



SPONSOR: Sen. Hoffner & Rep. Romer  
Rep. Berry

DELAWARE STATE SENATE  
153rd GENERAL ASSEMBLY

SENATE BILL NO. 287  
AS AMENDED BY  
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO SOLID WASTE RECYCLING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6053, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6053. Universal recycling.

The goal of universal recycling is to create an economy of scale wherein a dramatic increase in Delaware's diversion of recyclables occurs in the most cost effective manner achievable while simultaneously creating job opportunities and significantly reducing Delaware's rate of waste disposal. Universal recycling shall be implemented in accordance with the following provisions:

(1) Effective no later than September 15, 2011, the Authority shall cease providing curbside recycling services, including yard waste collection, and all persons providing solid waste collection services in the State shall also provide:

a. Single-stream curbside recycling collection services to all of their Delaware single-family residential customers, including delivery of a container for the purpose of storage and collection of recyclables that is adequately sized for the customers use such that recycling is encouraged and disposal of recyclables is discouraged; and the recyclables collection service shall be provided at a frequency of not less than once every other week.

b. Source-separated recycling collection services to dealers who provide on-premise sales, including delivery of a recyclables container that is adequately sized for the premise being served and a frequency of recyclables collection that shall preclude the recycling containers from overflowing and otherwise causing a nuisance.

c. All single-family residential and on-premise sales customers with a single charge for the collection of waste and recyclables on their "waste services" bill that is inclusive of the combined waste

and recycling collection service costs. Local governments that do not presently bill separately for the costs of waste collection are exempt from this requirement

d. Notification to all customers that the single-stream recycling service will be provided and instructions on participation prior to September 15, 2011.

e. Annual notification to single family residential customers with instructions on participating in the recycling program, including educational content about recyclable material.

(2) Effective no later than January 1, 2013, all persons providing solid waste collection services in the State shall provide:

a. Single-stream recycling collection services to all of their Delaware multi-family residential customers, including providing the multi-family complex with an appropriately sized and centrally located recyclables collection container or containers for the complex being served and ideally in the same proximity as the complex's waste disposal containers. Local governments may require multifamily complex owners to provide their own recyclable collection containers consistent with local requirements.

~~b. Notification~~ Annual notification to the multi-family complex management ~~that the single-stream recycling service, including instructions on participation, will be provided.~~ with instructions on participating in the recycling program, including educational content about recyclable material.

c. A frequency of recyclables collection that shall preclude the recycling containers from overflowing and otherwise causing a nuisance.

d. Written justification to the Department for not providing multi-family recycling collection services where the physical constraints of the site prevent the placement of both trash and recycling containers. Exclusion from multi-family recycling is subject to Department review and approval.

(3) Owners or operators of multi-family complexes must, at least once per calendar year, provide residents with instructions on participating in the complex's recycling program, including educational content about recyclable material.

(4) ~~The Recycling Public Advisory Council shall issue a report to the Governor and the General Assembly no later than November 1, 2012, with recommendations regarding the implementation of universal recycling in the commercial sector.~~ It is the express requirement of this legislation that universal recycling be adopted by the commercial sector and that all commercial businesses actively participate in a comprehensive recycling program no later than January 1, 2014.

a. A comprehensive recycling program for the commercial sector must, at a minimum, include recyclable wastes that are collected in the Authority's single-stream recycling program.

b. Persons who provide waste collection services to commercial customers shall include delivery of a container for the purpose of storage and collection of recyclables that is adequately sized for the customers' use such that recycling is encouraged and disposal of recyclables is discouraged; the recyclables collection service must be provided at a frequency of not less than once every other week.

c. Commercial businesses shall assess all generated wastes, other than those that are able to be accepted in the Authority's recycling program, and identify those wastes that have commercially available means of recycling. Commercial businesses shall recycle those wastes unless the commercial business determines that the cost of recycling those wastes exceeds the cost of disposal. The commercial business must maintain records documenting this evaluation for Department review.

(5) Persons who choose to transport and deliver the solid waste and recyclables they generated on their own property for proper disposal or to a recycling facility of their choice respectively ~~shall not be~~ are not affected by this subchapter and may continue in this practice.

(6) Nothing shall impair the ownership of recyclable materials by the generator unless and until such materials are placed at curbside or similar location for collection and recycling, and nothing in this chapter shall be construed to prevent any person from collecting, transporting, processing, and marketing recyclable materials in competition with other persons in the same business, including the Authority, provided that the requirements of this subchapter are satisfied.

