SPONSOR: Rep. Maier & Rep. Valihura & Sen. McBride & Sen. Sokola
Reps. Lofink, Manolakos, Miro, Oberle, Brady, Ennis, Hall-Long, Johnson, Kowalko, McWilliams, Mulrooney, Schooley; Sens. Henry, McDowell, Peterson, Copeland, Sorenson, Connor, Simpson, Cloutier

HOUSE OF REPRESENTATIVES
144th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 146

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO RESIDENTIAL CURBSIDE RECYCLING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 6002, Title 7 of the Delaware Code, by inserting therein the following new paragraphs:

"(74) 'Collector' means a person who collects recyclable materials and/or organic yard waste.

(75) 'Municipal Solid Waste' means durable goods (excluding vehicles and other moving equipment), nondurable goods, containers and packaging, food scraps, organic yard waste and miscellaneous inorganic waste from residential (single- and multi-family households) and non-residential (commercial, institutional and industrial) sources. Municipal solid waste does not include construction and demolition debris, vehicle bodies, pre-consumer waste, municipal sludges, combustion ash or industrial process wastes.

(76) 'Organic yard waste' means plant material resulting from lawn maintenance and other horticultural gardening and landscaping activities and includes grass, leaves, prunings, brush, shrubs, garden material, Christmas trees and tree limbs up to 4 inches in diameter.

(77) 'Processor' means a person who manages recyclables and/or organic yard waste for the purpose of returning them to the economic mainstream.

(78) 'Recyclable Material' or 'Recyclables' means any material or group of materials that can be collected and sold or used for beneficial purposes.

(79) 'Single Stream' means a system in which all fibers (at a minimum paper, cardboard, etc.) and containers (at a minimum plastic and metal) are mixed together for collection into one container instead of being sorted into separate commodities and multiple containers.

(80) 'Source Separated' means the process by which recyclable materials are segregated and kept apart from the waste stream by the generator thereof for the purpose of collection, disposition, recycling or resources recovery.

(81) 'Transporter' means any person engaged in the transportation of municipal solid waste and construction and demolition debris.

(82) 'Authority' means the Delaware Solid Waste Authority.

(83) 'Recycling' means the process by which discarded municipal solid waste materials are separated and used as raw materials, products or replacement of products, including the reuse of organic yard waste, but does not include the burning of materials for energy.

(84) 'Local Governments' means counties, cities, towns, municipalities, civic or community associations within unincorporated areas of the state that are recognized as a not-for-profit organization under state and federal law.".

Section 2. Amend Chapter 60, Title 7 of the Delaware Code, by adding the following new Sections to Subchapter II thereof:

"§6043. Local Government Recycling Grants Program and Private Sector Initiatives.

(a) Local Government Recycling Grants Program. There is hereby established a competitive Local Government Recycling Grants Program (Program) to assist local governments with (1) the implementation of source separated recyclables collection and processing programs with emphasis on start-up costs for single-stream curbside collection and (2) start-up costs for initiatives which result in the beneficial use of municipal solid waste and construction and demolition debris materials which would otherwise be land disposed. The Program shall be administered by the Department, and monies from the Program shall be paid based on approved grant requests. The Department shall be entitled to charge to the Program an administrative fee of 7.5% of grants made to cover the cost of managing the Program. The Department shall be entitled to disburse grant monies for the documented costs of implementing the collection or processing of source separated 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 § 6044(a) of this Title. 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 § 6044.

(b) Local Governments and private sector entities engaging in the collection, transportation, processing, and marketing of source-separated recyclable materials shall conduct such activities in a manner that the source-separated recyclable materials enter the marketplace or, in the event the recyclable materials are unmarketable, then

put to other beneficial use.

