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## 2011 Maryland General Assembly: Which Bills Will Affect Your Operation?

By: [Jackson B. Boyd](#)

A number of bills were passed during the Maryland General Assembly's 2011 legislative session that will impact certain sectors of the construction industry. Ober|Kaler has put together brief summaries of certain bills from information supplied by the Maryland Department of Legislative Services. For assistance in determining how these developments affect your operations, contact the author, [Jack Boyd](#), the Construction Group chairs, [Joe Kovars](#) and [Jack Morkan](#), or your Ober|Kaler attorney.

### **Senate Bill 120 / House Bill 456 (Procurement – Minority Business Participation)**

This bill extends the State's MBE program for one year (until July 1, 2012) and maintains the program's current overall participation goal of 25%. However, the bill repeals (1) the program's subgoals for women- and African American-owned businesses of 10% and 7%, respectively, and (2) the exemption from MBE provisions for construction contracts valued at \$50,000 or less. In place of the 10% and 7% subgoals for women- and African American-owned businesses, the bill authorizes the Governor's Office of Minority Affairs, in consultation with the Maryland Department of Transportation and the Office of the Attorney General, to set guidelines for each unit to consider when deciding whether to set subgoals for individual procurements based on existing categories for minority groups. This bill will take effect on July 1, 2011.

### **House Bill 972 (Building Codes – International Green Construction Code)**

This bill authorizes the Maryland Department of Housing and Community Development (the "DHCD") to adopt by regulation the International Green Construction Code (the "IGCC") and also authorizes local governments to adopt the IGCC regardless of whether the DHCD does so. The IGCC is a new model

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code (the first edition is scheduled for publication in 2012) that addresses green building design and performance. The IGCC will work as an overlay with existing building codes and will not serve as an alternative to existing building codes. This bill will take effect on March 1, 2012.

**House Bill 630 (Building Standards – High-Performance Homes)**

This bill requires the DHCD to encourage the construction of new “high-performance homes” which are new residential structures meeting or exceeding the current version of the Silver rating of either (1) the International Code Council’s 700 National Green Building Standards or (2) the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) for Homes Rating System. This bill was approved by the Governor on April 12, 2011, and will take effect on October 1, 2011.

**Senate Bill 256 / House Bill 1041 (Business Regulation – Definition of Home Builder)**

This bill provides that the definition of a “home builder” in Maryland includes a person that enters into a contract with a consumer under which the person agrees to provide the consumer with a new home. This bill also clarifies that a “home builder” does not include the following: (1) a real estate developer who does not undertake home construction; (2) a real estate developer who does not enter into contracts with consumers to construct homes; and (3) a buyer’s agent – as defined in statute – when representing a prospective buyer in the purchase of a new home. This bill was approved by the Governor on April 12, 2011, and will take effect on October 1, 2011.

**Senate Bill 334 / House Bill 379 (Real Property – Deposits on New Homes – Escrow Accounts)**

This bill provides that if a vendor or builder of a new home receives any money from the purchaser prior to completion of the home, the vendor or home builder must maintain an escrow account, a corporate surety bond, or an irrevocable letter of credit from a Maryland bank to hold the money. The money must be held in trust for the benefit of the purchaser, and any payments for labor or materials in connection with the construction of the new home must be consistent with the trust

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obligations and in accordance with a draw schedule agreed to by the purchaser in writing. This bill, which will take effect on July 1, 2011, also provides that the escrow account, corporate surety bond, or irrevocable letter of credit must be maintained until the earlier of (1) the granting of a deed to the property on which a completed home is located to the purchaser, (2) the return of the money to the purchaser, or (3) the forfeiture of the money by the purchaser under the terms of the contract of sale for the home.

**House Bill 437 (Real Property – Sales of New Homes – Minimum Visitability Features)**

This bill requires home builders constructing 11 or more new homes in a subdivision that receives preliminary plan approval on or after October 1, 2012 to offer minimum visitability features as an option for purchase. Minimum visitability features are defined as (1) a ground level entrance meeting specified height, width, and accessibility characteristics and (2) a circulation route from the ground level entrance to an unattached garage, parking space, or public right-of-way that is free of specified impediments or vertical changes in level greater than 1.5 inches. Pursuant to this bill, which will take effect on October 1, 2012, the home builder must provide a point-of-sale document describing the minimum visitability features and provide a drawing or photograph that shows these features and shows the lots and new home types conducive to the construction of these features.