(7) Persons engaging in the collection, transportation, processing, or marketing of source separated recyclable materials shall conduct such activities in a manner that the source separated recyclable materials enter the marketplace and are otherwise not disposed via a landfill or by incineration.

(8) Persons who collect single-stream recycling may not knowingly commingle the contents of waste and recyclable containers for disposal.

(9) Persons who collect single-stream recycling may report to the Department known instances of repeated contamination of recyclable containers placed out for recycling.

Section 2. Amend § 6054, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6054. Delaware Recycling Fund.

(c) The Fund shall be used by the Secretary for the exclusive purpose of funding specific activities designed to enhance the State's recycling rate and the diversion of recyclables that would otherwise be land disposed. ~~The Fund may be expended only:~~

~~(1) To fund the Recycling Grants and Low Interest Loan Program referenced in § 6055 of this title. Annual funding for the Recycling Grants and Low Interest Loan Program shall be dependent on revenue generated by the Fund;~~

~~(2) To pay the limited and reasonable cost of the Department and the Recycling Public Advisory Council to study, evaluate and report on the status and potential for recycling various components of the solid waste stream, with emphasis on those aspects of municipal solid waste and commercial waste necessary to achieve the diversion goals established in § 6056 of this title;~~

~~(3) To pay the Department's limited and reasonable costs for administering this subchapter. No greater than 10% of the revenue deposited into the Fund shall be used by the Department for administering this subchapter without approval of the Joint Finance Committee and shall include but not be limited to: promoting the Recycling Grants and Low Interest Loan Program, universal recycling, zero waste principles, development of reporting requirements and related recycling initiatives; and~~

~~(4) To pay the Division of Revenue for the costs of administering § 2912 of Title 30.~~

~~(d) The Department shall commence the Recycling Grants and Low Interest Loan Program in calendar year 2011 and offer the Program at least annually thereafter until 2014.~~

~~(e) The revenue from the Fund and its disbursement via the Recycling Grants and Low Interest Loan Program shall be subject to audit and the recipient of any such funding shall agree to the audit and cooperate with the auditor as a condition of receiving funding.~~

~~(f) No expenditures shall be made from the Fund for any grants or loans pursuant to § 6055 of this title without the approval by the Controller General and Director of the Office of Management and Budget of a plan for revenues and expenditures for the period between December 1, 2010, and September 15, 2011.~~

Section 3. Amend § 6055, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 6055. Recycling Grants and Low Interest Loan Program.~~

~~(a) There is hereby established a competitive Recycling Grants and Low Interest Loan Program (the "Program") to assist persons engaged in the business of collecting, transporting, processing, or marketing recyclable materials with the implementation of:~~

~~(1) Source-separated recyclables collection and processing programs with emphasis on start-up costs for residential single-stream recyclables collection; and~~

~~(2) Start-up costs for initiatives which result in the recycling of solid waste materials which would otherwise be land disposed, with emphasis on commercial waste.~~

~~The Program shall be administered by the Department, and moneys from the Program shall be paid based on approved grant and loan moneys. The Department shall be entitled to disburse grant and loan monies for the documented costs of implementing the collection or processing of recyclable materials. The Department shall be entitled to adopt guidelines and procedures for administering the Program and determining eligibility for receipt of funding pursuant to § 6054 of this title. Such procedures shall include provisions for repayment of loans to the Department and may include a rebate program for costs based on, including but not limited to, a prorated share of household customers in a recycling program that may have been in existence prior to creation of this law. The Department shall solicit the commentary of the grant eligible stakeholders during development of the grant guidelines and procedures. The Program shall be funded by monies made available under the provisions of § 6054 of this title.~~

~~(b) The Recycling Public Advisory Council, after the receipt of comments by grant and loan eligible stakeholders, shall make recommendations annually to the Department regarding the programmatic priorities for awarding Program funds under this subchapter. The Recycling Public Advisory Council shall provide recommendations regarding the categories and priorities for grants and loans that reflect an informed and representative view of the most urgent and important areas where grant funding will provide the most benefit to the State balancing current needs with those of future generations.~~

~~(c) The Department shall review all grant and loan applications and award grants and loans taking into consideration the Recycling Public Advisory Council recommendations. In those cases where the Department's funding decisions differ significantly from the Recycling Public Advisory Council recommendations, the Department shall report to the Recycling Public Advisory Council the justification for such differences.~~

~~(d) Any person providing solid waste collection services that is a recipient of a grant or low interest loan from the Delaware Recycling Fund shall not, as a result of implementation of universal recycling, increase rates charged for solid waste collection between such time as they make application for the grant until March 15, 2013.~~

Section 4. Amend § 6056, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6056. Adopting diversion goals and reporting requirements.