(c) Private Sector Initiatives. There is hereby established a competitive grant program to assist private sector entities with (1) start-up costs for the implementation of source separated recyclables collection and processing programs with emphasis on single-stream curbside collection and (2) start-up costs for beneficial use initiatives which result in the beneficial use of municipal solid waste and construction and demolition debris materials which would otherwise be land disposed. The private sector initiatives program shall be administered and subject to the requirements set forth in subsection (a) above.

§6044. Delaware Recycling Fund.

(a) There is hereby established a Delaware Recycling Fund in the Department for the exclusive purpose of funding specific activities designed to enhance the state's recycling rate and the beneficial use of materials otherwise land disposed. Monies in the Delaware Recycling Fund shall be retained in an interest bearing account and may be expended only:

(1) To fund the Local Governments Recycling Grants Program and Private Sector Initiatives. Annual funding for the Local Governments Recycling Grants Program and Private Sector Initiatives shall be dependent on revenue generated by the Delaware Recycling Fund referenced in subsection (d) of this Section;

(2) To pay the Department's limited and reasonable costs and grant recipient's costs of establishing and conducting public outreach and education programs to promote the Grant Program, curbside recycling and organic yard waste management and beneficial use initiatives;

(3) To pay the limited and reasonable cost of the Department and Recycling Public Advisory Council, collectively studying and evaluating the status and potential for recycling the commercial component of municipal solid waste, and other improvements to the residential curbside recycling program, including the funding of initiatives undertaken by Local Governments and the private sector to enhance the recovery rates of recyclable materials and determination of the level of recycling achievable for all municipal solid waste and construction and demolition debris generated in the state as a result of implementation of the programs established under this Subchapter.

(b) The funding for the Delaware Recycling Fund shall be derived from an assessment of $3.00 per ton made by the Department for every ton of municipal solid waste and construction and demolition debris generated and/or

disposed in Delaware, excluding recyclable materials actually recycled and hazardous waste, collected by transporters and/or generators subject to: (i) the permit requirements of the Department pursuant to § 6001(c)(6), § 6003 (a)(4), and § 6025 of Title 7 of the Delaware Code; or (ii) the licensing requirements of the Authority adopted pursuant to § 6404 (6) of Title 7 of the Delaware Code. Quarterly (by the 15th of January, April, July and October) the Authority shall submit to the Department the names and addresses of the transporters subject to the provisions of 7 Del. C. 6404(6) and the total municipal solid waste and construction and demolition debris tonnage that each transporter delivered to each DSWA facility. The Department, via its transporter permit program, shall be responsible for identifying the generators and transporters of municipal solid waste and construction and demolition debris which do not use the Authority's facilities, and shall make an assessment for the tonnage of municipal solid waste and construction and demolition debris generated and/or disposed in Delaware.

(c) Any Local Governments subject to the assessment established under this § 6044 shall be entitled to seek and obtain an exemption from the assessment upon demonstration to the satisfaction of the Secretary that the Local Government has adopted a program which has achieved a recovery rate of 30 percent of the total residential solid waste which would otherwise be land disposed by the Local Government. The exemption shall be valid so long as the 30 percent recovery rate is being achieved on an annual basis.

(d) The assessment shall become effective three (3) months from the date of enactment and the Department shall collect the assessment from transporters and/or generators after the initial assessment on a quarterly basis utilizing forms and procedures developed by the Department. Payment of assessments shall be due within 30 days of the end of the quarter (The 30th of January, April, July and October), and any late payment shall bear interest at the rate of 1.5% per month. The Department shall provide an annual report to the Authority and the Recycling Public Advisory Council setting forth the amounts collected from each transporter and/or generator and any delinquencies. The Authority and the Department shall cooperate in maintaining an accurate list of active transporters and/or generators subject to the assessment. The Department shall be entitled to seek collection of any assessments due to the Department through civil action or may seek to impose on the transporter and/or generator the sanctions specified for violation of a permit condition as set forth in § 6005 of Title 7 of the Delaware Code.

