

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1352

Introduced by Senator Wyland

February 20, 2008

An act to amend Sections 1742.1 and 1743 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 1352, as amended, Wyland. Public works: prevailing wage rates: wage and penalty assessments.

Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if the Labor Commissioner determines, after investigation, that the contractor or subcontractor, or both, violated the laws regulating public works contracts, including the payment of prevailing wages. Existing law permits the affected contractor or subcontractor to obtain review of a civil wage and penalty assessment or a notice of withholding, as defined, by transmitting a written request for a hearing to the office of the Labor Commissioner within 60 days after service of the assessment or notice and ~~would require~~ *requires* a hearing officer, as specified, or, after January 1, 2009, an administrative law judge appointed by the Director of Industrial Relations, to commence a hearing within 90 days of receipt of the request. Existing law provides that, after 60 days following the service of the assessment or notice, the affected contractor, subcontractor, and surety on a bond issued to secure the payment of wages, as provided, become liable for liquidated damages in an amount equal to the amount of unpaid wages, as specified. Existing law authorizes the hearing officer, as specified, or, after January 1, 2009, an administrative judge, to waive payment of the liquidated damages

if the affected contractor or subcontractor demonstrates, as provided, that he or she had substantial grounds for believing the assessment or notice to be in error, and also permits the affected contractor or subcontractor to obtain review of the administrative decision by filing a petition for a writ of mandate to the superior court within 45 days after service of the decision. Existing law also provides that the contractor and subcontractor are jointly and severally liable for all amounts due pursuant to a final order or a judgment on that final order.

This bill would modify those provisions to provide that an affected contractor, subcontractor, and surety become liable for liquidated damages after 60 days following the service of the assessment or notice of withholding, as specified, only if no request for a hearing has been made. ~~This bill would also require the affected contractor, subcontractor, and surety to pay all wages determined to be due within 45 days following the service of the administrative decision or notice from the court regarding a writ of mandate, whichever is applicable, and would require a payment of liquidated damages, as specified, if full payment is not made within those 45 days, if a request for a hearing has been filed, allow the affected contractor, subcontractor, or surety to deposit in an escrow account, within 5 working days, specified items in the amount of wages covered by the assessment, and provide a procedure for distributing the amount of money due and owing and any liability in connection thereto, as provided.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1742.1 of the Labor Code is amended to
2 read:
3 1742.1. (a) After 60 days following the service of a civil wage
4 and penalty assessment under Section 1741 or a notice of
5 withholding under subdivision (a) of Section 1771.6, if no request
6 for a hearing has been made, the affected contractor, subcontractor,
7 and surety on a bond or bonds issued to secure the payment of
8 wages covered by the assessment or notice shall be liable for
9 liquidated damages in an amount equal to the wages, or portion
10 thereof, that still remain unpaid. If the assessment or notice
11 subsequently is overturned or modified after administrative or
12 judicial review, liquidated damages shall be payable only on the

1 wages found to be due and unpaid. ~~If, pursuant to Section 1742,~~
2 ~~a request for a hearing has been filed and all administrative~~
3 ~~remedies and judicial review options have been exhausted, the~~
4 ~~affected contractor, subcontractor, and surety shall pay all wages~~
5 ~~determined to be due within 45 days of receiving the administrative~~
6 ~~decision or notice from the court regarding a writ of mandate,~~
7 ~~whichever is applicable, filed pursuant to Section 1094.5 of the~~
8 ~~Code of Civil Procedure. After 45 days following the service of~~
9 ~~the administrative decision or notice from the court, whichever is~~
10 ~~applicable, the affected contractor, subcontractor, and surety shall~~
11 ~~also be liable for liquidated damages in an amount equal to the~~
12 ~~wages, or portion thereof, that remain unpaid. Any~~ *If a request for*
13 *a hearing has been filed pursuant to Section 1742, the affected*
14 *contractor, subcontractor, or surety may deposit into an escrow*
15 *account within five working days from the date of filing any of the*
16 *following: cash, a letter of credit, a payment bond, or negotiable*
17 *securities in the amount of the wages covered by the assessment.*
18 *Upon receipt of the administrative decision or notice from the*
19 *court regarding a writ of mandate filed pursuant to Section 1094.5*
20 *of the Code of Civil Procedure, whichever is applicable, setting*
21 *forth the amount of money due and owing, that amount of money*
22 *shall be distributed from the escrow account to either or both of*
23 *the following for distribution, along with any interest earned, to*
24 *the affected employees:*

- 25 (1) *The affected contractor or subcontractor.*
- 26 (2) *The Labor Commissioner.*

27 *If an escrow account is not established, the affected contractor,*
28 *subcontractor, or surety shall be liable for liquidated damages in*
29 *an amount equal to the wages, or portion thereof, that still remain*
30 *unpaid. Any liquidated damages collected shall be distributed to*
31 *the employee along with the unpaid wages. Section 203.5 shall*
32 *not apply to claims for prevailing wages under this chapter.*

33 (b) *The Labor Commissioner shall, upon receipt of a request*
34 *from the affected contractor or subcontractor within 30 days*
35 *following the service of a civil wage and penalty assessment under*
36 *Section 1741, afford the contractor or subcontractor the opportunity*
37 *to meet with the Labor Commissioner or his or her designee to*
38 *attempt to settle a dispute regarding the assessment without the*
39 *need for formal proceedings. The awarding body shall, upon receipt*
40 *of a request from the affected contractor or subcontractor within*

1 30 days following the service of a notice of withholding under
2 subdivision (a) of Section 1771.6, afford the contractor or
3 subcontractor the opportunity to meet with the designee of the
4 awarding body to attempt to settle a dispute regarding the notice
5 without the need for formal proceedings. The settlement meeting
6 may be held in person or by telephone and shall take place before
7 the expiration of the 60-day period for seeking administrative
8 review. No evidence of anything said or any admission made for
9 the purpose of, in the course of, or pursuant to, the settlement
10 meeting is admissible or subject to discovery in any administrative
11 or civil proceeding. No writing prepared for the purpose of, in the
12 course of, or pursuant to, the settlement meeting, other than a final
13 settlement agreement, is admissible or subject to discovery in any
14 administrative or civil proceeding. The assessment or notice shall
15 advise the contractor or subcontractor of the opportunity to request
16 a settlement meeting.

17 (c) This section shall become operative on January 1, 2007.

18 SEC. 2. Section 1743 of the Labor Code is amended to read:

19 1743. (a) The contractor and subcontractor shall be jointly and
20 severally liable for all wages found due pursuant to a final order
21 under this chapter or a judgment thereon. The Labor Commissioner
22 shall first exhaust all reasonable remedies to collect the amount
23 due from the subcontractor before pursuing the claim against the
24 contractor.

25 (b) From the amount collected, the wage claim shall be satisfied
26 prior to the amount being applied to penalties. If insufficient money
27 is recovered to pay each worker in full, the money shall be prorated
28 among all workers.

29 (c) Wages for workers who cannot be located shall be placed
30 in the Industrial Relations Unpaid Wage Fund and held in trust for
31 the workers pursuant to Section 96.7. Penalties shall be paid into
32 the General Fund.

33 (d) A final order under this chapter or a judgment thereon shall
34 be binding, with respect to the amount found to be due, on a
35 bonding company issuing a bond that secures the payment of wages
36 and a surety on a bond. The limitations period of any action on a
37 payment bond shall be tolled pending a final order that is no longer
38 subject to judicial review.

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