



JOHN J. VIOLA
Majority Whip
STATE REPRESENTATIVE
26th District

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

COMMITTEES
Gaming & Parimutuels, Chair
Revenue and Finance, Chair
Telecommunication/Internet &
Technology

House Revenue & Finance Committee Meeting Minutes

4.10.19

Chair Viola called the meeting to order at 2:59 p.m. Committee members present include Chair Viola, Vice Chair Brady, Reps. Baumbach, Dorsey Walker, Bennett, Q. Johnson, Williams, Gray, Ramone, Spiegelman, and Yearick. Rep. Kowalko was also present. For a complete list of guests, refer to the attendance list below.

Chair Viola introduced **HB 98, AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO TOBACCO PRODUCT TAXATION AND LICENSING**. Chair Viola explained the bill imposes a 15 percent tax to the wholesale costs of premium cigars, reducing it from 30 percent. The bill also clarifies the definition of a premium cigar as a hand rolled cigar made entirely of leaf tobacco.

Rep. Q. Johnson asked the intent of the bill. Chair Viola explained that Pennsylvania does not tax premium cigars, and as a result, Delawareans travel across the border to purchase premium cigars. Rep. Q. Johnson clarified the intent is to compete with Pennsylvania's premium cigar shops. Chair Viola replied yes. Due to the lower tax rate, Rep. Q. Johnson asked if premium cigar sales would increase to the point of yielding a net tax revenue increase. Rep. Viola replied that it is possible, as many cigar smokers travel across the state border to purchase cigars to avoid the tax.

Chair Viola further noted that the Division of Revenue does not agree with the fiscal note for HB 98; it is not possible to collect sales data for premium cigars based on current data collection methods of tobacco products. Secretary of Finance Richard Geisenberger has indicated his willingness to work with tobacco retailers to study premium cigar data to calculate a more accurate fiscal projection.

Rep. Ramone noted that lower taxes will not increase cigar consumption, but rather, will shift the location of consumption. He expressed his belief that the projected revenue loss is exaggerated because of potential increase in sales in Delaware. The fiscal note must follow certain assumptions, which would therefore produce the projected revenue loss. He concluded by voicing his support for the bill.

Rep. Yearick asked if there would be testimony from business owners on the bill. Chair Viola replied that he did not know who would be testifying but noted that business owners have hired a

private entity to perform their own revenue projections. Rep. Yearick expressed his interest in hearing from business owners regarding their experiences.

Chair Viola explained that Delaware currently imposes a tobacco product tax of 30 percent, Pennsylvania's is 0 percent, Maryland's is 15 percent, and New Jersey's is 30 percent. Approximately 85 percent of Delaware's cigar retailers are located on the Delaware-Pennsylvania border.

Rep. Baumbach questioned the fiscal note's assumption that premium cigars is a niche market. Rep. Viola deferred the question to Senior Legislative Analyst Art Jenkins of the Office of the Controller General. He explained that the Office of the Controller General assumed that there would be no cross border impact and therefore no price elasticity in cigar demand.

Chair Viola reiterated his comment regarding Secretary Geisenberger's willingness to work with cigar retailers to collect premium cigar data and develop a more accurate fiscal projection. Rep. Baumbach asked if the Controller General's Office would be involved. Mr. Jenkins replied yes.

Seeing no further questions from the committee, Chair Viola opened the floor for public comment.

Scott Zucca of the Delaware Convenience and Tobacco Store Association (DECTSA) voiced his support for the bill. He explained that 85 percent of the Delaware premium cigar retailers are located on the Delaware border. There is no tax in Pennsylvania and on online sales. Since the tobacco tax increase, premium cigar retailers experienced a 35 percent decrease in revenue, forcing them to cut inventory and lay off staff. This bill would allow DECTSA members to remain competitive in the region, and provide tax relief to small business retailers in the association.

Rami Dakko of the Delaware Premium Cigar Retailers voiced his support for the bill. He emphasized that many retailers are small businesses, and so the tax increase has adversely affected many premium cigar retailers.

Rep. Yearick asked Mr. Dakko what the average wholesale cost for a premium cigar is. Mr. Dakko responded that a box of 20 cigars is between \$80 and \$100, and that the current tax rate adds approximately \$4 to the price of each cigar.

