

House of Representatives

Week in Review

For the Week Ending: Friday, May 14, 2010

News Items From the House

- **Despite Concerns, “Universal Recycling” Bill Clears General Assembly**

Despite concerns over its legality, efficiency, and the spending of an estimated \$16 million in state money, "universal recycling" will soon be a reality in the First State.

The State House of Representatives approved legislation to create the program (5/11), sending it to the governor to be signed into law. The recycling initiative (Senate Bill 234), which has been repeatedly described by supporters as a “fragile compromise,” was fast-tracked through the General Assembly, taking just three weeks from its introduction to final passage.

The proposal is the work of Gov. Jack Markell, who broadly outlined his vision for a recycling program earlier in the year. Gov. Markell has embraced fostering jobs through the growth of “green” industries as one of the guiding principles of his administration. However, it’s unclear how many jobs the universal recycling program will produce, or what the nature of the new positions will be.

What is certain is that the controversial “Bottle Bill” law, which currently places a five cent deposit on selected beverage containers sold in Delaware, will be eliminated after nearly 30 years on the books. The General Assembly passed legislation to repeal the compromised, ineffective anti-litter law last year, but the bill was vetoed by Gov. Markell.

In place of the deposit, a new temporary four cent fee on the same beverage containers will be levied to finance the recycling effort. Sussex County small business owner, State Rep. Gerald Hocker (R-Ocean View), said he was deeply disappointed by the new fee. “This is the beginning of a sales tax,” he said. “This has been a no sales tax state. We have been very proud of that. It has brought business in from neighboring states and we’ve changed that. This (fee) is supposed to be sunsetted after four years, but I haven’t seen any taxes go away yet.”

Set to expire in late 2014, the fee will finance the creation of a new Delaware Recycling Fund. The Department of Natural Resources and Environmental Control (DNREC) will issue grants and low-interest loans from the fund to help private waste-haulers and municipalities finance the program's start-up costs. According to an analysis by the Controller General's office, the program will cost a minimum of \$16 million to initiate.

State Rep. Bill Oberle (R-Beecher's Lot), a former co-chair of the Joint Finance Committee, objected to using state money to underwrite private corporations. "We do not need to offer state subsidies, taxpayer dollars, to ... billion dollar companies to offset those start-up costs. It's just insanity," he said.

Testifying before the House, DNREC Sec. Collin O'Mara said that it was essential that the state provide start-up costs if the recycling program was to succeed.

The new law will require every waste-hauler in the state to offer curbside recycling to their customers in three stages: first to single-family homes (by Sept. 15, 2011); then apartments and condominiums (Jan. 1, 2013); and finally commercial businesses (Jan. 1, 2014).

The Markell administration says the goal is to divert 50-percent of municipal solid waste from landfills by the start of 2015. That goal rises to 60-percent in 2020.

Although participation in the recycling program remains voluntary, the bill contains a provision that if diversion goals are not achieved, DNREC and a new recycling advisory council could propose "any additional mechanism necessary" to reduce the amount of waste heading to landfills, including the implementation of a "Pay As You Throw" program and waste bans.

State House Minority Leader Dick Cathcart (R-Middletown) says while the bill doesn't mandate recycling for consumers, they'll eventually be paying for the service. "This is a bill that is going to cost the consumer in the long run," he said. "The consumer has no choice in this. If they receive trash service they are getting a recycling bin and they will pay for it, whether they use it or not."

Before the bill's passage through the House, Republican representatives offered seven amendments to change the measure. All the amendments failed, with five of the proposed changes defeated along party lines.

Among the changes defeated by House Democrats were:

- An amendment that would have allowed consumers to see the cost of recycling as a separate line item on their waste collection bills. (The new law specifically bars waste-haulers from disclosing this information.)
- An amendment that would have reduced the beverage container fee to one-cent, while broadening the scope of the containers to which it would

have been applied. Currently, only about 25-percent of beverage containers will be subject to the fee - creating a potential legal issue because of the selective and arbitrary nature of the way in which the fee is levied.

- An amendment that would have eliminated the Delaware Recycling Fund, two years after the temporary beverage container fee is set to expire. Supporters of the amendment said if the fee is temporary, and the fund's purpose is only to pay for the start-up cost of the universal recycling program, it should have a limited lifespan.
- An amendment that would have radically streamlined the bill, eliminating the grant program, the beverage container fee, and the Bottle Bill, while still requiring waste-haulers to provide curbside recycling.

Testifying on the House floor on behalf of this last amendment, former Delaware Solid Waste Authority chief N.C. Vasuki said the recycling program is needlessly convoluted and that the more complicated a system is, the more likely it is to fail.

