

# **Senate Environmental, Natural Resources & Energy**

## **Committee Meeting**

**Official Minutes**

**149<sup>th</sup> General Assembly**

**Second Session**

## **Committee Meeting**

**Wednesday March 28th, 2018**

**1:30 p.m.**

**Senate Chamber Meeting Room**

## **Meeting Attendance**

### **Committee Members:**

#### **Present:**

Senator Harris McDowell	<a href="mailto:Harris.McDowell@state.de.us">Harris.McDowell@state.de.us</a>	302-744-4147
Senator Stephanie Hansen	<a href="mailto:Stephanie.Hansen@state.de.us">Stephanie.Hansen@state.de.us</a>	302-744-4138
Senator Jack Walsh	<a href="mailto:John.Walsh@state.de.us">John.Walsh@state.de.us</a>	302-744-4163
Senator Ernesto Lopez	<a href="mailto:Ernesto.Lopez@state.de.us">Ernesto.Lopez@state.de.us</a>	302-744-4136
Senator Gerald Hocker	<a href="mailto:Gerald.Hocker@state.de.us">Gerald.Hocker@state.de.us</a>	302-744-4144

### **Other Legislators Present:**

Senator Gary Simpson	<a href="mailto:Gary.Simpson@state.de.us">Gary.Simpson@state.de.us</a>	302-744-4134
----------------------	--	--------------

### **Staff:**

Valerie McCartan	<a href="mailto:Valerie.McCartan@state.de.us">Valerie.McCartan@state.de.us</a>	302-744-4065
Anthony Bernadzikowski	<a href="mailto:Anthony.Bernadzikowski@state.de.us">Anthony.Bernadzikowski@state.de.us</a>	302-744-4269

### **Attendees:**

Shawn Garvin

### **Organization:**

DNREC

### **Phone:**

Lisa Boren-Ogdin	DNREC
Andrea Kreiner	DNREC
David Carey	Landowner
Shauna Thompson	Landowner
Steph Herron	Sierra Club
Andrew Slater	Public Advocate
Richard Wilkins	Kent County Farm Bureau
David Saveikis	DNREC/Fish & Wildlife
John Irwin	
Maddy Lauria	News Journal
Brenna Goggin	DE Nature Society
Kathy Harris	DNREC/Energy & Climate
Dr. Willett Kempton	UD/Ev R&D Group
Sara Parkison	UD/Ev R&D Group
Harry Isaacs	Landowner
Wayne Baker	Landowner
Robert Horsey	David Horsey & Sons
Ellison Carey	Landowner
Isaac Meyer	Alexander & Cleaver
Julie Fedele	Division of Research
Anne Farley	FSS – DPL
Holly Vaughn Wagner	Division of Research
Tarik Zerrad	Ruggerio Willson and Assoc
Sam Hemphill	PSC
Matt Hartigan	PSC

### **Agenda:**

Senator McDowell brought the meeting to order at 1:30 pm. He then called for a motion to accept the minutes of the previous meeting on June 28, 2017. The motion was seconded and received unanimous approval from members of the Committee.

*SB 133 (Lopez) - An Act To Amend Title 29 Of The Delaware Code To Impose A Moratorium On The Publication Of Private Property Information By The Department Of Natural Resources And Environmental Control.*

**SYNOPSIS-** This Act acknowledges that the Department of Natural Resources and Environmental Control has been collecting natural resource data for years without the consent of the respective property owners. This Act further prohibits the dissemination of natural resource data to any person or entity without first disclosing the date and method of collection along with obtaining the written consent of the respective property owner. In the event written consent cannot be obtained during a two year period following the effective date of this Act, the Department must expunge, without the distribution or transmission to any other person or entity any natural resource data.

Senator Lopez explained that this legislation is constituent-driven, and originates from a thirty-year history of DNREC going on to private property to remove specimens. He acknowledged constituent concerns about the moratorium proposed on lines 37 and 38 of the bill and thanked Secretary Garvin for his willingness to meet with constituents. He said that he was open to compromise regarding an amendment to this language and requested that the bill be moved out of committee.

Secretary Garvin expressed his belief that the bill was unnecessary, saying that the issues the bill sought to address had already been addressed in 2016 by policy changes at Fish and Wildlife, and that any data relating to the constituents who had objected had been purged from DNREC's databases.

Senator McDowell asked for further comment from members of the committee.

Senator Hansen said that the bill conflicted with Delaware's Open Space Act and introduced Sunset Committee staffer Holly Wagner to testify on behalf of this.

Holly Wagner said that in 2015-2016 the Sunset committee reviewed the Open Space Council and made a great deal of changes to the Land Protection Act as a result of its review. She said that limitations were added to the Open Space Council regarding the use of their data. She specifically referenced Title 7, Section 7507B. She said that SB 133 conflicted with this, as it would prohibit DNREC from sharing the mentioned information with any other agency, but that the Open Space Council specifically required DNREC to share information with the Department of Agriculture and Department of State.

