

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 727 (Leyva)
Version: April 21, 2021
Hearing Date: April 27, 2021
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Labor-related liabilities: direct contractor

DIGEST

This bill extends the joint liability of a direct contractor on a private construction project to include civil penalties and liquidated damages associated with unpaid wages, fringe benefits, or contributions to labor trust funds. Under existing law, that joint liability is limited to the unpaid amounts only. The bill also establishes a mechanism for direct contractors to avoid liability for penalties and liquidated damages by showing that the underlying violation has been fully abated.

EXECUTIVE SUMMARY

In 2017, California enacted new laws 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 that 2017 law, however, director contractors are not liable for any penalties or liquidated damages associated with the subcontractor's failure to pay. The author and sponsor of this bill contend that, in the absence of joint liability for penalties and liquidated damages, direct contractors still do not face serious enough economic consequences to incentivize careful monitoring by the direct contractors to make sure that all workers on their projects are getting paid in full. This bill would make direct contractors jointly liable for the penalties and liquidated damages associated with wages, fringe benefits, and labor trust fund contributions that go unpaid on their projects, though recent amendments also establish a mechanism for direct contractors to avoid such liability by presenting evidence that the underlying violation has been abated.

The bill is sponsored by the California Conference of Carpenters. Support comes from organized labor. Opposition comes from construction employers, who assert that even if director contractors must make up for the violations by their subcontractors, the

director contractors should not be penalized in addition and that the current right to cure provision is unworkable. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4-1.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) 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. (Lab. Code § 218.7(a)(1).)
- 2) 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. (Lab. Code § 218.7(a)(2).)
- 3) Establishes that the Labor Commissioner may enforce against a direct contractor the liability for unpaid wages created by subdivision through administrative hearings or through a civil action but limits the direct contractor's liability to unpaid wages, including any interest owed. (Lab. Code § 218.7(b)(1).)
- 4) 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. (Lab. Code § 218.7(b)(2).)
- 5) 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. (Lab. Code § 218.7(b)(3).)
- 6) 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. (Lab. Code § 218.7(b)(3).)

- 7) Requires the court to award a prevailing plaintiff in an action pursuant to (9) and (10), above, reasonable attorney's fees and costs, including expert witness fees. (Lab. Code § 218.7(b)(2) and (3).)
- 8) 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. (Lab. Code § 218.7(f).)
- 9) 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. (Lab. Code § 218.7(h).)

This bill:

- 1) Extends joint liability to the direct contractor on a private construction project undertaken pursuant to a contract entered into on or after January 1, 2022, for liquidated damages and penalties arising out of the failure of a subcontractor at any tier of the project to pay wages, fringe benefits, and contributions earned on account of the performance of labor on the project.
- 2) Authorizes the Labor Commissioner, third parties, and Joint Labor Management Cooperation Committee to pursue liquidated damages and penalties from a direct contractor for the failure of any subcontractor to pay wages, fringe benefits, and contributions for work performed on the project.
- 3) Requires the Labor Commissioner, third parties, and Joint Labor Management Cooperation Committees to provide 30 days' notice to the direct contractor of intent to take legal action pursuant to (2), above, before proceeding. Requires the entity providing the notice to forward a copy of the notice to the State Contractors' Licensing Board (SCLB). Directs the SCLB, within five days, of receiving such notice, to report receipt of that notice to the direct contractor and the subcontractor who are the subject of the notice. Instructs the SCLB to keep a record of these notices for at least three years.
- 4) Requires a direct contractor who receives a notice pursuant to (3), above, to take reasonable steps to abate the alleged violation.
- 5) Specifies that if a direct contractor can provide evidence that the alleged violation has been abated, then the direct contractor is no longer jointly liable for any associated penalties and liquidated damages, unless (6), below, applies.

- 6) States that a direct employer cannot avoid joint liability for liquidated damages and penalties pursuant to (5), above, if any of the following apply:
 - a) the direct contractor has previously received two notices pursuant (3), above, within a three-year period;
 - b) the liability against the direct contractor arises from actions by a subcontractor that previously received two notices pursuant to (3), above, within a three-year period; or
 - c) the liability against the direct contractor arises from actions by a subcontractor is a successor to a subcontractor, as defined, that previously received two notices pursuant to (3), above, within a three-year period.

