

# Senate Labor Committee Meeting

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Wednesday, May 15<sup>th</sup>, 2019  
12:30 p.m.  
Senate Hearing Room  
Legislative Hall

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## Meeting Attendance

### Committee Members

#### Present

John J. Walsh, III, Chair  
Colin R.M.J. Bonini

#### Email

John.Walsh@delaware.gov  
Colin.Bonini@delaware.gov

#### Absent

David B. McBride  
Nicole Poore  
Catherine Cloutier

#### Email

David.McBride@delaware.gov  
Nicole.Poore@delaware.gov  
Catherine.Cloutier@delaware.gov

### Staff

#### Present

Ryan Dunphy  
Bailey Brooks

#### Email

Ryan.Dunphy@delaware.gov  
Bailey.Brooks@delaware.gov

#### Public Attendees

Anthony Delcollo  
Cerron Cade  
Debbie Gottschalk  
Mark Gandy  
Anne Farley  
Dennis Yetman  
Jamie Nutter  
John Horner  
Ed Capodanno  
John Casey  
Laird Stabler  
Chris Baker  
James DeChene  
Julie Petroff  
C. Scott Kidner  
Fran Chudzik  
James Maravelias

#### Affiliation

Senator, 7<sup>th</sup> District  
Secretary, Department of Labor  
Division of Research  
Home Builders Association of Delaware  
Delmarva Power  
Access Labor Service  
Parkowski, Guerke, & Swayze  
Schell Brothers  
Associated Builders and Contractors  
Delaware Contractor's Association  
  
Drive Delaware Forward  
Delaware State Chamber of Commerce  
Department of Labor  
Central Delaware Chamber of Commerce  
Department of Labor  
Delaware Building Trades/ AFL-CIO

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## Agenda

1. Consideration of the Meeting Minutes from the March 20<sup>th</sup>, 2019 and April 17<sup>th</sup>, 2019
  2. SB 95 (Walsh) AN ACT TO AMEND TITLE 19 AND TITLE 29 OF THE DELAWARE CODE RELATING TO CONTRACTOR REGISTRATION.
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The meeting was called to order at 12:33 P.M. Senator Jack Walsh mentioned that a quorum was not present, and therefore the meeting minutes from the previous meetings could not be approved.

### **Consideration of SB 95**

1. SB 95 (Walsh) AN ACT TO AMEND TITLE 19 AND TITLE 29 OF THE DELAWARE CODE RELATING TO CONTRACTOR REGISTRATION.

### Synopsis

*This Act provides a fair bidding environment for contractors who obey the law and protects the interests of workers and taxpayers by implementing recommendations from the review of the Workplace Fraud Act required by Senate Resolution No. 26 of the 149<sup>th</sup> General Assembly by making changes to the Workplace Fraud Act and creating the Delaware Contractor Registration Act. This Act take effect 1 year from the date of enactment. This Act revises the Workplace Fraud Act by doing all of the following: 1. Creates definitions for the terms "contractor", "general contractor", "construction manager", "labor broker", "outside of the usual course of business", "place of business", and "subcontractor" and revises the definition of "independent contractor". 2. Explicitly prohibits labor brokers from providing construction services. 3. Allows general contractors, construction managers, and subcontractors to engage other construction companies in the same line of work as the general contractor, construction manager, or subcontractor. The Delaware Contractor Registration Act creates a contractor registration system to effectively regulate employee misclassification by doing all of the following: 1. Requires contractors to pay a small annual fee and apply for a certificate of registration to engage in construction activities in this State. 2. Requires registered contractors to establish compliance with State labor and revenue laws. 3. Requires that all contractors who work on a public works contract comply with the new contractor registration requirement. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.*

Senator Walsh introduced the bill by reading the synopsis and explaining that the bill has been in the making for over a year. He mentioned that the study group formed by SR 26 of the 149<sup>th</sup> General Assembly consisted of members of the Department of Labor, ABC, Building Trades, State Chamber of Commerce, DCA, Homebuilders, and others. He added that neighboring states have similar contractor registration structures in place, such as New Jersey and Maryland. He continued by explaining that this bill will add 5 additional enforcement officers to effectively police workplace fraud, which has already been presented to the Joint Finance Committee and appropriated. He clarified that the fines go to the General Fund and the fees collected go to the Department of Labor. He concluded by adding that the bill is effective 1 year from enactment. Sen. Walsh then opened up the floor to the members of the committee and invited Cerron Cade, Secretary of the Department of Labor, to join the committee to answer any questions.