Senator McDowell asked Secretary Garvin if the legislation being proposed would address the concerns expressed by Ms. Wagner.

Secretary Garvin echoed the sentiment that the legislation may cause complications for agencies trying to do their jobs. He reiterated that he thought that the concerns of Sen. Lopez's constituents had already been addressed in 2016.

Sen. Lopez said he thinks the provisions addressed by DNREC policy need to be codified.

Senator McDowell asked if the law would protect criminals who were violating environmental law by giving them the unabated ability to remove agencies from their property.

Secretary Garvin said that, in the event of legal violations, law enforcement would then still be able to come onto the property.

Sen. Hansen agreed that we should make sure property owners have given their permission, unless it's an enforcement action.

Sen. McDowell asked for comment by other members of the committee.

Sen. Hansen asked if the bill in question would apply to the data of residents who were no longer living or had moved.

Secretary Garvin said that DNREC had to purge more information than they felt that they had to.

Sen. Hansen asked how much data was purged from DNREC's databases.

Secretary Garvin said about 50%.

Senator Hansen asked him about the impact of this on the inventory of endangered species.

Secretary Garvin said that DNREC would deal with that moving forward.

Sen. McDowell introduced the Director of the Division of Fish and Wildlife in DNREC, Dave Saveikis

Mr. Saveikis said that one impact the proposed legislation would have is the inability to accurately classify endangered and critical species, as their classifications are dependent on the amount of data collected.

Sen. Hansen asked if there was a way to keep the data without identifying the property and expressed concern about losing the data of endangered species.

Secretary Garvin said the Department had not addressed that yet.

Sen. McDowell gave the floor to Sen. Hocker.

Sen. Hocker said that the legislation was necessary to make the changes permanent, as the staff at DNREC will change over time.

Secretary Garvin said that he believed that for much of the purged data, they were given verbal permission by the landowners to collect it – but not written permission.

Sen. Hocker retorted that if the legislation had been in place, they would have certainly had to get it in the first place.

Sen. McDowell said the information is of benefit to the people of Delaware in relation to protecting our natural environment. He asked, if the legislation were passed, would it then be possible for DNREC to go to those whose data was collected and simply ask for permission to keep it.

Sen. Hocker said such a policy would make sense.

Secretary Garvin expressed that this would be his intention, and said that as of 2016 written permission was required for DNREC's access to private property and that this would continue to be the policy.

Sen. Hocker reiterated that legislation would convey that beyond a single Administration, making the policy change permanent.

Sen. McDowell asked if it would be possible to see how voluntary retention of the information collected by DNREC would work.

Sen. Hansen expressed concern of the possibility of DNREC being denied access to this data, and also mentioned that much of this information has since been published or sent beyond the state of Delaware in federal databases.

Secretary Garvin clarified that much of the data collected was in fact *generic* data about the prevalence of certain species of wildlife, rather than data that specifically marked with the location at which it was collected.

Sen. Hocker reiterated his belief that, had the legislation been law in the first place, the entire conflict in question would have been avoided.

Sen. McDowell agreed with Sen. Hocker, but expressed a need to revisit the legislation to amend language so that it did not harm the environment. He said that, with that understanding, the bill should move forward.

Sen. Hocker agreed.

Sen. Lopez introduced his constituents who wanted to testify in front of the committee, and expressed his belief that they would be willing to compromise on the bill's language.

Sen. McDowell said he was inclined to let the bill out of committee pending the agreed testimony.

Sen. Hansen excused herself to go to a committee hearing for a bill creating the Delaware Native Species Commission.

Sen. McDowell asked for a show of hands to get a number of those who would be testifying and counted six people. He then asked the first speaker to identify himself.

The speaker identified himself as Mr. Dave Carey, a property owner in the Milton area. He said that the legislation was necessary because of a continuous 25 year pattern of DNREC trespassing on their property. He mentioned that, despite the purging of his specific data from DNREC's databases, it still exists on databases at the Department of Justice.

Mr. Saveikis acknowledged that this was in fact the case.

Mr. Carey also brought up that the data has been updated into the NatureServe for the past 25-30 years. He wanted to know who else had his data and what they were going to do with it. He expressed his belief that the bill was necessary.

Ms. Shauna Thompson introduced herself to the committee as a member of the Pemberton Branch Alliance and said she came from a 200-year lineage of Delaware property owners. She presented a picture taken from a deer camera on her property of a man walking in a wooded area, saying that it was taken after Secretary Garvin assured her that she would no longer have her property trespassed upon. She expressed her support for the legislation.

Sen. McDowell then introduced the third speaker, Mr. Robert Horsey, a Laurel-area property owner. Mr. Horsey expressed his belief that legislation was necessary to keep DNREC from trespassing on his property. He said they want to know when people are coming on their property. They want to have full authority to “ok” access.

