

Date of Hearing: July 9, 2025

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Liz Ortega, Chair

SB 597 (Cortese) – As Amended June 27, 2025

SENATE VOTE: 38-0

SUBJECT: Labor-related liabilities: direct contractor and subcontractor

SUMMARY: Revises, in light of an adverse court decision, the statutory remedy that allows a labor trust fund to collect from a direct contractor the unpaid contributions owed to workers by a subcontractor; instead conforms the remedy to the state's mechanic's lien law. Specifically, **this bill:**

- 1) Except as specified below, maintains the language used to establish and enforce direct contractor liability in Labor Code § 218.8. (See (7)-(12) below in existing law).
- 2) Requires for contracts entered into on or after January 1, 2026, 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, to assume, and be liable for, any indebtedness to a laborer incurred by a subcontractor at any tier acting under, by, or for the direct contractor included in the subject of the contract between the direct contractor and the owner.
 - a. Maintains and utilizes the definition of "laborer" in existing law (see (13) below), which includes a person or entity to which a portion of a laborer's compensation for a work of improvement, including, but not limited to, employer payments (defined as contributions made to a trustee or third person for benefits like health and welfare, pension, and apprenticeship programs and implementing regulations), is paid by agreement with that laborer or the collective bargaining agent of that laborer.
- 3) Provides that the direct contractor's liability under these provisions is limited to payments for labor required by the subcontractor's agreement with the laborer or the subcontractor's collective bargaining agreement with the labor organization representing the laborer.
- 4) Provides that these provisions do not prohibit a direct contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for liability created by any indebtedness for labor by that subcontractor or by a subcontractor at any tier working under that subcontractor, including liability for associated penalties and liquidated damages.
- 5) Authorizes a laborer, as defined in (2)(a) above, to bring a civil action against a direct contractor to enforce the liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor pursuant to (2) above.
- 6) Provides that an action pursuant to these provisions shall not be based on the employer's misclassification of the craft of a worker.

- 7) Provides that the remedies created by these provisions are cumulative of any other available remedies.
- 8) Provides that a direct contractor that makes contribution payments pursuant to the following shall not be held liable with respect to fringe or other benefit contributions:
 - a. If a direct contractor has been provided documentation that the subcontractor has been notified by the trust, plan, fund, or program that the subcontractor has failed to make timely required contribution payments for a private construction project, the direct contractor may make the contribution payments for performance of labor for that project in compliance with all of the following:
 - i. The direct contractor makes a payment using a joint check made payable to the subcontractor and the trust, plan, fund, or program for any fringe or other benefit payment or contribution.
 - ii. The subcontractor provides the name, type, number, and address of the trust, plan, fund, or program to the direct contractor.
 - iii. The direct contractor notifies the trust, plan, fund, or program that it has paid the subcontractor with a joint check.
- 9) Defines “direct contractor” as a contractor that has a direct contractual relationship with an owner or any other person or entity engaging contractors or subcontractors for the erection, construction, alteration, or repair of a building, structure, or other private work on behalf of the owner.

EXISTING FEDERAL LAW:

- 1) Establishes joint labor management committees (JLMCs) pursuant to the Labor Management Cooperation Act of 1978. 29 U.S.C. § 175a.
- 2) Establishes Taft-Hartley trust funds, which are employee pension or welfare benefit trusts jointly administered by equal numbers of representatives of employees and employers, as specified. 29 U.S.C. § 186(c)(5)-(c)(8).
- 3) Establishes, under the Employee Retirement Income Security Act of 1974 (ERISA), minimum standards for most voluntarily established retirement and health plans offered by private-sector employers to protect the rights of plan participants and beneficiaries. 29 U.S.C. § 1001-1461.
- 4) Requires every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement, to the extent not inconsistent with law, to make such contributions in accordance with the terms and conditions of such plan or such agreement. 29 U.S.C. § 1145.

EXISTING STATE LAW:

- 5) Establishes the DLSE, under the direction of the LC, within the Department of Industrial Relations (DIR) and sets forth its powers and duties regarding the enforcement of labor laws. Labor Code § 79 et seq.