Senator Colin Bonini stated that he is not in favor of creating another bureaucracy and asked Sec. Cade how many contractors would have to pay the fee. Secretary Cerron Cade responded that he does not have an exact number as he does not know the number of contractors that would be coming from out of state to pay the fee. He added that there are about 6,000 construction contractors in the State of Delaware who are regulated by the Workplace Fraud Act. Senator Bonini asked if smaller contractors would also be required to pay the \$300 fee. Secretary Cade responded that they would for a few reasons, including to be sure not to give a disincentive to participate in the program by giving a cut-off that would encourage some contractors to stay below the cut-off line. He also added that construction is not the safest job and that it is important that fraud is not being committed. He elaborated further that the contractor registry is a way to weed out bad actors on the front end by preventing them to enter the marketplace, and that this is a way for citizens to see what contractors have been vetted by the Department of Labor. He concluded that the registry would be attached to the state's one-stop to make the process as seamless as possible for contractors that would be registering.

Senator Bonini asked what the contractor would receive from paying the \$300 fee. Secretary Cade responded that they would receive the peace of mind knowing that they are a part of a system where someone isn't allowed into the marketplace who is going to artificially reduce the cost of their labor force in order to put out the lowest bid or not do the right thing. Senator Bonini asked what the "right things" are. Secretary Cade explained that the investigators identified that not holding worker's compensation for workers is one example, which affects unemployment and withholds money from the General Fund.

Senator Bonini asked if this system would not allow someone to act as a separate contractor. Secretary Cade responded that this bill is to fight misclassification of workers and workplace fraud and not independent contractors. He added that he hopes that this system will allow those who are being misclassified to have an opportunity and be encouraged by the marketplace to create their own legitimate businesses to conduct operations in a legal perspective.

Senator Bonini asked if someone who is a sole proprietorship would have to pay the fee. Secretary Cade answered that since they are still operating in the marketplace, they would have to pay the fee. He added that some companies that don't have any employees sometimes are the biggest offenders. He stated that he does not want to give an incentive for those who do the wrong thing. Sen. Walsh stated that if this group was removed from the registry, it would create a loophole in the bill.

Senator Bonini asked if fraud is that endemic that a whole new system needs to be created. He added that he has absolute faith that Secretary Cade will execute this registry the right way, but he does not know who will have the job in 8 years. Secretary Cade said that fraud is a large problem both locally and nationally in all industries. He added that people are opting to become independent contractors more now than ever, and that it is a great thing if they are treated as independent contractor. He noted that misclassification can lead to loss of social security, unemployment, and can hurt the economy even when to economy is in a positive state. He also added that if enforcement is not being funded, the issues will not be properly identified. Senator Bonini stated that he has major concerns about creating a new process because it has the potential to negatively impact or discourage smaller businesses and restrict the pool.

Secretary Cade explained that this is why he feels that it is necessary to have the 1 year from enactment clause to give the Department of Labor enough time to thoroughly educate the public to

the new regulations and the existing labor laws. He also added that this opens up the playing field to smaller contractors as there is an ability to get contracts that they would not be able to receive without the registry as this removes the simple “race to the bottom” mentality by cutting corners. Secretary Cade concluded that he feels that contractors would be willing to pay the fee in order to enter into the marketplace and have the ability fairly bid.

Seeing no further questions from the committee, Senator Walsh opened up the floor for public comment.

Mark Gandy, Homebuilders Association of Delaware, stated that New Castle County already has very specific licensing requirements and a registry of all residential contractors. He stated that including residential contractors in the bill is unnecessary as the registry is already in place on the county level. He added that the counties in Delaware already have systems and that this bill may conflict what the counties already have. He added that there are bad actors due to low enforcement, and that those who strive to follow the laws are burdened by this. He concluded by saying that this bill is a lose-lose situation for small business and by saying that the bill contradicts state laws for sole proprietors and LLCs. He urged to remove residential construction trades from the bill or table it for more discussion.

John Horner, Homebuilders Association of Delaware, argued that the unintended consequences of the legislation is contradictory to the goal that it is trying to reach, including overly-broad definitions, and that there are some legal challenges with the bill.

Senator Walsh reiterated that this bill would add 5 new enforcement agents to the Department of Labor staff. Secretary Cade added that the revenue from the fees will allow the Department of Labor to fund additional positions as needed to enact the law. He added that the bill is not restricting the ability to subcontract to other subcontractor, rather it is restricting the ability for subcontractors to subcontract to those who are using unlawful practices.

Ed Capodanno, Associated Builders and Contractors, offered his support for the legislation, stating that the process has been comprehensive with the study group. He also noted that this may be the first time that the Building Trades and ABC agree.

John Casey, Delaware Contractor’s Association, offered the DCA support of the legislation, as it levels the playing field and eliminates the bad actors in the marketplace, as well as allows subcontractors to still subcontract.