Rep. Ramone asked what the previous tax rate on premium cigars was. Mr. Dakko replied the rate was 15 percent. Rep. Ramone noted that when the tobacco tax rate increased to 30 percent, tax revenue for all forms of tobacco products increased except for premium cigars. Mr. Dakko explained that, due to the higher tax rate in Delaware, he has sold more premium cigars to retailers in Pennsylvania than in Delaware.

Deputy Secretary Rebecca Goldsmith of the Department of Finance expressed that there were several technical issues in the bill she hopes will be addressed through amendments. The Department of Finance would like an amendment that includes a specific effective date to allow the Division of Revenue to prepare for a tax rate change. She noted that while Pennsylvania does not impose a tobacco tax on premium cigars, a state and county sales tax applies to the sale. She

further reiterated the Department of Finance's willingness to work with premium cigar retailers to determine a more accurate fiscal projection.

Rep. Ramone asked if tax changes affect Delaware more than a larger state. Ms. Goldsmith explained that the calculations provided in the fiscal note were the best method of calculation with the data available. Rep. Ramone suggested the Department of Finance study the impacts of changes in tobacco consumption and health deterrence. Ms. Goldsmith said that she would be willing to work with the bill sponsors and the committee to provide additional information regarding the fiscal impact.

Elizabeth Lewis voiced opposition to the bill on behalf of the American Lung Association. Acknowledging the adverse effects of tobacco use, she stated the organization would like to see a bill that taxes all tobacco products at the 30 percent rate.

Chief Fred Gatto of the Division of Public Health voiced his opposition to this bill since cigar consumption has increased 116 percent over the past 4 years. He noted that evidence suggests that an increase in tobacco prices will reduce consumption and felt the premium cigar tax-rate should match that of all other tobacco products.

Chair Viola introduced HA 1 to HB 98. The amendment will delay the effective date to 90 days after enactment and clarifies the definition of a premium cigar. Chair Viola reiterated that it is possible to purchase premium cigars online without paying sales tax.

A motion was made by Rep. Ramone and seconded by Rep. Bennett to release HB 98 from committee; motion carried. Yes=9 (Chair Viola, Vice-Chair Brady, Reps. Baumbach, Dorsey Walker, Bennett, Q. Johnson, Ramone, Spiegelman, Yearick); No=0; Absent=2 (Rep. Williams, Gray). HB 98 was released from committee with F=2, M=7, U=0 vote.

Chair Viola asked Rep. Kowalko to introduce **HB 14, AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX**. Rep. Kowalko explained that this bill creates two new brackets for the state personal income tax: a 7.10 percent rate at \$125,000 and a 7.85 percent rate at \$250,000. He explained this bill differs from HB 15 by phasing out available itemized deductions based on a person's income. Rep. Kowalko explained the intention is to stabilize the revenue stream for the state and improve the financial standing for future recessions that may arise in the future. He noted that the Division of Revenue projects that these two brackets would generate an additional \$42 million in Fiscal Year 2020.

Chair Viola asked if a fiscal note or other documentation was available to explain the revenue projections. Rep. Kowalko explained that he would distribute a memo containing this information to committee members.

Rep. Q. Johnson thanked Rep. Kowalko for his work on this bill. He expressed his agreement for the need to address the volatility of Delaware's revenue streams but disagreed on the effects of the bill. He explained the higher tax brackets will still be volatile, and that the bill does not address the ultimate goal of revenue stabilization. He expressed his opposition to the bill.

Rep. Kowalko noted that this bill is not the only solution, and that HB 14 would address the policy suggestions made by the Delaware Economic and Financial Advisory Council (DEFAC). Rep. Q. Johnson replied that this bill would not singularly address the problem of revenue volatility; he would like to see a broader encompassing package to address all the problems at once.

Rep. Yearick thanked Rep. Kowalko, and asked about the Governor's position. Rep. Kowalko explained that he did not know, but noted that HB 14 mirrors past legislation the Governor has supported.

Rep. Yearick explained he would oppose the bill on the floor, but would like to release the bill from committee to allow for a broader debate among all members of the House of Representatives.

