



2021 Legislative Wrap-Up

April 15, 2021

To Our Valued Clients, Friends, and Colleagues:

The 441st Legislative Session of the Maryland General Assembly adjourned on April 12, 2021, marking the end of one of the most unusual sessions in Maryland history. In deference to the ongoing COVID-19 pandemic, the Maryland General Assembly implemented strict protections for the 2021 Legislative Session, including virtual hearings and voting sessions, masks and plexiglass barriers on the House and Senate Floors, and limited access to state buildings and legislators by lobbyists, advocates, and other members of the interested public.

However, despite the “COVID protocols,” the Maryland General Assembly, under the guidance of the presiding officers, fulfilled its constitutional duty of passing a balanced budget which included the allocation of billions of additional federal funding from the American Rescue Plan Act of 2021. In addition, meaningful legislation passed to (1) provide relief to individuals and businesses impacted by the pandemic; (2) address systemic racial inequities; and (3) reform the State’s law enforcement system.

At this time each year, we like to take a moment to share the highlights of the Legislative Session. Despite the physical and procedural changes, the 2021 session was still extremely busy as members of the Maryland General Assembly introduced 2,344 bills, excluding local bond initiatives and 13 Joint Resolutions. The following synopsis is not an exhaustive report of the legislative activities this session, but an overview of particular topics of interest. If you have specific questions, please feel free to contact us.

Please note that the table of contents in this document is interactive. If you would like to jump to a specific topic or issue, just click that issue in the table of contents.

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Veto Overrides

Blueprint for Maryland's Future

In early February, the Maryland General Assembly (MGA) moved to override Governor Larry Hogan's veto of the Kirwan Commission's education plan, Senate Bill 1000/House Bill 1300 of the 2020 Legislative Session. Formally known as the Blueprint for Maryland's Future (the Blueprint), the Kirwan plan sets lofty goals for the State's education system by expanding access to pre-kindergarten, increasing teacher salary minimums statewide, adding additional revenue to support economically disadvantaged students, raising performance standards, and allocating resources toward vocational and college-preparatory education. The veto override mainly fell along party lines. The funding for the plan, valued at \$30 billion over ten years, is anticipated to be generated from several revenue streams, including tobacco tax increases, online sales tax revenues, digital download taxes, and a first-in-the-nation digital ad tax.

Digital Advertising Tax

On February 12, 2021, the Maryland Senate joined the House of Delegates in overriding Governor Hogan's veto of House Bill 732 of the 2020 Legislative Session, to adopt a Digital Advertising Gross Revenues Tax, the nation's first tax targeting digital advertising. The highly controversial legislation mandates that a person's annual gross revenues derived from digital advertising services in the State are to be determined using an apportionment fraction based on the annual gross revenues of a person derived from digital advertising services in the State and the annual gross revenues of a person derived from digital advertising service in the United States. State revenues gained from the implementation of the tax are also directed to the programs implemented under the Blueprint legislation. Despite the blessing of the Maryland Attorney General's Office, opponents to the law have raised a significant number of legal questions that mostly center around the law's impact on interstate commerce. Opponents have also filed a lawsuit to strike this law down.

Digital Sales Tax

The MGA also overrode the veto of House Bill 932 of the 2020 Legislative Session, *21st Century Economy Fairness Act*, which subjects specified digital products and codes to the State sales tax, similar to those applied to their tangible good counterparts. The amended legislation's fiscal note estimates that the State would gain more than \$83 million in tax revenue, directed to funding programs created under the Blueprint.

Tobacco Tax

By overriding the Governor's veto of House Bill 732 from the 2020 Legislative Session, the MGA also moved to pass into law significant changes to the State's tobacco tax. As of March 14, 2021, the tax rate for cigarettes, other tobacco products, and electronic smoking devices all increased significantly. In the wake of the override, the Comptroller's Office worked to issue guidance to licensed tobacco retailers on compliance with the new tax regime.

Prescription Drug Affordability Board - Funding

Following the 2020 Legislative Session, Governor Hogan vetoed Senate Bill 669/House Bill 1095, which was a departmental bill introduced to establish an ongoing funding source for the Prescription Drug Affordability Board (PDAB) through an assessment on manufacturers, pharmacy benefits managers (PBMs), carriers, and wholesale distributors that sell or offer for sale prescription drug products to persons in the State. The total fees collected under the assessment may not exceed \$2 million in a calendar year. The PDAB is currently working to establish and implement the assessment and, under the law, impacted entities will be expected to pay the designated amount to the PDAB by October 1, 2021 and annually thereafter.

Budget Overview

The Governor and the MGA began the 2021 Legislative Session anticipating the passage of a significantly limited budget due to the loss of state revenues during the COVID-19 pandemic. However, the newly inaugurated Biden Administration immediately passed significant relief packages that included substantial revenue infusions to the States for designated purposes. The dramatic increase in federal funding with a relatively short amount of time to spend it, allowed for a considerable expansion of Maryland's operating budget, including the incorporation of five supplemental budgets from the Governor totaling more than \$3 billion in additional expenditures. The increased cash flow also resulted in a substantially expanded capital program, funding projects in nearly every jurisdiction in the State without fund matching requirements. Strict parameters from the federal government around the use of the funding, including impacts on future State coffers, also led the MGA to be highly cautious about passing any new legislation, particularly tax bills, that would endanger the State's ability to take maximum advantage of the federal stimulus funds.

Business Regulation

Board Diversity

In the aftermath of the death of George Floyd, Speaker Adrienne Jones (D – Baltimore County) crafted an ambitious legislative plan as the “Black Agenda,” aimed at closing the race gap in areas such as homeownership, health and wealth. As part of the Black Agenda, she introduced House Bill 1210 to expand equity and ensure corporate diversity in Maryland. This legislation requires a business in the State to demonstrate either (1) diversity in its board or executive leadership or (2) support for “underrepresented communities” in its mission to qualify for State capital grants, tax credits, or contracts worth more than \$1 million. The bill also requires the Department of Commerce (DOC) and the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA) to develop a State equity scorecard containing diversity data relating to corporate boards, leadership, and missions. The data compiled for this scorecard must include: (1) the membership of underrepresented communities in the entity's board or executive leadership and (2) the support of underrepresented communities in the entity's mission.

The bill tasks the DOC and GOSBA with adopting regulations to carry out the bill's requirements, including compliance directives for State agencies and other entities. Additionally, House Bill 1210 requires a person who submits an annual report to the State Department of Assessments and Taxation (SDAT) to include this diversity data. Given this legislation's proactive nature, its measures do not apply to any application or claim for a contract, grant, or tax credit submitted before the bill's effective date. Following the support of various stakeholders and the adoption of clarifying amendments in the Senate, the bill passed and will take effect on July 1, 2022.

Home Improvement Contracts – Deposits

Chairman Derek E. Davis (D – Prince George's County) and Delegate Christopher Adams (R - Caroline, Dorchester, Talbot, & Wicomico Counties) introduced House Bills 408 and 395, respectively, aimed at altering the amount of payment a home improvement contractor can receive before work commences and/or is finished. Ultimately, the bills were merged into House Bill 395, *Business Regulation – Home Improvement Contracts – Deposits*. As amended, a home improvement contractor would have been prohibited from receiving more than one-half of the total amount of a home improvement contract price before work commences on a project or the remaining amount of the contract price until the home improvement specified in the contract is complete. For a home improvement contract valued at \$10,000 or more, however, a home improvement contractor and a customer would have been allowed to contractually agree to a draw schedule that reflects how the payment will be collected. The bill was held over on the Senate floor on the final night of session and never came back up for a vote.

Freight Trains - Required Crew

Undeterred by Governor Hogan's previous veto and the MGA's subsequent unwillingness to override the veto, Delegate Dana Stein (D – Baltimore County) presented House Bill 492, which requires a train or light engine used in connection with the movement of railroad freight and that shares the same rail corridor as a high-speed passenger or commuter train to operate in the State with a crew of at least two individuals. The bill did not have a Senate cross-file as it has in years past. Under the bill, a person who willfully violates the bill's prohibition is guilty of a misdemeanor and subject to a fine of \$500 for a first offense and a fine of \$1,000, per offense, for a second offense or a subsequent offense committed within three years of the second offense. The bill preempts a county or municipality from enacting and enforcing legislation requiring crews greater than two members. Additionally, the bill terminates if a federal rule requiring two-person crews is adopted. While proponents this session still focused on safety, the opponents shifted their focus to federal preemption thanks to a 7th Circuit Court ruling, *Indiana Railway Company v. Illinois Commerce Commission & the Brotherhood of Locomotive Engineers and Trainmen*, which held that the Federal Railroad Safety Act (FRSA) expressly preempted the exact same crew-size law passed in Illinois in 2019. It is also worth noting that the 7th Circuit Court did not even need to evaluate the remaining two federal preemption grounds as the first ground was so plain on its face. Ultimately, the bill easily passed the House, but died in the Senate when the Finance Committee failed to act.

Peer-to-Peer Car Sharing

The MGA, once again, sought to finalize a regulatory and tax regime for the emerging industry of peer-to-peer car sharing in the State. Several pieces of legislation were introduced to place specific requirements on the industry, and, ultimately, the legislature passed House Bill 1209, sponsored by Delegate Eric Luedtke (D – Montgomery County). As amended, the bill repeals the June 30, 2021 termination date for the 8% sales and use tax imposed on peer-to-peer car-sharing and establishes a new sales and use tax rate of 11.5% for qualifying peer-to-peer car-sharing vehicles that are a part of a “fleet” as defined in the bill. Additionally, the sales and use tax revenue from peer-to-peer car-sharing must be distributed to the Transportation Trust Fund (TTF) and the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund in the same manner as the sales and use tax revenue from short-term vehicle rentals.

In addition to the tax legislation, Senator Pamela Beidle (D – Anne Arundel County) and Delegate David Fraser-Hidalgo (D – Montgomery County) sponsored Senate Bill 705/House Bill 1304, which would have imposed a new restrictive regulatory regime on peer-to-peer car-sharing transactions occurring at Baltimore-Washington Thurgood Marshall Airport. The proposed regulatory regime was intended to treat peer-to-peer in a manner similar to that which the traditional car rental industry operates. Senate Bill 705 passed successfully out of the Senate, but despite efforts to compromise, the bill failed to progress beyond the House Economic Matters Committee and died on *Sine Die*.

Plastic Bag Ban

Senator Malcolm Augustine (D – Prince George’s County) and Delegate Brooke Lierman (D – Baltimore City) reintroduced Senate Bill 223/House Bill 314, *Plastic Bag Reduction Act*, to prohibit a retail establishment from providing a customer with a plastic carryout bag, defined in the bill as one that is less than four mils thick, at the point of sale on or after July 1, 2022. Enforcement of the bill would have fallen on county governments. A unit of county government would have been allowed to grant a retail establishment up to two three-month waivers from the bill’s requirements if the unit of county government determined that complying with the bill would have caused the retail establishment an undue hardship or a practical difficulty not generally applicable to other retail establishments in similar circumstances.

The bill also attempted to codify a civil penalty of up to \$500 for each violation. Before a county government would have been allowed to impose a penalty, however, it would have been required to issue a written notice of a violation and allow the retail establishment the opportunity to correct the violation within three months. The bill was drafted to preempt the authority of a local government to enact a similar law or ordinance and supersedes any existing local law or ordinance that prohibits, restricts, or regulates the use of plastic bags less than four mils thick by a retail establishment. Finally, a local government would have been generally prohibited from adopting or enforcing a law or an ordinance that requires a retail establishment to charge and collect a fee, tax, or any other charge for the use of carryout bags at the point of sale, unless the law or ordinance is authorized by a State law enacted on or after January 1, 2022. However, with respect to a local government that, on or before February 1, 2021, adopted a law or ordinance that includes such a requirement, the bill did not affect the local government’s authority to charge and collect the fee,

tax, or other charge for the use of carryout bags that are not otherwise prohibited by the bill. The House moved its version of the bill, but the Senate was disinterested in moving either bill, and it died in the Finance Committee for lack of action.

Cash Transactions Preservation Act

House Bill 340, *Cash Transactions Preservation Act*, was introduced by Delegate Joseline Pena-Melnyk (D - Anne Arundel and Prince George's Counties). As initially drafted, a merchant conducting an in-person retail transaction could not have (1) prohibited a person from making a cash payment to purchase goods or services; (2) required a person to use a credit or debit card to purchase goods or services; or (3) charge or collect a fee for making a cash payment for the purchase of goods or services. A merchant who violated the bill's prohibition could be found guilty of an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act and subject to both civil and criminal penalties. The sponsor testified that the bill was to protect the State's most vulnerable consumers who either do not have access to credit or debit cards for routine transactions and those who choose to pay with cash after being the victims of identity theft. The bill sponsor presented amendments at the hearing to exempt existing parking structures, kiosks, rental car transactions, hotel bookings, equipment rentals, and vending machines/micro markets. After some discussion, the House Economic Matters Committee ultimately chose to take no action on the bill.

Merchant Cash Advance – Regulation

Senator Benjamin Kramer (D – Montgomery County) and Delegate Seth Howard (R – Anne Arundel County) reintroduced legislation, on behalf of the Maryland Retailers Association, to limit the ability of financial lenders to offer merchant cash advances (MCAs) in Maryland. In an evolution from an outright ban on MCAs introduced in 2020, Senate Bill 532/House Bill 664, instead, would have established a regulatory framework for businesses that engage in “sales-based financing transactions,” which the bill defines as financing transactions that are repaid over time as a percentage of sales or revenue (where the payment amount may increase or decrease depending on the volume of sales made or revenue received by the recipient). The regulatory framework proposed in the bill would have mandated certain disclosures by entities offering an MCA, including an estimated annual percentage rate (APR) based on a formula laid out in the legislation and a 24% cap on that APR. As introduced, the bill applied solely to MCAs and not to other types of commercial lending products.

After contentious hearings in both the Senate and House, House Bill 664 received an unfavorable report by the House Economic Matters Committee due to concerns about the bill's impact on small business access to capital during the current economic climate, and Senate Bill 532 failed to progress beyond the initial public hearing. The issue will likely be the topic of interim review by the Office of the Commissioner of Financial Regulation, combined with the bill sponsors and interested stakeholders.

Extended Producer Responsibility

In response to concerns about taxpayers and local governments bearing the total cost of managing waste and recycling, which is becoming increasingly unmanageable and unsustainable, Delegate Brooke Lierman (D – Baltimore City) introduced House Bill 36 to highlight Extended Producer Responsibility (EPR). EPR is a policy that assigns responsibility for end-of-life management of specific products and packaging to the companies or producers that put these products into the marketplace. Under the bill, businesses who manufacture, sell, import, or distribute packaging and paper products pay fees to the product stewardship organization (higher fees if their product/packaging is not recyclable, lower fees if their product is readily recyclable). These fees would have been used to fund staffing for the product stewardship organization, with oversight by the Maryland Department of the Environment (MDE), and reimbursements and grants for local governments. Ultimately, the producers pay for the management of their own packaging - including collecting, transporting, and processing - instead of taxpayers / municipal governments. The bill was jointly assigned to the House Economic Matters and Environment and Transportation Committees. Neither committee acted on the bill after its hearing.

