castle County, they sought some clarity as to how the process would be implemented after enactment. Released from committee in April, it remained on the Ready List.

*No Further Action Taken.*

HB439 Rep Phillips and Sen Hoffner – Homeless Bill of Rights  
NEUTRAL

This is the final version of bills HS#1 to HB55, HS#2 to HB55, HB415 and finally HB439 w/HA#1, #2 that simply adds “Housing Status” as a new protected class to various sections of the DE code, that already includes gender, sexual orientation, identity, marital status, sex, national origin, race and other identifications. The amendment allows the landlord to continue to use credit checks that are currently allowed under law as to determining the suitability of the prospective tenant.

Previous versions all sought to amend Title 6 and Title 31, that would establish a new protected class for those that are defined as homeless in the bill. Strongly opposed by DAA and DAR because of the negative impact it will have on the ability of the property owner to determine if the potential tenant can meet the requirements of tenancy, along with other factors, these versions failed to advance.

Additional issues focused on the broad definition of homelessness, the rights afforded to these people that include 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.

This bill and its companion HB440 (housing status in employment), eventually passed both Chambers by June 30<sup>th</sup>

*Awaiting Governor’s Action*

#### HB407 Rep Mathews and Sen Hansen – Transporters of Manufactured Homes SUPPORT

The bill establishes an application process, policies, procedures, operational instructions, and requirements for licensed transporters to obtain and use transporter license plates when transporting vehicles. Supported by FSMHA and some of the retailers, it easily worked its way through both Chambers.

Signed June 17, 2024

#### HB442 Rep K Johnson and Sen Huxtable – Housing Production Task Force SUPPORT

Given the tremendous issues around affordability and housing need, the task force was created to bring the REALTORS, Apartment industry, manufactured housing, the League of Local Government, other organizations and appointments by the Governor’s office to make recommendations on how to increase the construction of affordable apartments and homes. The bill lays out the details of the TF, full membership, sub-committees, and areas of work. Its report is due 1 March 2025. Passing easily in both Chamber by June 30<sup>th</sup>.

*Awaiting Governor’s Action.*

#### HB450 Rep Harris and Sen McBride – Apartment Registry OPPOSED

This will require the creation of an apartment registry by the DSHA by September of 2028. The registry will require landlords to submit information to the DSHA that includes basic data as well as date of construction, terms of the lease, lead

based inspections and the results of those inspections, and if any remediation efforts were taken by the property owner. Opposed by DAA and DAR, the sponsor indicated the bill would not be run before the close of Session.

*No Further Action Taken.*

#### HB452 Rep Harris and Sen McBride – Lead Based Paint Hazard Reduction OPPOSED

This Act requires that all rental units constructed before January 1, 1978, are certified as lead free or lead safe by a specific deadline. Lead inspectors must be approved by the State to conduct inspections and if necessary, lead abatement and remediation. A certificate exemption may be issued for no more than 6 months. If the rental unit is uninhabitable, the landlord must provide alternative housing while the unit undergoes lead abatement or remediation. Recertification for lead safe units must occur prior to commencement of any rental agreement more than 4 years after the date the unit was last certified. Units must be recertified as lead free or lead safe if a lead-based paint hazard is discovered in the rental unit or if individuals residing in the unit develop elevated lead blood levels. Beginning July 1, 2026, every rental unit constructed prior to January 1, 1978, shall include a disclosure as to whether the rental unit has been certified as lead safe or lead free.

Complicated and adding significant costs to the property owner, the sponsor did indicate this too would not be run before the close of Session.

*No Further Action Taken.*

#### HB455 Rep Lambert and Sen Lockman – Rent Control OPPOSED

Rumored to be “in the works” for months, rent control was finally introduced on 28 June with significant concerns from the REALTOR and multi-family housing community. This Act creates a 10-year program to address the lack of affordable housing in Delaware by establishing statewide limitations on the amount that rent can be increased as follows: 1. When a rental agreement is renewed, the rent increase may not exceed 5% of the previous rent unless the 36-month average annual increase of the Consumer Price Index for All Urban Consumers (CPI-U) is greater than 5%. If the 36-month CPI-U is greater than 5%, the rent may be increased by no more than 7% of the previous rent. 2. For a new rental agreement, the amount rent can be increased from the previous rent is as follows: • If the amount of the previous rent is equal to or exceeds the Fair Market Rent (FMR), the rent may not exceed the previous rent plus the amount allowed for a rent increase for the renewal of a rental agreement. • If the amount of the previous rent plus 7% of the FMR equals or exceeds the FMR, the rent may not exceed the previous rent plus the amount allowed for a rent increase for the renewal of a rental agreement. •

If the amount of the previous rent plus 7% of the FMR equals less than the FMR, the rent may not exceed the previous rent plus 7% of the FMR. The limitations on the amount of rent under this Act do not apply to any of the following: • Owner-occupied structures with 2 dwelling units. • Rental agreements when the amount of a tenant's rent is governed by federal regulations or guidelines. • A rental unit that has not been subject to a rental agreement during the previous 12-month period.

