

LEGISLATIVE / REGULATORY UPDATE  
"FINAL GAVEL"

1<sup>st</sup> SESSION OF THE  
145<sup>TH</sup> GENERAL ASSEMBLY  
AS OF: 13 July 2009  
EXECUTIVE SUMMARY

"What we are doing is killing jobs!"

The end of the First Session of the 145<sup>th</sup> closed with one overall riding issue....the budget. The fiscal 2010 year starting July 1 was reported to be some \$750mm in deficit, and the 2011 budget year looks no better. However, despite the difficulty the Assembly faced, they did leave Dover without spending more than 98% of projected revenues. The Session also saw a number of landmark bills passing, as well as the rendering of honors upon the death of the Senate's Pro-Tempore, Senator Thurman Adams on June 23, 2009.

While the Assembly saw numerous retirements that preceded the 2008 elections, this election was unprecedented in recent memory because the House, Senate, and the Administration were won by the Democratic Party. In the House, the Republican minority is at 17, while the Senate minority has shrunk to only 5 Senators. While in the House, tax bills need one R to vote in favor, the Senate can run any bill, including tax and fee legislation without the consent of the minority. More importantly, with the entire legislative process controlled by one party, the normal push/pull of reaching compromise on legislation is much harder to come by. Coupled with the passing of Senator Adams, (the special election is set for August 3<sup>rd</sup> between Rep. Joe Booth and Polly Adams Mervine, Thurman's daughter) who was a conservative Democrat from Sussex County, many believe we are entering a new tone and tenor in the Assembly that may not speak well for business interests.

As starting to become the norm, this year was no different than years past with tremendous pressure on the budget, except the scale in which the deficit and tax increases occurred. Facing the shortfall, the Administration with the Assembly concurring therein, broke down the overall tax and spending as follows:

Sports Gambling	\$55 million
Federal Stimulus Funds	\$230 million
Tax Increases	\$206 million
Cuts	\$301 million

This fiscal year raised taxes on virtually every business and person in the state. The brunt will be felt mostly by the small business owner, who is organized as a sole proprietor and pays gross receipts and personal taxes.

Here is the summary of all the taxes and fees raised this year:

HB210	Increases the alcohol licensing fees for taprooms, hotels, etc..
HB211	Increases the tax on tobacco from \$1.15 to \$1.60 per pack
HS#1/HB 260	Eliminates the exemption of lottery winnings from PIT
HS#1/HB 262	Increases the cost of recordation at the County Recorder of Deeds offices, with a portion going to museums
HS#1/HB263	Raises the Fire Marshall fees for plan reviews, permits.
HS#1/HB264	Increases PIT for various levels and moves the tax for those making over \$60,000 to 6.95%, with a sunset in 4 years.
HS#1/HB267	Increases the various fees for incorporation, with a sunset of 4 years.
HS#1/HB268	Allows tax-payers to avoid fees/interest on back taxes if paid or agreed to by Sept.1, 2009.
HB286	Increases the fees on non-certified copies of vital records.
HB287	Imposes a new tax on crude lightering businesses at \$100,000 per year.
HB288	Imposes a new utility tax on home satellite services and increases the current utility tax to 2.35%.
HB289	Increases the Gross Receipts Tax on all categories.
HB291	Re-establishes the Estate Tax.

The overall funding picture for Delaware created a general operating budget of \$3.01 billion, the Bond Bill (capitol spending) was some \$284.5 million, and Grant-in-Aide (non-profit spending) was about \$35.4 million. Once again, spending included things that some would argue are unnecessary in this economic environment such as the Kalmar Nickel sailing ship at \$500,000, maintenance at the state's two golf courses and marina, and bottled water at \$65,000 a year. However, for the second year running, the alcohol tax did not get enough votes to pass the House.

What was noticeable throughout the passing of the tax package was the very partisan nature of the votes. Virtually every member of the Minority in both chambers voted against the tax increases (except one in the House). During the debate, Rep. Gerald Hocker, a small business owner from Ocean View, stated that "...not only are we raising taxes, but what we are doing is killing jobs!" And like years past, even the budget, bond bill and grant-in-aid bills passed, but with many votes in opposition.