Labor & Employment

Maryland Essential Workers Protection Act

With the introduction of the Maryland Essential Workers' Protection Act, Senate Bill 486/House Bill 581, Senator Malcolm Augustine (D – Prince George's County) and Delegate Dereck Davis (D – Prince George's County) proposed the most discussed and debated bill of the session. As introduced, the bill would have required employers of essential workers, as defined in the bill, to do the following when any state or local state of emergency was declared, including the current state of emergency in response to the COVID-19 pandemic:

- (1) a hazard wage, prospectively for the State's current emergency and from the beginning of all other emergencies, of no less than \$3 per hour for each pay period actually worked during an emergency to employees making less than \$100,000 per year;
- (2) assist with healthcare costs for employees with or without health coverage, including reimbursement and payment of copays, insurance premiums, and out of pocket costs or assistance with obtaining and paying for health insurance coverage;
- (3) permit an employee to refuse to fulfill a responsibility that is required or encouraged by an essential employer, relating to an unsafe work environment;
- (4) develop and enforce a Health Emergency Preparedness Plan, which must be submitted to local and state officials by December 31st of each year; including paid leave for emergency-related reasons;
- (5) provide three (3) days of bereavement leave and 14 days of health leave, separate and distinct from the State's currently mandated sick and safe leave; and
- (6) report all positive cases of infectious diseases to the Maryland Department of Health (MDH) and informing workers who may have been exposed.

The bill received significant pushback from businesses of all sizes. The legislature, after calling a joint legislative workgroup that included select opponents and proponents, hammered out and ultimately passed a more streamlined bill that requires employers of essential workers as defined in a Governor’s declaration of a catastrophic health emergency to do the following:

- (1) provide working conditions that comply with state and local safety standards;
- (2) provide no-cost “safety equipment,” not necessarily PPE, to essential workers;
- (3) pay for testing for the communicable disease that is the subject of the catastrophic health emergency, if not covered by the essential worker’s insurance and notify other employees who may have been exposed to a said communicable disease and MDH of an essential worker’s positive test;
- (4) if the federal government or State provide funding for such, provide paid “public health emergency leave” of 112 hours for full-time (40 hours/per week), non-teleworking, essential workers or an amount of hours equivalent to the average of a typical four-week period of a part time essential worker; and
- (5) limit public health emergency leave to use for the following purposes: (a) to isolate without an order to do so because the essential worker has been diagnosed with the communicable disease that is the subject of the emergency or is experiencing associated symptoms; (b) to care for a family member who is isolating for the same reason; or (c) for related and specified public health and safety reasons.

The bill is an emergency measure and awaits the Governor’s consideration and signature.

Bereavement Leave

Senator Mary Washington (D - Baltimore City) and Delegate Regina Boyce (D – Baltimore City) reintroduced Senate Bill 473/House Bill 56 to expand Maryland’s Flexible Leave Act by authorizing employees of businesses with at least 15 employees to use earned paid leave for bereavement leave. This bill codifies an employee’s eligibility to use bereavement leave for an immediate family member's death. Following strong support in both the Senate and House, both versions of the bill passed and will take effect October 1, 2021.

Prevailing Wage Applicability

After October 1, 2021, public work contracts with a value of \$250,000 or more and public work projects for which State funds constitute at least 25% of the construction costs will be subject to Maryland’s prevailing wage law. Current law only captures public works contracts with a value of \$500,000 or more and public work projects for which state funds constitute at least 50% of construction costs. Senator Brian Feldman (D – Montgomery County) and Delegate Kriselda Valderrama (D – Prince George’s County) introduced Senate Bill 35/House Bill 37, which was heavily supported by organized labor. The fiscal note to the bill notes that the total costs of projects required to pay prevailing wages under the bill will likely increase by between 2% and 5% overall.

Investor–Owned Utilities Prevailing Wage Applicability

Senate Bill 95/House Bill 174, introduced and passed by Senator Benjamin Kramer (D – Montgomery County) and Delegate Benjamin Brooks (D – Baltimore County), requires investor-owned gas and/or electric utilities to require contractors and subcontractors to pay their employees at least the applicable prevailing wage rate when working on projects involving the construction, reconstruction, installation, demolition, restoration, or alteration of any underground gas or electric infrastructure of the company, and any related traffic control activities. The fiscal note advised that though affected project costs will increase by between 2% and 5% overall, the bill is not anticipated to materially affect utility rates, although there is likely some upward pressure over time due to increased costs for underground utility projects. The bill takes effect October 1, 2021.

Secure Wage Act

After several years of consideration, the MGA finally passed a heavily amended Senate Bill 107/House Bill 685, sponsored by Senator Antonio Hayes (D – Baltimore City) and Delegate Kriselda Valderrama (D – Prince George’s County), which establishes the Secure Maryland Wage Act for qualifying employees at designated heightened security locations in the State. As passed, Senate Bill 107/House Bill 685 implements a phased-in, heightened wage for employees at Baltimore Washington Thurgood Marshall Airport and Pennsylvania Station in Baltimore City. The bill was amended to exempt airlines, retail and food service employees, employees related to the rental of motor vehicles, as well as employees providing construction services. The initial wage phase-in of not less than \$13.50 per hour will take effect on January 1, 2022.

Family Leave

Senator Antonio Hayes (D – Baltimore City) and Delegate Kriselda Valderrama (D – Prince George’s County) also teamed up to reintroduce Senate Bill 211/House Bill 375, the *Time to Care Act*, which would have established the Family and Medical Leave Insurance (FAMLI) program and FAMLI Fund to provide up to 12 weeks of benefits to a covered individual taking leave from employment due to specified personal and family circumstances. The weekly benefit is based on the individual’s average weekly wage, subject to a cap. The FAMLI Fund consists of employer and employee contributions and pays for benefits, a public education program, and implementation and administrative costs. Once again, this legislation failed to progress beyond the initial public hearings in the Senate Finance and House Economic Matters Committees.

Taxes

Combined Reporting

The 2021 Legislative Session saw the reintroduction of various legislation to require corporations doing business in Maryland to use a combined reporting method to determine their taxable corporate income in Maryland. Senate Bill 511, the *Corporate Tax Fairness Act of 2021*, sponsored by Senator Paul Pinsky (D – Prince George’s County) would have imposed combined reporting on all corporations in the State. Similarly, House Bill 172, sponsored by Delegate Mary Lehman (D – Anne Arundel & Prince George’s Counties) would have applied the same corporate income

tax distribution requirements for companies doing business in the State and directed a portion of any gained revenues towards the TTF and the Higher Education Investment Fund. Senator Ronald Young (D – Frederick County) also introduced Senate Bill 123, the perennial Small Business Fairness Act, which applies combined reporting requirements only to businesses in the restaurant and retail industries. Due to the potential impact on the federal stimulus funding flowing into the State throughout the legislative session, there was no action in either chamber on any combined reporting legislation. Still, similar bills are likely to be reintroduced for more serious consideration in 2022.

Throwback Rule

Legislation was reintroduced to increase state revenue from corporate income tax by implementing the “throwback rule” on income from goods manufactured in Maryland and sold in other states. Senator Paul Pinsky’s (D – Prince George’s County) broader corporate tax legislation, Senate Bill 511, included throwback provisions in addition to combined reporting. Additionally, Delegate Vaughn Stewart (D - Montgomery County) sponsored House Bill 229, a stand-alone bill implementing the throwback rule in Maryland and determining how a corporation’s personal property sales are considered in the State’s corporate income tax apportionment formula.

As introduced, these bills would require that sales of tangible personal property must be included in the numerator of the sales factor used for determining the Maryland taxable income of a multistate corporation if: (1) the property is delivered or shipped to a purchaser within the State, regardless of the point from where it is shipped or other conditions of the sale or (2) the property is shipped from an office, store, warehouse, factory, or other place of storage in the State and the corporation is not taxable in the state of the purchaser. The bills provided that a corporation is considered taxable in a state if: (1) in that state the corporation is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax or (2) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes a tax. There was no action on either bill after the initial public hearing.

Carried Interested

In an attempt to close a perceived “carried interest” tax loophole available to investment funds (i.e., private equity and hedge funds), Senator Paul Pinsky (D – Prince George’s County) and Delegate Julie Palakovich-Carr (D – Montgomery County) sponsored Senate Bill 288/House Bill 215. This bill would have imposed a 17% State income tax on the distributive share of a pass-through entity’s (PTE) taxable income from investment funds. PTEs are business entities that direct income towards their owners to receive a personal tax rate, thus allowing businesses to avoid double taxation and potentially reduce their overall taxes owed. According to the fiscal note prepared by the Department of Legislative Services (DLS), this legislation would have increased the State’s general fund revenue by \$45.1 million, beginning in FY 2022. Senate Bill 288/House Bill 215 failed to progress after the initial hearings in both chambers.

Tax Transparency

Delegate Lorig Charkoudian (D - Montgomery County) introduced House Bill 330, which would have required a publicly traded corporation to provide an itemized statement to (1) identify how their effective tax rates were calculated and (2) compare their effective tax rate both before and after the application of any credits, deductions, subtraction modifications, or other adjustments. The “effective tax rate” is defined as a percentage that equals the quotient of the State income tax liability of a publicly traded corporation and the corporation's book income determined under the State’s current accounting principles. Ultimately, the House Ways and Means Committee failed to take action on the bill after a contentious public hearing.

Workers’ Compensation

Uninsured Employers’ Fund

House Bill 876 was departmental legislation introduced at the request of the Uninsured Employers’ Fund (UEF) to extend, by one year to June 30, 2022, legislation that passed in 2020 to redistribute funding from the State’s workers’ compensation assessment from the Subsequent Injury Fund (SIF) to the UEF, to help address solvency concerns within the UEF. Members of the House Economic Matters Committee voiced concerns about a long-term strategy to address the UEF’s solvency and funding issues. Ultimately, that committee moved unfavorably on the bill, in light of budget language that passed to withhold designated funding from the Workers’ Compensation Commission (WCC), the SIF, and the UEF until a report is submitted to the MGA on the UEF’s personnel needs and potential restructuring.

Medical Cannabis

Senator Brian Feldman (D – Montgomery County) and Delegate Kriselda Valderrama (D – Prince George’s County) reintroduced Senate Bill 461/House Bill 683, which would have expressly authorized the WCC to require an employer or its insurer to provide medical cannabis to an injured employee receiving workers’ compensation benefits as part of the injured employee’s medical treatment. After substantial discussion in both the Senate Finance and House Economic Matters Committees, the bill received an unfavorable vote in the Senate, and the House failed to move forward. Similar legislation is likely to be reintroduced in future sessions as medical cannabis programs become more prevalent throughout the nation.

Legal Fees

Senator Katherine Klausmeier (D – Baltimore County) reintroduced Senate Bill 951, at the request of the Maryland Association for Justice. As introduced, Senate Bill 951 would have authorized the WCC, if there is no compensation other than a medical benefit payable to a covered employee, to order that a fee of not more than \$2,000 for legal services rendered on behalf of the covered employee be payable by the covered employee, an employer or its insurer, a self-insured employer, or the UEF. The bill was introduced late in the session and failed to progress beyond the Senate Rules Committee.

COVID-19 Presumption

Several pieces of legislation were introduced in both the Senate and the House by a myriad of sponsors to create an occupational disease presumption under workers' compensation law for specified employees suffering from the effects of COVID-19. The various proposed bills applied to different classes of employees, including public safety personnel, first responders, teachers, healthcare providers, and other "essential workers." After a series of robust hearings and a lengthy subcommittee discussion on potential amendments in the House Economic Matters Committee, all bills establishing a presumption for COVID-19 died due to lack of action.

Unemployment Insurance

Business closures and economic decline caused by the COVID-19 pandemic caused unprecedented strain on the State's unemployment insurance program (UI). In the eyes of the MGA, the pandemic exposed many severe shortcomings in the current system and its administration under the Department of Labor (DOL). In response to those concerns, a significant legislation package was introduced in the 2021 Legislative Session to address those matters in both the short and long term. After substantial consideration both before and during the session, the legislature passed the following pieces of legislation, all sponsored by Senator Katherine Klausmeier (D – Baltimore County) and Delegate Ned Carey (D – Anne Arundel County), the Co-Chairs of the Joint Committee on Unemployment Insurance Oversight:

- (1) Senate Bill 817/House Bill 907 establishes a study on potential major reforms to UI;
- (2) Senate Bill 816/House Bill 908 increases both employer contributions and reimbursement payments under UI;
- (3) Senate Bill 818/House Bill 1138 increases accountability and oversight for UI;
- (4) Senate Bill 819/House Bill 1139 establishes an income disregard for the weekly UI benefit amount for workers with multiple jobs; and
- (5) Senate Bill 771/House Bill 1143 expands work sharing within UI.

Additionally, in collaboration with the Joint Committee's legislative package, the MGA passed an amended version of House Bill 1002, sponsored by Delegate Lorig Charkoudian (D – Montgomery County), which is an emergency bill that requires the DOL to take specified actions in administering UI. Most of the requirements relate to enhancing applicant and claimant services as well as general program administrative procedures. The bill also requires DOL to begin implementing a system through which a claimant may consent, as part of any weekly claim certification, to the sharing of relevant information collected by DOL with the Maryland Health Benefit Exchange (MHBE) and MDH to determine whether the individual qualifies for free or low-cost health insurance and, if so, to help the individual enroll for coverage. MHBE must open a special or other enrollment period for an individual who consents to share the information.

To help mitigate the impact of COVID-19 related shut-downs on employers, the MGA also passed Senate Bill 811, an emergency bill that requires the Governor, based on the availability of qualified federal funds and notwithstanding any other provision of law, for fiscal 2022, to include in the annual budget bill an appropriation of funds toward replenishment of the Unemployment Insurance Trust Fund (UITF) in an amount sufficient to result in Table C applying in calendar 2022. The

appropriation may be used for administrative costs, including the repayment of federal funds. Additionally, notwithstanding any other law, the bill requires Table C to apply in calendar 2023. The bill terminates December 31, 2023. This, combined with the freeze on the experience rating for employers impacted by the pandemic included in the [Governor's RELIEF Act](#), provides significant mitigation of the cost of UI for Maryland employers.

Procurement

Emergency Procurement

House Bill 1091/Senate Bill 829, introduced by Senator Clearance Lam (D – Baltimore & Howard Counties) and Delegate Kirill Reznik (D – Montgomery County), establishes a statutory definition of “emergency” for the purpose of deciding when to use an emergency procurement. Under the bill, an “emergency” is an occurrence or condition that creates an immediate and serious need for services, materials, or supplies to avoid or mitigate serious damage to public health, safety, or welfare that cannot be met through normal procurement methods. Further, the bill also requires that the Chief Procurement Officer must approve in advance most emergency procurements that are greater than or equal to \$1 million. In addition, it extends authority to conduct expedited procurements, rather than an emergency procurement, to all agencies and not simply the Maryland Port Commission or the Maryland Aviation Administration. Finally, it codifies and expands reporting requirements related to emergency procurements.

The sponsors advised that the bill is needed to ensure that appropriate “guardrails” exist around emergency procurement procedures to ensure the State’s procurement professionals are overseeing the process. The sponsors further contended that the State is using the term “emergency” to circumvent procurement rules and pointed to the fact that 70% of the State’s emergency procurements awards took place outside the statutorily defined time period for an emergency procurement to occur as a response to an issue or need. Opponents, mostly from the Governor’s Administration, warned that “this bill would limit the State’s ability to avoid or mitigate serious damage to public health, safety, or welfare by delaying award of emergency contracts.” The bill takes effect July 1, 2021; however, the provisions related to prior approval of emergency procurements, expansion of expedited procurements, and new reporting requirements take effect October 1, 2021.

