

AMENDED IN ASSEMBLY JULY 1, 2008

AMENDED IN SENATE APRIL 15, 2008

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~~ *Section 1742.1* 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 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, 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
13 wages found to be due and unpaid. If a request for a hearing has
14 been filed pursuant to Section 1742, the affected contractor,

1 subcontractor, or surety may deposit into an escrow account within
2 five working days from the date of filing any of the following:
3 cash, a letter of credit, a payment bond, or negotiable securities in
4 the amount of the wages covered by the assessment. Upon receipt
5 of the administrative decision or notice from the court regarding
6 a writ of mandate filed pursuant to Section 1094.5 of the Code of
7 Civil Procedure, whichever is applicable, setting forth the amount
8 of money due and owing, that amount of money shall be distributed
9 from the escrow account, along with any interest earned, to the
10 prevailing party, that may be either or both of the following:

- 11 (1) The affected contractor or subcontractor.
- 12 (2) The Labor Commissioner.

13 The Labor Commissioner shall distribute any funds found owing
14 to an affected employee to that affected employee.

15 If an escrow account is not established, the affected contractor,
16 subcontractor, or surety shall be liable for liquidated damages in
17 an amount equal to the wages, or portion thereof, that still remain
18 unpaid. Any liquidated damages collected shall be distributed to
19 the employee along with the unpaid wages. Section 203.5 shall
20 not apply to claims for prevailing wages under this chapter.

21 (b) The Labor Commissioner shall, upon receipt of a request
22 from the affected contractor or subcontractor within 30 days
23 following the service of a civil wage and penalty assessment under
24 Section 1741, afford the contractor or subcontractor the opportunity
25 to meet with the Labor Commissioner or his or her designee to
26 attempt to settle a dispute regarding the assessment without the
27 need for formal proceedings. The awarding body shall, upon receipt
28 of a request from the affected contractor or subcontractor within
29 30 days following the service of a notice of withholding under
30 subdivision (a) of Section 1771.6, afford the contractor or
31 subcontractor the opportunity to meet with the designee of the
32 awarding body to attempt to settle a dispute regarding the notice
33 without the need for formal proceedings. The settlement meeting
34 may be held in person or by telephone and shall take place before
35 the expiration of the 60-day period for seeking administrative
36 review. No evidence of anything said or any admission made for
37 the purpose of, in the course of, or pursuant to, the settlement
38 meeting is admissible or subject to discovery in any administrative
39 or civil proceeding. No writing prepared for the purpose of, in the
40 course of, or pursuant to, the settlement meeting, other than a final

1 settlement agreement, is admissible or subject to discovery in any
2 administrative or civil proceeding. The assessment or notice shall
3 advise the contractor or subcontractor of the opportunity to request
4 a settlement meeting.

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

6 ~~SEC. 2.— Section 1743 of the Labor Code is amended to read:~~

7 ~~1743. (a) The contractor and subcontractor shall be jointly and~~
8 ~~severally liable for all amounts found due pursuant to a final order~~
9 ~~under this chapter or a judgment thereon. The Labor Commissioner~~
10 ~~shall first exhaust all reasonable remedies to collect the amount~~
11 ~~due from the subcontractor before pursuing the claim against the~~
12 ~~contractor.~~

13 ~~(b) From the amount collected, the wage claim shall be satisfied~~
14 ~~prior to the amount being applied to penalties. If insufficient money~~
15 ~~is recovered to pay each worker in full, the money shall be prorated~~
16 ~~among all workers.~~

17 ~~(c) Wages for workers who cannot be located shall be placed~~
18 ~~in the Industrial Relations Unpaid Wage Fund and held in trust for~~
19 ~~the workers pursuant to Section 96.7. Penalties shall be paid into~~
20 ~~the General Fund.~~

21 ~~(d) A final order under this chapter or a judgment thereon shall~~
22 ~~be binding, with respect to the amount found to be due, on a~~
23 ~~bonding company issuing a bond that secures the payment of wages~~
24 ~~and a surety on a bond. The limitations period of any action on a~~
25 ~~payment bond shall be tolled pending a final order that is no longer~~
26 ~~subject to judicial review.~~