Rep. Bill Oberle said he believes the fate of the new recycling law will likely be decided in court. He said the state constitution requires that any state appropriation of funds to municipalities or corporations – something the law will do by issuing grants and low-interest loans via the Delaware Recycling Fund – requires that the legislation be approved by a three-quarters vote of both chambers of the General Assembly. “In my mind there is no question that by passing this act we violated the state constitution. I think it is certainly ripe for someone to challenge it and if they do they will be successful.”

Despite the seeming constitutional conflict, Speaker of the House Bob Gilligan (D-Sherwood Park) ruled the bill could move ahead without the three-quarters vote requirement.

The bill cleared the House on a vote of 26 to 12, five votes short of a three-quarters majority.

• **Bill to Protect Delawareans from Healthcare Mandates Killed in House Committee**

A bill designed to protect Delawareans from the mandates contained in the recently enacted federal healthcare legislation has been killed.

The House Administration Committee voted three-to-two to prevent House Bill 353 (a.k.a. - the Delaware Health Freedom Act) from going to the House floor for a debate and vote.

The Delaware Health Freedom Act specifies that Delawareans are free to choose, or decline to choose, all healthcare services, without penalty or threat of penalty. The bill further directs the state attorney general to enforce the provisions of the act and defend the State of Delaware against challenges to the law.

“This bill was an attempt to do two things I think are of extreme importance,” said the bill’s prime sponsor, State Rep. Deborah Hudson (R-Fairthorne). “First, it sought to preserve Delawareans’ freedom of choice in matters of healthcare. Under this bill, our residents could have exercised their free will to join the government plan, continue with their private healthcare coverage, or pay for their healthcare out of their own pocket – without the threat of being bullied into a decision by the federal government. Secondly, it would have defended Delaware’s right to govern its own citizens.”

At least 38 states have filed or pre-filed similar legislation, including the neighboring states of Pennsylvania, New Jersey and Maryland. Three states have already enacted laws (Virginia, Idaho and Arizona) and three states have placed constitutional amendments on the ballot.

Introduced on March 30th, the Delaware Health Freedom Act was assigned to the House Administration Committee and kept there for as long as was permissible under House rules. The bill was added to the committee’s May 12th agenda as a late addition, two days prior to its consideration.

Appearing before the committee, Democratic Caucus House Attorney Meredith Stewart said she did not believe Delaware had standing to challenge the federal law. She also maintained that there was a potential “separation of powers” issue because the bill involved the legislature instructing the attorney general’s office (an executive branch agency) to take action on the state’s behalf.

Ron Smith, an attorney for the House Republican Caucus, took issue with both arguments. He said the bill poses no “separation of powers” issue since it allows the attorney general to exercise his discretion in defending the state’s rights.

Regarding Stewart’s other point, Smith noted there have been several cases in the last 15 years in which laws have been struck down because the federal government overstepped its authority. Smith said that protecting the State of Delaware’s sovereign rights was “ultimately what this bill is all about.”

Speaker of the House Bob Gilligan (D-Sherwood Park) challenged Mr. Smith’s interpretation, saying the federal government already regulates healthcare through programs such as Social Security and Medicaid. Smith said the new federal healthcare law differs fundamentally from those programs in that it mandates the purchase of healthcare coverage, under the threat of penalty. “If you’re just born and breathing, you have to have insurance,” Smith said.

“You don’t know that yet because the regulations have not even been written, Mr. Smith,” Speaker Gilligan said. “The regs have not been written and you’re making these rash judgments.”

State Rep. Deborah Hudson said Speaker Gilligan’s comments supported releasing the bill. She said since much of the healthcare law’s implementation will rely on regulations that have yet to be crafted by federal agencies, The Delaware Health Freedom Act would allow Delawareans to make their own healthcare decisions after the implications of the federal law are better understood.

The discussion by the committee seemed to do little to sway any of the members’ expressed opinions. In a vote split along party lines, Rep. Schwartzkopf, Speaker Gilligan and State House Majority Whip Valerie Longhurst (D-Bear) voted against releasing the bill for open debate. State House Minority Leader Richard Cathcart (R-Middletown) and State House Minority Whip Dan Short (R-Seaford) cast votes to allow it to move forward.

“I have some questions, I have some reservations about the separations of powers thing,” Rep. Schwartzkopf said after the vote. “I also have some reservations about spending money on a court case other people are already doing.”

Rep. Dan Short said the committee’s decision was disappointing. “This bill was both about protecting consumers’ freedom of choice as well as our state’s right to make policy at the local level. Keeping this bill in committee shows a lack of courage to openly discuss the philosophical issues raised by this legislation and to cast a vote on the House floor based on its merits.”

Also disappointed was Bryan Steilkie Sr., Kent County Chairman for the 9-12 Delaware Patriots, who carried more than 3,000 citizen signatures to the committee hearing in support of the bill. “What a shame to see the rights of Delaware citizens tramped into the dust,” he said.