- 6) Requires, for contracts entered into on or after January 1, 2022, 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, to assume, and be 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(a)(1).
- 7) Extends the direct contractor's liability to penalties, liquidated damages, and interest owed by the subcontractor on account of the performance of the labor covered by the contract, unless specified requirements are met. Labor Code § 218.8(a)(2).
- 8) Provides that, if a worker employed by a subcontractor on a private construction project is not paid the wage, fringe or other benefit payment or contribution owed by the subcontractor, the direct contractor of the project is not liable for any associated penalties or liquidated damages unless 1) the direct contractor had knowledge of the subcontractor's failure to pay the specified wage, fringe or other benefit payment or contribution, or 2) the direct contractor fails to comply with all of the following requirements:
 - a. The contractor must monitor the payment by the subcontractor of wage, fringe or other benefit payment or contribution to the employees or the labor trust fund, by periodic review of the subcontractor's payroll records, as specified.
 - b. Upon becoming aware of the failure of the subcontractor to pay wages, the contractor must diligently take corrective action to halt or rectify the failure.
 - 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. Labor Code § 218.8(a)(3).
- 9) Provides that (6) through (8) above do not prohibit a direct contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for liability created by the nonpayment of wages, fringe or other benefit payments, or contributions by that subcontractor or by a subcontractor at any tier working under that subcontractor, including liability for associated penalties and liquidated damages. Labor Code § 218.8(a)(5).
- 10) Authorizes the LC to enforce against a direct contractor the liability for unpaid wages, liquidated damages, interest, and penalties created by (6) through (8) above, as specified. Labor Code §218.8(b)(1).
- 11) Authorizes a third party owed fringe or other benefit payments or contributions on a wage claimant's behalf to bring a civil action against a direct contractor to enforce the liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor pursuant to (6) through (8) above. Labor Code §218.8(b)(2).
- 12) Authorizes a JLMC to bring an action in any court of competent jurisdiction against a direct contractor or subcontractor at any tier to enforce liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the

subcontractor on account of the performance of the labor on a private work pursuant to (6) through (8) above. Labor Code § 218.8(b)(3).

- 13) Defines “laborer” to include a person or entity to which a portion of a laborer’s compensation for a work of improvement, including, but not limited to, employer payments (defined as contributions made to a trustee or third person for benefits like health and welfare, pension, and apprenticeship programs and implementing regulations), is paid by agreement with that laborer or the collective bargaining agent of that laborer. Civil Code § 8024(b).
- 14) Provides that a person or entity described in (13) above that has standing under applicable law to maintain a direct legal action, in its own name or as an assignee, to collect any portion of compensation owed for a laborer for a work of improvement, shall have standing to enforce any rights or claims of the laborer, as specified, to the extent of the compensation agreed to be paid to the person or entity for labor on that improvement. Civil Code § 8024(c).
- 15) Defines “per diem wages,” for purposes of any statute applicable to public works, as employer payments for, among other things:
 - a. Health and welfare.
 - b. Pension.
 - c. Subsistence.
 - d. Industry advancement and collective bargaining agreements administrative fees, provided that these payments are made pursuant to a collective bargaining agreement to which the employer is obligated.

Specifies that employer payments include the rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program. Labor Code § 1773.1.

- 16) Authorizes a direct contractor, subcontractor, or laborer to file a mechanic’s lien to enforce a claim of wages, including fringe benefits, as specified. Civil Code § 8400, 8416, and 8430.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- “Any administrative costs to the Department of Industrial Relations (DIR) have yet to be identified.
- By authorizing specified persons and entities to file a civil action, this bill would result in cost pressures to the state funded trial court system (Trial Court Trust Fund, General Fund). It is unclear how many proceedings would actually be commenced that otherwise would not have as a result of this bill. The fiscal impact of this bill to the courts would depend on many unknown factors, including the number or proceedings and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. The Governor's 2025-26 budget proposes a \$40 million ongoing increase in discretionary funding from the General Fund to help pay for increased trial court operation costs beginning in 2025-26. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for

increased funding for courts from the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.”

COMMENTS: Note: this bill is double referred to the Assembly Judiciary Committee upon passage out of this Committee.

In 2017, the Legislature passed AB 1701 (Thurmond), which established that a direct contractor on a private construction project is jointly liable with a subcontractor for any wages, fringe benefits, and labor trust fund contributions owed to any worker on its project. AB 1701 also authorized the LC, a JLMC, or a third party owed fringe or other benefit payments or contributions on a wage claimant’s behalf to bring an action to enforce this liability.