(1) In order to effectively measure the diversion rates being achieved, all persons, including persons who collect, ~~process~~ process, or market recyclables, with the exception of those specified in § 6053(5) of this title, must

report to the Department on a calendar year basis, no later than February 15 of the following year, the type and quantity of recyclables managed, the method of recycling collection used (single or multiple streams), and the location of the recycling facilities used pursuant to reporting guidance developed by the Department and the ~~Recycling Public Advisory Council~~ Authority. Said reporting guidance ~~shall~~ must be developed pursuant to the solicitation of stakeholders responsible for reporting, shall take into account the need for confidentiality of the information ~~reported~~ reported, and shall be finalized no later than December 1, 2010. The first recycling report shall cover calendar year 2011 and shall be due no later than February 15, 2012.

(2) In order to ensure that the waste diversion goals specified in Table 1 of this section above are achieved by the dates specified, the Department, ~~in cooperation with the Recycling Public Advisory Council [RPAC]~~, shall assess progress and recommend to the Governor and General Assembly any additional mechanisms ~~necessary including but not limited to~~ necessary, including all of the following:

- a. ~~which~~ Which waste streams must be diverted from ~~disposal;~~ disposal.
- b. ~~the~~ The parties responsible for ensuring the identified waste streams are diverted from ~~disposal;~~ disposal.
- c. ~~the~~ The date by which the diverted waste streams must be diverted from ~~disposal;~~ disposal.
- d. ~~implementation~~ Implementation of Pay As You ~~Throw;~~ Throw.
- e. ~~Extended Producer Responsibility;~~ Responsibility.
- f. ~~incentive-based recycling;~~ Incentive-based recycling.
- g. ~~waste~~ Waste bans and related requirements.

~~Such assessment shall be completed, inclusive of any draft legislation determined necessary, and submitted to the General Assembly no later than November 1, 2014, as part of the RPAC annual report.~~

Section 5. Amend § 6058, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6058. ~~Establishment, composition and responsibility of the Recycling Public Advisory Council.~~ Stakeholder Engagement.

~~(a) There is hereby established a Recycling Public Advisory Council (the "Council"). The Council shall be composed of 16 members who shall be appointed by the Governor as follows: The Department shall coordinate with the Authority in convening periodic meetings of stakeholders to discuss the status of recycling activities in Delaware. For purposes of this section, "stakeholders" include representatives from all of the following:~~

- (1) The Department.

- (2) The Authority.
- (3) The Delaware Association of Counties.
- (4) The Delaware League of Local Governments.
- (5) The recycling industry.
- (6) The waste hauling industry.
- (7) The soft drink industry.
- (8) The alcoholic beverage industry.
- (9) Delaware State Chamber of Commerce.
- (10) The restaurant industry.
- (11) The Delaware Food Industry Council.
- (12) The public.

(1) One member from the Department;

(2) One member from the Authority;

(3) One member representing county governments, with such member being recommended by the Delaware Association of Counties;

(4) One member representing municipal governments, with such member being recommended by the Delaware League of Local Governments;

(5) One member representing the recycling industry;

(6) One member representing the waste hauling industry;

(7) Two members, 1 representing the soft drink industry and 1 representing the alcohol beverage industry;

(8) One member representing the Delaware State Chamber of Commerce;

(9) One member representing the Delaware restaurant industry;

(10) Five members representing community-based or public interest groups; and

(11) One member representing the Delaware Food Industry Council.

(b) Members of the Council, except for those appointed pursuant to paragraphs (a)(1) and (2) of this section above, shall serve for terms up to 3 years and may not serve more than 2 consecutive terms but may again serve after 1 year off of the Council. Members shall be appointed for staggered terms so that no more than 5 appointments shall expire in any 1 calendar year. Members may be reimbursed for travel to and from meetings. The Governor shall appoint a Chairman from among the 16 members. Actions of the Council shall be approved by a majority vote of the Council. At least 9 members of

the Council shall constitute a quorum. The Council may adopt bylaws as it deems appropriate to serve the purposes of this subchapter.