It requires the Delaware State Housing Authority (DSHA) annually do all of the following: • Calculate and publish the 36-month CPI-U for New Castle County and for Kent and Sussex counties. • Publish the FMR for each county. • Create and publish an explanation of the limitations on the amount of rent under this Act. • Compile a report regarding the effectiveness of the limits on the amount of rent under this Act. This Act also requires that DSHA establish procedures to annually collect and analyze rental housing data in this State to measure the supply and availability of rental housing, including the amount of rent for rental units and other operating characteristics. Beginning January 1, 2026, landlords must annually provide specific data for rental units to DSHA. If a landlord refuses or fails to comply with the data reporting requirement, the penalty for the first occurrence is a warning and opportunity to comply and for subsequent violations, a civil penalty that does not exceed \$150 for each occurrence thereafter. Assigned to House Housing Committee, a hearing was not schedule.  
*No Further Action Taken.*

## **II. LAND USE/ENVIRONMENT**

### **SENATE**

SB237 Sen Hansen and Rep Heffernan – Comprehensive Planning  
NEUTRAL

This seeks to mandate county and municipal comp plans of over 2000 in population to incorporate community resiliency plans and to address strategies to deal with and combat climate change in their plans. Concerns over what these plans will look like, and to what level of detail required remain unanswered, but the bill passed along party line votes.

*Awaiting Governor's Action.*



SS#1 to SB290 Sen Hansen and Rep Phillips– Wetlands Protection/Land Use  
OPPOSED

Immediately upon the introduction of SB290, numerous organizations to include independent farmers, developers, and the housing industry voiced their significant concerns with the approach and breadth of new regulatory authority given to DNREC to protect isolated non-tidal non-404 wetlands in the state. Supported by Sierra Club and Nature Conservancy, the business community sought changes. A substitute was introduced, but many problems remained. After a lengthy zoom meeting in June, the sponsor committed to seeking money in the budget to help DNREC actually determine what these wetlands look like, and how many acres are actually unprotected without any zoning or other local protections afforded.

*No Further Action Taken.*

**HOUSE**

HB246 – Rep Phillips and Sen Huxtable – Statewide Riparian Buffers  
OPPOSED

Introduced last Session in 2023, it sought to establish a uniform statewide 300 foot buffer around all water bodies in DE, the bill creates numerous problems within the land development community, and steps on home rule. With numerous organizations including the CDCC in strong opposition, the bill was not heard in committee and the sponsors indicated they would bring all stakeholders into a meeting(s) to discuss this issue before the return of Session in January.

To note, no meetings were ever held in 2024 and the bill never advanced beyond the introduction back in 2023.

*No Further Action Taken.*

HS#1 to HB248 w/HA#1 – Rep Johnson and Sen Townsend – Pre-Permit  
Community Outreach Meeting  
OPPOSED

The original bill was introduced in 2023, and given the amount of opposition from numerous organizations within the business/permitting community, ongoing discussion were held throughout the Fall of '23 and into the Spring of '24. Despite tremendous work from the sponsor and the business community as lead by the New Castle County Chamber, HS#1 was introduced in May. However, it contained many of the same onerous provisions as before, lack of clarity in who is responsible for what, and still allowed DNREC to accept the outreach plan or not at their discretion. HA#1 was to address some of these concerns but kept the bill

as completely unmanageable by the permittee. The bill did get released from Committee but did not make the Ready List.

*No Further Action Taken.*

#### HB249 – Rep Carson and Sen Paradee – Increasing Fees for DNREC OPPOSED

Introduced on 28 June in 2023 – this bill was left for the next Session, with a commitment by DNREC to provide a new version. The bill would increase virtually all DNREC fees that include storage tanks, emergency generators, hazardous waste facilities, drilling licenses, waste hauling transport permits, NPDES permits, VOC unit fees, sediment and stormwater control fees, and many others. It also allows fees in Section 6 of the bill to be raised by the Department without Assembly vote by no more than 5% each year. Assigned to the House Appropriations Committee in 2023, it never was brought forward again in 2024.