Sen. McDowell then called on another speaker, Mr. Harry Isaacs Jr. Mr. Isaacs mentioned that he owned 10,000 acres of property and expressed his support for the bill. He feels the practice was an invasion of the private property owner’s rights.

Sen. McDowell then called on Ms. Brenna Goggin from the Delaware Nature Society. Ms. Goggin expressed her support for obtaining written permission to access private lands and for private property rights. She expressed concern, however, that the proposed legislation could impact DNS’s ability to do its job, as it needs to know specific locations and quantities of species on the property that it incorporates into its land trust.

Sen. Hocker asked her if she thought it would be difficult to get written permission to access the properties in question.

Ms. Goggin clarified that they do not seek out property to protect; rather, they receive it. She stated that they do need, however, to be aware of the species on the surrounding properties. They check adjacent lands against their criteria and the impact on land trusts should be part of the conversation if a moratorium is proposed.

Sen. McDowell said that he’d be okay with that. He then recognized the sixth speaker.

The sixth speaker identified himself as Mr. Wayne Baker, a Sussex County property owner. He recounted incidents of DNREC trespassing on his property and expressed his support for the bill.

Sen. McDowell then asked Mr. Baker if, were the bill to be signed into law, would he give DNREC permission to go onto his property and collect data?

Mr. Baker said he would ask what they were looking for and would prefer to accompany them.

Mr. Richard Wilkins then introduced himself as a member of the Delaware Farm Bureau Legislative Committee, a farmer, and a private property owner in Kent and Sussex Counties. He also expressed concern about trespassing by DNREC and his support for the bill.

Sen. McDowell then said that there seemed to be a consensus that the bill should move out of committee. He then asked Secretary Garvin to report back to the committee in 6 months about the success of using a voluntary method of keeping DNREC’s collected data and future data. He also requested another report another 6 months after the initial report. There was no disagreement from the rest of the committee.

Secretary Garvin asked Sen. Lopez about what specifically an amendment added to the bill after its introduction designed to mitigate the language of lines 37 and 38 would look like.

Sen. Lopez said he would ask the Secretary specifically for the language that he would like to include in such an amendment and requested that the bill be released.

Sen. McDowell said he would sign the back of the bill and concluded the hearing on SB 134.

SB 133 was signed out of committee with 5 on its Merits (McDowell, Lopez, Hocker, Walsh, Hansen)

---

SB 152 (Simpson) – *An Act To Amend Title 26 Of The Delaware Code Relating To Generating Systems With The New SAE Safety Standard.*

*Synopsis* - This Act would facilitate EV and grid-integrated electric vehicle interconnection by including the Society of Automotive Engineers industrial safety standard, J3072, which sets safety requirements for EVs that provide power from their batteries back to the electric grid.

Sen. Simpson provided opening comments and a brief synopsis of the bill, stating that it has been vetted through the Public Service Commission, DNREC, and Delmarva Power. He then introduced Dr. Willett Kempton and Ms. Sara Parkison from the University of Delaware.

Ms. Parkison introduced herself as a policy analyst working under Dr. Kempton with the University of Delaware's Electric Vehicle Research and Development Team. She explains that the bill updates the list of safety standards already put forth in Section 1014, Chapter 10, Title 26 of the Delaware code and rectifies discrepancies in its terminology. She said that the Delaware Code, as currently written, presents a barrier to safe electric vehicle interconnection by not specifically calling out SAE standards. She said that the bill also suggests edits to the code that make consistent use of the term "grid integrated electric vehicle" and "customer" as they have been written elsewhere in Section 1040. (Ms. Parkison's written testimony is attached to these minutes as reference.)

Sen. McDowell asked why Underwriters Laboratories was cut out of the bill.

Ms. Parkison and Dr. Kempton explained that it was, in fact, still in the bill, but that they have renamed themselves simply "UL".

Senators Lopez, Walsh, and Hocker requested to be added as cosponsors.

Sen. McDowell asked for further questions.

Ms. Anne Farley introduced herself as a representative on behalf of Delmarva Power and expressed Delmarva's support for the bill.

Sen. McDowell signed the back of the bill and passed it around for signatures.

SB 152 was signed out of committee with 5 on its Merits (McDowell, Lopez, Hocker, Walsh, Hansen)

---

SB 134 (Lopez) – *An Act to Amend Title 11 of the Delaware Code Relating to Offenses Involving Property.*

*Synopsis – This act enhances the penalty for Theft when the victim is a veteran of the United States Armed Forces.*

SB 134 was tabled at the request of the Sponsor, Sen. Lopez.

---

Sen. McDowell adjourned the meeting.

Meeting minutes prepared by Anthony Bernadzikowski and Valerie McCartan.