

MICHAEL P. MULROONEY
STATE REPRESENTATIVE
Seventeenth District



HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
LEGISLATIVE HALL
DOVER, DELAWARE 19901

COMMITTEES
Natural Resources, Chair
Energy, Vice Chair
Labor, Vice Chair
Capital Infrastructure
Education
Revenue & Finance
Veterans Affairs

Natural Resources Committee
Meeting Minutes
May 5, 2010

Chairman Mulrooney called the meeting to order at 12:10 p.m. Members present included Representatives Q. Johnson, Carson, Hocker, Kovach, Walls, Kowalko, Atkins, and Thornburg. For a list of guests present, please see attached.

After calling the meeting to order, Chairman Mulrooney addressed **SB 234 AN ACT TO AMEND TITLES 7 AND 30 OF THE DELAWARE CODE RELATING TO RECYCLING AND BEVERAGE CONTAINERS**. Rep. Mulrooney read off a hand out that gave the key points of the bill. The handout is attached for further review. Rep. Mulrooney addressed the debate about whether this bill institutes a tax or a fee. He joked that in the spirit of compromise, they will call it a “fax”. He then asked Secretary Colin O’Mara, of the Delaware Department of Natural Resources and Environmental Control, to give some comments about the bill.

Secretary O’Mara thanked everyone for being there. He expressed his excitement about this bill because he feels that it solves the statewide challenge that Delaware has had for a long time with universal recycling. Secretary O’Mara explained that everyone who would have an interest in recycling was a part of the bill. He expressed his appreciation towards Rep. Mulrooney and Senator McBride for their leadership on this bill. Secretary O’Mara went on to say everyone worked hard on this bill to make sure everyone’s needs were met and accomplished the goal of creating robust recycling in Delaware. He said that right now there is a 30% recycling rate in this area, and with this bill that percentage could be raised to 50%. He believes that if recycling is made easy then everyone will recycle.

Secretary O’Mara explained that this bill takes a deposit that already exists and gives residents a 20% reduction. He went on to say that the money collected would be used to build up the infrastructure that is needed across the state for recycling. Secretary O’Mara reiterated that the fee will go away after four years. He explained that he is happy to entertain any questions and understands that there are some concerns. Secretary O’Mara reiterated that this bill is a product of grand compromise. He discussed when the committee last year wanted to remove the bottle bill in its entirety with nothing else to replace it. He believes that this bill does what the committee wanted. It comes up with a solution for statewide recycling and creates new jobs.

Rep. Mulrooney thanked Secretary O’Mara. He also singled out Greg Patterson because he had heard that Greg did a fantastic job on the bill.

Rep. Kovach said that this bill is a product of a lot of compromise and that he had a lot of questions not intending to be critical. He expressed that he is a sponsor of the bill and that he believes that something needs to be done. He also expressed that this bill will probably be a good step forward but wanted to have answers to his concerns. Rep. Kovach asked about the equity of the funding and grants programs. Rep. Kovach asked if the people who are already invested in recycling equipment would be eligible for the credit.

Secretary O'Mara explained that the language in the bill is flexible enough to do just that. He also said that he would prefer to use the money for new equipment, but they do have the flexibility to give funds to the people who have already invested. Secretary O'Mara expressed that he did not want to punish anyone who has already done a good job of recycling. He noted that line 64 is where they were given this flexibility.

Rep. Kovach thanked Secretary O'Mara for his response. His next concern was about this bill disturbing the market place. He explained that it could give people who have already invested in the recycling equipment an unfair advantage because the people who have been given grants can afford to reduce their rates.

Secretary O'Mara responded by saying that no one will be punished for being early actors. They are committed to making sure that everyone receives what they need. Rep. Kovach invited anyone who had an interest in this issue to speak up during public comment.

Rep. Kovach addressed the change from a 5-cent deposit to a 4-cent fee. He explained that it is a reduction, and it isn't a reduction. For those who are recycling, it will be an increase in 4 cents. He asked what the motivation is behind cutting the fee. Secretary O'Mara said that one of the main concerns was having the revenues match the needs. Reducing it by a cent was a way to give people a little bit of relief and collected the funds needed to get the program started.

