

# Solar in Maryland: Policy and Regulatory Landscape

*Key Legislation*

*Regulatory Challenges*

*Likely Market Changes*

# Agenda & Logistics

1. COVID-19 Response & Reopening
  2. The 2020 Legislative Session
  3. Key Legislative Themes
  4. Major Regulatory Issues
  5. Looking Ahead to the 2021 Session
- [Uberconference.com/mdvseia](https://uberconference.com/mdvseia)
  - Or follow along by dialing into (202) 660 1553
  - **Please mute yourself until the Q&A**
  - Submit questions to [david@mdvseia.org](mailto:david@mdvseia.org)
  - Conference recording will be uploaded on MDV-SEIA and Gordon Feinblatt's websites

# Presenters



**David Murray**

**Executive Director**

**MDV-SEIA**

**[david@mdvseia.org](mailto:david@mdvseia.org)**



**David Beugelmans**

**Associate**

**Gordon Feinblatt**

**[dbeugelmans@gfrlaw.com](mailto:dbeugelmans@gfrlaw.com)**

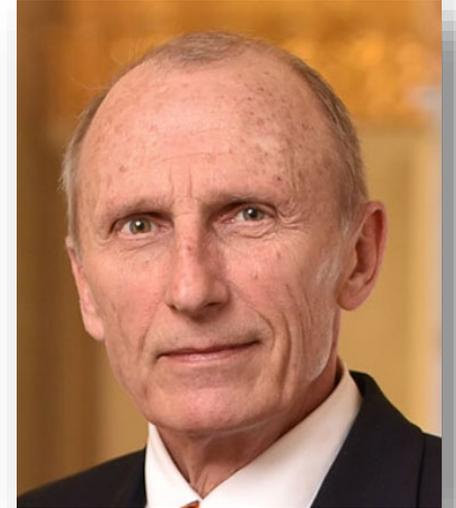


**Todd Chason**

**General Counsel & Managing Member**

**Gordon Feinblatt**

**[tchason@gfrlaw.com](mailto:tchason@gfrlaw.com)**



**Bill Shaughnessy, Jr**

**Member**

**Gordon Feinblatt**

**[wshaughnessy@gfrlaw.com](mailto:wshaughnessy@gfrlaw.com)**

# MARYLAND EXECUTIVE ORDERS

Federally, solar energy workers are part of Energy Sector “critical infrastructure”

- <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

Governor’s Orders/Guidance acknowledge companies/workers engaged in energy production are essential/can remain open

- March 23, 2020 Office of Legal Counsel for the Governor, Interpretive Guidance [COVID 19-04]
- March 30, 2020 Governor issues “Stay at Home” order [Executive Order NUMBER 20-03-30-01]

Solar development can continue, but consider “best practices”

- See <https://www.seia.org/research-resources/covid-19-guidance-solar-installers>