COMMENTS

1. Background on the bill

This bill is a follow up to AB 1701 (Thurmond, Ch. 804, Stats. 2017). That bill established that the direct contractor on a private construction project is jointly liable for all of the wages, fringe benefits, and labor trust fund contributions that accrue for any worker on the project. In other words, through SB 1701, the direct contractor became a financial backstop in the event that any subcontractor anywhere on the project failed to pay the workers or their labor trust fund as required.

The idea was to crack down on incidents of wage theft and related labor violations in the private construction sector, where such problems had been rampant. Those violations were a detriment to workers and a competitive disadvantage for those subcontractors, including many union shops, who were trying to play by the rules. For the workers, having the direct contractor as a guarantor of their wages and fringe benefits means that they have greater assurance of getting paid for their labor, even if the subcontractor who immediately employed them tries to cheat them or runs into financial difficulties. Labor trust funds get the same assurance with respect to their required contributions. Just as importantly, making the direct employer jointly liable for violations committed by subcontractors anywhere on the project creates a strong incentive for the direct contractors to select subcontractors that the direct contractor can count on to pay their workers properly. Similarly, joint liability incentivizes direct contractors to monitor payment of wages, fringe benefits, and labor trust fund contributions across their projects so that the direct contractors can detect and avoid violations before they get stuck with the bill.

2. Debate over liability for penalties and liquidated damages

Under California law, an employer's failure to pay certain wages can expose the employer to penalties and liquidated damages. (Lab. Code 1197.1(a).) At the time that AB 1701 was working its way through the Legislature, there was considerable debate about whether or not direct contractors should or should not be liable for these

penalties and liquidated damages in addition to the underlying violations. On the one hand, direct contractors argued that it would be unfair to penalize them for violations that they themselves did not commit. On the other hand, worker advocates pointed out that the whole concept was to create a financial incentive for the direct contractor to exercise greater vigilance over whether workers on their projects are getting paid properly. The prospect of penalties and liquidated damages would increase that incentive.

Ultimately, AB 1701 limited direct contractors' liability to the underlying violations, and expressly stated that direct contractor were not jointly liability for any associated penalties or liquidated damages. Thus, under existing law, such penalties and liquidated damages remain the sole responsibility of the aggrieved worker's immediate employer.

3. Dispute about the efficacy of the existing law

The proponents of this bill concede that the existing law enacted by AB 1701 "has marginally increased recovery of workers' wages." But they contend that it has not done nearly enough: "[e]nforcement 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."

By contrast, one group of opponents to the bill asserts that "by all accounts [AB 1701] is working as intended." Another coalition of opponents elaborates: [i]n the three years since AB 1701 took effect, there has only been one case identified in which a subcontractor underpaid its employees. In that case, AB 1701 worked to ensure that the general contractor paid the subcontractor's workers what was due to them. That is exactly how it was intended to work, and there is no evidence that AB 1701's remedies are insufficient."

Unfortunately, an independent assessment of whether AB 1701 has been effective does not appear to exist.

4. How to structure the opportunity to cure?

Amendments to the bill taken in the Senate Labor Committee maintain the proposed joint liability of direct contractors for penalties and liquidated damages.¹ However, they establish a new mechanism through which a direct contractor can avoid liability for penalties and liquidated damages by ensuring that the underlying violations are fully abated.

¹ As introduced, this bill would also have made direct employers jointly liable for any failures to maintain workers' compensation insurance coverage and any failures to make unemployment insurance contributions as required. The amendments taken in the Senate Labor, Public Employment and Retirement Committee dropped both of these components of the bill.

Here is how the bill in print would work. The Labor Commissioner, Joint Labor-Management Cooperation Committee are all empowered to file suit against the direct contractor and the subcontractor that directly employed the worker who has not been paid. However, whichever entity intends to sue must first give the direct contractor and the State Contractors' Licensing Board 30 days' advance notice. The direct contractor is then supposed to endeavor to remedy the violation. If, in some period of time (it is unspecified in the bill in print, but presumably is intended to be the same 30-day period), the direct contractor provides evidence of substantial compliance with any applicable payroll requirements and can show that the violations alleged in the notice have been fully abated, the direct contractor's liability will not extend to liquidated damages, penalties or interest. The bill in print does not make clear to whom this evidence must be presented or what entity makes the determination as to whether or not the direct contractor is off the hook for the penalties and liquidated damages.

