

CONCURRENCE IN SENATE AMENDMENTS

AB 1565 (Thurmond)

As Amended May 24, 2018

2/3 vote. Urgency

ASSEMBLY: (May 30, 2017) SENATE: 37-0 (August 13, 2018)

(vote not relevant)

COMMITTEE VOTE: 7-0 (August 22, 2018) RECOMMENDATION: concur
(L. & E.)Original Committee Reference: **L. & E.****SUMMARY:** Makes technical and clarifying changes to the recently created joint liability provisions for construction contractors and subcontractors.**The Senate amendments** delete the Assembly version of this bill, and instead:

- 1) Strikes the language stating that a direct contractor's liability for debts owed to a wage claimant, or to a third party on the wage claimant's behalf, for any unpaid wage, fringe, or other benefit payment or contribution, is in addition to any obligations and remedies otherwise provided by law.
- 2) Provides that, for any contract entered into on or after January 1, 2019, in order to withhold dispute payments, 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 must provide upon request. Subcontractors may include the same requirements in their contracts with lower tiered subcontractors and may withhold as disputed all sums owed, as specified.
- 3) Declares the bill an urgency measure that must go into effect immediately due to the need to resolve the confusion created by the existing language at the earliest possible time.

EXISTING LAW:

- 1) Extends liability, for contracts entered into on or after January 1, 2018, from a subcontractor at any tier to the direct contractor for any debt owed to a wage claimant or third party on the wage claimant's behalf for the wage claimant's performance of labor.
- 2) Limits the liability to any unpaid wage, fringe or other benefit payment or contribution, including interest owed, but explicitly *excludes* penalties and liquidated damages.
- 3) Prohibits a direct contractor or any other person from evading or negating the requirements of this section, but *explicitly allows* 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.
- 4) Provides that the Labor Commissioner may enforce the liability against a direct contractor through either a civil action or the administrative process for disputing unpaid wages.

- 5) Limits enforcement of direct contractor liability through civil action to the Labor Commissioner, a joint labor-management cooperation committee, or a third party which is owed fringe or benefit payments.
- 6) Provides that the joint liability discussed above is in addition to any obligations and remedies otherwise provided by law, and that nothing in this bill alters an owner's obligation to timely pay his or her direct contractor.

FISCAL EFFECT: Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS: According to the author, "This bill picks up on our work last year ensuring that workers receive the benefits and pay owed them for the work they performed. This bill reflects an agreement between stakeholders to clean up the bill and eliminate confusion."

Last year, the Legislature passed and Governor Brown signed AB 1701 (Thurmond) Chapter 804, Statutes of 2017, which created joint liability provisions for construction contractors and subcontractors. Prior to the conclusion of the Legislative Session, Assemblymember Thurmond entered the following letter to the Assembly Journal:

[Assembly Bill 1701] proposes to enact a new labor Section 218.7. Due to a disagreement about the meaning of subdivision (h), the author and stakeholders have agreed to delete that subdivision from Section 218.7 in follow-up legislation. No inference should be drawn from the inclusion and subsequent removal of that subdivision.

This bill is the follow-up legislation described in Assemblymember Thurmond's letter to the Assembly Journal, striking subdivision (h).

The measure also includes technical language to resolve stakeholder concerns on withholding disputed payments. To assist general contractors in monitoring payment of wages, benefits, and contributions at the worksite, the law as amended by AB 1701 includes a provision allowing the general contractor to withhold as "disputed" all sums owing to a subcontractor if the subcontractor fails to produce adequate information about payroll records and about the lower-tier subcontractors to whom the subcontractor has awarded work. This provision raised concerns for subcontractors who sought assurance about the exact circumstances in which payments might be withheld from them.

This measure resolves those concerns by requiring the general contractor to specify, in the terms of its contract with the subcontractor, what documents the general contractor may require the subcontractor to produce prior to withholding payments. In that way, this bill would provide certainty to subcontractors about the exact nature of their obligations and what they must do to avoid withholding of payments.