
THIRD READING

Bill No: SB 727
Author: Leyva (D)
Amended: 4/29/21
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 4/19/21
AYES: Cortese, Durazo, Laird, Newman
NOES: Ochoa Bogh

SENATE JUDICIARY COMMITTEE: 9-1, 4/27/21
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Stern,
Wieckowski, Wiener
NOES: Borgeas
NO VOTE RECORDED: Jones

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SUBJECT: Labor-related liabilities: direct contractor

SOURCE: California Conference of Carpenters

DIGEST: This bill expands existing direct contractor liability to include liquidated damages and penalties in circumstances where the direct contractor fails to meet payroll monitoring and corrective action requirements.

ANALYSIS:

Existing law:

- 1) Requires that, if a final judgment against an employer for nonpayment of wages remains unsatisfied after a period of 30 days after the time to appeal has expired and no appeal is pending, the employer is prohibited conducting business in this state, including conducting business using the labor of another

business, contractor, or subcontractor, unless the employer has obtained a surety bond and has filed a copy of that bond with the Labor Commissioner. (Labor Code §238)

- 2) Establishes that for contract entered into on or after January 1, 2018, a direct contractor making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other private work, shall assume, and is liable for, any debt owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the contract between the direct contractor and the owner. (Labor Code §218.7)
- 3) Establishes that the direct contractor's liability under this section shall extend only to any unpaid wage, fringe or other benefit payment or contribution, including interest owed but shall not extend to penalties or liquidated damages.
- 4) Establishes that the Labor Commissioner may enforce against a direct contractor the liability for unpaid wages created by subdivision (a) pursuant to Section 98 or 1197.1, or through a civil action but limits the direct contractor's liability to unpaid wages, including any interest owed.
- 5) Authorizes that a third party owed fringe or other benefit payments or contributions on a wage claimant's behalf may bring a civil action against a direct contractor to enforce such liabilities.
- 6) Authorizes that the court shall award a prevailing plaintiff in relevant enforcement actions reasonable attorney's fees and costs, including expert witness fees.
- 7) Establishes that upon request by a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide relevant payroll records containing information sufficient to apprise the requesting party of the subcontractor's payment status in making fringe or other benefit payments or contributions to a third party on the employee's behalf.
- 8) Allows a direct contractor to withhold as "disputed" all sums owed to a subcontractor if that subcontractor does not provide the relevant payroll records with which to verify that relevant wage and hour standards are being met. (Labor Code §218.7 (h))

- 9) Allows a joint labor-management cooperation committee to bring an action in any court of competent jurisdiction against a direct contractor or subcontractor at any tier for unpaid wages for the performance of private work. (Labor Code §218.7(b)(3))
- 10) Requires a joint labor-management cooperation committee, prior to commencement of an action against a direct contractor, to provide the direct contractor and subcontractor that employed the wage claimant with at least 30 days' notice by first-class mail. The notice need only describe the general nature of the claim and *does not* limit the liability of the direct contractor or preclude subsequent amendments of an action to encompass additional wage claimants employed by the subcontractor. (Labor Code §218.7)

This bill:

- 1) Establishes a sunset date of December 31, 2021, for Labor Code Section 218.7
- 2) Establishes that for contracts entered into on or after January 1, 2022, a direct contractor taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other *private* work, shall assume, and is liable for, any debt owed to a wage claimant incurred by a subcontractor acting under the direct contractor.
- 3) Requires that the direct contractor's liability extends to penalties and liquidated damages if the direct contractor had knowledge of the subcontractor's failure to pay the specified wage or benefit.
- 4) Requires that the direct contractor's liability extends to penalties and liquidated damages if the direct contractor fails to comply with the following requirements:
 - a) The contractor must monitor the payment of subcontractor wages by periodic review of payroll records.
 - b) Upon becoming aware of a failure to pay wages, the contractor must take diligent corrective action to halt or rectify the failure, including withholding payments from the subcontractor.
 - c) Prior to making final payment to the subcontractor, the contractor must obtain an affidavit from the subcontractor affirming that all workers have been properly paid.