Under the bill in print, a direct contractor can only use this method get out of paying penalties and liquidated damages so many times. Specifically, the bill calls for the State Contractors Licensing Board to track the number of violations alleged against each direct contractor and each subcontractor. Once a direct contractor is the subject of at least two such allegations in a three-year period, then the direct contractor can no longer avoid liability for penalties and liquidated damages. Similarly, a direct contractor cannot avoid liability for penalties and liquidated damages if that direct contractor hires a subcontractor who has been the subject of at least two alleged violations in any three-year period.

A consensus exists among at least some of the stakeholders that an approach along these lines is desirable: direct contractors should only be punished with penalties and liquidated damages where they knew of the violations or failed to take adequate measures to avoid or abate those violations. However, a number of stakeholders have raised concerns about exactly how the provisions in the bill in print would work mechanically. In addition, the State Contractors' Licensing Board, while not formally opposed to the bill in print, has raised some concerns about the role being proposed for it.

With both that consensus and those concerns in mind, the author proposes to amend the bill to adopt a system modeled off of Labor Code Section 1775. Labor Code 1775 applies to violations of prevailing wage law on public works projects. Under Labor Code Section 1775, a direct (or "prime") contractor can be held liable for the penalties associated with a subcontractor's failure to pay the prevailing wage, but only if the direct contractor had knowledge of the failure or failed to take specified precautionary measures to avoid violations, including acting promptly to address the situation whenever the direct contractor learns of a violation. (Lab. Code § 1775(b).)

The proposed amendments to the bill adapt this framework to the private construction context. Under the amendments, a direct contractor on a private construction project

will be jointly liable for penalties and liquidated damages associated with an underlying wage violation, but only if the direct contractor had knowledge of the violation or failed to take specified proactive steps to try to avoid violations, including swiftly remedying any violations that nevertheless occur.

These amendments are likely to remove some, though not all, of the opposition to the bill.

5. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- make direct contractors on private construction projects liable for the payment of penalties and liquidated damages in much the same way that prime contractors are made potentially liable for prevailing wage violations in the context of public works projects. Specifically, direct employers will be liable for penalties and liquidated damages if they had knowledge of the underlying violation or failed to take certain steps to ensure full payment of wages, fringe benefits, and labor trust fund contributions throughout the project.

A mock-up of the amendments in context is attached to this analysis.

6. Arguments in support of the bill

According to the author:

California's construction industry built our world class infrastructure, is a key driver of the state's economy, and provided hundreds of thousands of housing units annually to address the needs of a growing California population. Due to the skills required and the fair wages and benefits workers received, the industry provided a pathway to the middle class for tens of thousands of construction workers who could then afford to purchase the homes they built. Unfortunately – for more than the last forty years – those standards have been gradually eroding. [...] Like many other sectors, construction wages have gone down, but wage theft and cash payments have also increased. A key factor for this is the lack of enforcement of basic labor laws on job sites. [...] While AB 1701 [...] has made some difference, it has not done enough. SB 727 will provide necessary enforcement tools to effectively deter continued wage theft by ensuring that direct contractors no longer ignore the violations of the subcontractors they hire to build their projects.

As sponsor of the bill, the California Conference of Carpenters writes:

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.

[...] 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.

In support, the State Building and Construction Trades Council of California writes:

When unscrupulous subcontractors engage in the wage theft, tax fraud, and workers' compensation fraud that the Department of Industrial Relations describes as "rampant" in the construction industry, they take opportunities for fairly paid work away from apprentices and qualified journeymen and women, exploit and steal from workers, and deprive Californians of high-quality craftsmanship. SB 727 seeks to engage general contractors in this pressing issue by making them jointly liable with the subcontractors they hire for employee contributions, deductions, and withholdings.

7. Arguments in opposition to the bill

In opposition to the bill, a coalition of 40 construction trade and commerce organizations led by the California Building Industry Association (CBIA) writes:

[AB 1701] initially contained provisions like those contained in SB 727, namely, imposing penalties and liquidated damages on homebuilders if a subcontractor fails to pay wages or fringe benefits for their employees. CBIA along with many of the organizations signed on here strongly opposed the inclusion of penalties and liquidated damages. When the sponsors agreed to remove the penalties and liquidated damages applied to

homebuilders (“direct contractors”), much of that opposition went neutral on AB 1701.