The Session ended around 4:30 AM for both Chambers on Wednesday morning. Yet, despite the intense pressure on the budget and numerous tax bills, the outlook for the real estate, building/development communities and property owners alike remained unchanged. **Numerous bills that would have curtailed the ability of the property owner to sell and transfer real property in Delaware have remained tabled in committee, did not have a committee meeting, or were not brought forward for a vote by the Assembly.**

Here is a partial list of bills that could have negatively impacted our collective industries and the rights of property owners, but DID NOT SEE any FINAL ACTION:

- \* Legislation seeking to impose a new 5% rental fee on less than 150 day rentals;
- \* A number of bills targeted to restrict or void the "workforce housing" ordinance adopted in NCC;
- \* Legislation that would again place the Office of State Wide Planning in a veto position over county land use plans, and;
- \* A bill seeking to increase the impact fee on new home construction in NCC.

This Session did see the passage of three energy bills related to housing and construction; The first two would allow home owners to install wind turbines and solar panels on their property, with restrictions, and; The third bill establishes IECC standards for commercial and residential construction in energy efficiency in the out years.

Of general business interest were the following issues and legislation:

- \* Passage of SB121, expanding employment protection for homosexuals;
- \* Passage of a new "Open Government" bill that applies to the GA;
- \* Passage of sports betting and table games legislation for the three currently licensed Racinos in the state;
- \* Passage of the independent contractor bill (HB230), and;
- \* Passage of Unemployment Insurance expansion bill for stimulus funds.

In closing, it is not without the dedication of many people who are part of the various organizations I am thankful to represent - such as the REALTORS®, the multi-family housing sector, individual property owners, home builders, CIRC, the manufactured housing team, and other trade associations that things this year could have been difficult.

Your investment in all aspects of Delaware's politics keeps some of this bad stuff from happening. However, the minute we all walk away and think someone else is going to "do it", is when we lose.

Respectfully Submitted;

C.S.KIDNER ASSOCIATES/CAPITOL STRATEGIES  
C. Scott Kidner

\* The following was compiled by C.S. Kidner Associates and reflects the positions of their various stakeholders. A number of positions have not been addressed by DAR.

## REVIEW OF LEGISLATION

### I. LAND USE/ENVIRONMENTAL

The following bills and positions noted represent the overall housing and development industries as it relates to their collective abilities to use and transfer real property within the state of Delaware.

#### **SENATE**

##### SB49 – Sen. McBride and Rep. Oberle – Solar Panels SUPPORT

This bill is a result of numerous discussions between the REALTOR® organization, DNREC, and Sen. McBride to reach agreement allowing home owners to install solar panels on their homes. A major issue for DAR was the original intent on eliminating all deed restrictions, laws, or ordinances that would prevent a homeowner from installing these devices on their homes. The current language has no retroactivity.  
*Signed by Governor*

##### SB59 – Sen. McDowell and Rep. Kowalko – Energy Conservation SUPPORT

The bill seeks to apply new energy codes to commercial and residential construction following the IECC. After input from the building community and CIRC, an amendment was placed on the bill that allows the HBADE and the Green Building Council, in consultation with the State's Energy Office, to develop programs that will promote "zero net energy" homes, with these new standards applying by December 2015 for residential construction and by December 2030 for commercial construction.  
*Signed by Governor*

##### SB131 – Sen. Ennis and Rep. Cathcart – Mandatory Disclosers for Housing Projects with Increased Density Bonuses. OPPOSED

The bill would mandate discloser by builders and REALTORS® about the number of bonus density homes in the project, any financial costs these homes add to market priced units as well as some regression analysis on the impact of these homes on the total project. After a fair amount of push-back from the building community, the bill remains tabled in the Senate County and Community Affairs Committee.  
*No Further Action Taken*

##### SB132 – Sen. Ennis and Rep. Cathcart – NCC Workforce Housing OPPOSED

This bill is another attempt to strike at NCC's Workforce Housing ordinance by seeking to have all land use ordinances adopted by any municipality or county reviewed by the Office of State Planning prior to its approval by that local government. It also prevented any plans not reviewed by the OSP from going to recordation. Uniformly opposed by HBADE and the local governments, the sponsor after many attempts to amend the bill, did not seek floor action towards the end of Session.  
*No Further Action Taken*