- d) The Division of Labor Standards Enforcement must notify the contractor and subcontractor within 15 days of the receipt of a complaint of a failure to pay specified wages or benefits.
- 5) Clarifies that this bill does not prohibit a direct contractor or subcontractor from establishing a contract that addresses liability created by failure to pay wages, including penalties and liquidated damages.
- 6) Allows the Labor Commissioner, a third party acting on a wage claimant's behalf or a joint labor-management cooperation committee to bring a civil action against a direct contractor to enforce the liability created by the failure to pay wages or other benefits. No other party may bring an action against a direct contractor to enforce this liability.
- 7) Holds that the above sections do not apply to work performed by employees of the state or any political subdivision of the state.
- 8) Requires that a subcontractor must provide payroll records in accordance with Labor Code Section 226 to a direct contractor upon request. Further requires the subcontractor to provide information including the project name, name and address of the subcontractor, the contractor with whom the subcontractor is under contract, anticipated start date, duration, and estimated journeymen and apprentice hours, and contact information for its subcontractors on the project upon request.
- 9) Allows the direct contractor to withhold as "disputed" all sums owed if a subcontractor does not timely provide the information required above. A contractor must specify the documents and information that they will require from the subcontractor.
- 10) Holds that the provisions of this bill are severable.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the Department of Industrial Relations indicates that it would incur first year costs of \$1.6 million, and \$1.5 million annually thereafter, to implement the provisions of this bill (Labor Enforcement and Compliance Fund).

SUPPORT: (Verified 5/21/21)

California Conference of Carpenters (source)
Carpenters/Contractors Cooperation

Northern California Carpenters Regional Council
Southwest Regional Council of Carpenters
State Building and Construction Trades Council of California

OPPOSITION: (Verified 5/21/21)

Associated General Contractors
Associated General Contractors of California
Brea Chamber of Commerce
Building Industry Association of Fresno and Madera Counties
Building Industry Association of Southern California, INC.
Building Industry Association of the Greater Valley
California Apartment Association
California Builders Alliance
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Forestry Association
California Legislative Conference of Plumbing, Heating & Piping Industry
California Retailers Association
Carlsbad Chamber of Commerce
Casita Coalition
Construction Employers' Association
Contractors Association of Truckee Tahoe
Garden Grove Chamber of Commerce
Greater High Desert Chamber of Commerce
Lodi Chamber of Commerce
National Electrical Contractors Association
Nevada County Contractors Association
North Coast Builders Exchange
North Orange County Chamber
North State Building Industry Association
Northern California Allied Trades
Oceanside Chamber of Commerce
Painting & Decorating Contractors Association of Sacramento
Pleasanton Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
Redondo Beach Chamber of Commerce
Sacramento Regional Builders Exchange
Santa Barbara Contractors Association
Santa Barbara South Coast Chamber of Commerce

Santa Rosa Metro Chamber of Commerce
Shasta Builders Exchange
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southern California Glass Management Association
Southwest California Legislative Council
TMG Partners
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Valley Contractors Exchange
Ventura County Contractors Association
Wall and Ceiling Alliance
Western Wall and Ceiling Contractors Association
Wilmington Chamber of Commerce

ARGUMENTS IN SUPPORT: The California Conference of Carpenters writes in support:

SB 727 will build upon 2017 legislation that requires direct contractors to share in the liability for the payment of wages and other contributions if their subcontractor's failed to make those payments. That law has marginally increased recovery of workers' wages. Enforcement remains rare and consequences, if any, are a minimal financial burden to the direct contractor. As a result, it provides no effective deterrence for continued wage theft violations. Unscrupulous contractors that do not play by the rules continue to have an illegal, unfair advantage over honest contractors. By undermining wages and working conditions throughout the industry the scofflaws drive a race to the bottom.

Where there is wage theft, there is a high likelihood of tax and workers' comp fraud and often there are few, if any, payroll records to be found. SB 727 will give tools and the incentive to an industry badly in need of the ability to police itself. As it stands now, crime actually does pay.

ARGUMENTS IN OPPOSITION: The Associated General Contractors of California write in opposition:

Liability is being wrongly placed on the direct contractor; while the subcontractor who is negligent in conducting their business and treatment of their employees is allowed to escape any liability. During AB 1701 discussions, the contractors suggested amendments to require the Labor Commissioner to pursue all remedies against the subcontractors who were not

properly paying wages and benefits to their employees and we would again suggest this as a remedy.

There is no evidence that AB 1701 is not working, and there is no need for additional liability to be extended to direct contractors. We are only aware of one incident involving underpayment and the employees of that subcontractor were made whole by the direct contractor. This bill unnecessarily penalizes direct contractors for no justifiable reason.

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