Penalties and liquidated damages are punitive and like punitive damages are only appropriate when an intentional wrong is committed with malice aforethought. This is not and cannot be the case when the party penalized (the homebuilder or general contractor) does not know or control what the other party (subcontractor) does. Moreover, there is no public list made available by any public agency that identifies bad actors. [...]

During a housing crisis, adding more risk, uncertainty, costs and delays to home production is misguided.

In further opposition to the bill, the Construction Employers’ Association (CEA) writes:

Setting aside the rationale for the bill, the amendments taken in the Senate Labor and Employment Committee are especially problematic. While CEA appreciates the removal of unemployment insurance and workers’ compensation provisions, the right-to-repair simply doesn’t work. [...] Were the bill to more closely mirror LC 1775 and provide avenues for contractors to obtain information about existing licensees, then it would be a far more practical measure, albeit one still in search of a problem.

SUPPORT

California Conference of Carpenters (sponsor)
Carpenters/Contractors Cooperation Committee, Inc.
Northern California Carpenters Regional Conference
Southwest Regional Council of Carpenters
State Building and Construction Trades Council of California

OPPOSITION

Associated General Contractors
Brea Chamber of Commerce
Building Industry Association of Fresno/Madera Counties
Building Industry Association of the Greater Valley
Building Industry Association of Southern California
California Apartment Association
California Building Industry Association
California Builders Alliance
California Business Properties Association
California Chamber of Commerce

California Forestry Association
California Legislative Conference of the Plumbing, Heating and Piping Industry
California Retailers Association
California State Pipe Trades Council
Carlsbad Chamber of Commerce
Casita Coalition
Construction Employers' Association
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
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 & Ceiling Contractors Association
Wilmington Chamber of Commerce

RELATED LEGISLATION

Pending legislation: SB 62 (Durazo, 2021) imposes joint and several liability on garment licensors, brands, manufacturers, and contractors, for wage theft taking place in their

supply chains, among other things. SB 62 is currently pending consideration before the Senate Appropriations Committee.

Prior legislation:

AB 1701 (Thurmond, Ch. 804, Stats. 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, Ch. 728, Stats. 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.

AB 2288 (Cedillo, 2012) would have extended liability for unpaid wages, fringe benefits, and contributions to direct contractors, much like this bill. AB 2288 died in the Assembly Committee on Labor and Employment.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 1)

Amended Mock-up for 2021-2022 SB-727 (Leyva (S))

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 218.7 of the Labor Code is amended to read:

~~218.7. (a) (1) For contracts 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.~~

~~(2) The direct contractor's liability under this section shall extend to any unpaid wage, fringe or other benefit payment or contribution, including penalties, liquidated damages, and interest owed by the subcontractor on account of the performance of the labor.~~

~~(3) A direct contractor or any other person shall not evade, or commit any act that negates, the requirements of this section. This section does 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.~~

~~(b) (1) (A) The Labor Commissioner may enforce against a direct contractor the liability created by subdivision (a) pursuant to Section 98 or 1197.1, or through a civil action. The direct contractor's liability shall extend to unpaid wage, fringe or other benefit payment or contribution, including penalties, liquidated damages, and interest owed by the subcontractor on account of the performance of labor.~~

~~(B) (i) Prior to the commencement of an action against a direct contractor to enforce the liability created by subdivision (a), the Labor Commissioner shall provide the direct contractor and subcontractor that employed the wage claimant with at least 30 days' notice by first-class mail. The notice shall describe the general nature of the claim, the project name, the name of the employer that failed to pay wages, and the dates of the alleged claim. The notice shall not limit the liability of the direct contractor or preclude subsequent amendments of an action to encompass additional wage claimants employed by the subcontractor. The Labor Commissioner shall forward the notice to the Contractors' State License Board, and the board shall note the failure to pay wages or benefits on the original employer's license.~~

~~(ii) Within five business days of receiving the forwarded notice described in clause (i), the board shall notify a direct contractor and the subcontractor who is the subject of the~~