(e) The Department shall commence the Local Governments Recycling Grants and Private Sector Initiatives Programs in calendar year 2009 and offer the Programs at least annually thereafter until December 31, 2015. One year prior to the termination date, the Department in consultation with the Recycling Public Advisory Council and pursuant to the solicitation of commentary by grant eligible stakeholders), shall report on the status of the Programs and

make recommendations to the Governor and General Assembly on whether and how the Program should be reauthorized. The assessment shall terminate as of December 31, 2015 unless reauthorized by enabling legislation.

(f) The Recycling Public Advisory Council, pursuant to solicitation of commentary by grant eligible stakeholders, shall make recommendations annually to the Department regarding the programmatic priorities for awarding grant funds under §6043 of this Title. The Recycling Public Advisory Council shall provide recommendations regarding the categories and priorities for grants 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 of Delaware balancing current needs with those of future generations.

(g) The Department shall review all applications and requests for funding from the Delaware Recycling Fund and award funding grants 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.

(h) The Authority shall not be entitled to receive any grants from the Delaware Recycling Fund.

(i) The Recycling Public Advisory Council and the Department shall publish annually by November 1st of each year a report on all actions and activities involving the Delaware Recycling Fund and the status of recycling activities in Delaware as they relate to attainment of the goals established under 7 Del C. §6046(a).

(j) The monies provided from the Delaware Recycling Fund shall be subject to independent audit and the recipient of any such funding shall agree to the audit and cooperate with the auditor as a condition of receiving funding.

§6045. Residential Curbside Recycling Programs.

Residential Curbside Recycling Programs eligible for receiving funding from the Delaware Recycling Fund shall provide that persons who participate in the curbside recycling program separate in single stream or multi-stream at least paper materials (including at a minimum corrugated cardboard), aluminum materials, steel materials, organic yard waste and plastics materials deemed capable of being recycled from other municipal solid waste generated at their homes, apartments and other residential establishments and to store such materials until collection. Nothing shall be deemed to impair the ownership of separated materials by the person who generated them unless and until such materials are placed at curbside or similar location for collection by the Local Government or other collector.

§ 6046. Minimum Recovery Rates.

(a) It is the intent of the General Assembly that the program implemented pursuant to this

Subchapter reduce the amounts of municipal solid waste, which is comprised of residential and commercial solid waste (including organic yard waste), currently deposited or capable of being deposited in landfills in this State by recovering from such municipal solid waste recyclable materials at the recovery levels specified below. The Department and the Recycling Public Advisory Council shall report annually on the recovery rates of municipal solid waste and construction and demolition debris by identifying all public and private recycling efforts which reduce the amounts of municipal solid waste generated. Any person engaged in recycling or resource recovery of source separated municipal solid waste generated in the State shall file with the Department an annual statement which contains the information required by the Department to determine and report on the recovery rate. It shall be a goal to achieve recovery rates of municipal solid waste according to the following schedule:

Time in which Recovery Rates are achieved	Total Residential Solid Waste Recovered	Total Commercial Solid Waste Recovered
January 1, 2008	20%	_____
January 1, 2009	25%	_____
January 1, 2010	30%	50%

The goal for recovery of municipal solid waste (residential solid waste and commercial solid waste) shall be 51% to be attained by January 1, 2015.

(b) Notwithstanding any provisions or definition to the contrary contained in this Chapter, for purposes of satisfying the minimum recovery rates set forth in subsection (a) above recyclable materials shall be those paper, aluminum, metal, and plastic materials and other municipal solid waste which is source separated and collected for recycling, and recycling for purposes of the program established hereunder shall mean the process by which discarded municipal solid waste materials are separated and used as raw materials, products or replacement of products, or put to other beneficial use, including the reuse of organic yard waste, but does not include the burning of materials.