• **Drivers Using Hand-Held Cell Phones and Similar Devices May Soon Face Fines**

A proposal to prohibit Delaware motorists from using hand-held cell phones to hold conversations or send text-messages has cleared the State House of Representatives.

The measure – (House Substitute 1 for House Bill 229), sponsored by State Reps. Darryl Scott (D-Dover) and Joe Miro (R-Pike Creek Valley) – had

bipartisan support, passing the House 33 to 5. It would also prohibit using hand-held devices to access e-mail or browse the Internet while operating a motor vehicle.

Two previous attempts to ban the use of handheld cell phones while driving died in the General Assembly, but Rep. Miro says the third time may be the charm. "This is very close to my heart," he said. "I believe in this legislation because it makes everyone pay more attention to what is in front of them when they are driving a car."

The use of cell phones by novice drivers and school bus drivers is already against the law in the First State. Reps. Scott and Miro point to these existing prohibitions as an acknowledgement that the use of cell phones poses an unacceptable distraction.

Rep. Scott said eliminating a confusing patchwork of local laws on the issue of cell phones and driving was a factor in winning passage for the bill. The City of Wilmington and the Town of Elsmere have already enacted ordinances outlawing motorists from using hand-held cell phones within their jurisdictions. "There were others that knew we had pending legislation and we're waiting to see what we would do," Rep. Scott said.

Last year, the National Safety Council (NSC) called for motorists to stop using cell phones and messaging devices while driving. Additionally, the NSC urged governors and legislators in all 50 states to enact laws banning it. Janet Froetscher, president and CEO of the NSC, noted that some studies show talking on a cell phone puts drivers at a four times greater risk of a crash.

Rep. Miro says in recent years the Delaware State Police have been tracking when cell phones have factored into traffic accidents and he says that data bears out the need for enacting his legislation. "The number of accidents has increased every year, and not only the accidents but the [number] of injuries," he said.

According to a Harvard Center of Risk Analysis study, cell phones are estimated to contribute to six percent of crashes. If accurate, it would mean that cell phones currently play a role in about 2,600 U.S. traffic deaths annually.

The Delaware legislation would not be breaking new ground if it becomes law. Six states have already enacted laws barring drivers from talking on hand-held cell phones: California, Connecticut, New Jersey, New York, Oregon and Washington. The nearby cities of Philadelphia and Washington D.C. also have such ordinances in place.

Additionally, 25 states have laws, or pending laws, prohibiting texting while driving.

The Delaware legislation would not apply to law-enforcement officers, firefighters, emergency medical technicians, or paramedics engaged in the performance of their duties. As amended, the bill would also not apply to motorists while they were placing a call or activating their “hands-free” equipment. People operating or driving farm tractors, farm trucks and farm equipment would be exempt from the measure as well.

State Rep. Miro says he believes the Senate will pass the bill and that the governor will sign it into law. Seven of the Senate’s 21 members are sponsoring the bill. Eleven votes are needed for its passage in the upper chamber.

The legislation would take effect 180 days after its enactment. First-time offenders would be hit with a \$50 fine, while repeat violators would face a penalty of between \$100 and \$200.

Rep. Scott concedes that while it’s the act of engaging in a phone conversation that provides the biggest distraction, he says barring the use of hand-held devices should at least curtail driver inattention. He also indicated that he considers the proposed law as part of a process. “It’s a good first step. ... Hopefully we’ll be able to continue to make strides to strengthen this as we go forward.”

- **Lawmaker Proposes Change to Help Public to See Budgets Earlier**

State Rep. Greg Lavelle (R-Sharples) introduced a bill today designed to help ensure the public gets an opportunity to examine the state’s budget bills before they’re enacted.

“My bill (House Bill 411) would mandate that the Delaware Economic and Financial Advisory Council (DEFAC) issue its last financial forecast no later than June 15th each year,” Rep. Lavelle said.

The Delaware Economic and Financial Advisory Council is a non-partisan group of lawmakers, financial analysts and business officials who estimate state revenue. By law, the state can only spend 98-percent of projected revenue, so the forecasts directly impact the shape and size of the operating and capital budgets. The group issues six forecasts annually, including monthly reports in March, April, May, and June. The June estimate is used to make last minute adjustments to the state’s spending plans, which take effect at the start of the new fiscal year July 1st.

“DEFAC currently meets on the third Monday of the month,” Rep. Lavelle said. “This means their last report can come out as early as June 15th or as late as June 21st. The operating and capital budgets can’t be finalized and printed until this forecast is issued. House Bill 411 would reform this needlessly arbitrary aspect of our budget procedures and provide predictability from one year to the next.”