Rep. Kovach asked what incentive residents have to recycle instead of just throwing things out. Secretary O'Mara explained that the legislature had two paths: expand the bottle bill or take the resources to expand the infrastructure. He does not believe that this bill will increase the litter uptake. He also explained that if people had a choice between recycling and trash, that people will choose recycling if it is made easy enough.

Secretary O'Mara explained a fourth piece to their strategy was to offset the need for tipping fees. This is also an economic incentive. He also explained that it is cheaper any day of the week to recycle than to just throw trash away. Recycling creates jobs because when trash goes into a landfill, it just stays there. Rep. Mulrooney also added the problems associated with building a new landfill: cost, placement, etc.

Rep. Kowalko made a remark about the incentive to recycle. He expressed that the incentive to recycle is to preserve this world for future generations. The incentive in this bill is the opportunity to participate in that. Rep. Kowalko expressed his trust in Delaware's citizens will have the moral fiber to recycle.

Rep. Carson thanked Secretary O'Mara for attending the meeting. He explained that he understood that carts and trucks would be given as grants, but it seems in the bill that municipalities are being made to take out loans. Secretary O'Mara explained that they put this language in the bill so there would be flexibility to make decisions. He expressed that the promise is to give municipalities their own vehicles with out any cost. Rep. Carson reiterated that municipalities would not have to pay for their own trucks if they decided to become their own haulers. Rep. Carson asked if there would be a tipping charge for municipalities that decide to become their

own haulers. Secretary O'Mara explained that DSWA signed contract that states there will be no tipping fees. He explained that their hope is that eventually, if the market gets better, the municipalities will be able to receive revenue for their recyclables.

Rep. Carson asked how long the carts last before they have to be replaced. Secretary O'Mara responded 15 years. Rep. Carson asked if the municipalities would be mandated to follow a set standard such as: collect trash one day then the next day recycling. Secretary O'Mara explained that all the bill is asking for is every other week pick up. Rep. Carson also asked if it would be possible to place someone from the municipalities on the Recycling Public Advisory Council. Secretary O'Mara expressed that people from the municipalities are already on it, such as the mayor of Newark. Rep. Carson asked if there were any penalties placed on people who don't comply. Secretary O'Mara clarified that there will be no penalty on homeowners but there will be on companies that do not offer recycling. Rep. Carson asked if the League of Local Governments supports this bill. Kim Willson, from the Delaware League of Local Governments, said that they do support this bill.

Rep. Q. Johnson asked if there will be any restrictions placed on the companies that receive the grant. Secretary O'Mara referred to line 178 of bill and explained that the only restriction is that there cannot be any rate increases of solid waste collection. Rep. Q. Johnson followed up by asking if whatever the companies charge now will have to remain, and if there are any bench marks that have been set. Secretary O'Mara explained that they have worked with DSWA to get a grasp of the rates and will provide the information to the General Assembly so they can see how things are moving along.

Rep. Hocker asked where the fiscal note is for this legislation. Secretary O'Mara responded that there is one. The fiscal note was made available to everyone at the meeting. Rep. Hocker explained that he is against this piece of legislation because he does not believe it will work. It will not work because of the cost involved. He also expressed that private business can do this much better and cheaper. Rep. Hocker said the number of households that are recycling is growing all the time. He stated that this bill is nothing but increasing government's role. In order to help the current economic state, he believes that they have to decrease the size of Delaware's government. Rep. Hocker also stated that the calls and e-mails he has been receiving from his constituents have been calling this bill a tax. He also explained that the reason the bottle bill is not working is because there is no market for glass.

Secretary O'Mara appreciated Rep. Hocker's comments but challenged some of his assumptions. He explained that this bill is not proposing a government-run program. DNREC trucks will not be used. Secretary O'Mara went on to say that this will be a completely private solution. DNREC is not planning to add any additional staff either. He also challenged the numbers that Rep. Hocker used. This bill will create job possibilities for people. He also felt that this bill is a fee in the whole sense of the definition. Delaware is not the first state to start this initiative, and other states have had such great success with this. Rep. Hocker clarified that he was against this bill because of the views of his constituency. He believes that this bill will cost households more money. Rep. Hocker also expressed that the municipalities are doing a better job at recycling.