##### SB160 – Sen. Marshall and Rep. Mitchell – Unified Plumbing Code SUPPORT

Supported by the building community and the local enforcement organizations for county and municipal government, the bill makes the International Plumbing code uniform for all three counties.  
*Signed by Governor*

## HOUSE

HB14 – Rep. J. Johnson and Sen. Henry – NCC/Administrative Variance  
NEUTRAL

The bill allows NCC land use department to grant a variance of 15% or 1 foot, whichever is greater outside of the required restrictions. With a one year sunset, the existing law prior to this adoption shall go into effect immediately without any further action by the GA in 2010. The bill passed the House and remains tabled in Senate County and Community Affairs.

*No Further Action Taken*

HB29 – Rep. Jaques and Sen. Ennis – Stay on Workforce Housing  
OPPOSED

Would prevent NCC from enacting any provisions relating to the workforce housing ordinance for 6 months to allow the State to review/study any issues caused by the ordinance. After debate in the House Committee, the bill was released, but did not have enough support for floor action, and remains on the House Ready List.

*No Further Action Taken*

HB30 – Rep. Jaques and Sen. Ennis – Increases School Impact Fees OPPOSED

The bill seeks to increase the Voluntary School Assessment fee paid by builders by a factor of 1.2, however such that the fee shall not exceed more than 6% of the total cost of the residential unit. Opposed by the building and real estate industries because it raises the cost of housing in a difficult market, the bill remained tabled for weeks. However, the sponsor walked the bill out on June 17<sup>th</sup>, with a commitment made to work with the affected parties during the off-Session.

*No Further Action Taken*

HB50 – Rep. Hocker and Sen. Bunting – Dewey Beach 35 Ft.  
NEUTRAL

The bill seeks to place a 35 foot zoning restriction within the Charter of Dewey Beach. While an amendment offered by the sponsors in the House was successfully attached to the bill offering some protection to property owners, the real estate community believed that placing height restrictions in a town charter was unprecedented and unnecessary. Eventually, the amount of opposition to the bill from other business groups including Dewey Beach Enterprises (which this was specifically directed towards) kept the bill from being acted upon in the Senate, where it remains on the ready list.

*No Further Action Taken*

HS#1 to HB70 – Rep. Oberle and Sen. McBride – Wind Energy Systems  
SUPPORT

This is a redrafted bill from last Session allowing wind turbine systems to be installed on homes, despite any ordinances or laws restricting the installation of these systems. There are a number of changes made to the bill after its introduction reflecting concerns from DAR, most critically, there is no retro-activity impacting existing deeds, covenants, or other rules that are in effect now. The bill also respected historic restrictions, and established a setback of 1.0 times the height of the wind tower and one blade. The substitute passed without much debate.

*Signed by Governor*

+ The following land use bills dealt with attempting to drive the NCC Workforce Housing issue towards more state control, and/or direct intervention in stopping this ordinance from working. The building and real estate industry remained OPPOSED +

\* HB79 – Rep. Cathcart and Sen. Blevins – Road Capacity in NCC.

This asks NCC to consider how highway and road capacity may affect residential development as part of Council's review of subdivision applications. (TABLED)

\* HB80 – Rep. Cathcart – DeIDOT and DOE Objections to Rezoning.

The bill gives veto power to these two agencies over re-zonings or subdivision applications that if a conflict exists between either agency or NCC, the Council must reject the application. (TABLED)

\* HB81 – Rep. Cathcart and Sen. DeLuca – PLUS Process on Density.

NCC cannot approve any increase in density of a residential plan without approval of Office State Planning and the PLUS. (RELEASED from COMMITTEE)

\* HB82 – Rep Cathcart – Discloser of Workforce Housing Units.

Bill requires buyers of homes in residential subdivisions be notified of 2 or more units that are workforce housing. (TABLED)

\* HB83 – Rep. Cathcart and Sen. DeLuca – School Capacity.

Seeks to require NCC to adopt school capacity ordinances related to increased density as a result of workforce housing units and the impact of these units on schools. (RELEASED from COMMITTEE)

\* HB173 – Rep. Cathcart and Sen. Ennis – Discloser of Workforce Housing.