Rep. Lavelle has long championed the early release of the state’s spending bills. His latest attempts – House Bills 13 and 84 – were introduced in early 2009. Both measures seek to require that the state’s operating and capital budgets be introduced at least a few days in advance of being voted on by the General Assembly. The bills have been bottled-up in the House Administration Committee for more than a year.

“One of the criticisms of my bills has been that if the June DEFAC forecast falls late, it becomes very difficult to make the needed adjustments and get the budgets printed and introduced early,” Rep. Lavelle said. “I’ve always maintained that was a lame excuse because there was nothing preventing us from issuing the last revenue estimate a little earlier. “

In fact, last month, Speaker of the House Bob Gilligan (D-Sherwood Park) requested that the DEFAC move this year’s reporting date from June 21st to June 17th - a request the council approved.

“I applaud the Speaker for his action,” Rep. Lavelle said. “Since he independently came to the same conclusion that I did – that DEFAC can modestly tweak its June reporting to improve the budgetary process – I’m hopeful he’ll look on this bill kindly and lend his assistance to moving it quickly to the House floor for consideration.”

Rep. Lavelle added that action on his new bill should clear the way for the release of his bills (House Bills 13 and 84) calling for the early filing of the state’s spending plans. “Together, these three bills will permanently provide some transparency to a budget process that has too often been viewed with suspicion.”

Around the Hall ***(Briefs from Legislative Hall)***

The Other Red Fruit

Delaware maybe the home to other red fruits, but one has now been raised above the rest. With the recent (5/13) signing of House Bill 203, the strawberry is now Delaware’s official state fruit. While the berry is not a major commercial crop in the First State, it is widely cultivated by homeowners and farmers alike.

State Rep. Gerald Hocker (R-Ocean View), whose district is partially agricultural, was the lead sponsor of the legislation.

Action on Bills*

House Bill 389 – (Sponsors: Rep. Viola, et. al.) – This bill seeks to legalize a private gaming club proposed for the Wilmington area. The club would be limited to a maximum of 5,000 members who would pay a minimum membership fee of \$10,000 each. The facility would be prohibited from operating slot machines, but would be allowed to have table games and sports lottery machines operated exclusively for the enjoyment of members and their guests. Supporters say the state would benefit from a one-time \$1 million license fee and an estimated \$2 million annually in direct gaming tax revenue. They also note the enterprise would generate significant additional tax revenue and create at least 150 permanent new jobs.

Status: Released from a House committee. Heads to the House floor for consideration.

House Bill 388 – (Sponsors: Rep. Hudson, et. al.) – This bill would dramatically increase the penalty for scofflaws who are not registering their vehicles in Delaware after they move here. The sponsors note the current \$25 fine for violators is not a sufficient deterrent to prevent the illegal behavior. Under the bill, first-time violators would be fined between \$400 and \$600. Subsequent violations could earn a civil penalty of \$800 to \$1,200 and/or 10 to 30 days in jail.

Status: Released from a House committee. Heads to the House floor for consideration.

House Bill 342 – (Sponsors: Rep. Hudson & Sen. Bonini, et. al.) – This is the first leg of a Constitutional Amendment that would require that if the growth of the state's operating budget exceeded the rate of inflation, a three-fifths majority (60-percent) vote would be needed to pass the spending plan. The supporters of the bill maintain the change would provide a modest check on the growth of state spending. The bill is a revival of legislation introduced during the last legislative session (House Bill 522). As a constitutional amendment, HB 342 would need to be approved by the current General Assembly before June 30, then again by the upcoming 146th General Assembly that begins in January. Constitutional amendments do not require the signature of the governor.

Status: Failed to be released by the House Appropriations Committee.

House Bill 399 – (Sponsors: Rep. Scott, et. al.) – This bill seeks to create the new Inspire Scholarship Program, to help students who both excel academically and have economic need, attend Delaware State University. Supporters say the intent of this program is to increase the number of Delaware students completing college degree programs. Scholarship recipients would be required to maintain high marks and show continual progress toward their degrees. They would also

need to complete at least 10 hours of community service per semester. The amounts available to the grant recipients would be subject to available funds and would be capped at the amounts available to recipients in the state's current SEED scholarship program.

Status: Released from the House Education Committee. Sent to the House Appropriations Committee.

House Bill 413 – (Sponsors: Rep. Lavelle, et. al.) – This bill would clarify that the state Insurance Department is subject to state procurement laws, including professional services contracts. The legislation is a reaction to published reports that Insurance Commissioner Karen Weldin Stewart awarded “no-bid” contracts to out-of-state companies when Delaware companies could have performed the work at competitive or cheaper rates.

Status: Pending action in the House Administration Committee.

[*partial list](#)