~~wage claim that they have received notice of the Labor Commissioner's intent to pursue an action against them.~~

~~(C) The Labor Commissioner shall not bring an action against a direct contractor to enforce liability created by subdivision (a) until 30 days from the day that the Contractors' State License Board receives the forwarded notice described in clause (i) of subparagraph (B).~~

~~(D) A direct contractor and subcontractor who are the subject of a notice pursuant to this paragraph shall, within 30 days of receiving the notice, take reasonable steps to abate any alleged violations. Except as provided in paragraph (2) of subdivision (c), if a direct contractor can provide evidence of substantial compliance with any applicable payroll requirements and can demonstrate that the violations alleged in the notice have been fully abated, the direct contractor's liability shall be limited to any remaining unpaid wage, fringe or other benefit payments or contributions owed to a wage claimant employed by one of their subcontractors, and that liability shall not extend to liquidated damages, penalties, or interest. This subparagraph shall not limit or reduce liquidated damages, penalties, or interest owed by a subcontractor.~~

~~(2) (A) 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 the liability created by subdivision (a) in addition to penalties, liquidated damages, and interest as specified in subdivision (a). The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees.~~

~~(B) (i) Prior to the commencement of an action against a direct contractor to enforce the liability created by subdivision (a), the third party shall provide the direct contractor and subcontractor that employed the wage claimant with at least 30 days' notice by first-class mail. The notice shall describe the general nature of the claim, the project name, the name of the employer that failed to pay wages, and the dates of the alleged claim. The notice shall not limit the liability of the direct contractor or preclude subsequent amendments of an action to encompass additional wage claimants employed by the subcontractor. The third party shall forward the notice to the Contractors' State License Board, and the board shall note the failure to pay wages or benefits on the original employer's license.~~

~~(ii) Within five business days of receiving the forwarded notice described in clause (i), the board shall notify a direct contractor and the subcontractor who is the subject of the wage claim that they have received notice of the third party's intent to pursue an action against them. A copy of this notice shall also be sent to the Labor Commissioner.~~

~~(C) A third party shall not bring an action against a direct contractor to enforce liability created by subdivision (a) until 30 days from the day that the Contractors' State License Board receives the forwarded notice described in clause (i) of subparagraph (B).~~

~~(D) A direct contractor and subcontractor who are the subject of a notice pursuant to this paragraph shall, within 30 days of receiving the notice, take reasonable steps to~~

~~abate any alleged violations. Except as provided in paragraph (2) of subdivision (c), if a direct contractor can provide evidence of substantial compliance with any applicable payroll requirements and can demonstrate that the violations alleged in the notice have been fully abated, the direct contractor's liability shall be limited to any remaining unpaid wage, fringe or other benefit payments or contributions owed to a wage claimant employed by one of their subcontractors, and that liability shall not extend to liquidated damages, penalties, or interest. This subparagraph shall not limit or reduce liquidated damages, penalties, or interest owed by a subcontractor.~~

~~(3) (A) A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of competent jurisdiction against a direct contractor or subcontractor at any tier for unpaid wages owed to a wage claimant by the direct contractor or subcontractor for the performance of private work, including unpaid wages owed by the direct contractor, pursuant to subdivision (a). The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees.~~

~~(B) (i) Prior to commencement of an action against a direct contractor to enforce the liability created by subdivision (a), the committee shall provide the direct contractor and subcontractor that employed the wage claimant with at least 30 days' notice by first-class mail. The notice shall describe the general nature of the claim, the project name, the name of the employer that failed to pay wages, and the dates of the alleged claim. The notice shall not limit the liability of the direct contractor or preclude subsequent amendments of an action to encompass additional wage claimants employed by the subcontractor. The joint labor-management cooperation committee shall forward the notice to the Contractors' State License Board, and the board shall note the failure to pay wages or benefits on the original employer's license.~~

~~(ii) Within five business days of receiving the forwarded notice described in clause (i), the board shall notify a direct contractor and the subcontractor who is the subject of the wage claim that they have received notice of the committee's intent to pursue an action against them. A copy of this notice shall also be sent to the Labor Commissioner.~~

~~(C) The committee shall not bring an action against a direct contractor to enforce liability created by subdivision (a) until 30 days from the day that the Contractors' State License Board receives the forwarded notice described in clause (i) of subparagraph (B).~~