Rep. Q. Johnson expressed his opposition to Rep. Yearick's suggestion to release incomplete bills from committee for the sake of a broader debate on the House floor.

Rep. Baumbach noted that several bills have previously been released in this fashion.

Rep. Gray asked Rep. Kowalko if he would reintroduce the bill in a later session if the bill were to be released from committee and defeated on the House floor. Rep. Kowalko explained that he would not do so if the bill was released from committee.

James DeChene of the Delaware State Chamber of Commerce echoed the comments made by Rep. Q. Johnson. The State Chamber of Commerce endorses the findings included in the DEFAC report, but notes that the findings are meant to be implemented as one singular policy. For that reason, he does not support the bill.

Rep. Kowalko reiterated that HB 14 is intended to be the first step towards implementing DEFAC's findings.

Joe Fitzgerald of the New Castle County Chamber of Commerce reiterated Mr. DeChene's comments, and voiced his opposition to the bill. Households and small businesses should not shoulder the burden generated by new tax brackets.

Rebecca Goldsmith of the Department of Finance noted that the state is not currently facing a budget deficit. For that reason, Governor Carney's administration will not be supporting the bill at this time. The addition of two top-tier tax brackets reduces Delaware's ability to attract workers to the state, and does not improve Delaware's revenue sustainability.

Sandy Spence of the Delaware League of Women Voters voiced her support for the bill. The League of Women Voters would like to see bills that generate a broader tax base. She noted that higher tax rates would help finance proposed legislation.

A motion was made by Rep. Baumbach and seconded by Rep. Bennett to release HB 14 from committee; motion failed. Yes=2 (Reps. Baumbach, Bennett); No=7 (Chair Viola, Rep. Brady, Dorsey Walker, Q. Johnson, Gray, Spiegelman, Yearick); Absent=2 (Reps. Williams, Ramone). No action was taken on HB 14.

Chair Viola asked Rep. Kowalko to introduce **HB 15, AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX**. Rep. Kowalko explained that this bill creates two new brackets on the state personal income tax: a 7.10 percent rate at \$125,000 and a 7.85 percent rate at \$250,000. Unlike HB 14, the bill does not phase out the itemized income tax deductions. He emphasized that the intent of this bill is not to be a panacea for Delaware's budget volatility.

Rep. Yearick voiced his opposition to the bill and stated that he would not vote to release this bill. He explained that he would like to see an all-inclusive bill written with input from the Executive Branch.

Rep. Q. Johnson commended Rep. Kowalko for his work on this bill. He noted that he is willing to work with Rep. Kowalko and the Executive Branch to develop future bills on the issue.

Seeing no further comments from the committee, Chair Viola opened the floor for public comment.

James Dechene, from the Delaware State Chamber of Commerce, voiced his opposition to the bill, and reiterated his comments from the discussion on HB 14. The State Chamber of Commerce is willing to work with the Representatives to produce a more comprehensive bill addressing Delaware's fiscal stability.

Mr. Fitzgerald voiced his opposition to the bill.

Ms. Spence commended Rep. Kowalko for his service, and voiced her support for the bill.

A motion was made by Rep. Bennett and seconded by Rep. Baumbach to release HB 15 from committee; motion carried. Yes=6 (Chair Viola, Vice-Chair Brady, Reps. Baumbach, Bennett, Dorsey Walker, Ramone); No=4 (Reps. Q. Johnson, Gray, Spiegelman, Yearick); Absent=1 (Rep. Williams). The bill was released from committee with an F=1, M=5, U=0 vote.

Chair Viola adjourned the meeting at 4:23 p.m.

Respectfully submitted by:

Nicholas Konzelman

Attendance List:

- James Dechene (Delaware State Chamber of Commerce)
- Scott Zucca (Delaware Convenience and Tobacco Store Association)
- Rami Dakko (Delaware Premium Cigar Retailers)
- Joe Fitzgerald (New Castle County Chamber of Commerce)
- Rebecca Goldsmith (Department of Finance)
- Elizabeth Lewis (Hamilton Goodman Partners)

- Fred Gatto (Division of Public Health)
- Sandy Spence (League of Women Voters, Delaware)
- Art Jenkins (Office of the Comptroller General)