



THE COMMITTEE OF 100

FYI

July 7, 2016

Dover Wrap-Up 2016

The 148th General Assembly drew to an exhausted close just before dawn on July 1. The second year of the session yielded some significant legislation and delivered some major disappointments.

Economic Development Legislation

The Delaware Competes Act, [HB 235](#), simplified the Corporate Income Tax, reducing the number of factors used to measure income subject to the tax. Designed to encourage corporations to locate their headquarters in the state, the bill was widely seen as part of the effort to retain Chemours. Actually, the change was originally proposed by the DEFAC Revenue Committee before the DuPont break-up and was intended to make the revenues less volatile and to put Delaware more on par with other states. The bulk of the CIT revenues comes from fewer than 20 companies and is subject to wide swings.

The [R&D tax credit](#) was also dramatically liberalized, putting Delaware in the top tier of states in terms of attractiveness to technology employers. The bill lifted the \$5 Million expenditure cap and, importantly, made the credits refundable. The legislation was credited with helping convince the DuPont agriculture spin-off to remain in Delaware, but will also make the state a draw for start-up companies that often do not have profits to allow them to take advantage of non-refundable tax credits.

A third bill, [HB 327](#), authorized Delaware citizens to participate in online crowd funding for Delaware-based start-up companies. Previously, only high net worth individuals were permitted to invest in start-ups. Now any Delaware resident can invest up to \$5,000 in a 12-month period and small companies can raise up to \$1 Million on the platform. The bill will provide an important new source of equity for Delaware entrepreneurs and should make the state attractive to new start-ups.

Beyond improving Delaware's economic competitiveness, the passage of these bills was good news because all three passed with nearly unanimous bi-partisan majorities - giving hope that the General Assembly can pull together when it needs to.

Budget

The budget situation deteriorated in the 5 months following the unveiling of the Governor's Recommended Budget in January. DEFAC delivered a series of declining revenue estimates that made the work of the Joint Finance Committee more difficult. By June, the budget was \$85 Million smaller than in January, but still represented a 4.5% increase over the current year. The major growth drivers were Medicaid, higher student counts, state employee benefits, and debt service.

After completing the [\\$4.1 Billion budget](#), the Joint Finance Committee (JFC) was thought not to have extra cash to put into the [Grant-In-Aid Bill](#), which funds fire companies, community programs, and social service providers. In the end, the JFC fully funded the Grant-in-Aid Bill at nearly \$46 Million, but left the [Bond Committee](#) with almost no additional cash.

The Bond Committee scrounged up one-time savings from a number of existing projects, and canceled or postponed others, to put a credible capital program together. Among the funds tapped was the \$1.5 Million for Wilmington public safety improvements left untouched by Mayor Williams. Transportation projects received a big boost from the revenue package adopted last year and increased Federal funding. But the necessity of having to cobble together one-time funds for non-transportation projects left a bad taste in the mouths of Bond Committee members who are voicing a growing concern that the state is not investing the kind of resources needed to improve critical infrastructure and in maintain the state's buildings and schools.

This lack of capital investment compounds the problem of flat revenues and growing expenses. DEFAC projects less than 1% growth in revenues in the out years. Combine that with the fact that essentially uncontrollable costs increased expenses by 4.5% and it is clear that we have an unsustainable situation. To make matters worse, Delaware's past ability to 'export' tax burden out of state is being threatened. Lawsuits challenging the state's escheat (abandoned property) have been filed that could result in a revenue loss of several hundred million dollars.

The business community has been raising alarms about this fiscal situation for the past several years. It now appears that 2017 will be the year of the reckoning.

Wilmington Schools

With the support of the Committee of 100, the Wilmington Education Improvement Commission (WEIC) Plan to shift

most school children to the Red Clay District passed the House on a mostly party-line vote, but ran into trouble in the Senate. House Joint Resolution 12 was defeated 15 – 6 over funding concerns. In its place, the Senate passed [legislation](#) that keeps the WEIC process alive to continue planning. The \$6 Million in funding set aside for the redistricting transition went instead to the Bond Committee for other projects. There was deep disappointment in the WEIC camp and in the Wilmington legislative delegation, but the issue is likely to return next January when the new General Assembly begins.