This is a combination of previous bills seeking mandatory discloser of any subdivision that contains more than 2 workforce housing units to the buyer, including quality of construction, interior fixtures, fees, and impacts on roads and schools. (TABLED)

HB205 – Rep. Scott and Sen. Bonini – KC Review of Subdivisions.

NEUTRAL

The bill provides the Kent County Regional Planning Commission is responsible for the review and approval of all plans/subdivisions, and they must be endorsed by Director of Planning and County Administrator.

*Awaiting Governor's Signature*

## **II. HOUSING**

### **SENATE**

SB36 – Sen. Adams and Rep. Marshall – Changes to JP Court.

NEUTRAL

The bill seeks to change items in the JP Court relating to trespass, replevin, and detinue proceedings, which essentially all dealing with trespass and the rights of property owners.

*Signed by Governor*

SB37– Sen. Adams and Rep. Marshall – Cost for the JP Courts.

NEUTRAL

This will allow all costs for operating the JP Courts in Delaware to established by Court order, with the review and approval by the Chief Justice and Supreme Court, instead of seeking legislative action every time for a change of fees.

*Signed by Governor*

SB43 – Sen. DeLuca and Rep. Marshall – JP Court Procedures

NEUTRAL

The bill eliminates duplicate mailing of process where the residence or last known address of the director, trustee, officer or member is the same as the address of the corporation's principal place of business, with an effective date of August 1, 2009.

*Signed by Governor*

SB77 – Sen. Ennis and Rep. Carson – Class C Recordings

NEUTRAL

The bill allows Kent County to permit Class "C" recordings for manufactured homes and requires Kent County Recorder of Deeds to accept these recordings.

*Signed by Governor*

SB141 – Sen. Bunting and Rep. Longhurst – Rent Control.

OPPOSED

Introduced early in June, the bill would impose rent "justification" to increases sought by manufactured housing community owners. The bill mandates that an owner must clearly articulate in the rental agreement the manner and basis for the calculation of all future rent increases prior to the tenant renewing

or signing a lease. Assigned to the Senate County and Community Affairs Committee awaiting possible action when the Assembly returns in January 2010.

*No Further Action Taken*

SB157 – Sen. Peterson and Rep. Ramone – Debtor’s Equity Protection.

NEUTRAL

Introduced under the suspension of rules late in the Session, the bill would protect up to \$125,000 of a debtor’s equity in their principal residential home in a bankruptcy proceeding. While the real estate community maintained a neutral position, the banking industry asked that the sponsor table the bill quickly in light of many federal issues contained within the various recovery and stimulus bills. The bill is on the Senate Ready List.

*No Further Action Taken*

SB180 – Sen. Bunting and Rep. Hocker – Installation Standards

SUPPORT

This legislation is a hold over from last Session that will establish a number of new provisions for the installation of manufactured homes, the inspections of these installations, display information for installers, bonding and liability requirements, and education of installers. The bill was introduced late in June under the suspension of rules, eventually passing both Chambers.

*Awaiting Governor’s Signature*

## **HOUSE**

HB105 w/HA#2 – Rep. Atkins – Tree Maintenance

OPPOSED

The bill establishes the obligations of the community owner of manufactured housing as it relates to removal and maintenance of trees. Introduced in March, the bill saw a number of significant rewrites as community owners and tenants tried to deal with liability issues and access to lots to deal with the trees. HA#2 reflects added definitions of a tree and areas of responsibility of the tenant. It also adds when owners may access the lot and under what circumstances. The amended bill removed the more difficult issues, the industry believes the legislation is completely unnecessary. Passing the House on June 30<sup>th</sup>, the bill has yet to assign to a Senate Committee.

*No Further Action Taken*

HB107 w/HA#1,2,3, and SA#1 – Rep Atkins and Sen. Bunting – Annual Rental Payments.

OPPOSED

Introduced specifically to seek changes by the Tunnel Properties in their leases, the bill received tremendous pressure from both owners and tenants. Eventually, the legislation was re-written that rental payments must be in monthly increments, in equal amounts, but if tenant and owner agree to one lump sum payment, nothing prevents the parties in doing so.