Police Reform

Repeal of the Law Enforcement Officers’ Bill of Rights

Speaker Adrienne Jones (D – Baltimore County) sponsored House Bill 670, *Maryland Police Accountability Act of 2021*. This bill repeals the Law Enforcement Officers’ Bill of Rights (LEOBR), which is a statewide law outlining due process protections for officers accused of police misconduct during administrative investigations. Under the bill, the LEOBR will be substituted with a new officer disciplinary process that seeks to increase citizen oversight of police disciplinary processes by introducing a charging committee made up of five appointees, some civilian, to review internal investigations and charge officers when appropriate. The bill also

creates an external trial board and removes the police chief from the final disciplinary decision. The bill becomes law on July 1, 2022.

Body Cameras

Senator Charles Sydnor (D – Baltimore County) introduced and passed Senate Bill 71 that will require all police departments in the State to equip their on-duty officers with body cameras by 2025. The bill also includes a statewide use of force policy, which the House of Delegates amended on to the bill and Senate accepted. Under the use of force policy, law enforcement officers must be trained in de-escalation and limit uses of force, except under imminent threat of harm to an officer or another person. A law enforcement officer who intentionally violates the use of force standard could face a misdemeanor criminal charge and up to ten years incarceration.

Police Disciplinary Records & Search Warrants

Senate Bill 178/House Bill 120, *Anton's Law*, sponsored by Senator Jill P. Carter (D - Baltimore City) and Delegate Gabriel Acevero (D – Montgomery County), will alter the Maryland Public Information Act to allow certain officer misconduct records to be available for public inspection. The bill is named after Anton Black, a 19-year-old who died after being in police custody on the Eastern Shore in 2018. The bill also regulates how and when search warrants can be executed by law enforcement and includes extensive restrictions on no-knock warrants. The bill takes effect October 1, 2021.

Juvenile Justice Reform

Juvenile Restoration Act

The MGA passed Senate Bill 494/House Bill 409, *Juvenile Restoration Act* (the Act). The bill had bi-partisan sponsors with Senator West (R – Baltimore County) and Delegate Jazz Lewis (D – Prince George's County) championing the bill. The Act first provides that mandatory minimum sentencing requirements do not apply to minors tried and convicted as adults. Similarly, the bill prohibits a court sentencing a minor convicted as an adult to life imprisonment without the possibility of parole or release. Finally, the bill provides to an inmate who was convicted as an adult for an offense committed when the inmate was still a minor and who has been in prison for at least 20 years an opportunity to file an additional motion for modification of sentence. A judge may not modify, meaning reduce, the sentence unless the judge finds, after a hearing, that “the individual is not a danger to the public” and that “the interests of justice will be better served by a reduced sentence”.

Opponents of the bill argued that defendants already have enough ways to modify and/or challenge a sentence, stating that the bill was unnecessary and deprives victims and/or their families of finality in criminal prosecutions. Supporters contended, however, that The U.S. Supreme Court has consistently ruled that life without parole for children under 18 years of age is unconstitutional in the vast majority of cases because of their “diminished culpability and heightened capacity for change.” Furthermore, a 2020 study from Montclair State University found that individuals sentenced to life without parole as children in Pennsylvania who were released in the last five years

saw a recidivism rate of approximately 1%, a stark comparison to Maryland’s overall recidivism rate of that remains around 40%. Concerned that the bill will “contribute to the re-traumatization of the victims of these heinous crimes” and arguing essentially that the punishment should fit the crime, the Governor promptly vetoed the legislation and the legislature, who was still in session, overrode the veto just as promptly. This legislation becomes effective October 1, 2021.

Juvenile Justice Reform Council

Senate Bill 853/House Bill 1187, introduced by Senator Jill Carter (D – Baltimore City) and Delegate Luke Clippinger (D – Baltimore City), is the partial work product of the Juvenile Justice Reform Council (JJRC). The JJRC's Final Report describes the JJRC as a “diverse, inter-branch, bipartisan group of juvenile justice stakeholders from across the state. In addition to legislators, the Council consists of representatives from the judiciary, prosecutorial and defense bars, state child-serving agencies, law enforcement, and various representatives from national and local organizations with experience in juvenile justice policy reform.”

The bill focuses on four sweeping policy changes to state law, with the intent to improve Maryland’s juvenile justice system. The areas of policy change include (1) Minimum Age of Juvenile Court Jurisdiction; (2) Juvenile Detention Utilization; (3) Juvenile Community Supervision/Probation; and (4) Juvenile Diversion. As to minimum age, the bill sets a general minimum age of prosecution in juvenile court at 13 years of age and a delineated violent crime floor for children ten years of age and older. The bill also would prohibit the out-of-home placement of justice-involved youth for misdemeanor offenses or technical violations of probation. Furthermore, the bill would set a maximum initial term of probation at six months for misdemeanors (maximum extension twelve months), twelve months for most felonies (maximum extension 48 months), and a maximum of 24 months for the most serious crimes (max extension to age of 21 years old). Finally, the bill makes it easier for stakeholders to return a case for informal processing, eliminating the requirement that a complaining witness consent to diversion, and allowing more types of offenses to qualify for pre-court diversion.

The Senate Judicial Proceedings Committee, dissatisfied with the JJRC’s recommendation, gutted the entire bill and simply extended the term of the JJRC and added \$2 million in funding for ROCA Baltimore, LLC, which is a “highly effective intervention program that provides relentless outreach to young people impacted by traumatic experiences at the center of urban violence and poverty,” according to Roca’s annual report. The MGA ultimately passed the Senate version of the bill after a reluctant House concurrence.

Juvenile Interrogation

Senate Bill 136/House Bill 315 would have prohibited a law enforcement officer from conducting a custodial interrogation of a child until the child has consulted with an attorney and the law enforcement officer has notified the parent, guardian, or a custodian in a manner reasonably calculated to give actual notice that the child will be interrogated. The bill contains a rebuttable presumption that a statement made by a child during a custodial interrogation is inadmissible in a delinquency proceeding or a criminal prosecution against the child, if a law enforcement officer willingly failed to comply with the bill’s requirements. Finally, the bill specifies that a law

enforcement officer may conduct an otherwise lawful custodial interrogation of a child if the law enforcement officer reasonably believes that the information sought is necessary to protect an individual from an imminent threat to the life of the individual and a reasonable delay to allow the child to have legal consultation would impede the ability of law enforcement to safeguard the life of the threatened individual and the questions posed to the child by the law enforcement officer are limited to those questions reasonably necessary to obtain the information necessary to protect the individual from an imminent threat to the life of the individual.

Opponents to the bill argued that if this policy were codified, it would have substantially hampered law enforcement's ability to investigate crimes and goes well beyond the protections afforded under the Constitution. Supporters, however, pointed out that children are two to three times more likely to falsely confess than adults and account for approximately one-third of all false confessions; thus, the safeguards of the bill are necessary. While the House Judiciary Committee gave the bill a favorable vote, the Senate took no action on the bill.

Public Safety

Forensic Analysis of DNA

After significant work in the interim, Senator Charles Sydnor (D – Baltimore City & County) and Delegate Emily Shetty (D – Montgomery County) reintroduced legislation to regulate law enforcement access to genetic data collected from commercial, direct-to-consumer genetic testing services, similar to that used to famously identify the Golden State Killer. After much collaboration with a variety of stakeholders, substantially amended versions of Senate Bill 187/House Bill 240 passed to establish clear requirements and procedures for forensic genetic genealogical DNA analysis and related searches of publicly accessible databases using genetic profiles.

Under the bill, regulated genetic data may only be used to prosecute specified violent crimes or demonstrate a defendant's innocence and only applies to direct-to-consumer genetic genealogy services and publicly accessible databases that share data with law enforcement entities under the parameters of the bill. Similarly, the state licensure requirements established in the bill only apply to individuals and laboratories conducting forensic analysis of genetic data under the definitions laid out in the bill. This legislation only applies to law enforcement access and use of genetic data and does not address the broader commercial use of the information. The bill will take effect on October 1, 2021.

Child Sexual Abuse – Statute of Limitations

Senator Shelly Hettleman (D – Baltimore County) and Delegate C.T. Wilson (D – Charles County) reintroduced Senate Bill 134/House Bill 263 to establish that an action for damages arising out of an alleged incident or incidents of “sexual abuse,” as defined under the bill, that occurred while the victim was a minor may be filed at any time. The bill must be construed to apply retroactively to revive any action barred by the statutory period of limitations applicable before October 1, 2021, if the action is filed before October 1, 2023. The bill also repeals provisions from Chapters 12 and 656 of 2017 establishing that the statute of repose in the existing statute must be construed to apply

both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.

Following a lengthy and emotionally charged hearing in the Senate Judicial Proceedings Committee, the House sponsor ultimately withdrew his bill to avoid subjecting his supportive witnesses to a similar hearing. As in previous years, the legislation failed to progress beyond the initial hearing.

Hate Crimes

Senator Shelly Hettleman (D - Baltimore County) and Delegate Vaughn Stewart (D - Montgomery County) reintroduced Senate Bill 201/House Bill 128. As amended, the bill adds “gender identity” to the list of protected classes in Maryland. While the bill as introduced would have also added “age” to the list of protected classes, this proposal was ultimately amended out of the bill. In addition, the bill authorizes a sentencing court to order a person convicted of a hate crime to complete an antibias education program and requires the University System of Maryland to manage the development of an antibias education program. This bill passed and awaits the Governor’s signature.

Additionally, Senator Benjamin Kramer (D – Montgomery County) and Delegate Charlotte Crutchfield (D - Montgomery County) also championed a hate crimes-related bill, which would have authorized a person who is the victim of a violation of the State’s hate crime laws to bring a civil action against the person or persons who committed the act. Furthermore, the bill would have authorized a court to award economic and non-economic damages should the moving party prevail. The bill failed to advance beyond the committees of jurisdiction. This proposal will likely be reintroduced next session.

Education

Blueprint for Maryland’s Future – Revisions

The MGA, in 2016, created the Kirwan Commission on Innovation and Excellence in Education (“the Kirwan Commission”) to develop recommendations on how to enhance Maryland’s primary and secondary schools. Based on these findings, the legislature passed the Blueprint for Maryland’s Future (“the Blueprint”) during the 2020 Legislative Session to revise the State’s school funding formula and create a 10-year strategic plan to raise academic achievement and strengthen Maryland’s education workforce by 2030. Upon passage, Governor Hogan vetoed the Blueprint, stating that the bill would result in increased taxes during the COVID-19 economic downturn. The MGA responded by overriding the Governor’s veto during this legislative session, thus enacting the Blueprint a year later than originally intended.

Speaker Adrienne Jones (D - Baltimore County) remedied the one-year delay and the implications of the COVID-19 pandemic by introducing House Bill 1372, *Blueprint for Maryland’s Future – Revisions*, as an emergency bill. The investment will be dedicated, but not limited to the following: (1) extending low-income students’ participation in the federal Community Eligibility Provision (CEP) through FY 2026; (2) mandating local boards of education use federal funds to address

educational learning loss during COVID-19 and the Blueprint's goals (i.e., summer school, tutoring, behavioral health programs, etc.); (3) excluding the 2020-2021 school year enrollment metrics from local funding formulas; (4) outlining the authority of the Blueprint's Accountability and Implementation Board; and (5) extending deadlines for the Career and Technical Education curriculum reviews. This \$110.9 million Blueprint supplement will be incrementally distributed between FY 2023 and FY 2026. Given the high priority of the bill, House Bill 1372 was deemed emergency legislation and became law upon enactment.

Historically Black Colleges and Universities – Funding

In 2006, *The Coalition for Equity and Excellence in Maryland Higher Education, et al* (“the Coalition”) alleged that the State had systemically underfunded its four historically Black colleges and universities (HBCUs) while developing competitive programs at its predominately White institutions (PWIs), thus diverting prospective students away from HBCUs. Following more than a decade of court proceedings and mediation attempts, the State and the Coalition have been working through a settlement agreement.

In response, Senator Charles Sydnor (D - Baltimore City & County) and Speaker Adrienne Jones (D – Baltimore County) introduced Senate Bill 1/House Bill 1, to provide an additional \$577 million to the State's four HBCUs, contingent on the final settlement of *The Coalition for Equity and Excellence in Maryland Higher Education, et al. v. Maryland Higher Education Commission, et al.* lawsuit. Beginning FY 2023 and running through 2032, this emergency legislation will disburse annual sums to Bowie State University, Coppin State University, Morgan State University, and the University of Maryland, Eastern Shore. These funds must be used for (1) scholarships; (2) financial aid support services; (3) faculty recruitment and development; (4) expanding and improving existing academic programs; and (5) implementing new academic programs, including online programs, academic support, and marketing.

Additionally, House Bill 1/Senate Bill 1 establishes an HBCU Reserve Fund to safeguard all unused HBCU settlement funds at the end of each fiscal year and may only be used for the same purposes specified under this legislation. Following amendments addressing the HBCU Fund and reporting requirements, both bills were passed as top priorities for Speaker Jones and were summarily signed into law by the Governor with great fanfare. The legislation will take effect, contingent on the execution of a final settlement agreement, June 1, 2021.

Alternative Student Transportation

Senator George Edwards (R – Garrett County) and Delegate Carl Anderton (R – Wicomico County) reintroduced and passed Senate Bill 448/House Bill 72, which, as amended, authorizes a county board of education to provide transportation for specified public school students to and from school using a vehicle other than a Type I or Type II school vehicle when a school vehicle cannot reasonably be provided. The Maryland State Department of Education (MSDE) must consult with county boards of education and the Motor Vehicle Administration (MVA) to adopt regulations establishing minimum vehicle and driver safety standards for alternative student transportation under the bill. The bill also broadens the definition of nonpublic school with respect to the transportation of students to mean any elementary or secondary school in the State that is

not part of the public elementary and secondary education system. Local school systems must report to MSDE on the provision of student transportation in accordance with the bill's changes by September 1, 2025; MSDE must compile the reports (in addition to other specified information) and submit a report to the MGA by December 1, 2025. The bill takes effect July 1, 2021, and terminates June 30, 2026.

Childcare/Early Care and Education

Senator Nancy King (D – Montgomery County) and Delegate Ariana Kelly (D - Montgomery County) introduced Senate Bill 436/House Bill 597 requiring the State Board of Education to adopt regulations to develop probationary employment qualifications for first-time job applicants seeking to be childcare teachers in a childcare center that serves preschool or school-age children who are at least three years of age. The regulations will help to facilitate professionals with the relevant education experience to readily begin working in those centers while at the same time completing their pre-service training. This legislation becomes effective July 1, 2021.

Senator Nancy King (D – Montgomery County) and Delegate Jared Solomon (D - Montgomery County) also introduced Senate Bill 711/House Bill 944 to establish the Growing Family Child Care Opportunities Pilot Program in MSDE to provide grants to establish and support local pilot programs in the State. Under the bill, grant recipients would provide technical assistance and financial incentives for recruited individuals as they navigate MSDE's process to become a registered family childcare provider. The legislation mirrors a similar, existing program in Montgomery County. This bill also becomes effective on July 1, 2021.

Further, Senator Nancy King (D – Montgomery County) and Delegate Jared Solomon (D - Montgomery County) introduced Senate Bill 890/House Bill 608, *Child Care Provider Support Act*. The bill sought to establish a grant program for qualifying center-based and family childcare providers who were struggling to remain open as a result of the COVID-19 pandemic. While the legislation failed to pass, the Governor's Administration allocated \$60 million in the Budget to establish a similar program.