~~(D) A direct contractor and subcontractor who are the subject of a notice pursuant to this paragraph shall, within 30 days of receiving the notice, take reasonable steps to abate any alleged violations. Except as provided in paragraph (2) of subdivision (c), if a direct contractor can provide evidence of substantial compliance with any applicable payroll requirements and can demonstrate that the violations alleged in the notice have been fully abated, the direct contractor's liability shall be limited to any remaining unpaid wage, fringe or other benefit payments or contributions owed to a wage claimant employed by one of their subcontractors, and that liability shall not extend to liquidated~~

~~damages, penalties, or interest. This subparagraph shall not limit or reduce liquidated damages, penalties, or interest owed by a subcontractor.~~

~~(4) No other party may bring an action against a direct contractor to enforce the liability created by subdivision (a).~~

~~(c) (1) The Contractors' State License Board shall keep a record of notices received and sent pursuant to subdivision (b) for no less than three years.~~

~~(2) A direct contractor shall not have their liability limited pursuant to subparagraph (D) of paragraphs (1), (2), or (3) of subdivision (b) by abating alleged violations if the direct contractor meets any of the following conditions:~~

~~(A) The direct contractor has previously received two notices pursuant to subdivision (b) within a three-year period.~~

~~(B) The liability against the direct contractor arises from actions by a subcontractor that previously received two notices pursuant to subdivision (b) within a three-year period.~~

~~(C) The liability against the direct contractor arises from actions by a subcontractor is a successor to a subcontractor that previously received two notices pursuant to subdivision (b) within a three-year period.~~

~~(3) For purposes of paragraph (2), a successor to a subcontractor is established upon meeting any of the following criteria:~~

~~(i) The successor uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the previous direct contractor. This factor does not apply to employers who maintain the same workforce pursuant to Chapter 4.5 (commencing with Section 1060) of Part 3.~~

~~(ii) The successor has substantially the same owners or managers that control the labor relations as previous direct contractors.~~

~~(iii) The successor employs as a managing agent any person who directly controlled the wages, hours, or working conditions of the affected workforce of the previous direct contractor. The term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.~~

~~(iv) The successor operates a business in the same industry and the business has an owner, partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the previous direct contractor.~~

~~(d) Unless otherwise provided by law, property of the direct contractor may be attached, after trial, for the payment of any judgment received pursuant to this section.~~

~~(e) An action brought pursuant to this section shall be filed within one year of the earliest of the following:~~

~~(1) Recordation of the notice of completion of the direct contract, pursuant to Section 8182 of the Civil Code.~~

~~(2) Recordation of a notice of cessation of the work covered by the direct contract, pursuant to Section 8188 of the Civil Code.~~

~~(3) Actual completion of the work covered by the direct contract.~~

~~(f) This section does not apply to work performed by an employee of the state, a special district, a city, a county, a city and county, or any political subdivision of the state.~~

~~(g) (1) Upon request by a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide payroll records, which, at a minimum, contain the information set forth in subdivision (a) of Section 226, and which are payroll records as contemplated by Section 1174, of its employees who are providing labor on a private work, which payroll records shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. The payroll records must contain 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.~~

~~(2) Upon request of a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide the direct contractor award information that includes the project name, name and address of the subcontractor, 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.~~

~~(3) A subcontractor's failure to comply with this subdivision shall not relieve a direct contractor from any of the obligations contained in this section.~~

~~(h) For purposes of this section, "direct contractor" and "subcontractor" have the same meanings as provided in Sections 8018 and 8046, respectively, of the Civil Code.~~

~~(i) Nothing in this section shall alter the owner's obligation to timely pay a direct contractor as set forth in Sections 8800 and 8812 of the Civil Code, or a direct contractor's obligation to timely pay a subcontractor as set forth in Section 7108.5 of the Business and Professions Code and Section 8814 of the Civil Code, or the penalties for failing to do so as set forth in Sections 8800 and 8818 of the Civil Code and Section 7108.5 of the Business and Professions Code, except that the direct contractor may withhold as "disputed" all sums owed if a subcontractor does not timely provide the information requested under paragraphs (1) and (2) of subdivision (g), until that information is provided.~~