*No Further Action Taken.*

#### HB422 Rep K Johnson and Sen Townsend – Environmental Permits in Overburdened Communities

##### OPPOSED

This bill differs in that it will require the permit holder, when seeking a new permit, reapplication of existing permit, or expansion of a permit, and that operation is located in an overburdened community as defined by the bill, the business must provide an environmental justice impact report 60 days prior to the required community information session and public hearing. These reports would be reviewed and commented upon by a newly created Environmental Justice Board, that would also help DNREC fulfill the purposes of the act.

Like HB249, this too was strongly opposed by the business and permitting community. After significant work in opposition, this bill did not have a hearing, but will be returning in 2025.

*No Further Action Taken.*

## **III. TAXES**

### **SENATE**

#### SB218 Sen Lawson and Rep Collins – State Power to Impose Taxes NEUTRAL

This is the first leg of a constitutional amendment that restricts the State from using excise or similar taxes for any other purpose than for necessary and essential gov programs. Given support from only one party, the bill was assigned to a committee without a hearing being held before June 30th.

*No Further Action Taken.*

## **HOUSE**

### **IV. BUSINESS ISSUES**

## **SENATE**

SS#1 to SB147 w/SA#1 Sen Sturgeon and Rep Osienski – Computer Related Offenses

**OPPOSED**

Introduce early in the Session, and undergoing some revisions, the bill creates a narrow exception to the computer crimes statutes by allowing employees to gain access to information in the attempt to pursue or report claims of employment law violations. Opposed by the Chambers and other business organizations, it was debated in the Senate, passing with only 12 votes yes. Assigned to the House Judiciary Committee where it failed to get a hearing.

*No Further Action Taken.*

SB229 Sen Sturgeon and Rep Williams – Employees Right to Inspect Files

**OPPOSED**

This will require the employer to grant the right to inspect former and current employees access to the employee's personnel records that exist at the time of the request. Again, opposed by the business community, the bill was assigned to the Senate Labor Committee and did not receive a hearing.

*No Further Action Taken.*

SB233 w/ SA#1 Sen Walsh and Rep Osienski – Service Worker Protection Act

**OPPOSED**

This Act establishes employment protections for certain service employees during changes of ownership by requiring all of the following: 1. Notice to affected service employees at covered locations at least 15 days before a service contract is terminated, services are contracted out, or the property where they are employed is sold or transferred. This notice must state the event triggering the notice, information about the new awardee, purchaser, or transferee, and the service

employee's rights under this Act. 2. The successor employer must retain all affected service employees at a covered location for a 90-day transition period. The bill will encumber new owners of having to employees they do not want to keep and interferes with employment at will. However, it passed along party-line votes in both Chambers before June 30<sup>th</sup>.

*Awaiting Governor's Action.*

#### SS#1 to SB248 Sen McBride and Rep Heffernan – FMAL Insurance Program NEUTRAL

This Act clarifies for purposes of the Family and Medical Leave Insurance Program, where an employee is leased by an employee leasing company or a professional employment organization, "employer" refers to the employer client of the employee leasing company or professional employment organization, and not to the employee leasing company or professional employment organization. SS#1 omits language concerning whether individuals covered by certain collective bargaining agreements are "employees" for purposes of the Program.

*Signed 30 June 2024*

#### SB256 w/SA#1 Sen Gay and Rep Griffith – Consumer Protection OPPOSED

Concerns were raised by the insurance, manufactured housing, and business community relating to DOJ's expansion of the consumer fraud statute by allowing the AG to collect unspecified damages from and freeze the assets of any person who violates this chapter, whether the violation was inadvertent or unintentional. Based upon significant feedback, the amendment clarifies the Summary Cease and Desist Order process by requiring that, when the Director of the Division of Consumer Protection, or the Director's designee, issues a cease and desist order pursuant to § 2525(c) of Title 29, the order must include findings of fact and conclusions of law sufficient to put the respondent on notice of the reasons for issuance of the order. The bill eventually passed the House on 26 June.