Finally, House Bill 1307, *Support Youth Development for School–Age Children Act*, introduced by Delegate Stephanie Smith (D - Baltimore City), would have exempted certain youth development organizations and programs from the definition of a childcare center, thereby exempting them from applicable rules and regulations governing childcare providers in the State. The bill ultimately failed with the understanding that there would be a concerted effort during the interim to do a comprehensive review and revision of the regulations as they pertain to school-age childcare.

Gaming

Sports Gaming

After countless workgroup and subcommittee discussions in both the House and Senate, the MGA finally passed comprehensive legislation to establish a sports gaming program in the State, following the gaming expansion's overwhelming approval in a 2020 referendum. As amended,

House Bill 940, introduced initially by Speaker Adrienne Jones (D – Baltimore County), as a key part of her Black Agenda and ongoing effort to build Black wealth in Maryland, does the following:

- (1) creates a limited number of retail sports gaming licenses for designated Class A (including the State’s six casinos, professional sports stadiums, and large racetracks) and qualifying Class B licensees;
- (2) creates a limited number of mobile sports gaming licenses for qualifying licensees, as determined by the Sports Wagering Application Review Commission;
- (3) mandates specific reporting requirements relating to a partnership with minority and women-owned businesses as part of the application for and issuance of sports gaming licenses;
- (4) creates and allocates special funding for minority and women-owned businesses seeking to participate in Maryland’s sports gaming industry and for HBCUs; and
- (5) implements a general licensure, regulatory, and tax regime for all aspects of the State’s sports gaming industry.

The stated intent of the MGA is that both the brick-and-mortar retail sports gaming and mobile licensure programs be implemented as soon as possible, with a goal of having retail in place for the start of the 2021 National Football League season.

Video Lottery Terminals - Proceed Distribution

After multiple years of legislation being introduced to adjust the proceed distribution rates for revenues from the various video lottery terminal (VLT) licensees in the State, the MGA finally passed an amended House Bill 532, which incorporated several provisions. Originally introduced by the Allegany County Delegation, House Bill 532, as it passed, will (1) decrease the mandated payout percentages for individual VLTs and the total gaming floor; (2) increase the overall distribution rate for the VLT licensees in Allegany and Cecil Counties and Baltimore City; (3) transfer the liability for the “hold harmless” requirements for local impact grants in Anne Arundel County from Prince George’s County to the State Lottery Fund; and (4) repeal a prohibition that the Worcester County licensee have a hotel on its premises. This legislation may serve as the first step in a comprehensive restructuring of the State’s gaming tax regime for VLTs, table games, and other types of gaming.

Casino License Renewal

Delegate Eric Ebersole (D – Baltimore & Howard Counties) reintroduced House Bill 406 to impose on a VLT licensee an annual license renewal fee of \$500 for each VLT and table game that is authorized for operation at the video lottery facility, to be distributed to the Education Trust Fund (ETF). The fee is indexed to inflation beginning October 1, 2022. The State Lottery and Gaming Control Commission (SLGCC) must renew a video lottery operation license upon proper application for license renewal and payment of the license renewal fee unless SLGCC finds that the licensee is no longer qualified to hold a license. A renewal of a video lottery operation license is for a term of 15 years instead of the 10 years authorized under current law. Before denying an

application, SLGCC must provide the video lottery operation licensee an opportunity for a hearing. The bill received significant industry opposition at the hearing and failed to progress, but legislation to establish a renewal process for VLT licensees is likely to be reintroduced in future sessions as the renewal date for the earliest State casinos approaches.

Healthcare

Preserve Telehealth Access Act of 2021

Senator Melony Griffith (D – Prince George’s County) and Delegate Joseline Pena-Melnyk (D - Arundel & Prince George’s Counties) sponsored Senate Bill 3/House Bill 123 to expand the definitions of “telehealth” as well as the coverage and reimbursement requirements for health care services provided through telehealth for both Medicaid and private insurance. Telehealth includes (1) synchronous and asynchronous interactions; (2) an audio-only telephone conversation between a health care provider and a patient that results in the delivery of a billable, covered health care service and that occurs between July 1, 2021 and June 30, 2023; and (3) remote patient monitoring services. Additionally, the bill clarifies that Medicaid’s telehealth coverage must include counseling and treatment for substance use disorders and mental health conditions.

With the exception of the temporary provision for audio-only discussed above, “telehealth” does not include the provision of health care services solely through an audio-only telephone conversation, an email message, or a facsimile transmission. Carriers must reimburse for a covered service appropriately provided through telehealth. The bill takes effect July 1, 2021; the bill’s insurance provisions apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after that date.

Minor Consent to Mental Health Treatment

Senate Bill 41/House Bill 132, introduced by Senator Malcolm Augustine (D – Prince George’s County) and Delegate Heather Bagnall (D – Anne Arundel County), establishes that a minor who is at least age 12 and is determined by a health care provider to be mature and capable of giving informed consent, has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by the health care provider or a clinic. A minor younger than age 16, however, may not consent to the use of prescription medications to treat a mental or emotional disorder.

Supporters of the bill argued that this is sound public policy that allows young people to seek help from trained professionals before they reach a point of crisis. Opponents to the legislation pointed out that almost every effective strategy at treating younger children with mental illness benefits from the involvement of the parent or guardian. Parent or guardian involvement undisputedly increases the effectiveness of most therapies and some interventions require such participation to even occur. After emotional and extended floor debate, the MGA eventually passed the bill. The capacity imparted under the bill becomes effective October 1, 2021.

Nursing Home Visitation During a Catastrophic Health Emergency

Delegate Mary Lehman (D – Anne Arundel & Prince George’s County) introduced House Bill 983 as emergency legislation that will require the MDH, consistent with federal requirements, to develop guidelines for visitation limitations that a nursing home may impose to reduce the spread of COVID-19 or another disease that constitutes a “catastrophic health emergency.” The bill also expresses the MGA’s intent that, during a catastrophic health emergency issued by the Governor, visitation in nursing homes should be prioritized in such a way as to balance residents' physical, mental, and spiritual needs with that of preventing isolation and separation from family members. The bill passed in the final hours on *Sine Die*.

COVID-19 Testing, Contract Tracing, & Vaccinations

Senate Bill 741/House Bill 836, *COVID-19 Testing, Contract Tracing and Vaccination Act of 2021*, introduced and passed by Senator Jim Rosapepe (D – Anne Arundel & Prince George’s Counties) and Delegate Joseline Pena-Melnyk (D – Anne Arundel & Prince George’s Counties), is also emergency legislation requiring that by June 1, 2021, MDH, in collaboration with local health departments, to adopt and implement a two-year plan to respond to COVID-19 that includes testing, contact tracing, and vaccination protocols. The legislation also includes mandated funding for testing for nursing homes, conditional on the appropriation of federal funding. In addition, each nursing home must adopt and implement a specified COVID-19 plan. Provisions related to COVID-19 plans and additional funding for nursing homes terminate on December 31, 2022.

Health Occupations

Implicit Bias Training

Senator Melony Griffith (D - Prince George’s County) and Delegate Joseline Pena-Melnyk (D – Anne Arundel & Prince George’s Counties) introduced and passed legislation that expands the data reporting requirements for the Office of Minority Health and Health Disparities (OMHHD) to include racial and ethnic data in their annual “Health Care Disparities Policy Report Card.” The OMHHD must post the information on their website and update the data every six months. The legislation also requires all licensed and certified health care professionals to complete an implicit bias training course approved by the Cultural and Linguistic Health Care Professional Competency Program, in conjunction with the OMHHD, that is recognized by a health occupations board or accredited by the Accreditation Council for Continuing Medical Education. A health care provider must attest to the completion of an implicit bias training course on the provider’s first application for licensure renewal after April 1, 2022.

Pharmacists - Maintenance Injectable Medications

Senator Ronald Young (D – Frederick County) and Delegate Karen Lewis Young (D – Frederick County) presented for a second time and passed Senate Bill 84/House Bill 135 to allow a licensed pharmacist to administer a maintenance injectable medication that is not a biological product and: (1) was prescribed by an authorized prescriber and the prescriber had not ordered the initial dose be administered by a prescriber; (2) administered in accordance with a standing order issued by an

authorized public health official; or (3) administered in accordance with a drug therapy management protocol. The bill defines “maintenance injectable medication” as a medication that is administered by injection other than intravenously and treats a chronic need, condition, or disorder. Maintenance injectable medication includes a medication for the treatment of a psychiatric or substance use disorder, contraception, and vitamins. The bill is an emergency bill and will become law immediately upon approval of the Governor.

Trauma-Informed Care and Adverse Childhood Experiences

In the wake of similar legislation passing in Baltimore City, the MGA proposed several bills to establish programs to address the impact of trauma and adverse childhood experiences (ACEs) on individuals in the State.

Senator Jill Carter (D – Baltimore City) and Delegate Robbyn Lewis (D – Baltimore City) sponsored and passed Senate Bill 299/House Bill 548 to establish the Commission on Trauma-Informed Care as an independent commission in the Department of Human Services (DHS) to coordinate a statewide initiative to prioritize the trauma-responsive and trauma-informed delivery of State services that affect children, youth, families, and older adults. The Governor’s Office of Crime Prevention, Youth, and Victim Services must provide staff to the commission. The commission, in consultation with specified entities, must also study and implement an ACEs Awareness program. The bill requires each commission member to participate in specified training and each specified agency head to designate two staff members to carry out specified responsibilities.

With similar intent but a different approach, Senator Malcolm Augustine (D – Prince George’s County) and Delegate Pam Queen (D – Montgomery County) sponsored Senate Bill 425/House Bill 783 to establish a commission on ACEs specifically and House Bill 774, which would have established a screening and training program for ACEs. These bills all failed to progress in the House Health and Government Operations Committee and died on *Sine Die*.

Maternal Healthcare

1. Licensed Direct-Entry Midwives – Prior Cesarean-Section

After years of data collection and review, Delegate Bonnie Cullison (D – Montgomery County) sponsored House Bill 1032 to expand the scope of licensed direct-entry midwives (LDEMs) in Maryland to provide maternal health services to women who have previously had a cesarean-section or c-section. The bill limited access to low-risk women with only one prior c-section, at least 18-months prior, with a previous low-lying transverse incision. After substantial debate in the public hearing and subsequent subcommittee discussion, the bill was referred for interim review by the Direct-Entry Midwifery Advisory Committee within the Board of Nursing (BON). Stakeholders will work within that Committee to develop recommended legislation for access to vaginal birth after c-section services with an LDEM for the 2022 Legislative Session.

2. *Licensed Midwives*

Senator Clarence Lam (D – Baltimore & Howard Counties) and Delegate Heather Bagnall (D – Anne Arundel County) introduced and passed with widespread support Senate Bill 684/House Bill 758 to establish a licensing and regulatory regime for a “licensed certified midwife” to “practice certified midwifery” under the BON. The BON must (1) establish standards for the practice of certified midwifery; (2) maintain a list of all licensed certified midwives; (3) set applicable fees; and (4) initiate specified disciplinary action. The BON Safe Practice Committee must evaluate licensed certified midwives who request participation in the program and report to the board the name and license number of any licensed certified midwife who is expelled from the program for failure to comply with the conditions of the program. On request of the BON, an employer must report the name and license number of each employee licensed to practice certified midwifery. This bill takes effect on October 1, 2021.

3. *Doulas – Medicaid Coverage*

Senator Arthur Ellis (D – Charles County) reintroduced legislation requiring Medicaid to cover doula services. After significant discussion in the Senate, the bill was amended to create a limited pilot program. The bill failed to progress after a public hearing on the amended bill in the House Health and Government Operations Committee and died on *Sine Die*.

Chiropractic Examiners

The Chair of the Senate Education, Health and Environmental Affairs Committee, Senator Paul Pinsky (D – Prince George’s County) introduced departmental legislation at the request of MDH. As passed, Senate Bill 125 simply extends the sunset of the regulating board for licensed chiropractors in the State by another ten years.

Podiatrists

Senator Obie Patterson (D – Prince George’s County) and Delegate Ken Kerr (D – Frederick County) reintroduced legislation to permit podiatrists in Maryland to use the term “podiatric physician” when referencing their services. The bill easily passed the House but failed to progress in the Senate Education, Health and Environmental Affairs Committee. This legislation is expected to be reintroduced in 2022.

Oral Healthcare

1. *Dentists – Administration of Vaccines*

Senator Chris West (R – Baltimore County) sponsored Senate Bill 808, at the request of the State Board of Dental Examiners, to expand the scope of practice for licensed dentists to administer certain vaccines. The bill came as one of several pieces of legislation to increase patient access to vaccines, particularly in the wake of the COVID-19 pandemic. A robust hearing on the bill occurred in the Senate Education, Health and Environmental Affairs Committee and subsequent

discussion to include other dental professionals, including qualifying licensed dental hygienists in the bill. Ultimately, the bill did not progress, but it is likely to be reviewed by stakeholders in the interim and may return in a revised posture for the 2022 Legislative Session.

2. Oral Health Task Force

After several years of debate, Senator Delores Kelley (D – Baltimore County) and Delegate Heather Bagnall (D – Anne Arundel County) reintroduced and ultimately passed Senate Bill 100/House Bill 368 to establish the Oral Health Task Force, under both MDH and DLS. As amended, the Task Force shall: (1) analyze current access to dental services in the State, with a focus on the socioeconomic status, race, ethnicity, age, and disability of residents; (2) identify areas of the State where a significant number of residents are not receiving oral health care services; (3) identify barriers to receiving dental services in areas in need; (4) analyze the specific impact of such barriers; (5) assess options to eliminate such barriers, including the feasibility of establishing a program for dental therapy in the State; and (6) make recommendations to increase access to dental services in the State. The Task Force must also submit an interim report by May 1, 2022, and a final report by December 1, 2022, to the Governor and the MGA. The bill takes effect July 1, 2021, and terminates June 30, 2023.

3. Medicaid Parity for Dental Services

Senator Malcolm Augustine (D - Prince George's County) and Delegate Robbyn Lewis (D - Baltimore City) sponsored Senate Bill 485/House Bill 547 to prohibit Medicaid from limiting dental prophylaxis (dental cleanings) or oral health exams to an interval greater than 120 days within a 12-month policy period. Beginning on January 1, 2022, these services will be covered under Medicaid at least twice a year, but no more than once every four months, subject to federal approval and State budget limitations. The bill establishes similar flexibility for essential dental services provided under Medicaid as with private dental coverage. After a smooth passage through both the Senate and House chambers, this legislation will become law on October 1, 2021.

Pharmaceuticals

Prescription Drug Affordability Board – Revisions

Legislation passed in the 2019 Legislative Session created the PDAB and tasked the PDAB with making several determinations, including evaluating the need for upper payment limits (UPLs) for prescription drug products and, if warranted, developing a draft plan of action that includes UPLs. Under that law, if the PDAB determines the need for UPLs, the subsequent draft plan had a deadline of July 1, 2021. Due to several unforeseen circumstances, including a lack of funding and delays associated with the COVID-19 pandemic, the PDAB has yet to make the mandated determinations under the initial legislation, so Delegate Bonnie Cullison (D – Montgomery County) introduced and successfully passed House Bill 1034 to repeal the specific due date for the PDAB's determinations relating to UPLs. During the committee discussion on the legislation, it was noted that it remains the PDAB's intent to make the specified determinations prior to the start of the 2022 Legislative Session.

In contrast, Delegate Julian Ivey (D – Prince George’s County) sponsored House Bill 162, which would have removed the PDAB’s discretion to determine the State’s need to implement UPLs, and instead required that UPLs be explicitly set by February 1, 2022. The bill received unfavorable consideration by the Insurance and Pharmaceuticals Subcommittee in the House Health and Government Operations Committee and failed to progress beyond that point.