~~(j) For any contract entered into on or after January 1, 2019, in order to withhold payments as disputed pursuant to subdivision (i), the direct contractor must specify, in its contract with the subcontractor, the specific documents and information that the direct contractor will require that the subcontractor provide under paragraphs (1) and (2) of subdivision (g). Subcontractors may include the same requirements in their contracts with lower tiered subcontractors and may withhold as disputed all sums owed if a lower tiered subcontractor does not provide the information requested under paragraphs (1) and (2) of subdivision (g), until that information is provided.~~

~~(k) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.~~

218.7. (a)(1) For contracts entered into on or after January 1, 2018 between January 1, 2018 and December 31, 2021, inclusive, 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.

(2) 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.

(3) A direct contractor or any other person shall not evade, or commit any act that negates, the requirements of this section. This section does 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.

(b)(1) 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. The direct contractor's liability shall be limited to unpaid wages, including any interest owed.

(2) 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 the liability created by subdivision (a). The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees.

(3) A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of competent jurisdiction against a direct contractor or subcontractor at any tier for unpaid wages owed to a wage claimant by the direct contractor or subcontractor for the performance of private work, including unpaid wages owed by the direct contractor, pursuant to subdivision (a). The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees.

Prior to commencement of an action against a direct contractor to enforce the liability created by subdivision (a), the committee shall 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 shall not limit the liability of the direct contractor or preclude subsequent amendments of an action to encompass additional wage claimants employed by the subcontractor.

(4) No other party may bring an action against a direct contractor to enforce the liability created by subdivision (a).

(c) Unless otherwise provided by law, property of the direct contractor may be attached, after trial, for the payment of any judgment received pursuant to this section.

(d) An action brought pursuant to this section shall be filed within one year of the earliest of the following:

(1) Recordation of the notice of completion of the direct contract, pursuant to Section 8182 of the Civil Code.

(2) Recordation of a notice of cessation of the work covered by the direct contract, pursuant to Section 8188 of the Civil Code.

(3) Actual completion of the work covered by the direct contract.

(e) This section does not apply to work performed by an employee of the state, a special district, a city, a county, a city and county, or any political subdivision of the state.

(f)(1) Upon request by a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide payroll records, which, at a minimum, contain the information set forth in subdivision (a) of Section 226, and which are payroll records as contemplated by Section 1174, of its employees who are providing labor on a private work, which payroll records shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. The payroll records must contain 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.

(2) Upon request of a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide the direct contractor award information that includes the project name, name and address of the subcontractor, 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.

(3) A subcontractor's failure to comply with this subdivision shall not relieve a direct contractor from any of the obligations contained in this section.

(g) For purposes of this section, "direct contractor" and "subcontractor" have the same meanings as provided in Sections 8018 and 8046, respectively, of the Civil Code.

(h) Nothing in this section shall alter the owner's obligation to timely pay a direct contractor as set forth in Sections 8800 and 8812 of the Civil Code, or a direct

contractor's obligation to timely pay a subcontractor as set forth in Section 7108.5 of the Business and Professions Code and Section 8814 of the Civil Code, or the penalties for failing to do so as set forth in Sections 8800 and 8818 of the Civil Code and Section 7108.5 of the Business and Professions Code, except that the direct contractor may withhold as "disputed" all sums owed if a subcontractor does not timely provide the information requested under paragraphs (1) and (2) of subdivision (f), until that information is provided.

(i) For any contract entered into on or after January 1, 2019, in order to withhold payments as disputed pursuant to subdivision (h), the direct contractor must specify, in its contract with the subcontractor, the specific documents and information that the direct contractor will require that the subcontractor provide under paragraphs (1) and (2) of subdivision (f). Subcontractors may include the same requirements in their contracts with lower tiered subcontractors and may withhold as disputed all sums owed if a lower tiered subcontractor does not provide the information requested under paragraphs (1) and (2) of subdivision (f), until that information is provided.

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Section 2. Section 218.8 is added to the Labor Code to read:

218.8. (a)(1) 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, 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.

(2) Subject to paragraph (3), the direct contractor's liability under this section shall extend to 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.