Chris Baker, Drive Delaware Forward, offered his organization’s support of the legislation and thanked the sponsor’s work to eliminate unintended consequences surrounding subcontracting language.

James DeChene, Delaware State Chamber of Commerce, offered the Chamber’s support of the legislation. He offered that there is some language as an amendment to clarify the contractor relationship and the maintenance relationship, relating to a concern for utility and telecom companies and municipalities.

C. Scott Kidner, Central Delaware Chamber of Commerce, pointed out some specific lines of concern in the legislation for impact on small business, and he submitted those comments in writing, which are attached at the end of these minutes.

James Maravelias, Delaware Building Trades/AFL-CIO, offered the support of the organization he represents and also mentioned the fact that this is first time that the ABC and Building Trades have agreed.

Senator Bonini, asked if there is still an opportunity to work through the issues brought forth by the home builders. Senator Walsh stated that he has had conversations with the homebuilders and that the conversation has gone as far as it could be taken. He added that he does not want to add a carve-out, as this bill is a protection act for all workers of the industries included in the bill. He thanked Senator Delcollo for his hard work and compromise on the bill and stated that he feels that the bill will do what it is intended to do: to protect the workers and catch the law-breaking contractors in the State of Delaware. He added that the amendment mentioned by James DeChene might not be needed but he is open to have a discussion about that topic.

Senator Walsh recognized Senator Delcollo.

Senator Anthony Delcollo stated that he does not want to blur the lines of the bill but mentioned that he looks forward to seeing the language of the amendment to see if it would be needed to be included in the legislation. He added that he believes that the language in the amendment would not impact the goal of the legislation. He also stated that a sole proprietor can go to an insurer to get a certificate to show that coverage is not needed. He concluded that the focus of the bill should be how Delaware workers are treated and that an environment where workers are treated fairly in the marketplace should be the ultimate goal.

Senator Walsh noted that the other members of the committee are not present because they had a Legislative Council meeting at the same time.

Senator Bonini made a motion to adjourn, and Senator Walsh seconded the motion.

The Senate Labor Committee adjourned at 1:25 P.M.

Minutes Prepared by Ryan Dunphy, Legislative Assistant, on May 31<sup>st</sup>, 2019

## **Dunphy, Ryan C (LegHall)**

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**From:** Scott Kidner <csk@kidner.com>  
**Sent:** Thursday, May 16, 2019 10:25 AM  
**To:** Walsh, John (LegHall); colinbonini@gmail.com; Delcollo, Anthony (LegHall)  
**Cc:** 'Judy Diogo'  
**Subject:** 5B95/CDCC comments

Senators -

As discussed in Committee yesterday, and on behalf of the Central Delaware Chamber of Commerce (CDCC) please consider the following issues as it relates to SB95. Again - while it is not the intent of the Chamber to derail or otherwise impinge the passage of the bill, we do feel that a number of provisions contained in the legislation as drafted are a significant hurdle for small business owners.

Concerns and where applicable, suggested language:

1. Line 84 - While "knowing" has been defined for this chapter, "not knowing" has not been defined, yet it is used on line 223. Suggested inserted language should read:

"Not Knowing" means not having actual knowledge and was not acting in a deliberate or reckless manner to purposely evade the prohibitions as outlined in this chapter.

2. Lines 113 to 115 - This language needs to be stricken since it runs afoul of Delaware's incorporating laws, and is unneeded. Additionally - ownership can change within a company and there are no provisions as to how or when DOL must be informed of these changes. Therefore, would the company be out of compliance because ownership has changed?

3. Line 117 - It is clear that you must provide proof of Workers Comp insurance, yet one person businesses or Sole Ownership do not need WC Insurance. Therefore, suggested language could be inserted after "compensation insurance" the words "... if applicable."

4. Line 141 -A certificate of registration must be renewed no less than 30 days before expiration. Does this mean that you must have your "Renewed Certificate" 30 days prior to the expiration - or that you simply must submit your renewal package to DOL before 30 days of expiration?

5. Line 176 - How does DOL define "reasonably have known" when this is not defined in the chapter. Suggested language is to strike the word "reasonably" since we have defined the word "**known**".

6. Line 189 - Requires a surety bond - not to exceed \$1000 per worker if there is either a pending or potential violation to this chapter. It is unclear if the "per worker" is defined as those only miss-classified worker(s), or every worker on the site, or just those workers under the direction of the contractor or subcontractor?

6. Line 202 - This is conflict with the APA which allows 20 days to respond to an action and request a hearing, not 10 days. Suggested language should be to strike "10" and insert "20"

In summary - we certainly recognize the critical pieces contained in this bill that must move forward - but believe that these minor corrections will bring some clarity as this gets implemented in the future.

Thank you for your review and consideration.

Respectfully submitted,  
Scott Kidner