

LEGISLATIVE UPDATE

“THE FINAL GAVEL” 2nd Session Of The 152nd 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 1st 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 already taken action on the bill. While Zoom offered seemingly more public access – it was still a difficult environment in which to have one’s voice heard since the ruling party seems to remain loyal to simply voting along party lines. The speed at which things happen in the building remains high. Once again, social and environmental issues took a prominent position in the debate. Some were left over from the 1st Session such as the “Death with Dignity” (doctor assisted suicide) Bill and numerous climate change bills. However, new for this year were bills related to wind power, environmental justice notification, and rent control for multi-family.

Overall, the Assembly worked on more adjustments to the marijuana 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 EARNS act becoming effective 1 July 2024, environmental “justice” notification legislation, a bill to allow individuals to self-identify as “pansexual,” 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 (HB 350) 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 rehabilitation 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.

During the debate in the Senate on HB275, Sen. Buckson explained his rec-

ognition 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. Buckson showed the frustration of many involved with the comment, “I am not doing this anymore.” 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 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 Republicans, and in the House of 26 to 15 Republicans. History was made in the Senate when, for the first time, a complete and whole agenda was published the day before June 30th - 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 \$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:

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

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-time Expenditures	\$ 168 million
Bond/Capital Improvement Bill	\$1.116 billion
Grants-in-Aid	\$ 98 million

REVIEW OF LEGISLATION

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 trigger-

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 30th. 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. 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 clar-

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 furthers 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

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 Osinski – Wage and Hour Enforcement Practices
OPPOSED

Introduced 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 3/5th 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 30th.

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#1 – 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 Collins 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 and 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 30th, and because it needed 26 votes, it was defeated gaining only 23 yes votes.

Defeated

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.