*Awaiting Governor's Action.*

#### SB263 Sen Paradee and Rep Phillips – Solid Waste Recycling OPPOSED

This Act limits the use of plastic and other beverage container rings, as well as plastic shrink wraps and plastic tops used to connect beverages, by expanding the definitions of "beverage" and "beverage container" and prohibiting beverages from being sold in containers connected to each other with plastic, ring, or ring-like connectors. Juice boxes and other aseptic containers are not defined as beverage containers and are not included in the ban. By prohibiting the use of rings or plastic connectors to package or connect beverage containers, this Act reduces waste and

further the State's sustainability goals. Reaction was fairly swift and expected from the beer producers, food processors, and manufacturers and the bill did not get a hearing.

*No Further Action Taken.*

#### SB266 Sen Mantzavinos and Rep Bush – Unclaimed Property

##### NEUTRAL

It deals with clarifying the process and roles of the Attorney General, State Escheator, and Secretary of State in actions under the Delaware False Claims and Reporting Act (DFCRA) for failure to comply with reporting requirements of the Delaware Unclaimed Property Law (UPL). The government, through the Attorney General, may bring such an action after a 120-day period during which the State Escheator may initiate an examination or within the 120-day period, with the State Escheator's consent. In addition, it clarifies how a whistleblower may submit information regarding a violation of the reporting requirements of the UPL and defines what payment a whistleblower may receive, in the event the State receives payment as a result of the whistleblower's information.

Easily passing the House by 6 June.

*Awaiting Governor's Action.*

#### SB324 Sen Walsh and Rep Osienski – Wage and Hour Enforcement Practices

##### OPPOSED

Introduce late in the Session on June 11 and from the DOL seeking to add and modify current statute addressing the ability of the DOL to seek prosecution of employers who violate the provision contained within wage and hour enforcement. Opposed by the CDCC, along with DCA and ABC, the bill sponsors asked the Dept of Labor to address the questions brought forward at committee before the bill would be considered for release. DOL pledged they would work with interested parties sometime during the off-Session.

*No Further Action Taken.*

## **HOUSE**

#### HS#1 To HB17 w/HA#1, #2 Rep Morrison and Sen Pinkey – Employee Sick Time and Safety Leave

##### OPPOSED

This Act requires all employers in the State to provide employees with a minimum of 1 hour of earned sick time and safety leave for every 30 hours worked. For employers of fewer than 10 employees, the time may be unpaid, job-protected time instead of paid time. Accrued earned sick time and safety leave may be used by the

employee for time off with pay at the employee's same wage and benefit rate to deal with the mental and physical health needs of either the employee or an employee's family member and other specified purposes. Earned sick time and safety leave may also be used to address the consequences of domestic violence for such things as meeting with lawyers, obtaining services from victim service organizations, temporary relocation and the like. Employers may cap the number of hours earned per year at 40, the carryover from one year to the next at 40 hours, and the maximum earned sick and safety leave an employee has access to at any one time at 40 hours.

Opposed by the Chambers and small business community and assigned to the House Appropriation Committee because of a fiscal note (FN) given the bill applies to state workers as well as private employers, other than those with a collective bargaining agreement (HA#1), the bill did not get a hearing.

*No Further Action Taken.*

HS#2 to HB168 w/HA#1 Rep Williams and Sen Mantzavinos – Short-term Lodging Tax

NEUTRAL

With two earlier versions introduced last Session and this Session amending Titles 9 and Title 30 – and supported by the Hotel and Lodging Assoc., it creates a new 4.5% rental tax for short-term rentals (VRBO/ARBNB) of no more than 31 consecutive days and adds a new rental license fee of \$25 a year for short-term listing services. Strongly opposed by DAR, HS#2 was introduced and changes the definition of terms and duties of those that collect the taxes. HS#2 also changes how the revenue will be disbursed, actually decreased the tax from 8% to 4.5%, and adds a number of municipalities that are part of the Sussex County Convention and Visitors Bureau, and updates various effective dates. HA#1 increases to a 3/5<sup>th</sup> vote because it levies a new tax. Introduced on 24 June, the bill passed the House mostly along party-line vote, and then the Senate on 26 June along straight party line vote.

*Awaiting Governor's Action.*

HB297 w/HA#1 Rep Shupe and Sen Wilson – Construction and Acceptance of New Roads

NEUTRAL

The bill, given rapidly increasing costs of materials and labor, combined with the frequency in which developers have gone out of business or otherwise been unable to complete work required within developments, it increases the funding required to be secured by a developer to ensure the developer fulfills the developer's obligations to construct and complete improvements within a subdivision.