*Signed by Governor*

HB200 – Rep. Longhurst and Sen. Bunting – Discloser and Counseling

OPPOSED

Introduced on June 9<sup>th</sup>, the bill requires community owners to disclose to the prospective tenant, at some time un-determined in the bill, a rental agreement, rules/standards of the community, and fee schedules. The bill also requires each prospective tenant prior to signing any lease agreement must attend a “pre-tenant counseling session” conducted by the Manufactured Homeowners Association, with any associated costs of the counseling sessions to be reimbursed by the Relocation Trust Authority. The bill was released on a partisan vote from Committee, and remained on the House Ready List until the close of Session.

*No Further Action Taken*

HB208 – Rep. Longhurst and Sen. Ennis – Utility Payments

OPPOSED

Another bill specifically targeting one manufactured housing community owner, this mandates any utility charges must reflect the actual cost of those utilities to the tenant, and would prevent the owner from selecting one utility provider for the entire development. It also provides for significant fines for owners that

fail to comply with the bill. Introduced in May, the bill spent days on the House Agenda, eventually being removed and returned to the House Ready List.

*No Further Action Taken*

HB246 w/HA#1 – Rep. Longhurst and Sen. Bunting – Right of First Offer

OPPOSED

Introduced late in June, the bill requires the registration of home owners associations, but within the bill there is an attempt to re-draft the “notice of the intent to sell” that was previously passed last year. It requires delivery and content of the notice, and clarifies language on counter-offers made by the homeowners association. Amended significantly with HA#1 that refines the how and when of the notice of sale, and talks about calculation of unused days on mailing notices. The bill passed the House and has not been assigned to a committee in the Senate.

*No Further Action Taken*

HB280 – Rep. Q. Johnson and Sen. Simpson – Five Day Notice

SUPPORT

The bill clarifies the ambiguities on the landlord tenant code relating to “five day notice” that is sent to the tenant that has not paid rent on the due date, and the “seven day notice” to tenants that have broken rules or the lease, by removing the formal service currently required by the Courts. The bill reduces the costs of notice by the Landlord, but the JP Court sought to have it tabled until they could determine if tenant’s rights would be impacted.

*No Further Action Taken*

HB292 – Rep. Marshall – Superior Court Appeals

NEUTRAL

Allows any person with action in Title 25, the Landlord Tenant Code, aggrieved by a decision of the JP Court, to appeal the decision to the Superior Court. Introduced on June 30<sup>th</sup>, the bill sits in the House Judiciary Committee.

*No Further Action Taken*

### **III. TAXES**

As previously discussed in the Executive Summary of this report, the following are all tax increases passed this Session, reflecting, as estimated, some \$206 million dollars in new net revenue.

#### **SENATE**

No Bills Introduced

#### **HOUSE**

+ Unless noted – all bills sponsored by House and Senate Majority and Minority Leadership, and generally speaking, were opposed by most segments of the business community +

HB210 – Alcohol Licensing Fees

The bill moves the licensing fees up to a biennial fee of \$1000 for hotels, restaurants selling alcohol, railroads to \$600, and those selling beer and wine only to \$500 biannually. It also moves the daily gathering license fees up and those selling alcohol at racetracks to \$3000.

HB211 – Cigarette Tax

Moves the tax to \$1.60 per pack and establishes the effective date for the collection of the tax on stamps issued prior to July 31, 2009.

HS#1 to HB260 – Tax on Lottery Winnings

Removes the personal income tax exemption on Delaware lottery winnings beginning after December 31, 2009.

**HS#1 to HB262 – Recorder of Deeds Fees**

Increases the current \$6 charge to \$24 for each document or paper recorded or filed with the Counties, and these funds shall be used to promote, preserve and protect Delaware's cultural assets, with an effective date of August 1, 2009.

**HS#1 To HB263 – Fire Marshall Fees**

Moves the cost of review by the Fire Marshall's office to 7/10 of 1% of the cost of the project, and increases the costs of permits, licenses and certificates.

**HS#1 to HB264 – Personal Income Tax**

The bill moves the PIT for every category, with those earning more than \$60,000 to 6.95% of income, and has a sunset of 4 years from the effective date of this act.