Rep. Kovach asked about where the tax will be collected, at the distributor level or the retailer level. Secretary O'Mara said that the bottom line is that the state wants to be transparent, that is why the tax will be collected on the retailers. David Small, of DNREC, explained that there was a concern if the fee was collected by the distributor that there could be a way for the fee to roll up and cost people more.

Rep. Kovach asked about the certain exclusion in the bill. There are exclusions for the people who enjoy glass bottled beverages especially at a restaurant or a bar. He asked if this was done for convenience sake. Secretary O'Mara explained that they view restaurants separate because the bottles never leave the establishment. The restaurants are willing to start earlier than any other institution and recycle right on site and because of this DNREC felt that they deserve special consideration. Rep. Kovach asked if there was a requirement for the restaurants to recycle this material immediately. Mr. Small stated that there is an existing expectation for on-site sale in the current bottle bill. The restaurant industry came to them and said that they would be willing to start recycling earlier than what the legislation asked for. Rep. Hocker commented on Rep. Kovach's question. He felt that it should be at the retailer level even though it could be an issue.

Rep. Kowalko expressed that he felt the exemption was well-placed because it gives a consistency to previous legislation requirements. He went on to say that if legislators put this fee on the distributor level, then the public would have good cause to think that they are posing a value-added tax. The public is not in favor of a value-added tax. Rep. Kowalko stated that it could look like they are trying to hide a fee somewhere opposed to what they are really doing. They are trying to create an openness and revenue neutrality. He explained that dedicating a fee/tax/revenue to something like this, which only has a four year life span, is the best and most appropriate way to do this.

Rep. Kovach asked why this bill is not taking the opportunity to impose a more proportional version on the containers that cause the societal costs of recycling. Secretary O'Mara reiterated that this legislation is a result of compromise and DNREC did not want to place any extra fees on companies. The bill's authors also had to take in to account the strong preferences of the stakeholders. Secretary O'Mara explained that this was the best way to make everyone happy.

Rep. Kovach asked about multi-stream recycling compared to single-stream recycling. Secretary O'Mara expressed that the easier it is to recycle, the more participation there will be. He gave an example about how in California, they have five separate bins and have very low participation rates. Secretary O'Mara also explained that if they did multi-stream recycling, the infrastructure costs would go up significantly because they would need more bins, trucks, etc.

Rep. Kowalko explained that single stream is the best way to get household participation. He went on to say that the technology out there to eventually allow a private enterprise to be able to make a profit in recycling.

Secretary O'Mara expressed that one of the biggest opportunities for Delaware is the job possibilities that will open up because of this legislation. He gave an example: The Wilmington organic recycling site made a commitment to hiring local people. He also discussed how incredible and efficient the technology is to separate the different recyclable materials. Secretary O'Mara agreed with Rep. Kowalko's comments. Rep. Kowalko added that the market overseas for recyclables is growing and as long as that is happening, it makes the recyclables more profitable.

Rep. Kovach expressed that his final concerns were financial ones. He asked how the public could be guaranteed that the 4-cent fee will sunset and what would happen if the \$22 million cap was not enough to support the infrastructure. Secretary O'Mara responded by saying that the legislation states the fee ends in 4 years, and he does not know of any other way to guarantee that other than by the force of law within this bill. He also expressed that DNREC does not foresee needing anymore funds for the infrastructure and that what they are proposing is sufficient for what they are trying to accomplish.

Rep. Kovach asked if DNREC's usages of the funds are limited by this bill and how they would be used. Secretary O'Mara stated that a majority of the funds will go to the grant program and the initial education. He explained that both of those are short term and limited roles that need to be filled.

Rep. Thornburg expressed that she is a recycler in Dover. She asked that if this bill should be enacted what happens the companies that already offer recycling. She was reiterating Rep. Kovach's concerns about there being a balance distribution. Secretary O'Mara re-stated his sentiments that there would be even distribution.