§ 6047. The provisions of this Subchapter shall be enforced by the Authority and the Department as follows:

(a) The Authority's enforcement responsibility shall include, but not be limited to:

(1) inspections to assure compliance;

(2) review of complaints made regarding noncompliance;

(3) issuance of written or oral notice of violation and request for voluntary compliance;

(4) for repeat violations written notice and demand for compliance served personally or sent by registered mail, return receipt requested; and

(5) for a repeated violation after written notice and demand for compliance, referral to the Department for formal enforcement action.

(6) The Department's enforcement responsibility shall include follow up investigation based on referrals from the Authority and complaints made regarding noncompliance, and formal enforcement action as warranted pursuant to the enforcement provisions of Subchapter II of Chapter 60 of this Title and the regulations promulgated thereunder.".

Section 3. Amend Chapter 64, Subchapter II, Title 7 of the Delaware Code by inserting therein the following new § 6461:

"§ 6461. Mandatory Residential Curbside Recycling.

(a) The Delaware Solid Waste Authority (DSWA) shall establish and implement a statewide mandatory residential curbside recycling program for the recyclable materials listed in § 6453 of (a)(1) through (a)(7) inclusive of this Title and defined in § 6451 of this Title. The DSWA may adopt regulations describing recyclable materials and adding other materials to the list of recyclable materials subject to the statewide mandatory residential curbside recycling program.

(b) Licensed municipal solid waste and construction and demolition debris collection and disposal service providers shall collect the recyclable materials separately and keep it separated from non-recyclable materials.

(c) Licensed municipal solid waste and construction and demolition debris collection and disposal service providers shall take all recyclable materials to either a person that handles and processes recyclable materials or to a DSWA facility duly designated.

(d) DSWA shall take all recyclable materials from licensed municipal solid waste and construction and demolition debris collection and disposal service providers for no fee. DSWA shall be responsible for processing all recyclable materials they receive and for marketing the recyclable materials in accordance with § 6458 of this Title.

(e) All persons who dispose of municipal solid waste through use of licensed municipal solid waste and construction and demolition debris collection and service providers shall separate recyclable materials from the municipal solid waste and place the recyclable materials in a separate container or containers.".

Section 4. The Delaware Solid Waste Authority shall develop and promulgate all rules and regulations necessary for the implementation of this Act within six (6) months following the enactment of this Act into law. The proposed rules and regulations developed by the DSWA to implement this Act shall be provided to the Department of Natural Resources and Environmental Control and the Governor's Recycling Public Advisory Council (RPAC) for review and comment, and

DSWA shall respond to any comments prior to adoption of the rules and regulations. The implementation of Mandatory Residential Curbside Recycling shall occur within six (6) months of the promulgation of regulations as called for above.

SYNOPSIS

This Act mandates a statewide recycling program. The Act is effective immediately upon enactment; however, there are some timelines and other provisions in place to assure timely implementation with the involvement of DNREC and RPAC.

This Act also establishes a Recycling Fund to help pay for various aspects of the recycling system. The source of funding will be a $3 per ton assessment on all solid waste (excluding recyclables) collected and/or disposed of in Delaware. Thus, those who collect solid waste in Delaware and dispose of it out of state will also pay the assessment to support the Delaware recycling initiatives. The fund will be administered by DNREC, with input form the Recycling Public Advisory Council, and used to help municipalities with start-up costs, fund private sector initiatives, support an education and outreach program and fund an assessment of the potential for increased commercial waste recycling. DSWA is not eligible to receive any monies from the Recycling Fund.

The Act provides for the development of yard waste management facilities to handle such materials. Development of private facilities will be encouraged; however, if these do not materialize, DSWA will manage the yard waste on its property or other public property. DSWA is entitled to charge a tipping fee at these facilities sufficient to cover the costs of operation.

The Act establishes recycling goals for both residential and commercial solid waste and involves the Recycling Public Advisory Council, whose role will be to advise DNREC and DSWA on various aspects of recycling and to report annually on the state of recycling and progress made toward the established goals.