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2012 Maryland General Assembly Legislative Update

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A number of bills were passed during the Maryland General Assembly's 2012 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 117 (Water Appropriation Permits – Construction Dewatering Projects)

This bill authorizes the Maryland Department of the Environment to waive the notice and hearing requirements for water appropriation or use permit applications for construction dewatering projects. The bill should expedite the process for obtaining water appropriation or use permits for such projects. The bill was approved by the Governor on April 10, 2012, and will take effect on October 1, 2012.

House Bill 890 (Washington Suburban Sanitary Commission – Pipeline Construction)

This bill expands the definition of a "facilities construction contract" in the Public Utilities Article of the Maryland Code to include contracts that provide services for the construction of a pipeline. The bill now authorizes the Washington Suburban Sanitary Commission to enter into design/build contracts for pipeline construction with costs exceeding \$2,000,000. The bill was approved by the Governor on April 10, 2012, and will take effect on October 1, 2012.

Senate Bill 272/House Bill 1364 (Workplace Fraud Act – Revisions)

This bill alters the presumption under the Workplace Fraud Act of 2009 (the "Act") that an employer-employee relationship (versus an independent contractor

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relationship) exists between an employer and an individual doing work for the employer. The employer may rebut the presumption by producing specified documentation for inspection, including: (1) a written contract between the employer and a business entity that describes the nature of the work, describes the compensation to be paid, and acknowledges the business entity's responsibilities under the Act; (2) a signed affidavit indicating that the business entity is an independent contractor who performs work for other employers; (3) a certificate of good standing for the business entity from the State Department of Assessments and Taxation; and (4) proof that the business entity holds all required occupation licenses for the work to be performed. The employer must also provide each individual classified as an independent contractor with the required notice and implications of such a classification. The bill will take effect on July 1, 2012, unless vetoed by the Governor.

Senate Bill 869/House Bill 940 (Maryland Building Performance Standards – Hotels – Mandatory Master Control Device)

This bill requires that each guest room in a newly constructed hotel be equipped with a master control device that turns off all light fixtures within 30 minutes after the room is vacated. The master control device may also (but is not required to) control the HVAC settings in a hotel guest room by adjusting the temperature +/- 3 degrees within 30 minutes after the room is vacated, depending on whether the system is on the air conditioning or heating mode. The bill, which will take effect on October 1, 2012, unless vetoed by the Governor, does not apply to bed and breakfast establishments.

House Bill 1268 (Plumbers – Lead Free Materials)

This bill relates to the allowable lead content of plumbing materials. It alters the definition of "lead-free" for individual plumbing fittings and fixtures and clarifies what pipes, pipe fittings, plumbing fittings, and fixtures are considered when calculating the weighted average lead content. The bill was approved by the Governor on April 10, 2012, and will take effect on October 1, 2012.

Senate Bill 764/House Bill 885 (Fraudulent Insurance Acts – Individual Sureties – Contracts of Surety Insurance)

This bill provides, in part, that it is a fraudulent insurance act for an individual surety

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to solicit or issue a surety bond or contract of surety insurance. An "individual surety" is defined in the bill as a "person that: (1) issues surety bonds or contracts of surety insurance; and (2) does not have a certificate of insurance issued by the [Maryland Insurance] Commissioner." The bill, however, does not apply to contractors authorized to provide individual surety bonds to satisfy the requirements for bid bonds and performance bonds on certain State contracts. The bill, which will take effect on June 1, 2012, unless vetoed by the Governor, also requires the Maryland Insurance Administration to conduct a specified analysis of the practices of corporate and individual sureties in Maryland.

Senate Bill 236 (Sustainable Growth and Agricultural Preservation Act of 2012)

This bill establishes a four tier system for development in local jurisdictions based on specified land use characteristics. The bill also establishes certain land use and sewage criteria and restrictions that apply to each of the four tiers. Pursuant to the bill, beginning December 31, 2012, a local jurisdiction may not approve a major residential subdivision served by on-site sewage disposal systems, community sewage systems, or shared systems unless it adopts growth tiers that are consistent with the bill. Local jurisdictions that do not adopt such growth tiers may authorize either a minor residential subdivision served by on-site sewage disposal systems, or any subdivision in a "Tier I" area served by public sewer. Most provisions of the bill will take effect on July 1, 2012, unless vetoed by the Governor. Certain provisions, however, will not take effect until October 1, 2012.

House Bill 900 (Prince George's County – Proposed Subdivisions – Development Impact Fees for Traffic Mitigation)

This bill provides, in part, that the Prince George's County Planning Board may collect development impact fees for financing up to 50% of the capital costs of transportation projects necessary to accommodate new construction or development. The bill will take effect on October 1, 2012, unless vetoed by the Governor.

House Bill 1445 (Plumbing, HVAC, and Refrigeration Employees – Public Contracts – License Requirement)

This bill prohibits a person from employing an individual to provide or assist with

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plumbing, HVAC, or refrigeration services under a public works contract subject to the State's prevailing wage law, unless that person is licensed by the State Board of Plumbing, the Baltimore County Plumbing Board, or the Washington Suburban Sanitary Commission. The bill also prohibits a person from classifying an employee under a public works contract subject to the State's prevailing wage law, who is licensed by the aforementioned regulatory agencies, at a specific work classification that is higher than the employee's license type. The bill will take effect on October 1, 2012, unless vetoed by the Governor.

Senate Bill 109 (State Board of Architects – Continuing Professional Competency)

This bill repeals a statutory continuing education requirement for architects. In its place, the State Board of Architects must adopt regulations requiring a licensed architect to demonstrate continuing professional competency by completing at least 24 hours of professional development activities as a condition of license renewal. The bill was approved by the Governor on April 10, 2012, and will take effect on October 1, 2012.

Senate Bill 40/House Bill 1301 (Sales and Use Tax - Machinery and Equipment - Energy Star Windows and Doors)

This bill exempts from the State's sales and use tax the sale of machinery and equipment used directly and predominantly to produce Energy Star windows or Energy Star entry doors for residential real property. The bill also exempts electricity, fuel, and other utilities used to operate the aforementioned machinery and equipment from the State's sales and use tax. The bill will take effect on July 1, 2012, unless vetoed by the Governor.

House Bill 158 (High Performance Building Tax Credit – National Green Building Standards)

This bill expands the definition of "high performance building" for purposes of the local option property tax credit for high performance buildings to include a residential building that achieves at least a silver rating under the International Code Council's 700 National Green Building Standards. The bill will take effect on June 1, 2012, unless vetoed by the Governor.

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House Bill 446 (Bay Restoration Fund – Fees and Uses)

This bill increases the "flush tax" for certain residential users by \$30 annually. For non-residential users and for a building or a group of buildings under single ownership or management that receives a sewer bill and contains residential dwellings that do not receive individual sewer bills, the increased "flush tax" is based on a sliding scale capped at \$120,000 annually. The bill will take effect on July 1, 2012, unless vetoed by the Governor.

Senate Bill 591/House Bill 678 (Manufactured Homes – Affixation to and Severance from Real Property)

This bill establishes certain requirements for affixing a manufactured home to or severing it from real property. Once the affixation requirements are met, the manufactured home will be governed by applicable real property laws. The bill will take effect on October 1, 2012, unless vetoed by the Governor.