With the passage of SB 727 (Leyva) in 2021, the Legislature expanded this liability to include statutory penalties and liquidated damages associated with wages, fringe benefits, and contributions that go unpaid by subcontractors. SB 727 also established a mechanism for direct contractors to avoid liability for penalties and liquidated damages, provided they comply with specified requirements.

AB 1701 and SB 727 created a clear incentive for direct contractors to work with reputable subcontractors, as well as to monitor their subcontractors’ compliance with their payment obligations.

However, in a 2024 lawsuit (*Sheet Metal Workers Pension Trust of Northern California et al. v. KB Home*, Santa Clara Superior Court Case No. 22CV401583) brought by a trust fund against a general contractor to recover unpaid benefit contributions owed by a subcontractor, the Santa Clara Superior Court ruled that the remedies created by AB 1701 and SB 727 are preempted by the federal ERISA, at least with respect to the ability of a trust fund to recover unpaid contributions. (*Please see the Senate Judiciary Committee analysis for more information on the Santa Clara Superior Court decision and other related legal background.*)

This bill revises the statutory remedy to instead use the mechanic’s lien law, which thus far has not been ruled by courts to be preempted by ERISA. The mechanics’ lien law allows contractors, subcontractors, material suppliers, equipment lessors, laborers, and design professionals to file a legal claim (a mechanics’ lien) against a property if they were not paid for work or materials provided for improvements to that property. The change in language would instead provide a labor trust fund standing to enforce a mechanics lien against a direct contractor to recover unpaid benefit contributions owed by a subcontractor.

According to the author:

“Wage theft in the California construction economy has been described as “rampant” by the California Bureau of Field Enforcement at the California Department of Industrial Relations. Since 2022 the courts have received countless wage theft cases, but amendments to Labor code unintentionally left workers underpaid and discouraged from speaking out against their employers for fear of retaliation. SB 597 bolsters statutory remedies against general contractors to eliminate ERISA preemption and incentivizes general contractors to monitor their subcontractors’ compliance. Furthermore, this bill only applies to work performed on private construction projects on or after January 1, 2026. SB 597 protects workers and ensures the courts have the tools they need to review cases.”

The author adds that the bill promotes equity solutions in that “this bill seeks to ensure that California law can continue to protect workers and that workers can be made whole if their construction employer fails to pay their trust benefits. A contractor failing to pay trust benefits can impact a worker and their family by putting a worker at risk of losing their healthcare and other benefits as a result of non-payment. This law ensures that workers are made whole for the work they perform both in wages and in benefits by having direct contractor liability for a subcontractor’s failure to pay.”

Arguments in Support

The Western States Council of Sheet Metal Workers, sponsor of this measure, write in support that “by reinforcing the responsibility of general contractors, SB 597 incentivizes greater oversight of subcontractors’ compliance with wage and benefit obligations, reducing the risk of wage theft and ensuring that workers receive the compensation they have rightfully earned. Furthermore, this bill will help maintain a level playing field for responsible contractors who adhere to fair labor standards, promoting integrity and accountability within the construction industry.”

Arguments in Opposition

None on file.

Prior Legislation

AB 2696 (Rendon), Chapter 734, Statutes of 2023, authorized a JLMC to bring an action in court against a direct contractor for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed to a wage claimant by the direct contractor for the performance of private work.

SB 727 (Leyva), Chapter 338, Statutes of 2021, expanded 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, as specified.

AB 1701 (Thurmond), Chapter 804, Statutes of 2017, established that a direct contractor on a private construction project is jointly liable with a subcontractor for any wages, fringe benefits, and labor trust fund contributions owed to any worker on its project; also authorized the LC, a JLMC, or a third party owed fringe or other benefit payments or contributions on a wage claimant’s behalf to bring an action to enforce this liability.

REGISTERED SUPPORT / OPPOSITION:

Support

Western States Council Sheet Metal, Air, Rail and Transportation (Sponsor)
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Building Industry Association
California Federation of Labor Unions, AFL-CCIO
California Safety and Legislative Board, Smart – Transportation Division
California State Association of Electrical Workers
California State Pipe Trades Council

District Council 16, International Union of Painters and Allied Trades
District Council 36, International Union of Painters and Allied Trades
District Council of Iron Workers of the State of California and Vicinity
International Brotherhood of Boilermakers, Western States Section
Santa Clara County Wage Theft Coalition
State Building and Construction Trades Council

Opposition

None on file.

Analysis Prepared by: Erin Hickey / L. & E. /