
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 727 (Leyva) - Labor-related liabilities: direct contractor

Version: April 29, 2021

Urgency: No

Hearing Date: May 10, 2021

Policy Vote: L., P.E. & R. 4 - 1, JUD. 9 - 1

Mandate: No

Consultant: Robert Ingenito

Bill Summary: SB 727 would make specified changes related to contractor joint liability.

Fiscal Impact: The Department of Industrial Relations (DIR) indicates that it would incur first year costs of \$1.6 million, and \$1.5 million annually thereafter, to implement the provisions of the bill (Labor Enforcement and Compliance Fund).

Background: Most large, modern construction projects involve a myriad of entities, each responsible for providing some element of the overall project, bound together by contracts. At the top is the general contractor (also known as a “direct contractor”), who is ultimately responsible for delivering the completed project to the person or business who ordered it built. In the middle are the subcontractors, who agree to perform discrete tasks within the overall project, either by carrying out the task themselves, or divvying up the task into still further pieces and hiring another “tier” of subcontractors to complete those parts. At the far end of the cascade are the workers that the various subcontractors employ to get the job done.

In 2017, California enacted legislation (AB 1701, Thurmond) making the direct contractor on a private construction project jointly liable for all unpaid wages, fringe benefits, and labor trust fund contributions throughout the project. In other words, if any subcontractor at any level of the project fails to pay the full wages, fringe benefits, or labor trust fund contributions of its workers, the direct contractor is now on the hook to make up the difference. Under AB 1701, director contractors are not liable for any penalties or liquidated damages associated with the subcontractor’s failure to pay.

Proposed Law: This bill would, among other things, do the following:

- Extend, for contracts entered into on or after January 1, 2022, the direct contractor’s liability to penalties, liquidated damages, and interest owed by the subcontractor on account of the performance of the labor, except as provided.
- Remove, for contracts entered into on or after January 1, 2022, the direct contractor’s specified limitation of liability.
- Require, for contracts entered into on or after January 1, 2022, the specified notice to include the project name and name of the employer and provide that any liquidated damages awarded by the Labor Commissioner or the court shall be payable to the aggrieved employee.

Related Legislation:

- SB 62 (Durazo) would impose joint and several liability on garment licensors, brands, manufacturers, and contractors, for wage theft taking place in their supply chains, among other things. The bill is pending in this Committee.
- AB 1701 (Thurmond, Chapter 804, Statutes of 2017) established direct contractor liability for wages, fringe benefits, or contributions of all workers on a private construction project, in the event that the subcontractor directly employing the workers fails to pay them.
- AB 1897 (Hernández, Chapter 728, Statutes of 2014) required a client employer, defined as “a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor contractor” to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for the payment of wages and the failure to obtain valid workers’ compensation coverage. It also prohibited a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor.

Staff Comments: The bill would impact DIR’s workload related to claims of wages owed to workers who work for subcontractors of direct contractors who fail to pay their employees. Between 2017 and 2019, DIR received an average of 3,151 wage claims from workers on private construction projects. Under the bill, additional staff time would be required to process claims and determine who is a “direct contractor” for one or more projects a claimant worked on, to add defendants, provide statutorily required notice, obtain documents, prepare subpoenas seeking information held by direct contractors and subcontractors, hear and determine contractor liability under the proposed statute with particular attention to the factors limiting liability, and processing increased appeals under Labor Code Section 98.2 on the issue of “knowledge,” if liquidated damages and penalties are assessed.

Additionally, the bill would affect DIR’s Bureau of Field Enforcement (BOFE) related to inspections performed on private construction worksites. DIR notes that between 2017 and 2019, BOFE performed an average of 252 inspections on private construction worksites. BOFE investigations on private construction worksites typically involve numerous interviews of workers who have worked on a number of different jobs for different general contractors in a short time frame. BOFE citations are of a larger scale than Section 98 claims (which typically are individual worker claims); thus, they require a longer investigation period and process to determine who the general contractor is, and to be able to determine whether they were given notice of unpaid wages as would be required by the bill. Additional cost drivers include staff time to (1) determine who the direct contractor is on one or more projects a worker worked on and prepare and process the special notice(s) to the direct contractor(s), (2) prepare subpoenas for workers seeking the information held by the direct contractor and subcontractors required to obtain for liquidated damages and penalties, and (3) conduct worker interviews to determine who is a “direct contractor,” to hear and determine contractor liability.