Rep. Mulrooney opened the discussion to public comments. The first speaker was Kim Willson from the Delaware League of Local Governments. She said that league voted to support this bill. Rep. Q. Johnson asked her if there were any dissenting votes. Ms. Willson responded that there weren't any. She explained that there was a list of concerns that they went through one by one and by the end the league felt that these concerns were addressed. Rep. Hocker requested a list of all those who were at the meeting because he has had a lot of municipalities express concern to him. Ms. Willson said she would provide him the list.

The next speaker was Robert Tunnell from Blue Hen Organics. He explained that his company was first to have yard waste recycling in Sussex county. Mr. Tunnell expressed his support for the bill. He said that the time has come for the State of Delaware to embrace recycling. Mr. Tunnell brought up what he felt were 3 unintended consequences of the bill: 1) by subsidizing the cost of recycling, people are not able to understand the real costs of recycling, 2) the \$22 million will not be adequate to provide for the start up costs, and 3) by subsidizing the initial costs for private businesses, they are creating an artificial barrier to entry for new haulers that will have to pay all the costs when this legislation sunsets.

The next speaker was Bryan Vickers from the Glass Packing Institute. He explained that he had some concerns regarding the single stream collection and the costs. Mr. Vickers stated that he was worried about the quality of single stream especially because it does not take full advantage of glass recycling and because the recyclables can be easily contaminated. He also said that he does not think it is fair for the people who have to pay the 4-cent fee. Mr. Vickers explained that 60% of what recyclers receive are glass beer bottles, and this puts the glass bottle producers at an unfair disadvantage. These producers are paying for a recycling system that does not really benefit them. Mr. Vickers said that he would want the fee to be lowered to 1 cent and be expanded to all producers to make it much fairer for everyone who will be benefiting from the recycling program. Rep. Hocker stated that one of the big costs to recycling is the glass because there is no market for glass. Mr. Vickers agreed but claimed that glass is a big cost because participation is so low. He would like to work more closely with member plants create a program that can be more successful because it is able to use more recyclables.

Rep. Kovach asked Mr. Vicker, based on his glass manufacturing standpoint, how the broader fee would help him and recycling as a whole. Mr. Vicker stated that the broader fee would help them because it would take away competition. He felt that if everyone is contributing then this program will have a better chance for success. Rep. Kovach asked him if he would want multiple stream recycling. Mr. Vickers articulated that multiple stream is much more effective for the end users of the recycled products. Rep. Kovach asked him how many streams he would want. Mr. Vickers responded that he would want three. The glass and plastic would be fine together, papers would need to be separated, and the metals would need their own bin. He went on to discuss the cost of having each container, but he did not have any actual numbers with him. Rep. Kovach asked if it was a fair assessment to say that the glass is the least valuable of all the materials. Mr. Vickers stated that it

is different in regional areas. Rep. Mulrooney clarified that no one disagrees with Mr. Vickers, but this bill is a fragile compromise and they are just trying to get something started.

The next speaker was Brenna Goggin from the Delaware Nature Society. She expressed that she felt very strongly about this bill because it provides both economic and environmental benefits to the state. She submitted a copy of her comments, and they have been attached for further review.

The next speaker was Kim Gomes from the Byrd Group. She was there on the behalf of Independent Disposal Service. Mrs. Gomes said IDS is in favor of this bill, and if it is to pass then the company will be able to hire more people. She also explained that IDS just purchased a recycling truck from DSWA and plans to purchase another soon. Mrs. Gomes went on to say that IDS feels this bill is a great starting point. She also handed in a statement on behalf of the Maryland-Delaware Solid Waste Association. The statement has been attached for further review. Rep. Kovach asked if IDS will be seeking reimbursement for the truck from the state. Mrs. Gomes responded no.