**HS#1 to HB267 w/HA#2 – Secretary of State Fees**

Increases the fees charged by the Division of Corporations for various levels of service, changes in filings, and issuance of various certificates.

**HS#1 to HB268 – Voluntary Tax Compliance**

Allows for the payment of back taxes, without penalty, to the State for a period running from September through October of this year for any taxpayer with an outstanding liability before January 1, 2009, if the taxpayer signs an agreement or pays the taxes.

**HB286 – Vital Records Fees**

This bill increases all fees for certified and non-certified copies of vital records to \$25, and for heirloom certificates to \$35.

**HB287 – Crude Oil Lightering**

Establishes an annual license fee of \$100,000 for any firm that engages in the oil lightering operations, and all fees collected shall be deposited in the hazardous substance cleanup fund.

**HB288 – Public Utility Taxes**

Adds the home satellite delivery operators in paying a utility tax and moves the utility tax from 2% to 2.35% effective after July 1, 2009.

**HB289 w/HA#1 – Gross Receipts Tax**

This bill moves all categories that pay the tax up on average of 10% to 20% with a sunset of 4 years after the effective date.

**HB291 w/HA#1, #4 – Estate Tax**

The bill re-establishes an estate tax on decedents passing after June 30, 2009 and includes the imposition of the tax on non-resident estates. The bill has a sunset of 4 years after the effective date.

**IV. BUSINESS ISSUES**

**SENATE**

**SB73 – Sen. DeLuca and Rep. Keeley – Mortgage Licensing.**

**OPPOSED**

This is a direct result of the Federal SAFE Act from 2008 that implements the Delaware version of the federal requirements as it relates to the licensure and supervision of the mortgage brokerage industry by the Delaware Banking Commissioner. While most provisions contained in the bill are required by 2008 SAFE Act, there are new licensing and renewal fees in the bill for individual mortgage brokers that operate outside of nationally chartered banks. Additionally, because the bill now defines each mortgage broker as a "financial institution" which allows unprecedented access to records normally expected for large banks. Although the mortgage banking industry was unsuccessful in amending the bill, language may be offered to adjust the fees collected by the State Banking Commissioner in the future.

*Signed by Governor*

SB121 – Sen. Peterson and Rep. Schwartzkopf – Employment Protection  
NEUTRAL

After some 6 years in various forms, the bill expands employment protection to homosexuals in employment, accommodations and insurance. The bill has been opposed by small business because it provides virtually no defense against when an employee claims employment discrimination because they are homosexual.

*Signed by Governor*

SB145 – Sen. DeLuca and Rep. B. Short – Examine Financial Institutions  
NEUTRAL

While the legislation impacts the banking industry specifically, there was concern raised by those in the mortgage banking industry, because of legislation introduced (and passing) that defines mortgage brokers as financial institutions, and the impact this may have upon them.

*Signed by Governor*

## **HOUSE**

HCR1 – Rep. Brady and Sen. Connor – Employee Free Choice Act.  
OPPOSED

This resolution calls for Congress to pass the Employee Free Choice Act (EFCA) that significantly changes the way unions can organize workers. As a result of the tremendous pressure from the business community that is opposed to the federal bill, the sponsor never ran the bill in the House.

*No Further Action Taken*

HB15 – Rep. Longhurst and Sen. McDowell – Recycling and Waste.  
OPPOSED

The bill seeks to mandate reusable bags by consumers and retailers by requiring retailers to establish at-store recycling program that includes these reusable bags, disposal of plastic bags and printed information about the store's recycling program. It also prevents the local governments from implementing any ordinance that would require the store to any other aspect of a program including the collection of a fee.

*Awaiting Governor's Signature*

HB18 – Rep. Plant and Sen. Henry – Employment-at-Will Doctrine. OPPOSED

This is the bi-annual introduction of a bill to eliminate the currently held employment-at-will statute that governs the relationship between employers and employees in the State of Delaware. The bill has been strongly opposed by the entire business community because it would remove many of the provisions that employers now consider critical in the hiring and firing of employees within their businesses. Assigned to the House Labor Committee, it was released for the very first time after many years, and placed on the House Ready List.