Drug or Device Product - Lower Cost Substitution

Senator Steven Hershey (R – Kent, Queen Anne's, Cecil, & Caroline Counties) and Delegate Emily Shetty (D – Montgomery County) reintroduced Senate Bill 537/House Bill 429 to increase patient access to lower-priced prescription drugs at retail pharmacies in Maryland. The bill, supported by the Chain Drug Store Association, authorizes a pharmacist to substitute a therapeutically equivalent brand-name drug or device product for any originally prescribed generically equivalent drug or device product if (1) the prescriber does not expressly state that the prescription must be dispensed only as directed; (2) the substitution is recognized, as specified; and (3) the consumer is charged less for the substitution than the originally prescribed drug or device. As amended and passed, the bill creates a similar substitution procedure for lower-cost brand name drugs as exists in current law for the substitution of generic drugs. The bill takes effect on October 1, 2021.

Vending Machine Sale of Drugs and Medicines

With the intent to increase accessibility to medical products in underserved communities, Senator Clarence Lam (D – Baltimore & Howard Counties) and Delegate Robbyn Lewis (D – Baltimore City) introduced Senate Bill 499 /House Bill 107 to repeal the statutory prohibition on the use of vending machines for selling, distributing, or disposing of drugs and other over-the-counter medical supplies. Following strong support from both chambers, this bill passed and will take effect October 1, 2021.

Out-of-Pocket Maximums & Cost-Sharing Requirements

A bill concerning the out-of-pocket (OOP) maximums and cost-sharing requirements for health insurance was once again introduced this session. As introduced by Senator Joanne Benson (D – Prince George’s County) and Delegate Pat Young (D – Baltimore City & County), the bill would have required Maryland insurers to include any payments made by, or on behalf of, the insured/member when calculating the overall contribution to an OOP maximum or a cost-sharing requirement. In short, this bill prohibits insurers from banning or restricting the use of co-pay accumulator programs, similar to insurers in Arizona, Virginia and Illinois. The bill failed to move beyond the committee of jurisdiction in each chamber.

Alcohol and Tobacco

Flavored Tobacco Ban

Senator Mary Washington (D – Baltimore City) and Delegate Jazz Lewis (D - Prince George’s County) reintroduced Senate Bill 177/House Bill 134, which was similar to legislation introduced by Delegate Dereck Davis (D – Prince George’s County) that the House passed during the truncated 2020 Legislative Session. As introduced, this legislation sought to reduce the harmful impact of tobacco products on youth and other vulnerable populations by prohibiting flavored tobacco cigarettes, other tobacco products (OTPs), electronic smoking devices (ESDs), and all menthol-flavored products from being manufactured, distributed, shipped, imported, or sold within the State. Following lengthy and contentious hearings in both the Senate and House, the bill failed to progress in either chamber.

Electronic Smoking Devices - Regulation

Senator Benjamin Kramer (D - Montgomery County) reintroduced Senate Bill 273, *Electronic Smoking Device Regulation Act of 2021*. As introduced, this bill would have eliminated ESD retailer licenses and restricted the sale of ESDs in the State to in-person transactions by licensed vape shop vendors only. Like the flavor legislation, this bill failed to progress beyond its initial hearing in the Senate Finance Committee.

Local Regulation – Tobacco & Electronic Smoking Devices

Once again, Senator Benjamin Kramer (D – Montgomery County) and Delegate Sandy Rosenberg (D – Baltimore City) introduced legislation to explicitly authorize local jurisdictions to regulate tobacco products. Senate Bill 410/House Bill 1011 would have expressly authorized a county or municipality to enact and enforce local laws that are at least as stringent as state laws that regulate the sale and distribution of cigarettes, OTPs, and ESDs, except for the issuance of cigarette, OTP, and ESD licenses and the taxation of cigarettes and OTP. The bill further stated that the MGA intends that the bill be applied and interpreted to abrogate Court of Appeals’ holding in *Altadis U.S.A., Inc. et al. v. Prince George’s County*, Maryland 431 Md. 307 (2013). Similarly, Senator Antonio Hayes (D – Baltimore City) sponsored Senate Bill 378, which would have made the same authorizations for Baltimore City. All three bills failed to move beyond the initial public hearings.

Alcohol Delivery – Class A Retailers

In March of last year, the Governor issued an Executive Order permitting entities holding a state or local license to manufacture or sell alcoholic beverages to offer beer, wine, or liquor for delivery throughout the length of the declared state of emergency. Delegate Lily Qi (D – Montgomery County) introduced House Bill 994, which would have, in part, made the actions of the Executive Order permanent. Specifically, House Bill 994 authorized Class A retailers to deliver to their customers on a permanent basis. Prior to the pandemic, licensing boards were statutorily authorized to approve licensees for delivery, though not all jurisdictions have opted to do so. House Bill 994 would have automatically authorized delivery by Class A license holders in all jurisdictions, codifying the practice throughout the pandemic. The bill also authorized Class A

license holders to deliver statewide, beyond the boundaries of the county in which they are licensed. Due to concerns raised by legislators, House Bill 994 was ultimately withdrawn by the sponsor, but policy discussions about alcohol delivery are likely to continue in future sessions.

Alcohol Carryout – Bars, Restaurants, & Taverns

The Governor’s March 2020 Executive Order also authorized restaurants, bars and taverns to sell and deliver beer, wine and mixed drinks for off-premise consumption. Senate Bill 205/House Bill 12, introduced by Senator Shelly Hettleman (D - Baltimore County) and Delegate Courtney Watson (D - Howard County) as amended and passed, enables local liquor boards to adopt a local ordinance to authorize those provisions of the Executive Order beyond the term of the state of emergency. The bill becomes effective on July 1, 2021 and sunsets after two years.

Cannabis

Medical Cannabis Access for Out of State Patients

Senator Katherine Klausmeier (D - Baltimore County) introduced Senate Bill 884 to allow an out-of-state “visiting qualifying patient” to legally obtain medical cannabis at a Maryland dispensary by presenting photographic identification and a valid medical cannabis certification issued by that individual’s state of residence. Despite support from the industry and patient advocacy groups, the bill failed to progress beyond the initial public hearing.

Medical Cannabis - Employment Discrimination

Senator William Smith (D – Montgomery County) introduced Senate Bill 504 to prohibit an employer from discriminating against an individual who has received a written certification for the use of medical cannabis or who has tested positive for cannabis components or metabolites if the individual holds a written certification for the use of medical cannabis. Unlike previous versions, this bill did not include any exceptions. This bill failed for lack of action by the Senate Judicial Proceedings Committee.

Handgun Wear & Carry Permit - Medical Cannabis Card Holders

Senator Michael Hough (R – Carroll & Frederick Counties) reintroduced Senate Bill 190, which would allow a participant in Maryland’s Medical Cannabis program to purchase, possess, or carry a firearm despite having a medical cannabis card. While this bill has passed the Senate before, it traditionally stalls in the House. This year, however, the House Judiciary Committee passed the bill, but in an unusual move, an amendment was offered and accepted on the House floor that stripped out provisions of the bill that impacted Medical Cannabis program participants. The bill ultimately failed.

Legalization

Much of the cannabis-related discussion this session focused on Senate Bill 708/House Bill 32 to legalize recreational use of cannabis. Sponsored by Senator Brian Feldman (D - Montgomery County) and Delegate Jazz Lewis (D - Prince George's County) this legislation sought to bring Maryland in line with nearby states like Virginia, New York, and New Jersey who are moving forward with legalizing cannabis. While discussion on this issue was more substantive than in years past, the bill ultimately failed to move forward. This will no doubt be a major issue during the 2022 Legislative Session.

Consumer Protection and Privacy

Maryland Personal Information Protection Act – Revisions

Senator Susan Lee (D – Montgomery County) and Delegate Ned Carey (D – Anne Arundel County) reintroduced legislation in conjunction with the Maryland Cybersecurity Council and the Office of the Attorney General (OAG) to revise the Maryland Personal Information Protection Act (MPIPA). As introduced, Senate Bill 112/House Bill 148 would have expanded MPIPA by (1) covering additional types of personal information, including genetic data; (2) expanding the types of businesses that are required to implement and maintain reasonable security procedures and practices to protect personal information from unauthorized use; (3) shortening the period within which certain businesses must provide required notifications to consumers after a data breach; and (4) requiring additional information to be provided to the OAG after a breach has occurred. The bill passed quickly out of the House with minimal technical amendments but failed to gain traction in the Senate and died due to a lack of action in the Senate Finance Committee.

Biometric Data Protection

Senator Malcolm Augustine (D – Prince George's County) and Delegate Sara Love (D – Montgomery County) reintroduced legislation to regulate the use of consumers' biometric data. Senate Bill 16/House Bill 216, as introduced, generally required each "private entity" in possession of biometric information to develop a publicly available written policy establishing a retention schedule and guidelines for permanently destroying the biometric identifiers and information on the earlier of (1) when the initial purpose for collecting or obtaining the biometric identifiers or information has been satisfied; or (2) within three years after the individual's last interaction with the private entity. Absent a valid warrant or subpoena, each private entity in possession of biometric identifiers or information must comply with the retention schedule and destruction guidelines. The bill would have established various other standards and requirements related to biometric identifiers and information, including authorizing an aggrieved individual to bring a civil action against a private entity that violates the bill's provisions. The House Economic Matters Committee raised concerns about the private right-of-action created by the legislation and the potential for significantly increased litigation, spurring the House sponsor to withdraw the bill. Similar legislation is expected to be reintroduced in future sessions, either as a stand-alone bill or as a key component of broader data privacy legislation.

Online Consumer Protection Act

Senator Susan Lee (D – Montgomery County) also reintroduced Senate Bill 930, *Online Consumer Protection Act* (OCPA), which would have implemented widespread data privacy standards for business entities in Maryland. The bill was similar to previously introduced legislation and the California Consumer Protection Act. However, the bill was introduced late in the Session and failed to make it out of the Senate Rules Committee. The Maryland Cybersecurity Council is expected to work on similar legislation over the interim for reintroduction in the 2022 Legislative Session.

Energy and Utility Regulation

Renewable Portfolio Standards

1. Waste-to-Energy

Delegate Julian Ivey (D – Prince George’s County) sponsored legislation that has been introduced for several years to remove waste-to-energy (WTE) from the State’s Renewable Energy Portfolio Standard (RPS). House Bill 332 would have removed waste-to-energy and refuse-derived fuel from eligibility for inclusion in the RPS as a Tier 1 resource, effective October 1, 2021. The bill was voted unfavorably by the House Economic Matters Committee. In the Senate, Senator Michael Hough (R – Carroll & Frederick Counties) offered similar language to remove or downgrade the inclusion of WTE in the RPS as amendments to other RPS legislation, but, like the stand-alone legislation, those amendments failed. This legislation is likely to be reintroduced in future sessions.

2. Black Liquor

Senator Delores Kelley (D – Baltimore County) and Delegate Dereck Davis (D – Prince George’s County) reintroduced Senate Bill 65/House Bill 875 to remove qualifying biomass, known as “black liquor,” from the RPS. The legislation was amended to also adjust percentages and amounts in the RPS relating to the existing solar energy carve-out and the related alternative compliance payments. After significant discussion and a conference committee, the bill passed on *Sine Die* and will take effect on January 1, 2022.

3. Hydroelectric Power

Senator Katherine Klausmeier (D – Baltimore County) and Delegate Mike Rogers (D – Anne Arundel County) reintroduced Senate Bill 316/House Bill 467 to upgrade large-scale hydroelectric power from Tier 2 to Tier 1, for purposes of the State’s RPS. After several years of consideration, the bill moved successfully out of both the Senate Finance and House Economic Matters Committees, with amendments to simultaneously adjust the designated percentages and alternative compliance payment requirements for solar energy within the RPS. However, due to political and procedural obstacles, Senate Bill 316 was recommitted to the Senate Finance Committee, and

House Bill 467 crossed over late in the Session and then failed to get out of the Senate Rules Committee. Ultimately, both bills died and will likely be reintroduced in a future Session.

4. Wastewater

Delegate Dereck Davis (D – Prince George’s County) also introduced and successfully passed House Bill 561 to expand Tier 1 of the RPS to include raw or treated wastewater used as a heat source or heat sink for a heating or cooling system. Energy from such a system is eligible only if the system (1) is connected with the electric distribution grid serving Maryland or (2) processes wastewater from Maryland residents. Under this bill, the Public Service Commission (PSC) must adopt regulations for metering, verifying, and reporting the output of wastewater heating and cooling systems. The bill takes effect July 1, 2021, and applies to all RPS compliance years starting with 2021.

5. Geothermal

After significant debate in both the Senate and the House, the MGA ultimately passed Senate Bill 810/House Bill 1007, sponsored by Senator Brian Feldman (D – Montgomery County) and Delegate Lorig Charkoudian (D - Montgomery County). The amended bill alters the RPS to create a carve-out for post-2022 geothermal systems in Tier 1 of the RPS, beginning in 2023 at 0.05% and increasing each year until reaching 1.0% in 2028 and beyond, subject to specified requirements and alternative compliance payments. The Maryland Energy Administration must staff a related workgroup created by the bill and complete a technical study. The bill may not impair a presently existing obligation or contract right.

6. Municipal Cooperatives

Currently, Maryland’s five municipal electric utilities (Berlin, Easton, Hagerstown, Thurmont, and Williamsport) account for less than 2% of the State’s energy sales yet pay a 40% premium for renewable energy credits (RECs) and the total amount of the State’s RPS requirements. Thus, resulting in higher service rates compared to large investor-owned utilities (IOUs). With the intent of keeping these municipal utilities competitive with IOUs, Senator Addie Eckardt (R – Eastern Shore) and Delegate Johnny Mautz (R – Eastern Shore) reintroduced Senate Bill 153/House Bill 376 to limit the annual Tier 1 percentage requirements of the RPS for municipal electric utilities. This adjustment to a 20.4 percent (%) RPS requirement limit includes at least 1.95 percent (%) for solar energy and 2.5 percent (%) for offshore wind. Senate Bill 153/House Bill 376 also requires municipal electric utilities to purchase “Tier 2” RECs this year. Following overwhelming support from both chambers, Senate Bill 153/House Bill 376 will take effect on October 1, 2021.

Renewable Energy

1. Coal Facilities - Transition from Fossil Fuels

Following significant policy discussions in the 2020 interim, Senator Chris West (R – Baltimore County) and Delegate Benjamin Brooks (D – Baltimore County) reintroduced legislation to incentivize the State’s transition away from coal-based energy facilities. As introduced, Senate

Bill 148/House Bill 66 would have established and phased in a limit for carbon dioxide (CO₂) emissions for electric generating units in the State. Relatedly, the bill established the Fossil Fuel Community Transition Fund (FFCTF) in DOL to provide grants to support (1) displaced workers; (2) impacted communities; and (3) displaced worker assistance programs. The bill also establishes a related advisory council, staffed by DOL, subject to specified requirements and procedures, including the development of a Statewide Fossil Fuel Reduction Plan. From FY 2022 through FY 2024, \$13.3 million must be transferred from the Strategic Energy Investment Fund to FFCTF.

Despite the interim discussions and bipartisan support for the bill, concerns were raised about (1) the need for the legislation given recent closure announcements for several coal facilities in the State; and (2) the impact on workers in the affected facilities. In response to those concerns and at the House Economic Matters Committee's request, the bill was ultimately withdrawn by both the Senate and House sponsors.