Stormwater Regulations

A political revolt that started in Sussex County over the difficulty and expense of complying with the 2014 Sediment and Stormwater Regulations resulted in several bills being adopted that effectively overrode DNREC's regulatory process. It was a major political rebuke to the Department. The most significant legislation was [SB 253](#), which lessened the requirements of the regulations and added an alternative compliance methodology based on what Maryland is doing on the Eastern Shore. The 2014 regulations mandated runoff reduction through onsite infiltration, which was always a tougher proposition in Sussex where there are poor soils and a high water table. The bill won't change much in New Castle County, with the notable exception that the runoff reduction requirements for redevelopment projects have been cut in half. The bill also extends the life of stormwater plans from 3 to 5 years, which may help some lapsed plans needing a grandfather. Farmers got generous standard plans for chicken houses. Lastly, the debate has reinvigorated the conversation about offsets, which had been confined just to fee-in-lieu payments. The Regulatory Advisory Committee (RAC) has formed an Offsets Subcommittee to flesh out additional options for off-site compliance. The engineering community has had mixed opinions about adopting the alternative compliance methodology; the concern being that we might stray far enough to prompt EPA to 'backstop' the state on the Chesapeake TMDL and take over our clean water act enforcement program. That would not be a good thing – but is also unlikely.

Clean Water Trust

The Clean Water Task Force wound up 10 months of work in mid-June, having considered, but not formally approving, draft legislation to create a Clean Water fund. A final report is expected to be issued this summer. Although the Task Force made considerable progress in reducing the differences between stakeholder groups, there continues to be opposition to creating a trust fund with a dedicated revenue stream. It was clearly an issue the General Assembly was not eager to take up in an election year.

Development

Two bills were passed during the session that could impact the development community. The first, sponsored by the Home Builders Association of Delaware, was [HB 396](#), the so-called 'Rocket Docket' bill. Under it, the Counties are required to establish an expedited review process for the approval of manufacturing/industrial development plans. Retail and residential projects are not eligible. The projects must produce at least 60 new full-time jobs. The expedited reviews must be completed within 9 months. The Counties may charge a fee of up to \$20,000 for the service.

The second bill was [SB 130](#) which authorizes local governments to establish transit-oriented districts called "Complete Community Enterprise Districts." The districts would be required to be mixed use and to encourage multi-modal transportation. The Districts could not be used for a regional commercial development. Bike Delaware was the prime mover behind the legislation.

Disappointments

Despite active leadership by the State Chamber, the General Assembly refused to consider changes that would modernize the Coastal Zone Act. At issue are the abandoned industrial sites north of the C&D Canal that are unlikely to be cleaned up and redeveloped as long as the CZA's prohibition against heavy industrial uses is in effect. Other sites are also hampered by the lengthy, expensive, and uncertain Coastal Zone permitting process. The [Delaware Business Times](#) recently did an informative article on the issue.

The Committee of 100 helped draft and supported legislation that would have created a 'lock box' for Special Funds intended for capital projects that was not acted upon. [SB 273](#) would amend the Delaware Constitution and require a super-majority vote to override limitations on the use of funds for administrative purposes. It would prevent the kind of problem encountered in the Transportation Trust Fund when DelDOT operating expenses were shifted from the General Fund to the TTF, thus greatly diminishing the amount of funding available for transportation projects. SB 273 represents common sense fiscal responsibility, but was opposed by some who thought it might facilitate passage of a proposed clean water surcharge. Hopefully, the bill can be re-introduced next year and acted upon independently of the water issue.

Cordially,



Paul H. Morrill, Jr.
Executive Director

SAVE THE DATE: 12/07/16

Note to self:
Sponsorship!

Just added it
to my calendar!

The Annual Auction
is the event of the year!

ANNUAL HOLIDAY AUCTION