**Senate Bill 996 (Sales and Use Tax – Machinery and Equipment – Energy Star Windows and Doors)**

This bill exempts from Maryland’s sales and use tax the sale of machinery or equipment (and electricity, fuel, and other utilities used to operate that machinery or equipment) used directly and predominantly to make Energy Star windows and entry doors for residential real property. This bill will take effect July 1, 2011.

**Senate Bill 691 / House Bill 590 (Public Service Commission – Certificate of Public Convenience and Necessity – Renewable Source Generator Lead Line)**

This bill provides that a person must obtain a certificate of public convenience and necessity (a “CPCN”) from the Public Service Commission to construct a qualified generator lead line, which is an overhead transmission line that (1) is designed to

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carry a voltage in excess of 69,000 volts and (2) would allow an out-of-state Tier 1 or Tier 2 renewable source to interconnect with a portion of the electric system in Maryland that is owned by an electric company. This bill also provides that a person may not apply for a CPCN to construct a qualified generator lead line unless the person offered the electric company that owns the portion of the grid to which the line would interconnect the right of first refusal to construct the line. This bill was approved by the Governor on April 12, 2011, and became effective immediately.

#### **Senate Bill 283 (State Board of Architects – Retired Status Licenses)**

This bill provides that the State Board of Architects may issue a retired status license to an experienced architect under certain circumstances, including if the architect has 25 years of experience practicing architecture, has been licensed in Maryland for at least five (5) years, is not subject to any pending disciplinary actions related to the practice of architecture, and pays the board a fee that is to be set by regulation. Pursuant to this bill, a holder of a retired status license may use the designation of “Architect Emeritus” but may not engage in the practice of architecture. A holder may also reactivate his or her license if he or she meets the board’s continuing education requirements, is not subject to any related disciplinary action, and pays the Board a reactivation fee. This bill was approved by the Governor on April 12, 2011, and will take effect on October 1, 2011.

#### **Senate Bill 143 (Home Inspectors – Records – Retention Requirements)**

This bill requires a licensed home inspector (the “licensee”) to retain for five (5) years a copy of (1) every contract that the licensee enters into, (2) each home inspection report that the licensee prepares or signs, and (3) all supporting data that the licensee uses to prepare a home inspection report. Furthermore, if within the five-year period a home inspection conducted by a licensee is involved in litigation, the aforementioned documents must be retained for an additional five-year period, which begins on the date of the litigation’s final disposition. All documents must also be made available to the Maryland Commission of Real Estate Appraisers and Home Inspectors upon request. This bill was approved by the Governor on April 12, 2011, and will take effect on October 1, 2011.



**Senate Bill 658 / House Bill 1181 (State Commission of Real Estate Appraisers and Home Inspectors – Special Fund and Registration and Regulation of Real Estate Appraisal Management Companies)**

This bill requires, among other things, appraisal management companies to register with the Maryland Commission of Real Estate Appraisers and Home Inspectors in order to provide appraisal management services in the State. This bill, which will take effect on July 1, 2011, also establishes extensive regulatory requirements related to the provision of appraisal management services in Maryland.

**Senate Bill 876 / House Bill 1242 (Baltimore County – Miscellaneous Business License Fees)**

This bill changes the licensing fees for certain types of businesses that operate in Baltimore County, including increasing the fees for residential and nonresidential construction licenses. This bill will take effect on October 1, 2011.

**House Bill 992 (Calvert County – Regulation of Roads)**

This bill responds to concerns in Calvert County about damage to county roads resulting primarily from the upgrading or fixing of underground utilities. This bill authorizes the Calvert County Commissioners to (1) enact ordinances that regulate specified activities associated with county roads and rights-of-way and (2) establish road-related fees, penalties, and minimum standards – both of which give Calvert County greater authority to hold entities responsible for damage that is done to county roads. An exemption exists for privately owned roads constructed by September 30, 2011. This bill will take effect on October 1, 2011.