The next speaker was David Stevenson from the Caesar Rodney Institute. He explained that he was not against recycling and that he currently participated in curb recycling. Mr. Stevenson expressed that he had a lot of problems with this bill. He addressed a specific line in the bill that prohibits haulers from separating out the cost of recycling from the rest of the trash collection. He felt that this looks like they are trying to hide the cost from the consumers. Mr. Stevenson also had a problem with DSWA not being allowed to charge a processing fee. They spend \$1.6 million on processing and only on good years is it offset by the value of the recyclable materials. He also stated that he felt the deposit bill is hiding the cost of the recycling. Mr. Stevenson articulated that this bill proposes spending \$22 million in start up costs to only save \$600,000. He discussed Rep. Kovach's concerns for the relative costs of materials. Mr. Stevenson clarified that tipping fees have nothing to do with how much space there is in the landfills. DSWA had increased tipping fees because they were collecting less material.

Rep. Kovach asked what Mr. Stevenson's main changes to the bill would be. Mr. Stevenson would reverse the wording that prohibits haulers from showing separate costs, abandon the bottle deposit law, and would take out the table on page 7 that gives zero waste diversion goals.

Rep. Kovach asked why there was language in the bill about not separating the costs of trash collection and recyclables collection. Secretary O'Mara explained that DNREC wanted it to be shown as one service so that it would be considered that way. Rep. Kovach asked if households will have to pay for recycling even if they chose not to. Secretary O'Mara responded yes because the service will be provided no matter what. Rep. Kovach asked if the haulers could offer a lower rate for the people who chose not to recycle. Secretary O'Mara responded that there is nothing in the bill that prohibits that.

The next speaker was Sandy Spence from the League of Women Voters of Delaware. She expressed their strong support of the bill and urged the committee to release the bill.

The next speaker was Bob Troster from the Delaware Wholesalers Association. He explained that he was in favor of the bill, and that he recognized the great compromise that went in to creating the bill. Mr. Troster hopes that this new bill will allow Delaware to move on with recycling.

The next speaker was Rich Collins from the Positive Growth Alliance. He declared that this hearing was distressing to him. Mr. Collins explained that this bill was putting another burden on families in an already weak economy. He also felt that this bill was on the fast track and because of that there are major things that have been over looked. Mr. Collins felt that the economy should be the number one concern on everyone's mind. He also believes that this program is going to cost more than what DNREC is claiming. Mr. Collins also was irritated that the people were using New Jersey and New York as examples of what Delaware should follow because these two states are going bankrupt. He believes that free enterprise is the answer. He also stated that this bill creates Delaware's first sales tax. Lastly, Mr. Collins clarified that Delaware does not have a landfill problem but has a road side trash problem that is due to irresponsibility and lack of money to pay for trash collection.

The next speaker was Laird Stabler from Laird Stabler and Associates LLC. He was there to represent Tomra North America. Mr. Stabler expressed their support of universal recycling and felt that they could have been a very valuable source if they were asked to the table when this bill was being drawn up. Mr. Stabler handed out a list of suggestions that could make this bill better. The handout has been attached for further review.

The next speaker was Julie Wenger from the Delaware Food Industry Council. She expressed her support of this bill. She also expressed that she felt if this bill were to be enacted, it would be a seamless transition. Rep. Hocker held that this bill is not the answer to the problem. He also stated that he was not asked for input when this bill was drawn up.

The next speaker was Jim Black from the Clean Air Council. He expressed that the council was very much in support of this compromise. Mr. Black also clarified that this bill has not been fast tracked and has been worked on for years.

The next speaker was Dave Swayze from the law firm of Parkowski, Guerke & Swayze. He said that this bill marries the goal of recycling with a subsidizing mechanism on glass packaging and small plastic bottling. Mr. Swayze explained that the fee imposed is on less than 25% of the containers sold in this state. Glass will be subsidizing this structure and will be getting the least amount of benefits. He also went on to say that glass was not considered because there isn't a glass manufacture in the state. Mr. Swayze said that there is significant inequality with this bill and universal recycling will not be opposed if the fee is equally shared.

Rep. Mulrooney thanked everyone for attending. He held that it has been a fair and open discussion. Rep. Kowalko motioned to release the bill from committee. Rep. Thornburg seconded the motion. The bill was released from committee by a 2-5-0 vote.

Chairman Mulrooney adjourned the meeting at 2:11 p.m.

Respectfully Submitted by,

Morgan DiGravina