2. Standard Offer Service

At the request of the renewable energy industry, Delegate Kathleen Dumais (D – Montgomery County), Vice-Chair of the House Economic Matters Committee, introduced House Bill 743 to require electric companies, beginning in 2022, to contract for RECs and electricity generated from specified Tier 1 renewable sources under the State's RPS to meet a portion of the RPS applicable to their standard offer service (SOS). Eligible sources are solar, wind, geothermal, ocean, and small hydroelectric. House Bill 743, which was similar in effect to previously introduced legislation mandating that energy companies enter into long-term contracts for renewable energy, was withdrawn by the sponsor prior to a public hearing.

Public Service Commission – Consideration of Climate and Labor

After two years of consideration, the MGA passed Senate Bill 83/House Bill 298, sponsored by Senator Benjamin Kramer (D – Montgomery County) and Delegate Charkoudian (D – Montgomery County). As amended, the legislation requires the Power Plant Research Program to include an evaluation of the impact of electric power plants on climate change as part of its ongoing research. Separately, the PSC, in supervising and regulating public service companies, must consider (1) the maintenance of fair and stable labor standards for affected workers; and (2) additional specified climate effects and greenhouse gas (GHG) emissions. Relatedly, the PSC may not take final action on a Certificate of Public Convenience and Necessity without considering the effect of climate change on the project and, for a generating station, the impact of the project on GHG emissions and its consistency with the State's GHG emissions reduction goals.

In the same vein, Delegate Marc Korman (D – Montgomery County) introduced and passed House Bill 30, which, as amended, requires the Office of People's Counsel (OPC), in determining whether the interests of residential and noncommercial users are affected, to consider the public safety, economic welfare, and environmental interests of the State and its residents, including the State's progress in meeting its GHG emissions reduction goals. OPC must hire at least one assistant people's counsel who will focus on environmental issues.

Strategic Infrastructure Development and Enhancement (STRIDE)

Delegate Dereck Davis (D – Prince George’s County) sponsored House Bill 890, which would have applied the existing strategic infrastructure development and enhancement program to the newly approved rate-setting methodologies approved by the PSC in 2020. House Bill 890, as amended by the House, would have required eligible infrastructure project costs collected under a gas infrastructure replacement surcharge to be included in base rates as part of rate adjustments made during a multi-year rate plan, with the surcharge continuing for eligible future projects that are not included in base rates. The bill passed out of the House with significant support but failed to receive a vote in the Senate Finance Committee and died on *Sine Die*.

Regulatory Assets

Senator Delores Kelley (D – Baltimore County) also introduced Senate Bill 506, which would have prohibited a public service company, in its utility operations, from demanding or collecting a rate of return on a regulatory asset created as a result of conditions addressed by a state of emergency declared by the Governor. The bill was introduced in response to Senator Kelley’s concerns about public utilities potentially benefitting as a result of the COVID-19 pandemic or similar emergencies. At the public hearing, the State’s utilities were able to clarify the process and timing of regulatory assets in determining their rate of return, and there was no subsequent action taken on the bill.

Damaged Wires

Senator Antonio Hayes (D – Baltimore City) and Delegate Ben Brooks (D – Baltimore County) introduced Senate Bill 754/House Bill 1231, which would have required the PSC to promptly notify the owner of a utility pole if it received notice related to the pole of (1) a damaged or dangling line; (2) an obsolete or redundant line; or (3) blight or public nuisance caused by an excessive number of lines on the pole. Within 30 days after receiving notice from PSC, the utility pole owner must require the person that controls the line or lines to investigate and, where appropriate, repair or remove the offending line or lines. If the offending line or lines are not repaired or removed within 90 days after PSC notification, the PSC must impose a fine on the utility pole owner of \$250 for each day of noncompliance. The bill was intended to spur regulated utilities to address concerns about damaged and dangling wires throughout the State, with an emphasis on Baltimore City. During the public hearings, the utilities committed to developing a strategy to address the concerns without legislation. Ultimately, the House Economic Matters Committee moved unfavorably on both bills.

Retail Energy Supply and Energy Assistance

Senator Mary Washington (D – Baltimore City) and Delegate Brooke Lierman (D – Baltimore City) reintroduced and passed Senate Bill 31/House Bill 397, which, as amended, requires the PSC, by January 1, 2023, to establish an administrative process to approve supply offers for electricity or gas for households in the State that receive energy assistance through a program administered by the Office of Home Energy Programs (OHEP), subject to specified requirements. An approved supply offer must include a commitment to charging at or below the SOS rate for

customers receiving energy assistance. Beginning July 1, 2023, unless the PSC has approved the supply offer, a third-party retail supplier is prohibited from charging a customer receiving assistance from an OHEP program, receiving funds from an OHEP program, and taking other specified actions. The bill contains a related annual reporting requirement for the PSC and takes effect July 1, 2021.

Electric Service Restructuring

Delegate Dumais (D – Montgomery County) also introduced House Bill 1327, which would have established a multi-year process to transition retail electric service for customers of IOUs to a more restructured market, subject to specified requirements. The transitional period would begin October 1, 2023, and last up to three years. Electric cooperatives and municipal electric utilities are not part of the transition. The bill also establishes the Customer Choice Clean Energy Fund, administered by the PSC and funded through fees on electricity suppliers. Following a robust hearing in the House Economic Matters Committee, there was no action on the bill. Still, the legislation may be the first step in a coordinated effort from some industry members to restructure the State’s electric system in the future.

Real Property

Civil Proceedings - Defendant Right to Counsel

The 1963 Supreme Court decision of *Gideon v. Wainwright* provided that criminal defendants have a fundamental right to counsel even if they cannot afford it. Now nearly 60 years later, Maryland will extend an access to counsel in select civil cases with the passage of Senate Bill 154/House Bill 18. The legislation, sponsored by Senator Shelly Hettleman (D – Baltimore County) and Delegate Wanika Fisher (D – Prince George’s County), will provide access to legal counsel in landlord-tenant proceedings for those individuals who occupy a residential rental property and are a member of a household with an income that is not greater than 50% of the State median income. To facilitate this access, the bill establishes the Access to Counsel in Evictions Program, administered by the Maryland Legal Services Corporation (MLSC), to organize and direct services and resources in order to provide access to such legal representation. The bill also establishes the Access to Counsel in Evictions Special Fund administered by MLSC. The MGA hoped to fund the Access to Counsel Program through a significant surcharge increase on failure to pay rent court filings, but House Bill 31 containing the surcharge fee increase, introduced by Delegate Luke Clippinger (D – Baltimore City), failed to pass in the final minutes of session despite a House concurrence. Luckily for MLSC, it has until October 1, 2025 to fully implement the program.

Tenant Protection Act of 2021

Senate Bill 967/House Bill 50, *Tenant Protections Act of 2021*, sponsored by Senator Michael Jackson (Calvert, Charles & Prince George’s Counties) and Delegate Vaughn Stewart (D – Montgomery County), makes multiple changes to a statute related to tenant rights and protections. First, the bill establishes requirements and procedures for landlords that use a ratio utility billing system (RUBS). RUBS is an allocation of one or more of a landlord’s utility charges, collected

via a master meter, among the tenants by any method that does not measure actual per tenant usage for the utility. Landlords will be required to provide detailed information in writing to all prospective tenants about landlord's use of RUBS at the unit offered for rent. The bill also requires a statement of costs incurred by a landlord, as required under specified current law provisions when a security deposit is withheld, to also include, where practicable, supporting bills, invoices, and receipts that identifies the materials or services provided and paid for out of the withheld security deposit.

The bill also grants tenant organizations the right of free assembly in a meeting room within the apartment facility designated for use by tenants for events and community gatherings during reasonable hours and on reasonable notice to the landlord, in order to conduct a meeting. Finally, the bill expands numerous statutory provisions for victims of domestic violence and sexual abuse to also include "victims of stalking." While the House Bill passed favorably out of the House, it failed to progress beyond an initial public hearing in the Senate.

Property Manager Registration

Senate Bill 73/House Bill 239, introduced by Senator Ronald Young (D – Fredrick County) and Delegate Mike Rogers (D – Anne Arundel County), would have required a person who provides residential "property management services" for less than 25 units, excluding units in mixed use properties, to register bi-annually with the State Real Estate Commission as a property manager before providing, attempting to provide, or offering to provide property management services in the State. Under the bill, "property management services" means the leasing, managing, renting, or handling of trust money of a property for the owner of a residential rental property. The bill also requires that a property manager must be covered by a surety bond in the amount of at least \$100,000, if the property manager rents fewer than 20 properties, or \$200,000, if the property manager rents or more properties. A property manager would have been required to provide acceptable proof of the surety bond to the commission.

Supporters of the bill advised that it closed a loophole as property managers currently are not required to be licensed in the State, and as a result, if a real estate practitioner's license is terminated because of law violations related to property management, that individual can open a new office the next day and continue their rental property activities. The former licensee would only be prohibited from conducting further sales activities. Ultimately, both versions of the bill received an unfavorable report from the Education, Health and Environmental Affairs Committee.

Nonrenewal of Lease – Notice

Under current law, a landlord that seeks to repossess leased property under a tenancy at will or after the expiration of the term of tenancy must give notice to the tenant or person in actual possession of the property one month before the expiration of the term of the tenancy or the time the landlord seeks to repossess the property if it is a tenancy at will. In the case of tenancies from year-to-year, the notice must be given three months before the expiration of the current year of the tenancy; in monthly or weekly tenancies, a notice in writing of one month or one week, respectively, must be given.

Senate Bill 401/House Bill 104, introduced by Senator Jill Carter (D – Baltimore City) and Delegate Vaughn Stewart (D – Montgomery County), alters statutory provisions that specify the amount of time prior to the expiration of a tenancy (lease) that a landlord is required to provide written notice to a tenant of the intent to repossess the property. Specifically, a landlord with a written lease for a stated term in excess of one week or a tenancy from month-to-month that wishes to repossess a property must provide sixty 60 days written notice to the tenant prior. Similarly, a landlord with a written lease for a periodic term of year-to-year that wishes to repossess a property must provide 90 days written notice to the tenant prior. The bill passed and becomes effective on October 1, 2021.

Escrow Agents & Trust Money

House Bill 19, sponsored by Delegate Marvin Holmes (D – Prince George’s County), makes stylistic and definitional clarifications to the Maryland Real Property Article surrounding a settlement company’s/escrow agent’s obligations regarding an earnest money deposit when a dispute arises between the buyer and seller over said deposit. Proponents of the bill noted that the law was drafted too broadly when passed in 2019 and captured sums, such as the down payment, that were deposited by buyers for which the seller had no claim if the transaction did not close. With the changes passed under House Bill 19, an escrow agent will now have better guidance when entering into a written agreement with the seller and the buyer of residential real estate when the escrow agent agrees to hold trust money. The bill becomes effective October 1, 2021.

Anne Arundel County – Transfer Tax

Senator Sarah Elfreth (D – Anne Arundel County) and Delegate Sandy Bartlett (D – Anne Arundel County) introduced Senate Bill 566/House Bill 933 which authorizes Anne Arundel County to increase the county transfer tax rate on a written instrument conveying the title to real property or a leasehold interest in real property if the actual consideration is \$1 million or more. This increased transfer tax rate does not apply when a title or leasehold interest is conveyed for real property that provides affordable housing for moderate- or low-income individuals in the County, including the City of Annapolis. The legislation establishes the Housing Trust Special Revenue Fund (HTSRF) to be used to provide affordable housing to moderate- and low-income individuals in Anne Arundel County, including the City of Annapolis. The bill further requires any revenue generated from a transfer tax rate more than 1%, as well as any revenue attributable to a special recordation tax rate on instruments of writing for which the consideration is \$1 million or more, to be paid to the HTSRF. The bill will take effect July 1, 2021.

Transfer-on-Death Deed Task Force

Senator Adelaide Eckardt (R – Caroline, Dorchester, Talbot, & Wicomico Counties) and Delegate Terri Hill (D – Howard County) introduced Senate Bill 698/House Bill 938 to establish the Real Property Transfer-on-Death Deed Task Force (DDTF). The DDTF would have been required to (1) study other jurisdictions that have implemented the use of a transfer-on-death deed for real property and consult with relevant experts to evaluate the potential benefits and negative implications of such an instrument as a means of property transfer in Maryland; and (2) make recommendations regarding the implementation of a transfer-on-death deed in the State. The

Attorney General or designee would have served as chair of the DDTF, and the OAG would have been required to provide staff. By December 1, 2022, the DDTF was required to report its finding and recommendations to the Governor and the MGA. While the bill passed the Senate, it failed to progress in the House Environment and Transportation Committee.

Reserve Studies

Delegate Marvin Holmes (D – Prince George’s County) introduced House Bill 313, statewide legislation to require an updated study every five years of the reserves needed for future major repairs and replacement of the common elements of a cooperative housing corporation (CHC) or condominium, or the common areas of a Homeowners Association (HOA). Similarly, the Montgomery County Delegation sponsored House Bill 567, which contained similar provisions but applied only in Montgomery County. Ultimately, only the local version of the bill passed, so these provisions now apply only in Montgomery and Prince George’s Counties.

As amended, House Bill 567 requires that if a CHC or condominium is established on or after October 1, 2021, (or October 1, 2020, in Prince George’s County), the governing body of the CHC or condominium must have an independent reserve study completed at least 30 days prior to the first meeting of (1) the CHC at which members other than the owner have a majority of votes in the CHC; or (2) the council of unit owners (COU) of a condominium to elect a board of directors. For HOAs established on or after the dates noted above, the governing body must have the study performed at least 30 days, but no more than 90 days, prior to the first meeting of the HOA to elect a governing body. Within five years after this first required reserve study, and at least every five years thereafter, the governing body of a CHC, condominium, or HOA must have an updated reserve study completed.

CHC, condominiums, and HOAs established before October 1, 2021 (or before October 1, 2020, in Prince George’s County), the governing body of the CHC, condominium, or HOA must have an updated reserve study conducted by October 1, 2022, (or by October 1, 2021, in Prince George’s County), unless the CHC, condominium, or HOA had a reserve study conducted within the past five years. Again, within five years after the first (or most recent) reserve study, and at least every five years thereafter, the governing body of a CHC, condominium, or HOA must complete an updated reserve study. The bill does not apply to an HOA that issues bonds to meet capital expenditures and is only applicable to an HOA that has responsibility under its declaration for maintaining and repairing common areas. In addition, the bill stipulates that the provisions regarding reserve studies only apply to HOAs for which initial purchase and installation costs for all components identified under existing laws total at least \$10,000.

The legislation also requires that a governing body of a CHC, condominium, or HOA must fund its reserves in accordance with the most recent study, review its reserve study annually for accuracy, and has the authority to increase an assessment levied to cover the reserve funding amount required – despite any provision of applicable governing documents restricting assessment increases or capping the assessment that may be imposed in a fiscal year.

Condominiums and Homeowners Associations – Meetings

Senator Nancy King (D – Montgomery County) and Delegate David Fraser-Hidalgo (D – Montgomery County) introduced Senate Bill 535/ House Bill 593 to establish procedures by which an HOA may call an additional meeting of the board of directors or other governing body, if the number of lot owners present in person or by proxy at a meeting is insufficient to constitute a quorum. This legislation also makes numerous clarifying and technical changes to applicable provisions of the Maryland Condominium Act (MCA) and (1) specifies that the notice of the original meeting must contain the date, time, and place of the additional meeting; (2) specifies that an additional meeting called must occur no less than 15 days after the initial properly called meeting; (3) specifies that notice of the additional meeting must be provided, as specified, no less than 10 days before the additional meeting; and (4) newly authorizes delivery of notice of the additional meeting by advertising in a newspaper published in the county where the condominium is located or, if the condominium has a website, by posting on the homepage of the website. This legislation will become effective on October 1, 2021.

