

Maryland-Delaware Solid Waste Association

a chapter of the

**National
Waste & Recycling
AssociationSM**

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TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Malcolm Augustine

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman

DATE: February 11, 2021

RE: **OPPOSE** – Senate Bill 486 – *Labor and Employment – Employment Standards During an Emergency (Maryland Essential Workers’ Protection Act)*

The Maryland Delaware Solid Waste Association (MDSWA), a chapter of the National Waste and Recycling Association, is a trade association representing the private solid waste industry in the State of Maryland. Its membership includes hauling and collection companies, processing and recycling facilities, transfer stations, and disposal facilities. MDSWA and its members **oppose** Senate Bill 486.

Senate Bill 486 creates a broad range of significant new employer mandates that would apply during a declared State of Emergency. Included in the bill’s provisions are a \$3/hour hazard pay mandate, an employee’s right to refuse work, requirements for employers to reimburse for health care costs, additional leave time requirements in addition to the State’s current mandate, new workplace safety standards, and a requirement for the development of health emergency preparedness plans.

While the MDSWA and its members appreciate the sponsor’s desire to provide added protection to employees and recognize employee challenges during this and future States of Emergency, the provisions of this bill are so extensive, complex, and ambiguous that they would serve to undermine the financial viability of the businesses who provide the essential services necessary to serve and protect the public and decrease the employment of the very individuals this bill is intended to protect.

Under the current public health emergency, waste industry workers are considered essential workers as the efficient and effective collection and management of solid waste and recyclable material is essential to protecting the health and safety of the public, thereby avoiding an escalation of public health risks that could be associated with the failure to collect and dispose of solid waste on a timely basis. While currently considered essential workers, the definitions of “emergency”, “essential employer”, and “essential employee” reflected in Senate Bill 486 are extremely broad and overly ambiguous. The requirements of this legislation go well beyond the scope of the public health emergency we are currently navigating as a result of COVID-19, and would apply to other potential public health emergencies, not

clearly defined, making it exceedingly difficult for the industry as well as other employer groups to understand whether the provisions of the bill apply in any given future “emergency”.

Furthermore, the bill does not consider that not every employee who works in an essential industry performs an essential function. Senate Bill 486 makes no differentiation among essential workers who are entitled to hazard pay. As a result, lower exposure risk positions would earn the same hazard pay as higher exposure risk positions.

The section of the legislation that addresses unsafe work environments and the right to refuse work is also of great concern to the industry. This section, also, has several provisions that are poorly defined and will therefore result in confusion and inconsistency. The lack of clarity related to “unsanitary conditions” and “unsafe” working environment is particularly concerning, given the fact that the very nature of waste collection and disposal could be considered “unsanitary” under any circumstance. To be even remotely enforceable and objective, the definitions in the bill must be more clearly defined and account for the context of the work environment. This section of the bill, also, includes a provision which affords an essential worker the right to refuse work. It provides this decision-making power to the employee, in the moment, and without review. This is problematic for many reasons, not the least of which is the potential for abuse without verification. These provisions are wholly unworkable in any workplace.

Also, of significant concern to the industry are the provisions that require employers to provide hazard pay at a rate of \$3/hour. The language of the bill is unclear as to how this provision would be applied. While it appears that the bill is intended to apply prospectively, there is a provision that states that an essential worker is eligible for hazard pay dating back to the start of the emergency. Further, the threshold that triggers hazard pay is very high in that an individual earning up to \$100,000 is eligible. The bill also requires employers to provide financial assistance for unreimbursed healthcare costs, including co-pays, insurance premiums, and out-of-pocket costs for healthcare or transportation. The industry believes it is unreasonable for employers to be compelled to pay for healthcare costs for undefined illnesses that are not likely to have been contracted in the workplace. Further, it is not clear that this provision would not, also, apply to teleworking employees.

The issues raised above do not reflect the full range of the industry’s concerns with the legislation. As stated previously, the industry appreciates the intentions of the sponsor to ensure reasonable worker protections and welcomes the opportunity to work with affected stakeholders to craft a reasonable and balanced framework to address those objectives. However, without further clarification of the bill’s applicability and significant narrowing of its provisions, MDSWA urges an unfavorable report.

For more information call:

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