Concerns from the home building community created HA#1 that says the roads must be dedicated to the state upon completion and does all of the following: Clarifies that the road or street is intended to be dedicated to this State for public use. (2) Increases the bond, certified check, letter of credit, or other form of security acceptable to the Department that is required to be posted to 150% and limits that bond, certified check, letter of credit, or other form of security acceptable to the Department to the costs associated with applying top coat to a road or street. (3) Requires the bond, certified check, letter of credit, or other form of security acceptable to the Department to be reassessed and reposted by the developer if top-coat is not underway 7 years from the date the security is posted with the Department, and then requires the same reassessment and reposting every 5 years until the developer complies with the written agreement entered into under this Act. (4) Requires the Department, on dedication of the right-of-way to the public use and satisfactory completion of the road or street construction, to release to the developer the bond. It eventually passed the Senate on June 30<sup>th</sup>.

*Awaiting Governor's Action.*

HS#1 to HB316 w/DA#1 Rep Romer and Sen Townsend – Deep Fakes In Elections

NEUTRAL

Focused on the use by organizations, individuals, others to influence elections, this bill seeks to create a new election crime and as well as hold the ISP and technology companies liable for putting forward, or allowing “deep fake” content on their platforms. Initially opposed by the internet companies and other platforms, an amendment made clear media broadcasters that have received a representation the material is true by the content provider, cannot be held liable. Eventually passing the Senate with SA#! – the bill was finished before the end of Session.

*Awaiting Governor's Action.*

HB333 w/HA#1, SA#1 Rep Griffith and Sen Hansen – Artificial Intelligence Commission

NEUTRAL

This Act creates the Delaware Artificial Intelligence ("AI") Commission. This Commission shall be tasked with making recommendations to the General Assembly and Department of Technology and Information on AI utilization and safety within the State of Delaware. The Commission shall additionally conduct an inventory of all Generative AI usage within Delaware's executive, legislative, and judicial agencies and identify high risk areas for the implementation of Generative AI. The Commission will terminate 10 years from enactment unless extended by the General Assembly.

*Signed by Governor 17 June 2024*

HS#1 to HB427 Rep Morrison and Sen Huxtable – Home Construction Contracts  
OPPOSED

The act sets new requirements for home improvement contractors as to the quality of work, ability of the consumer to break the contract, limiting contract deposits, material deposits, and period when construction must begin. Overarching and getting into specific details on private contracts, the bill was heard in committee in June but was not released.

*No Further Action Taken.*

HS#1 to HB434 Rep Colins and Sen Walsh – DNREC Public Hearings  
SUPPORT

This substitute bill requires the Secretary of DNREC to follow certain procedures when conducting public hearings, while giving discretion to the Secretary in choosing which hearings the procedures apply to. The bill becomes effective August 1, 2024. Supported by many different trade organizations, and with the creation of the substitute, the bill easily passed both Chambers.

*Awaiting Governor's Action.*

HB440 Rep Phillips and Sen Hoffner – Homeless Bill of Rights in Employment  
OPPOSED

Like the previous HB439 that placed “housing status” within various portions of the code on protected classes, this adds “housing status” to the employment section such that employers cannot discriminate against an individual solely because of their housing status. With little opposition from the general business community the bill passed with bi-partisan support.

*Awaiting Governor's Action.*

HB453 Rep Lynn – Backflow Prevents and Plumbing Code  
SUPPORT

Introduced late in the Session the 2/3 bill would prevent the local governments from implementing or enforcing any code or regulation that requires the use of backflow preventors on residential and low hazard commercial buildings.

Knowing the bill would most likely be opposed by the munis and other water providers, the sponsor none-the-less brought the bill to the floor on June 30<sup>th</sup>, and because it needed 26 votes, it was defeated gaining only 23 yes votes.

*Defeated*



## V. ISSUES FOR JANUARY 2025

Delaware's revenue picture looks less robust for 2025, with inflation remaining and tax revenues slowing. The employment picture remains a mixed bag of lower claims, but “Help Wanted” signs indicating employers are still having trouble finding employees. With no tax cuts offered, and the loss of the final Covid federal dollars washing through the system, it remains unclear how this impacts our state’s economy in the coming months.

Returning legislation for next year will include these and other bills that impact the business community: Transfer Tax Reduction; Rent Control; Multi-Vendor Sports Book/Fan Dule/Draft Kings; Employer Sick and Safety Leave; Changes to the Homeless Bill of Rights; Potential Additional Lead Paint Testing/Inspection Requirements for Multi-family Housing; Mandatory State-level Apartment Registry; State-level Wetlands Protection; Environmental Justice legislation; Issues around Climate Change, and; Implementation of FMLA by regulation.