Delegate Marvin Holmes (D – Prince George’s County) introduced House Bill 352 which would have amended various provisions of the MCA concerning the governing bodies of condominiums and HOAs. This legislation required in part that a board of directors or the developer of a condominium or the board of directors or the declarant of an HOA convene a meeting at least twice a year. The agenda for such meeting must be open to any matter relating to the condominium or HOA allowing the unit or lot owners an opportunity to provide comment.

Where a developer or declarant has already established a board of directors for a condominium or an HOA, House Bill 352 required the developer or declarant to appoint at least one unit or lot owner who is not affiliated with the developer or the declarant or a vendor of lots in the development (UAU or UAL).

For condominiums, the bill required that it be done within 30 days after the date on which units representing 25% of the votes in the condominium have been conveyed by the developer to members of the public for residential purposes. If no board of directors has been established within 30 days after the 25% threshold is met, the developer would have been required to establish a board of directors and appoint at least one member to the board who is a UAU. For HOAs, this must be done within 30 days after the date that lots representing 25% of currently subdivided lots that may be part of the development – after all phases are complete – have been conveyed by the declarant to members of the public for residential purposes. If no board of directors has been established when the 25% threshold is met, the declarant must establish a board of directors and must appoint at least one member to the board who is a UAL.

Additionally, the bill required a developer or declarant to provide each member of the board of directors who is a UAU or UAL with notice of any bond provided by the developer or declarant to a governmental unit in connection with the development, as well as the contact information of the governmental unit that serves as the bond holder. The developer or declarant must deliver this notice within 15 days after the date of the meeting to elect the board of directors. If the developer or declarant requests to be released from such a bond, the developer or declarant would have been required to provide each member of the board of directors, as specified therein, with notice, at least

30 days before the request, of the intention to be released from the bond and the contact information of the governmental unit that serves as the bond holder.

The bill amended the MCA and the Maryland Homeowners Association Act (MHAA) recordkeeping requirements for books and records to require that the recordkeeping begin on the date the COU or HOA is established. This legislation further required that all books and records kept by the COU or an HOA must be maintained separate and apart from those of the developer, declarant, or any other person. The bill also required a copy of the fidelity insurance policy or fidelity bond to be included in the accounts kept and made available by or on behalf of the HOA. While passing out of the House, House Bill 352 failed for lack of action by the Senate Judicial Proceedings Committee.

Governing Bodies of Common Ownership Communities – Member Training

For the second year in a row, Delegate Marvin Holmes (D – Prince George’s County) introduced legislation to require each member of a board of directors or officer of a COU of a condominium and each member of a governing body of a HOA to successfully complete a training curriculum on the responsibilities of being a member or an officer within 90 days after first being elect or appointed to office. House Bill 361 died in the House Environment and Transportation Committee for lack of action.

Regulation of Common Ownership Community Managers

Once again legislation was introduced to establish a State Board of Common Ownership Community Managers (the COC Board) to regulate the provision of common ownership community (COC) property management services in Maryland. Delegate Marvin Holmes (D – Prince George’s County) sponsored House Bill 367 that defined a COC as a condominium organized under the MCA that is used for residential purposes, a HOA organized under the MHAA and a CHC organized under the Maryland Cooperative Housing Corporation Act (MCHCA). Had House Bill 367 passed, individuals that provide management services to COC must be issued a license by the COC Board. This 33-page bill set forth specific provisions concerning (1) the creation and funding of the COC Board; (2) the authority of the COC Board; (3) the types of licenses that maybe issued by the COC Board; (4) the qualifications of applicants for COC licensing; (5) the grounds for denying, reprimanding, suspending, or revoking a COC license; (6) bonding and insurance requirements; and (7) enforcement and penalty provisions. The legislation would have also required each COC to register with the COC Board on or before January 1st of each year and provide the COC Board with certain identifying information. While the legislation passed the House (101-27), it died in the Senate Judicial Proceedings Committee for lack of action.

Dispute Settlement Mechanism and Eviction Procedures

Once again, Delegate Anne Healey (D – Prince George’s County) introduced legislation to modify the dispute settlement mechanism under the MCA and establish a similar dispute settlement mechanism under the MHAA. House Bill 826 prohibits a board of directors or other governing body of an HOA from imposing a fine, suspending voting, or infringing on any other right of a lot owner or other occupant for violations of rules unless a written demand to cease and desist from

an alleged violation has been provided to the alleged violator. The demand must include (1) the alleged violation; (2) the action required to abate the violation; and (3) a period of at least 10 days during which an ongoing violation may be abated without further sanction or, in connection with noncontinuing violations, a statement that any further violation of the same rule may result in the imposition of sanction after notice and a hearing. This legislation applies prospectively and does not have any effect on any complaints or demands arising under the rules of a condominium or HOA before October 1, 2021, unless the governing documents of the condominium or HOA state otherwise.

Within 12 months of the demand, if the violation continues or if the same rule is violated again, the board must provide the alleged violator with a written notice of the alleged violator's right to request a hearing to be held by the board in executive session. The notice must contain (1) the nature of the alleged violation; (2) the procedures for requesting a hearing; (3) the period for requesting a hearing, which may not be less than 10 days from the giving of the notice; and (4) the proposed sanction. If the alleged violator requests a hearing, the board must provide the alleged violator with a written notice of the time and place of the hearing, which may not be less than 10 days after the date of the request for a hearing. At the hearing, the alleged violator may produce any statement, evidence, or witnesses on their behalf and has the right to present evidence and cross-examine witnesses.

The hearing must be held in executive session and give the alleged violator a reasonable opportunity to be heard. Prior to any sanction taking effect, proof of notice must be entered in the minutes of the meeting. The notice requirement must be considered satisfied (1) if a copy of the notice along with a statement of the date and manner of providing the notice is entered in the minutes by the officer or director who provided the notice or (2) the alleged violator appears at the meeting. The minutes of the meeting must also contain the results of the hearing and the details of any sanction imposed. If the alleged violator does not request a hearing, the board, at the next meeting, must deliberate as to whether the violation occurred and decide whether a sanction is appropriate for the violation. An alleged violator may appeal a decision in court. If a lot owner fails to comply with the provisions of MHAA, the declaration, or bylaws, or a governing body's decision made pursuant to the dispute settlement procedures, the lot owner may be sued for damages and/or for injunctive relief by the HOA or by any other lot owner. Reasonable attorney's fees may be awarded by the court to the prevailing party. Generally, the failure of the board of directors or other governing body to enforce a provision of MHAA, the declaration, or bylaws on any occasion is not a waiver of the right to enforce the dispute settlement provision on any other occasion. The dispute settlement mechanism established under MHAA does not apply to the Columbia Association or the village community associations for the villages of Columbia in Howard County.

Relatedly, Delegate Healey introduced House Bill 825, which also changes the dispute settlement mechanism under the MCHCA, repeals the prohibition against a governing body of a CHC bringing an action to evict a member based on the member's failure to pay specified assessments, and makes other technical and clarifying changes. The bill applies prospectively and may not be interpreted to have any effect on or apply to any complaint or demand formally arising under the rules of a CHC or the provisions of a member's proprietary lease before its October 1, 2021

effective date unless the governing documents of the CHC or the proprietary lease of the member state otherwise.

The bill specifies that the dispute settlement mechanism set forth does not apply to complaints or demands related to a member's failure to pay assessments owed to the CHC. The bill makes several other changes to the notice and procedural requirements of the dispute settlement mechanism, including:

- (1) the governing body of a CHC must provide, rather than serve, a member with specified notices;
- (2) a member of a CHC has a right to request a hearing to be held by the governing body;
- (3) notice advising a member of his or her right to request a hearing must specify the procedure for requesting a hearing and the timeframe for submitting the request, which may not be less than 10 days beginning on the date of the notice; and
- (4) the governing body must give a member at least 10 days written notice of the time and place of any hearing.

If the member does not request a hearing within the timeframe specified in the notice, the governing body, at the next meeting, must deliberate as to whether the violation occurred and decide whether a sanction is appropriate for the violation. Unfortunately, while both bills passed the House (133-0), they died in the Senate Judicial Proceedings Committee for lack of action.

Condos, HOAs, and Co-operatives – Virtual Meetings

Effective June 1, 2021, the governing body of a condominium, HOA, or CHC is authorized to conduct certain meetings by electronic means under specific circumstances. Senate Bill 686 and House Bill 1023 introduced by Senator William Smith (D – Montgomery County) and Delegate Marvin Holmes (D – Prince George's County) respectively, also authorizes certain individuals who attend a meeting by certain electronic means to be deemed present for quorum and voting purposes and permits certain matters to be set for a vote during a virtual meeting under specified circumstances.

Impermissible Restrictions on the Use of Portable Basketball Apparatuses

Delegate Kumar Barve (D – Montgomery County) introduced House Bill 1347, which prohibits specified restrictions on the use and the imposition of unreasonable limitations on the location of a "portable basketball apparatus," if the property owner owns or has the right to exclusive use of the area in which placement and use of the apparatus is to occur. The legislation specifies that such restrictions on use include covenants, restrictions, or conditions included in, among other instruments, deeds, declarations, or contracts. An "unreasonable limitation" includes a limitation that significantly (1) increases the cost of using the apparatus; or (2) decreases the ability to use the apparatus as designed and intended. A "portable basketball apparatus" is defined as a portable apparatus or device designed for recreational use in conjunction with the game of basketball. The bill is not applicable to historic property that is listed in, or eligible for inclusion in, the Maryland Register of Historic Properties. This legislation becomes effective October 1, 2021.

Notaries Public

Wills, Powers of Attorney, and Advance Directives – Electronic Execution

Senator Chris West (R – Baltimore County) and Delegate Wanika Fisher (D – Prince George’s County) introduced Senate Bill 820/House Bill 1261 which modifies the method in which wills, powers of attorney (POA), and advance directives may be executed. This legislation (1) allows wills and POAs to be executed electronically and witnessed remotely; (2) allows written or electronic advance directives to be witnessed remotely; (3) defines electronic presence for purposes of remote witnessing; (4) provides requirements and protections for the proper use of electronic signing and remote witnessing; and (5) establishes that wills, POAs, and advance directives executed in conformance with specified executive orders during the time they were in effect are deemed in conformity with the terms of the bill. The bill also modifies the statutory definition of a “will” and a provision regarding execution of a will outside the State. Finally, the legislation changes a provision of the Real Property Article of the Maryland Code relating to the effect of specified failures of a recorded instrument. The legislation includes a lack of or defective witness attestation to a POA among a list of failures in the formal requisites of a recorded instrument that have no effect unless the instrument is challenged in a judicial proceeding commenced within six months after the instrument is recorded. The bills apply retroactively to any will, POA, or advance directive executed on or after March 10, 2020. The House version of the bill ultimately passed and will become effective on October 1, 2021.

Remote Notarizations

Senator Chris West (R – Baltimore County) and Delegate Wanika Fisher (D – Prince George’s County) also introduced Senate Bill 735/House Bill 1265. This legislation would have (1) authorized remote notarial acts with respect to wills and trust instruments; (2) clarified the application of certain requirements for credential analysis and identity proofing as they pertain to remote notarial acts; (3) established requirements and procedures for remote notarial acts involving a tangible record; (4) set forth procedures by which a notary public may administer an oath to a remotely located individual; (5) authorize the Secretary of State (SOS) to adopt regulations prescribing the methods for reasonable confirmation of a tangible record; and (6) make clarifying changes to communication technology requirements applicable to remote notarizations. Finally, the legislation specified that the notarization of any document in conformance with specified executive orders authorizing remote notarization must be deemed valid if the notarization occurred during the time that the orders were in effect. Both versions of the bill failed to pass out of the House Health and Government Operations Committee.

Disclosure of Notary’s Address and Phone Number

By request of the SOS, Senate Bill 132 was introduced to shield the home address or home telephone number of notaries public by requiring that a custodian of a public record can only allow inspection of the part of a public record that includes this information only if the notary public has not provided the custodian with a business address or business telephone number. This legislation becomes effective on October 1, 2021.

Official Stamp of a Notary Public

By request of the SOS, Senate Bill 212 was introduced to clarify the information that must be included in the official stamp of a notary public. This legislation repeals a requirement that the official stamp of a notary public include the notary public's "jurisdiction" and provides that for a notary public who resides in the State of Maryland, the official stamp must include the county in which the notary public resides. For a notary public who resides outside the State, the official stamp must include the county in which the notary public was qualified. Senate Bill 212 takes effect July 1, 2021.

Notary Fees

Delegate Marvin Holmes (D – Prince George's County) introduced House Bill 1360 which would have increased the cap on the fee established by the SOS for an original notarial act from \$4.00 to \$25.00 and authorized a notary public or person acting for a notary public to charge a certain fee for the performance of a specified notarial act. The legislation was introduced late in the session and failed to progress beyond the House Rules Committee.

Transportation

Transit Funding

After several years of consideration and in the wake of the significant funding infusion from the federal government, the MGA finally passed Senate Bill 199/House Bill 114, sponsored by Senator Cory McCray (D – Baltimore City) and Delegate Brooke Lierman (D – Baltimore City), the Transit Safety and Funding Act. As amended, the bill alters and extends by seven years provisions of the Maryland Metro/Transit Funding Act that require increased operating and capital spending for the Maryland Transit Administration (MTA). The bill also establishes minimum required funding levels for MTA's operating and capital spending. Additionally, the Maryland Department of Transportation (MDOT) must conduct a Western Maryland Area Regional Commuter (MARC) rail extension study. The bill also establishes a Purple Line Construction Zone Grant Program in the Department of Commerce. In each of fiscal 2023 and 2024, Commerce must provide \$1 million in general funds to the grant program to assist "qualified small businesses." The bill takes effect on June 1, 2021.

Electric Vehicles (EV)

1. Tax Credits & Rebates

Delegate David Fraser-Hidalgo (D - Montgomery County) introduced House Bill 44, *Clean Cars Act of 2021* to reestablish an Electric Vehicle Recharging Equipment Rebate Program and a tax credit program for first-time buyers of new electric vehicles. Both programs expired last year when legislation to extend their sunsets failed to pass during the truncated 2020 Legislative Session. Heavily amended, the legislation would (1) reestablish the Electric Vehicle Recharging Equipment Rebate Program through 2023 and increase the maximum amount of rebates the MEA may award in each year up to \$1.8 million; and (2) allocate \$10 million to cover the outstanding

amount of qualified plug-in electric vehicle and fuel cell electric vehicle tax credits applied for prior to July 1, 2020. An additional amendment was added to the bill in the final week session that requires a study focusing on EV's impact on the TFF. While this bill ultimately passed, it was significantly less impactful than the originally introduced legislation.

2. Electric Vehicle Recharging Equipment

Senator Guy Guzzone (D – Howard County) and Delegate Marc Korman (D – Montgomery County) reintroduced and passed Senate Bill 144/House Bill 110 to establish standards relating to the installation and use of electric vehicle recharging equipment in condominiums and HOAs. The bill takes effect October 1, 2021.