(c) The Recycling Public Advisory Council shall:

(1) Advise the Department and the Authority on all aspects of recycling;

(2) Advise the Department in developing criteria for the Recycling Grants and Low-Interest Loan Program and selection of applications as well as provide an annual assessment of the revenue needed to satisfy the grant requirements;

(3) Maintain, in conjunction with the Department and the Authority, a methodology for measuring recycling rates;

(4) Provide advice and recommendations regarding the recycling outreach and education programs conducted by the Authority and/or the Department;

(5) Report to the Governor and the General Assembly annually by November 1 of each year on the status of recycling activities in Delaware. Said report shall include, but not be limited to the following:

a. Status of attainment of the recycling goals specified in § 6056 of this title;

b. An accounting of the recycling grants and loan program and any recommendations for future funding of the grants and loan program;

c. An assessment of the activities of both the Department and the Authority in achieving the recycling goals specified in § 6056 of this title;

d. An objective, auditable accounting of recycling rates for total solid waste, municipal solid waste, and residential solid waste;

e. Such other recommendations as the Council shall deem appropriate; and

f. Use the definitions of "recycling" and "municipal solid waste" as stated by the United States Environmental Protection Agency in its document EPA530-R-97-011 dated September 1997. The Council shall be able to adopt changes to these definitions.

(d) The Department, in concert with the Authority and the Council, shall:

(1) Monitor the State's recycling initiatives and measure Delaware's achievements toward attainment of the recycling goals specified in § 6056 of this title;

(2) Design and implement public educational efforts aimed at increasing public awareness of recycling opportunities;

(3) Provide technical assistance to local entities to assist them in increasing their recycling rates; and

~~(4) Provide administrative support to the Council.~~

Section 6. Amend § 6059, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 6059. Enforcement, civil and administrative penalties.~~

~~(a) Whoever violates this subchapter, or any rule or regulation promulgated there under, or any order of the Secretary, shall:~~

~~(1) For the first conviction, be fined not less than \$100 nor more than \$500 for each day of violation;~~

~~(2) For each subsequent conviction for the same offense within a 10-year period, be fined not less than \$500 nor more than \$1,500 for each day of violation;~~

~~(3) In the Secretary's discretion, the Secretary may endeavor by conciliation to obtain compliance with all requirements of this subchapter. Conciliation shall be giving written notice to the responsible party:~~

~~a. Specifying the complaint;~~

~~b. Proposing a reasonable time for its correction;~~

~~c. Advising that a hearing on the complaint may be had if requested by a date stated in the notice; and~~

~~d. Notifying that a proposed correction date will be ordered unless a hearing is requested. If no hearing is requested on or before the date stated in the notice, the Secretary may order that the correction be fully implemented by the proposed date or may, on the Secretary's own initiative, convene a hearing, in which the Secretary shall publicly hear and consider any relevant submission from the responsible party as provided in § 6006 of this title.~~

~~(b) Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board, in accordance with § 6008 of this title.~~

Section 7. Amend Chapter 60, Title 7 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6060. Reporting Responsibility of the Department and Authority.

(a) The Department and Authority are hereby required to provide to the Governor and the General Assembly, by November 1 of each year, an annual report on the status of recycling activities in Delaware. Said report must, at a minimum, include the following:

(1) Status of attainment of the recycling goals specified in § 6056 of this title.

(2) An assessment of the activities of both the Department and the Authority in achieving the recycling goals specified in § 6056 of this title.

(3) An objective, auditable accounting of recycling rates for total solid waste, municipal solid waste, and residential solid waste.

(4) Use the definitions of “recycling” and “municipal solid waste” as stated by the United States Environmental Protection Agency in its document EPA530-R-97-011 dated September 1997. The Department is able to adopt changes to these definitions.

(b) The Department, in concert with the Authority, shall:

(1) Monitor the State’s recycling initiatives and measure Delaware’s achievements toward attainment of the recycling goals specified in § 6056 of this title.

(2) Design and implement public educational efforts aimed at increasing public awareness of recycling opportunities.

(3) Provide technical assistance to local entities to assist them in increasing their recycling rates.