# MARYLAND RE-OPENING PLAN

Maryland Strong Roadmap to Recovery

24 Apr 2020 <https://governor.maryland.gov/recovery/>

Basis of Plan: federal, governors, health

“Gating” – 14 days down/flat

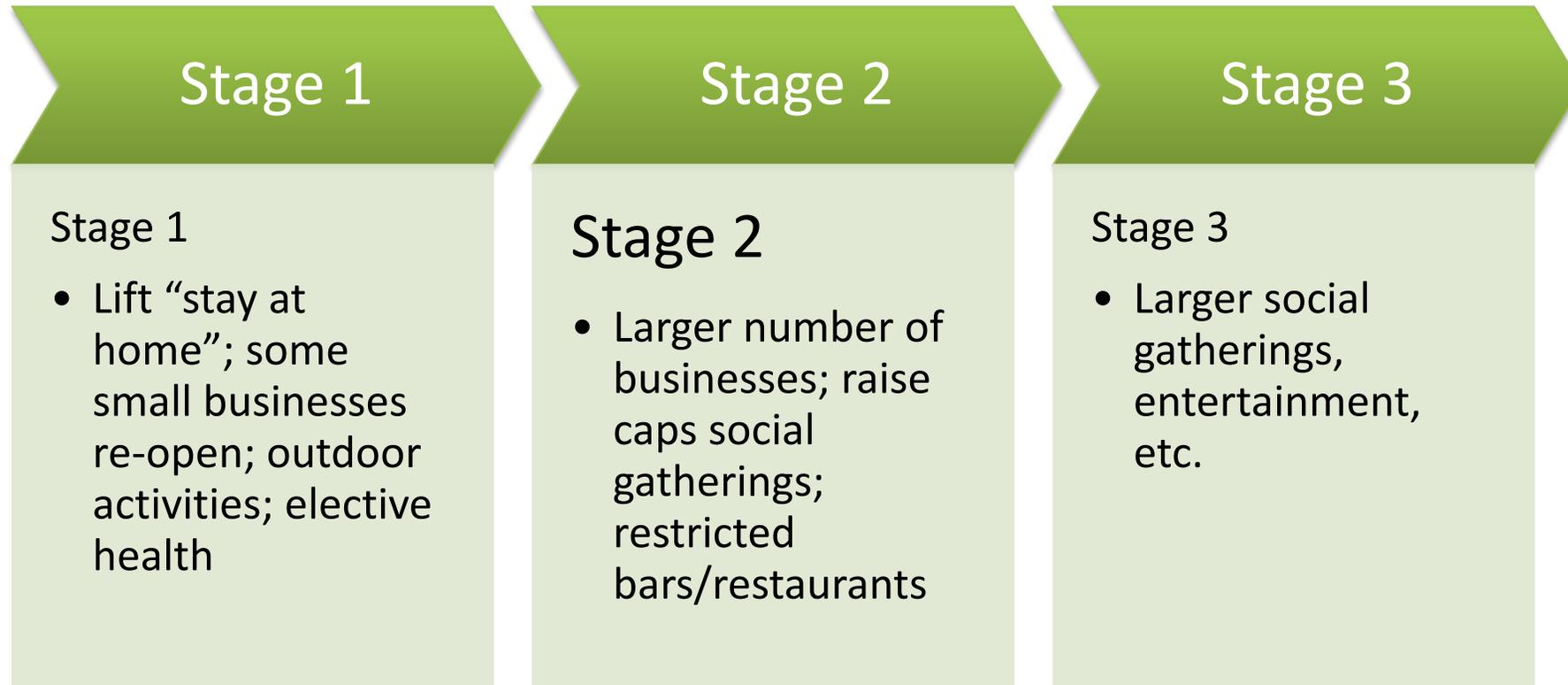
“Stop Signs” – increases or outbreaks

Local government input

Industry Recovery Advisory Groups

---

# MARYLAND RE-OPENING PLAN, CONT'D



# UPDATE ON SBA, PPP, EIDL

4-24-2020 President signs “re-funder” bill

- \$321B into PPP program
- \$60B into EIDL program
  - of which \$10B for emergency grants

Still awaiting guidance on “forgiveness” details for PPP loans

---

# COVID-19 BUDGETARY RESPONSE

The Maryland Comptroller has estimated the Maryland state government will lose \$2.8 billion in projected revenue due to COVID-19



Governor Hogan has indicated this, combined with the expense of responding to the pandemic, will require the State to use most, if not all, of its rainy-day fund.



In response, Governor Hogan implemented a budget and hiring freeze on April 11.



The Office of Budget Analysis will be sending budget reduction targets to the various state agencies for fiscal 2021, which starts July 1, in coming weeks.



**Speaker Adrienne Jones (D-Baltimore County) and Senate Majority Leader Bill Ferguson (D-Baltimore City)**

## “A New Era”

- Kirwan was King: the exhaustive Commission on reforming Maryland’s public education system – and how to fund it - dominated legislators’ attention.
- In the wake of the Clean Energy Jobs Act, climate was not a top priority of legislative leadership
- Environmental advocates focused on transportation and “cleaning up” the RPS
- Both parties focused on solar siting