Similarly, Delegate Jen Terrasa (D – Howard County) reintroduced and passed House Bill 784, requiring a builder of certain new housing units to provide each buyer or prospective buyer with the option to include in or on the garage, carport, or driveway either (1) an “electric vehicle charging station” capable of providing at least “Level 2 charging” or (2) a dedicated electric line of sufficient voltage to support the later addition of such a charging station. The builder or its agent must provide notice of these options and other information to each buyer or prospective buyer. This legislation applies prospectively to any new construction for which a building permit is issued on or after the bill's effective date of October 1, 2021.

3. Reserved EV Parking Spaces

Delegate Kumar Barve (D – Montgomery County) introduced House Bill 480, which would have prohibited stopping, standing, or parking a vehicle in a designated “plug-in electric drive vehicle charging space,” unless that vehicle is a plug-in electric drive vehicle. This bill, among other things, would have established requirements for signage and pavement markings, standards for towing and ticketing, and a civil penalty of \$100 for persons violating the legislation. While it passed successfully out of the House, HB 480 failed for lack of action by the Senate Judicial Proceedings Committee.

Telecommunications

Office of Statewide Broadband – Digital Connectivity Act of 2021

Senator Sarah Elfreth (D - Anne Arundel County) and Delegate Brooke Lierman (D - Baltimore City) sponsored emergency legislation, Senate Bill 66/House Bill 97, which establishes the Office of Statewide Broadband (OSB) within the Department of Housing and Community Development (DHCD). Under the heavily amended bill, the OSB will succeed the Office of Rural Broadband and is tasked with ensuring that every Maryland resident is supported in the adoption of reliable, universal, high-quality broadband internet at an affordable rate. The OSB's purpose is also to ensure that Marylanders have the tools necessary to use the internet and take advantage of internet resources. This legislation further establishes the Digital Inclusion Fund and the Digital Connectivity Fund within DHCD to provide grants to nonprofits and local governments to increase access to high-speed internet and to assist in the development of affordable broadband internet. Upon enactment the Rural Broadband Coordination Board and the Rural Broadband Assistance

Fund will be transferred from the DOC to the OSB. This legislation takes effect on July 1, 2021 and terminates on June 30, 2030.

Public Safety - 9-1-1 Emergency Telephone System

Senator Cheryl Kagan (D - Montgomery County) and Delegate Susan Krebs (R - Carroll County) introduced Senate Bill 714/House Bill 989, which will take effect on June 1, 2021 after each passed unanimously through the full MGA. This legislation makes various changes to the regulatory structure governing the State's 9-1-1 system and funding. For example, in the event of a 9-1-1 accessible service outage lasting more than 30 minutes and affecting more than 600,000 user minutes, a commercial mobile radio service or 9-1-1 service provider will be required to notify any affected public safety answering point (PSAP), the Maryland Joint Operations Center, and the Maryland 9-1-1 Board, as specified in the bill.

The composition of the Maryland 9-1-1 Board will be expanded from 17 to 24 members. The Board's responsibilities have also been expanded to include: (1) establishing training standards for PSAP personnel related to individual psychological well-being and resilience; (2) establishing onboarding standards for newly hired 9-1-1 specialists; and (3) supporting 9-1-1 specialist recruitment activities consisting of a database that offers information on recruitment guidance, best practices, and strategies; recruitment projects; and a website that contains links to job opportunities throughout the State for 9-1-1 specialists.

This legislation, among other things, will also require the Behavioral Health Administration in the MDH, in consultation with the WCC and the Maryland 9-1-1 Board, to study the State's workers' compensation laws and the effects of job-related audible or visual trauma experienced by 9-1-1 specialists and submit a report of its findings and recommendations by August 1, 2021 to the Governor, the Maryland 9-1-1 Board, the Commission to Advance Next Generation 9-1-1 Across Maryland and the MGA.

Environment

Climate Solutions Now Act of 2021

Senator Paul Pinsky (D - Prince George's County) and Delegate Dana Stein (D - Baltimore County) introduced Senate Bill 414/House Bill 583, the *Climate Solutions Now Act of 2021*, which would have made broad changes to the State's approach to addressing climate change and reducing GHG emissions. Among other things, this legislation would have increased the statewide GHG emissions reduction requirement (from 40% of 2006 levels by 2030 to 60%) and required the State to achieve net-zero statewide GHG emissions by 2045. It would have also required the DOL to adopt new energy conservation requirements for buildings and expand and alter the applicability of "high-performance building" standards. The bill aimed to establish State tree-planting goals (5 million sustainable native trees in the State by the end of calendar year 2030, including at least 500,000 in an "underserved area"). The bill would have also increased, and extended energy efficiency and conservation program requirements administered by the PSC; and established requirements for the purchase of zero-emission vehicles in the State fleet.

Ultimately, the Senate and the House could not agree on certain terms of this legislation, including the GHG emission reduction goals and it failed to pass. Portions of this legislation did survive however, as they were added on to other bills which passed both chambers. The sponsors of this legislation are expected to reintroduce similar legislation in 2022 with additional elements.

Environment and Natural Resources - Complaints, Inspections, and Enforcement

Senator Sarah Elfreth (D - Anne Arundel County) and Delegate Brooke Lierman (D - Baltimore City) sponsored Senate Bill 324/House Bill 204 which requires the MDE and the Department of Natural Resources (DNR) to initiate a more expansive tracking and reporting system. For example, MDE must maintain complaint data as prescribed and develop and maintain a website with specified information and data relating to the enforcement of certain environmental laws. Specifically, the MDE website must provide:

- (1) a list of each complaint received by MDE, as specified in the bill;
- (2) a list of each inspection and enforcement action conducted and initiated by MDE during the previous 365 days under the authority of a state or federal law or regulation related to protecting the environment;
- (3) an electronic link to a digital copy, if readily available, of each of those inspection reports (if the information is maintained by MDE in the Environmental Tracking System or a comparable database);
- (4) a list of each violation discovered within the previous 365 days that MDE has deemed “significant noncompliance” or a “high-priority violation,” as defined;
- (5) a list of all expired and administratively continued environmental permits as designated in the bill;
- (6) all information required to be posted on MDE’s website under a provision of law relating to the enforcement of sediment and erosion control laws and regulations; and
- (7) a list of each sewage overflow incident in the State.

The required information must be posted on the website (including the information on finalized settlements) and must be (1) kept for at least 10 years; (2) updated on at least a monthly basis; and (3) maintained in a database format that is searchable by category of information. By September 30th of each year, DNR is required to submit an annual report with certain data regarding the enforcement of natural resources and conservation laws. This legislation becomes effective on October 1, 2021.

Climate Crisis and Education Act

Senator Benjamin Kramer (D - Montgomery County) and Delegate David Fraser-Hidalgo (D - Montgomery County) introduced Senate Bill 76/House Bill 33, the *Climate Crisis and Education Act*. This legislation would have established the Climate Crisis Initiative (CCI) within MDE. The CCI would have provided for (1) the establishment of GHG reduction goals (reduce GHG emissions to 60% of 2006 levels by 2030, achieve net-zero GHG emission by 2045, and be net-negative thereafter); (2) the establishment of a Climate Crisis Council; (3) funding for education under the recommendations of the Kirwan Commission; (4) the assessment of a fee on fossil fuels and on the sale or registration of new high-emission vehicles; (5) benefits to households and

employers in the State to mitigate the impact of fees under the initiative; and (6) the funding of activities for GHG reduction and sequestration, improvements in resiliency, and the promotion of a just economic transition in the State. The House Bill died due to an unfavorable report in the Economic Matters Committee, while the Senate version failed due to inaction.

PFAS Chemicals

Senator Sarah Elfreth (D - Anne Arundel County) and Delegate Sara Love (D - Montgomery County) sponsored Senate Bill 195/House Bill 22 which would have prohibited a person from using, manufacturing, or attempting to sell Class B fire-fighting foam, new rugs, or a food package which contained intentionally added PFAS chemicals, unless specifically required by federal law. The legislation defines “PFAS chemicals” as a class of fluorinated organic chemicals that contain at least one fully fluorinated carbon atom, including perfluoroalkyl and polyfluoroalkyl substances. Both versions of the bill died due to inaction without ever receiving a vote in the Senate Education, Health, and Environmental Affairs or the House Health and Government Operations Committees, respectively. Alternatively, Senator Elfreth secured budget language directing MDE to issue a report on PFAS levels in the State’s water resources. Discussions on a modified version of the PFAS legislation are expected to take place over the interim.

Recycling Market Development

Senator Cheryl Kagan (D - Montgomery County) and Delegate Dana Stein (D - Baltimore County) introduced Senate Bill 116/House Bill 164, which aims to promote the development of markets for recycled materials and recycled products in the State. This legislation will require MDE’s Office of Recycling to: (1) evaluate the availability of local, national, and international markets for recycled materials and products; (2) identify the recyclable materials representing the largest portion of the recycling waste stream; (3) identify businesses in the State that use recycled materials and opportunities for businesses in the State to increase their use of recycled materials; (4) establish and promote the “Maryland is Open for Recycling Business” campaign to attract new businesses to the State; and (5) provide advisory and technical services to support the development of markets for recycled materials and recycled products in the State. By September 1, 2022, and annually thereafter, the Maryland Solid Waste Management and Diversion Report must include the activities conducted pursuant to this legislation. This legislation has an effective date of October 1, 2021.

Maryland Recycling Act - Recyclable Materials and Resource Recovery Facilities

Senator Paul Pinsky (D – Prince George’s County) and Delegate Lorig Charkoudian (D - Montgomery County) sponsored Senate Bill 304/House Bill 280, the *Maryland Recycling Act*. This bill repeals county authority to use one or more resource recovery facilities to achieve a 5% reduction in its solid waste stream for the purposes of meeting required solid waste reductions and mandatory recycling rates under the Maryland Recycling Act (MRA). It will also exclude incinerator ash from the definition of “recyclable materials” for the purposes of MRA. The bill passed and will go into effect on October 1, 2021.

Recycling – Prohibition on the Chemical Conversion of Plastic

Delegate Sara Love (D - Montgomery County) sponsored House Bill 21 in an attempt to prohibit specified plastic-to-fuel processes. The bill would have excluded from the definition of “recycling” the following processes: pyrolysis, hydrolysis, methanolysis, gasification, enzymatic breakdown, or a similar process, as determined by MDE. House Bill 21 would have also prohibited a person from building a facility in the State that converts plastic to fuel or feedstock through those same chemical conversion processes. The bill died due to inaction in the House Environment and Transportation Committee.

Stormwater Management - Review and Update

Senate Bill 227/House Bill 295 sponsored by Senator Sarah Elfreth (D - Anne Arundel County), and Delegate Sara Love (D - Montgomery County), passed the MGA and will go into effect on June 1, 2021. The legislation requires MDE to update specified stormwater management regulations and criteria once every five years, beginning with the first update on January 1, 2022. The legislation also requires MDE to use the most recent precipitation data available when updating the regulations. Additionally, MDE must submit a climate load allocation addendum to the Chesapeake Bay Total Maximum Daily Load Phase III Watershed Implementation Plan, as well as updated two-year milestones, to the U.S. Environmental Protection Agency by December 31, 2025.

Water Pollution Control – Intervention in Civil Actions

Senator Jill Carter (D - Baltimore City) and Delegate Sara Love (D - Montgomery County) introduced Senate Bill 334/House Bill 76 that provides a person who meets the threshold standing requirements under the federal Clean Water Act an unconditional right and the authority to intervene in a state court civil action initiated so as to require compliance with Subtitle 3 of Title 9 of the Environment Article, related regulations, or any related discharge permit, effluent limitation, or order issued by MDE. Under the legislation, a person who meets the requirements to intervene, as set forth therein, has the same rights as an interested person or aggrieved party under the Clean Water Act, including the right to apply for judicial appeal. This legislation will go into effect on October 1, 2021.

Constitutional Amendment - Environmental Rights

Senator Obie Patterson (D – Prince George’s County) and Delegate Erik Barron (D – Prince George’s County) sponsored Senate Bill 151/House Bill 82, which would have amended the Maryland Constitution to establish that every person has an inalienable right to a healthful environment - including the right to clean air, water, and land, a stable climate, and the preservation, protection, and enhancement of ecological, scenic, and historic values of the environment. The proposed constitutional amendment would also have authorized the State, a political subdivision of the State, or any person to enforce these rights against any public party through legal proceedings. The bill would have provided every person the right to intervene in an action brought by the State or a political subdivision of the State to protect the rights established by the legislation. House Bill 82/Senate Bill 151 would have established that all-natural resources

in the State are the common property of every person and would have established standards of treatment for the State's natural resources. The bills died due to a lack of action after the initial public hearings.

Commission on Environmental Justice and Sustainable Communities

Senator Sarah Elfreth (D - Anne Arundel County) and Delegate Tony Bridges (D - Baltimore City) sponsored Senate Bill 674/House Bill 1207, which makes several changes to the Commission on Environmental Justice and Sustainable Communities (CEJSC). CEJSC membership will increase and the Chair of the CEJSC will be elected by its members, rather than appointed by the Governor. This legislation requires that, to the extent practicable, the membership must reflect the racial, gender, ethnic, and geographic diversity of the State. SB674/HB1207 requires at least six meetings of the Commission per calendar year, including one in a rural and urban location. The legislation, among other things, further expands the duties of the CEJSC by: (1) requiring the use of data sets and mapping tools to analyze current laws and their impact on the environment; (2) requiring coordination with the Commission on Climate Change; (3) creating a list of supplemental environmental projects; and (4) recommending options to the MGA and the Governor on environmental issues. This legislation becomes effective on October 1, 2021.

COVID-19

Recovery for the Economy, Livelihoods, Industries, Entrepreneurs, and Families (RELIEF) Act

Senate Bill 496/House Bill 612, the *RELIEF Act* was introduced on behalf of the Hogan Administration in response to the ongoing COVID-19 pandemic. The bill, which passed and was immediately signed into law, became effective on February 15, 2021. This legislation does the following:

- (1) provides up to \$750 in economic impact payments to a taxpayer who claims the State earned income tax credit in certain tax years;
- (2) exempts from the State income tax the unemployment insurance (UI) benefits received by an individual;
- (3) authorizes certain businesses to retain an increased sales and use tax vendor credit;
- (4) excludes FY 2020 and FY 2021 from the multi-year lookback periods generally used to establish employer UI taxes each year (this provision terminates June 30, 2025);
- (5) exempts from the State income tax certain coronavirus relief payments; and
- (6) authorizes the DOC to convert certain business loans into grants; and establishes reporting requirements for the Comptroller.

The RELIEF Act also authorizes the Governor, in FY 2021, to transfer (1) \$100 million from the Blueprint for Maryland's Future Fund to the MSDE to facilitate delivering in-person classroom instruction and for summer school instruction and (2) \$420 million, combined, from the Revenue Stabilization Account (known as the Rainy Day Fund) and local income tax reserve account to a newly established fund to provide financial assistance to individuals, businesses, and nonprofit organizations and funding for certain State agencies.

The RELIEF Act, among other things, establishes a Recovery Now Fund (RNF), administered by the Department of Budget and Management, which receives money to be spent on the purposes specifically set forth in the legislation. The Governor may transfer to the RNF (1) \$320 million from the Rainy Day Fund and (2) \$100 million from the local income tax reserve account. The transferred funds may be used as specified to provide (1) financial assistance to individuals, businesses, and nonprofit organizations; (2) funding for the MDH and UI program; and (3) the restoration of MDOT transit services and highway maintenance funding. At the end of FY 2021, any balance remaining in the RNF reverts to State's general fund.