(3) The direct contractor's liability under this section shall extend to penalties and liquidates damages only as follows:

(A) 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 on account of the worker's performance of labor on that project, the direct contractor of the project is not liable for any associated penalties or liquidated damages under paragraph (2) unless the direct contractor had knowledge of the subcontractor's failure to pay the specified wage, fringe or other benefit payment or contribution, or the direct contractor fails to comply with all of the following requirements:

(i) The contractor shall 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 which, at a minimum, contain the

information set forth in subdivision (a) of Section 226, and which are payroll records as contemplated by Section 1174.

(ii) Upon becoming aware of the failure of the subcontractor to pay the wage, fringe or other benefit payment or contribution to the employees or the labor trust fund, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the private construction project.

(iii) Prior to making final payment to the subcontractor for work performed on the private construction project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the wage, fringe or other benefit payment or contribution due to the employees or the labor trust fund for all work performed on the private construction project.

(iv) The Division of Labor Standards Enforcement shall notify the contractor and subcontractor on a private works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that private works project to pay the specified wage, fringe or other benefit due to workers.

(4) A direct contractor or any other person shall not evade, or commit any act that negates, the requirements of this section. This section does 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.

(b)(1) The Labor Commissioner may enforce against a direct contractor the liability for unpaid wages, liquidated damages, interest and penalties created by subdivision (a) pursuant to Section 98 or 1197.1, or through a civil action.

(2) 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 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 subdivision (a). The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees.

(3) A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may 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 subdivision (a). The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees. Prior to commencement of an action against a direct contractor to enforce the liability created by subdivision (a), the committee shall 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, the project name and the name of the employer, and shall not limit the liability of the direct contractor or preclude subsequent amendments of an action to encompass additional wage claimants employed by the subcontractor.

(4) No other party may bring an action against a direct contractor to enforce the liability created by subdivision (a).

(5) Any liquidated damages awarded by the Labor Commissioner or the court shall be payable to the aggrieved employee.

(c) Unless otherwise provided by law, property of the direct contractor may be attached, after trial, for the payment of any judgment received pursuant to this section.

(d) An action brought pursuant to this section shall be filed within one year of the earliest of the following:

(1) Recordation of the notice of completion of the direct contract, pursuant to Section 8182 of the Civil Code.

(2) Recordation of a notice of cessation of the work covered by the direct contract, pursuant to Section 8188 of the Civil Code.

(3) Actual completion of the work covered by the direct contract.

(e) This section does not apply to work performed by an employee of the state, a special district, a city, a county, a city and county, or any political subdivision of the state.

(f)(1) Upon request by a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide payroll records, which, at a minimum, contain the information set forth in subdivision (a) of Section 226, and which are payroll records as contemplated by Section 1174, of its employees who are providing labor on a private work, which payroll records shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. The payroll records must contain 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.

(2) Upon request of a direct contractor to a subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide the direct contractor award information that includes the project name, name and address of the subcontractor, 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.

(3) A subcontractor's failure to comply with this subdivision shall not relieve a direct contractor from any of the obligations contained in this section.

(g) For purposes of this section, "direct contractor" and "subcontractor" have the same meanings as provided in Sections 8018 and 8046, respectively, of the Civil Code.

(h) Nothing in this section shall alter the owner's obligation to timely pay a direct contractor as set forth in Sections 8800 and 8812 of the Civil Code, or a direct contractor's obligation to timely pay a subcontractor as set forth in Section 7108.5 of the

Business and Professions Code and Section 8814 of the Civil Code, or the penalties for failing to do so as set forth in Sections 8800 and 8818 of the Civil Code and Section 7108.5 of the Business and Professions Code, except that the direct contractor may withhold as “disputed” all sums owed if a subcontractor does not timely provide the information requested under paragraphs (1) and (2) of subdivision (f), until that information is provided.

(i) For any contract entered into on or after January 1, 2022, in order to withhold payments as disputed pursuant to subdivision (h), the direct contractor must specify, in its contract with the subcontractor, the specific documents and information that the direct contractor will require that the subcontractor provide under paragraphs (1) and (2) of subdivision (f). Subcontractors may include the same requirements in their contracts with lower tiered subcontractors and may withhold as disputed all sums owed if a lower tiered subcontractor does not provide the information requested under paragraphs (1) and (2) of subdivision (f), until that information is provided.

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.