## Uncontroversial Measures Passed....

- [MD Electricians Act](#): Creates a working group to explore creating a statewide electrician and journeyman license. MDV-SEIA successfully killed a provision that would have required a licensed journeyman to be onsite for solar installations.
- [Energy Storage Tax Credit](#): Revises existing program by increasing the maximum grant for commercial projects; expands eligibility
- [REDS](#): The Governor's siting legislation waives permitting fees for brownfield projects. Measures to make the CPCN application process more cumbersome were removed

- Broad Love for Rooftop Solar: A California-like mandate for solar on new commercial buildings; solar-ready roofs; new solar on public buildings; exempting from property tax for rooftop CSEGs
- Improving PSC Processes: Clarifying the role of the PSC in the CPCN process; consideration of climate and labor
- Left vs. Right on RPS Eligibility: Remove WTE or BLQ from Tier 1; versus including nuclear, hydro, CCS and CHP as RPS-eligible
- Protect the SEIF from all sides: Using funds to support healthy soils initiative; fossil fuel worker transition; investment in disadvantaged communities

...While Other  
Bills Signaled  
What's to  
Come



# Major Regulatory Issues 2020

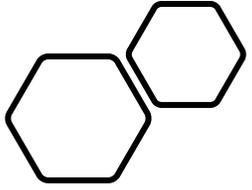
# Net Metering Expansion/Reform

Current Maryland law imposes a 1500 MW state-wide cap on net metering, after which utilities no longer need to offer net metering

This limitation was created more than a decade ago, with a focus on rooftop systems.

Now, community solar and aggregate net metered facilities count towards the cap.

As Maryland moves closed to reaching the cap, legislation will be needed to modify the limit.



# Net Metering Expansion/Reform

It is conceivable that as part of this discussion the General Assembly will consider replacing net metering with a predecessor concept like a “value of solar” tariff. The community solar bill included this concept, but the PSC instead chose traditional net metering.

However, the legislature has been generally supportive of net metering.

Given the impacts of COVID-19 on the solar industry, the General Assembly may be inclined to increase the cap without departing from traditional net metering concepts.

# Solar Siting Reform

- Increased utility-scale and community solar development in Maryland has led to a political backlash in many Maryland counties, with several passing restrictive zoning ordinances and/or imposing moratoriums
- The primary stated concern is that solar facilities will consume a large amount of farmland. However, in reality:
  - Assuming all the 14.5% solar carve out in the RPS was met using solar on farmland, it would consume just 1.61% of all farmland.
  - Assuming a more realistic split of the carve out between utility-scale and rooftop systems, it would consume just 0.72% of all farmland.
  - The leading loss of farmland in Maryland is residential/commercial development and sea-level rise.



# Solar Siting Reform



Political pressure has created friction within the CPCN process (applicable to projects larger than 2MW).



CPCNs are granted through a litigated process in front of the Maryland Public Service Commission (PSC), with a judge presiding.



CPCNs preempt local zoning ordinances.



The primary review is conducted by the Power Plant Research Program (PPRP), which consolidates a review by the main state agencies.



As part of this review, PPRP typically submits an environmental review document called a Project Assessment Report, along with licensing conditions.

# Solar Siting Reform

- Issue: PPRP is NOT required by statute to submit a PAR and licensing conditions when it recommends denial of a CPCN.
- The PAR and licensing conditions are essential to the PSC's review, so if PPRP refuses to submit these items it makes it difficult to impossible to receive a CPCN from the PSC.
- PPRP has done this for several projects opposed by local jurisdictions that refused to apply for local zoning permits.
- PPRP has maintained this position even after the Maryland Court of Appeals affirmed preemption in the *Perennial II* case.



# Solar Siting Reform

- HB1390/SB741 (2020 Legislative Session)
  - Would have modified statute to require PPRP to always submit environmental report and licensing conditions, even if PPRP recommends denial
  - Would have removed ability of PPRP to submit revised conditions after record in case has closed
  - Would have required PSC to provide notice of CPCN application to non-political planning and zoning staff of county and required that staff to submit comments on zoning consistency before PPRP's submission was due
  - Would have required the PSC to implement regulations governing standard conditions, including decommissioning and setbacks/buffers
  - Did not receive vote prior to early sine die due to COVID-19. Bill received some opposition.
  - Except ideas in bill to reappear in following sessions.