



## Maryland Procurement Law ALERT

June 14, 2021

---

Scott A. Livingston, Barry L. Gogel, and Stephen Kuperberg

### **MSBCA Tasked to Review Unsuccessful Applications for Sports Wagering Licenses**

In the closing hours of the final day of the 2021 session, the Maryland General Assembly voted to implement legalized sports wagering in the State. The legislation allows for as many as 60 mobile operation licenses and up to 47 additional “brick and mortar” licenses. In an interesting twist that has implications to procurement, the General Assembly tasked the Maryland State Board of Contract Appeals to review complaints by unsuccessful applicants.

The MSBCA will soon be very busy since it has been mandated: to give complaints by unsuccessful applicant precedence on the Board’s docket; to hear complaints at the earliest practicable date; and to expedite proceedings in every way. House Bill 940 can be found [here](#).

By Barry L. Gogel, [bgogel@rwllaw.com](mailto:bgogel@rwllaw.com)

## **Major Expansion of Baltimore Rail Tunnel Clears NEPA Hurdle**

A major expansion to Baltimore's Howard Street tunnel, which would allow double-stacked containers to travel to and from the Port of Baltimore, received a "finding of no significant impact" under the National Environmental Policy Act (NEPA) in late June, which gives the tunnel owner CSX Transportation the green light to finalize plans and permits for the expansion.

According to Governor Hogan and the Maryland Department of Transportation, the tunnel expansion, which would allow for now-common double-stack rail cars to service the Port of Baltimore for the first time, could generate significant job growth for the Port and Baltimore generally as well reducing millions of gallons of fuel consumption. Read more: <https://bit.ly/3r7Mrkd>

By Steve Kuperberg, [skuperberg@rwillaw.com](mailto:skuperberg@rwillaw.com)

## **I-270 and Bridge Plan Continues to Generate Debate**

A plan to widen the American Legion Bridge and the I-270 Corridor continues to generate debate among state and county leaders. After Delegates Marc Korman and Jared Solomon (D-Montgomery) claimed in late June that the Hogan Administration was deliberately delaying the release of a budget analysis underpinning the proposal so as to avoid legislative review, the project gained momentum from leaders in Frederick County, who on July 6 appointed County Executive Jan Gardner (D), a supporter of the project, to the regional Transportation Planning Board. Other leaders in the National Capital Region have similarly been reaffirming or modifying views on the project.

The changing dynamics come as Deputy Secretary of Transportation R. Earl Lewis Jr. wrote a letter on July 7 to the Transportation Planning Board warning

that 15 projects in Montgomery, Prince George's, and Frederick counties could be "downgraded" or removed from plans if the I-270 project did not go forward.

Read more: <https://bit.ly/2UGmpZd>

By Steve Kuperberg, [skuperberg@rwillaw.com](mailto:skuperberg@rwillaw.com)

## **Controversies Continue at BPW Over Emergency Contracts**

The Board of Public Works has once more witnessed intense debate over the use of retroactive approvals for contracts entered into during the pandemic under emergency rules. On July 7, the BPW considered a \$100 million emergency healthcare contract with Qualivis, a company providing clinical health care staff to COVID-19 testing and vaccination sites, among other locations. The Department of Health had already entered the contract with Qualivis and had incurred \$38 million in costs for May and June before presenting the BPW with the contract, which also included a \$68 million extension through June 2022.

Comptroller Peter Franchot (D) and Treasurer Nancy Kopp (D) complained that while emergency contracts may have been necessary at the height of the pandemic, they are no longer needed. Franchot sought to delay approval of the contract, which, he noted, had increased by more than 2,000% since the state had first entered into an emergency agreement with Qualivis's predecessor company in April 2020. The state has used emergency authority to approve nearly \$1.5 billion in procurements during the pandemic. While Kopp and Lt. Governor Boyd Rutherford also expressed concern about the emergency contracts, they ultimately voted to approve the Qualivis contract.

Read more: <https://bit.ly/2UJTRhk>

By Steve Kuperberg, [skuperberg@rwillaw.com](mailto:skuperberg@rwillaw.com)

## Supreme Court Decision Could Benefit Potomac Pipeline

A decision that the U.S. Supreme Court released in late June could mean that a planned gas pipeline running under the Potomac River could proceed. In a 5-4 decision, the Supreme Court ruled in *PennEast v. New Jersey* that the PennEast Pipeline Company could seize land from New Jersey using the federal power of eminent domain, despite the state's objection, because the pipeline had received the necessary waterway permits from the state and a certificate of necessity from the Federal Energy Regulatory Commission (FERC).

The Supreme Court precedent affecting New Jersey's disapproval would appear to have similar results for a vote in Maryland that had also disapproved the pipeline. If constructed, the pipeline would run through a part of Maryland near Hancock before passing under the Potomac River to deliver gas to West Virginia. Read more: <https://bit.ly/36zRsIN>

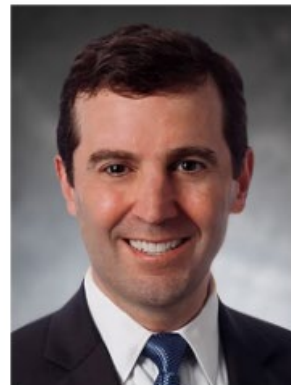
By Steve Kuperberg, [skuperberg@rwillaw.com](mailto:skuperberg@rwillaw.com)



Scott Livingston  
Partner



Barry L. Gogel  
Partner

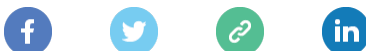


Stephen Kuperberg  
Partner

***Bid protests happen quickly. Scott Livingston and the RWL team are ready -- to protect your rights under Maryland procurement law.***

***To find out how we can help, give us a call at (301) 951-0150 or email us at [slivingston@rwillaw.com](mailto:slivingston@rwillaw.com), [bgogel@rwillaw.com](mailto:bgogel@rwillaw.com), or [skuperberg@rwillaw.com](mailto:skuperberg@rwillaw.com) .***

*The information in this publication should not be construed as legal advice about your rights and you should contact your attorney for legal advice.*



**Our mailing address is:**

4800 Hampden Lane, Suite 820  
Bethesda, MD 20814

Want to change how you receive these emails?  
You can [update your preferences](#) or [unsubscribe from this list](#).

*Copyright © 2020 Rifkin Weiner Livingston, LLC. All rights reserved.*