*No Further Action Taken*

HB51 – Rep. Hocker and Sen. Bunting – Dewey Beach Accommodations Tax.  
OPPOSED

The legislation will amend the town's charter allowing it to collect a summer rental tax of at least 3% on the cost of the rental unit. The bill was amended by the hotel industry to ensure the tax is not applied to hotels or those that already pay the state's accommodations/lodging tax.

*Signed by Governor*

HB149 – Rep. B. Short and Sen. DeLuca – Compensation of Mortgage Brokers.  
NEUTRAL

This act limits compensation that may be received by the mortgage loan brokers and licensed lenders who engage in loan modification services for homeowners. The bill faced no opposition from the mortgage lending industry.

*Signed by Governor*

HB188 – Rep. Brady and Sen. Ennis – Summer Rental Lodging Tax.

OPPOSED

The bill reflects an attempt to expand the current state lodging tax to those rental units that are less than 150 day leases.... typically summer rentals at the beach. Supported by the Delaware Tourism Alliance (DTA) and others, it would impose a state-wide tax of 5% on the rental amount, and would require all owners of rental units to pay an annual rental license fee to the State. Introduced in June, the bill was ultimately opposed by the REALTOR community because it lacked enforcement, no plan for where dollars would be spent, increases the cost of renting, and may drive rentals underground.

The bill was heard in the Housing Community Affairs Committee, where it was tabled.

*No Further Action Taken.*

HB170 – Rep B. Short and Sen. Marshall – Unemployment Insurance

OPPOSED

This allows the State to collect \$21.6mm in Federal monies to support the state's UI fund, which at current payouts, will be out of money by December 31, 2009. However, to receive the money, the state must dramatically expand those who can collect UI including "paid family leave" and "voluntary quit" provisions. The business community sought to amend the bill by asking for one time charges to avoid expanding the program.

Ultimately, the strings attached to accepting the federal money prevents any amendments.

*Signed by Governor.*

HB193 – Rep. Viola and Sen. DeLuca – Grocery Store Sales

NEUTRAL

Introduced on June 4<sup>th</sup> and assigned to the House Revenue and Finance Committee, the bill would allow grocery stores to sell wine and beer. Opposed by the liquor retailers and distributors who claim that because of their scale, most of the small independently owned liquor stores would not survive. The bill failed to get a second on the motion to release from Committee.

*No Further Action Taken.*

HB213 – Rep. Manolakos and Sen. Peterson – Business License Discloser

OPPOSED

The sponsor is seeking to require all Delaware-licensed businesses to disclose that information in all advertising. While the bill is trying to get after those out-of-state businesses that do not comply with state laws, many in the real estate and building communities had significant concerns.

It remains assigned to a House committee.

*No Further Action Taken.*

HB229 – Rep. Scott and Sen. Sokola – Cell Phone Ban.

OPPOSED

The bill is an outright ban on the use of cell phones while operating a car on any road in the state with fines fro first offense of \$50. Introduced on the June 17<sup>th</sup>, the bill was released from Committee on a partisan vote the next day, and remained on the House Ready List awaiting, action in January 2010.

*No Further Action Taken.*

HB230 – Rep. Gilligan and Sen. DeLuca – Independent Contractor.

OPPOSED

This is the re-introduction of a bill from last Session that would change the definition within the construction industry of what an independent contractor is and the relationship between the employer and employee. Supported by the Laborers union, it imposes penalties upon the employer that misclassifies an employee, and adds numerous enforcement provisions for the Department of Labor that includes stop work orders. The bill was released from the Labor Committee un-amended, but after intense pressure on specific House members from ABC, the CDCC and the business community, some of the more difficult provisions were removed. However, the rulemaking process within the DOL is expected to begin late summer that will further clarify the law, and its impact on business.

*Signed By Governor*

HB231 – Rep. Scott and Sen. Henry – Mandated Family Leave  
OPPOSED

This act grants up to 16 hours of leave per year to any employee to attend school meetings, sports events or any activity related to the child's education, and imposes civil penalties for each violation. Introduced on June 16<sup>th</sup>, the bill was tabled in the House Education Committee.

