



## **CONSTRUCTION LAW UPDATE: 2010 MARYLAND GENERAL ASSEMBLY**

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A number of bills were passed during the Maryland General Assembly's 2010 legislation session that will impact certain sectors of the construction industry. The bills will take effect on either July 1 or October 1 of this year, unless vetoed by the Governor. Ober|Kaler has put together brief summaries of the 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.

### **House Bill 836 / Senate Bill 551 (Preference for State and Local Business Entities in School Construction)**

This bill authorizes a local government to give preference first to businesses located in the county and then to other businesses located in Maryland in bidding for school construction projects that are not subject to the State's prevailing wage law. Eligible school construction projects are those valued at less than \$500,000 or those in which less than 50% of the project cost is paid for by State funds. Local governments are currently not authorized to give preferences to local businesses for these projects. This bill will take effect on October 1, 2010.

### **House Bill 1044 / Senate Bill 234 (High Performance Building Act – Applicable to Community College Capital Projects)**

This bill requires community college capital projects that receive State funds to comply with the State's High Performance Buildings Act. This means that any new or renovated community college building that is at least 7,500 square feet and built or renovated with State funds must be constructed or renovated as a high performance building that meets or exceeds the U.S. Green Building Council's LEED criteria for a silver rating. The requirement applies prospectively to projects that have not initiated a request for proposals for the selection of an architectural and engineering consultant on or before July 1, 2011. Community colleges, however, may apply for and receive a waiver from this requirement under the High Performance Building Act's existing waiver procedures. This bill will take effect on July 1, 2010.

### **House Bill 168 (Architectural, Engineering, Inspecting, or Surveying Service – Indemnity Agreements - Void)**

Maryland law currently establishes that construction or property maintenance contracts that purport to indemnify the promisee against property damage or bodily injury caused by or resulting from the sole negligence of the promisee (or its agents or employees) are against public policy and are void and unenforceable. This bill adds architectural, engineering, inspecting, and surveying services to the list of services for which such indemnity agreements are considered void and unenforceable. The bill also clarifies that the prohibition on these types of indemnity agreements does not apply to general indemnity agreements required for surety bonds. This bill will take effect on October 1, 2010, and applies prospectively to causes of action arising after its effective date.

### **House Bill 620 / Senate Bill 597 (Condominium and Homeowners Association – Common Elements and Common Areas -Implied Warranties)**

This bill extends the length of time of implied warranties on improvements to both a condominium's common elements and a homeowners association's common areas. For improvements to a condominium's common elements, the bill extends a developer's implied warranty to the later of three years from the first transfer of title to a unit owner or two years from the date the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors for the council of unit owners. For improvements to a homeowners association's common areas, the bill extends a declarant's implied warranty to the later of two years from the first transfer of title to a lot to a member of the public or two years from the date on which the lot owners, other than the declarant and its affiliates, first elect a controlling majority of the governing body of the homeowners association. This bill also requires that certain common

elements in a condominium (like roofs, exterior walls, and foundations) be designated in the declaration as common elements rather than as parts of the units to ensure that the implied warranties apply to those common elements. This bill will take effect on October 1, 2010, and applies only to a condominium or homeowners association for which a declaration, bylaws, and plat are recorded in the local land records on or after its effective date.

**House Bill 1290 / Senate Bill 911 (Underground Facilities – Damage Prevention)**

This bill alters current statutory provisions regulating the protection of underground facilities and establishes a Maryland Underground Facilities Damage Prevention Authority to hear complaints and assess civil penalties for violations. Owners of underground facilities, such as water and sewer mains, telephone, cable, and electric lines, and steam heating pipes, must become members of the existing one-call system, known as Miss Utility, and must provide for the marking of their underground facilities. Among other things, the bill alters the practices and procedures used in marking underground facility locations, specifying that colors used in marking must adhere to certain national standards. This bill will take effect on October 1, 2010.

**Senate Bill 382 (Marine Contractors – Licensure and Regulation – Tidal Wetlands Licenses)**

This bill provides for the licensure and regulation of marine contractors in Maryland by establishing a Marine Contractors Licensing Board (the “Board”) within the Maryland Department of the Environment. All marine contractors must now be licensed exclusively by the Board – instead of by the Maryland Home Improvement Commission – and must have their Board license prior to performing marine contractor services in the State, which include construction, demolition, installation, alteration, repair, or salvage activities located in, on, over, or under State or private tidal wetlands. This bill will take effect on October 1, 2010.

**House Bill 80 (State Board for Professional Engineers)**

This bill requires licensees of the State Board for Professional Engineers to demonstrate continuing professional competency as a condition of their license renewal. The continuing professional competency requirements do not apply to the first renewal of a license and are instead phased in beginning on October 1, 2012. This bill will take effect on July 1, 2010.

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