HB232 – Rep. Keeley and Sen. Henry – Debt Management Services  
NEUTRAL

It creates language to clarify the Debt Management Services Act is intended to regulate providers who negotiate terms or concessions related to an individuals unsecured debt within the foreclosure process.  
*Awaiting Governor's Signature*

HB237 – Rep. Viola and Sen. Cloutier – Automatic Doors  
OPPOSED

The sponsor will require, if passed, that all newly constructed businesses and other places of public accommodation be equipped with automatic doors for persons with disabilities. While noble in its goal, the bill may run in conflict with the ADA and other building codes, and certainly increases the cost of construction. It remains tabled in committee.

*No Further Action Taken*

HB247 – Rep. Keeley and Sen. McBride – Consumer Protection.  
OPPOSED

Some 17 pages long, the bill was drafted by the Consumer Protection Unit of the AG's Office, providing for extensive revisions of the title and adding new administrative powers to the Director's office to prosecute businesses that offer, sell, or provide services or products that harm the public. Like last year, the bill was again opposed by the REALTOR community, Chambers, and some insurance companies. It was tabled in Committee.

*No Further Action Taken*

HB256 – Rep. B. Short – Mortgaging of Leasehold Interests.  
NEUTRAL

This amendment to law is seeking to allow for certainty regarding leasehold mortgage transactions in accordance with what is customary, which is 10 years of the original length of the term, not what remains of the term.

The bill remains unheard in the House Banking and Insurance Committee.

*No Further Action Taken*

## **GAMING LEGISLATION:**

\* HB11 – Purses Redistribution.

The bill seeks to redistribute the video lottery proceeds to equalize the State share with that of the video lottery agents. With opposition from the Tracks and the Administration, the bill remains tabled in the Gaming Committee.

\* HS#1 to HB100 – Sports Gaming

Introduced as HB100 to authorize sports betting in Delaware, the bill drew immediate opposition from the horse racing and casino industries because the bill imposed a significant tax, imposed a yearly licensing fee, expanded gaming beyond the three existing lottery operators, and did not include any lottery proceeds from sports bet to the standardbred or thoroughbred horsemen's purse accounts. After weeks of difficult negotiations between the horsemen, racinos and the Administration, HS#1 to HB100 was introduced. While some issues were addressed, many of the provisions contained in the bill were unaccepted by the regulated industry. The Bill passed without amendment, and has been signed.

\* HB194 – Expansion of Gaming/Del-Point

On behalf of the Schell Family and their residential and commercial development project in Millsboro, the bill would allow a new operator for VLT's, sports bet, coupled with a standardbred track in Sussex County. The advocates believe there remains untapped gaming dollars in the state and consider the under-served beach market would provide enough money for their project and the currently operating tracks. The opponents think there is a limited gaming dollar in Delaware and our surrounding areas, coupled with the new taxes, makes the project highly questionable. Under suspension of rules, the bill was introduced on the House Floor without a hearing in the House Gaming Committee, and remains on the Speaker's Table.

\* HB257 – Adds Horsemen to Sports Bet for Purses

As part of an agreement between the Administration, Horsemen and Tracks, the bill adds a % take of Sports Bet for the purses of the two breeds running at the three currently licensed operating tracks.

*Signed by Governor*

V. ISSUES FOR JANUARY 2010

TAXES \* If the economy does not regain its footing, there is great concern many of the taxes raised on business and individuals will not provide the government the money it says it needs. The problem of course, where does the state go to raise more tax money for the FY 2011 budget?

However, it is expected that Sports Bet, and potentially Table Games, at the three licensed Racinos will have begun to impact the revenue picture for next year that may offset some new tax increases.

LAND USE \* While there was some activity regarding land use issues within the GA, most of this was driven by specific legislators over NCC's Workforce Housing Ordinances recently enacted. Yet, it remains unclear if any aspect of the previous Administration's "Livable Delaware" agenda will resurface in 2010, along with the role of the Office of State Planning in reviewing plans. What has not changed is the attempted continuation of reducing local control by the state on land use matters.

MANUFACTURED HOUSING \* With another roller-coaster ride of bills and attacks by the tenant organization this past year, the FSMHA managed to amend or otherwise deal with the bills submitted on behalf of the tenant group. Two bills with significant impact on community owners that remain alive, (utility services and mandatory disclosures and counseling) still remain alive in the Assembly for next year. Also, rent justification will most likely return as well with the attempt to move HB141.