

**ASSEMBLY BILL**

**No. 1741**

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**Introduced by Assembly Member Frazier**

February 14, 2014

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An act to amend Section 1742.1 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 1741, as introduced, Frazier. Public works: prevailing wage rates: wage and penalty assessments.

Existing law generally requires the payment of the prevailing rate of per diem wages for work of a similar character in the locality in which the public work, as defined, is performed and the prevailing rate for holiday and overtime work fixed to employees employed on public works projects that cost more than \$1,000. 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. Existing law provides that, after 60 days following the service of a civil wage and penalty 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 a contractor, subcontractor, or surety to deposit the full amount of the assessment or notice, including penalties, with the Department of Industrial Relations to hold in escrow

pending administrative or judicial review and to be distributed, as specified. Under existing law, if so deposited, there would be no liability for liquidated damages.

This bill would specify that a contractor, subcontractor, or surety may deposit the full amount of the assessment or notice with the Department of Industrial Relations in the form of cash or a bond.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
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, the affected  
6 contractor, subcontractor, and surety on a bond or bonds issued to  
7 secure the payment of wages covered by the assessment or notice  
8 shall be liable for liquidated damages in an amount equal to the  
9 wages, or portion thereof, that still remain unpaid. If the assessment  
10 or notice subsequently is overturned or modified after  
11 administrative or judicial review, liquidated damages shall be  
12 payable only on the wages found to be due and unpaid.

13 Additionally, if the contractor or subcontractor demonstrates to  
14 the satisfaction of the director that he or she had substantial grounds  
15 for appealing the assessment or notice with respect to a portion of  
16 the unpaid wages covered by the assessment or notice, the director  
17 may exercise his or her discretion to waive payment of the  
18 liquidated damages with respect to that portion of the unpaid  
19 wages. Any liquidated damages shall be distributed to the employee  
20 along with the unpaid wages. Section 203.5 shall not apply to  
21 claims for prevailing wages under this chapter.

22 (b) Notwithstanding subdivision (a), there shall be no liability  
23 for liquidated damages if the full amount of the assessment or  
24 notice, including penalties, has been deposited with the Department  
25 of Industrial Relations, *in the form of cash or a bond*, within 60  
26 days following service of the assessment or notice, for the  
27 department to hold in escrow pending administrative and judicial  
28 review. The department shall release ~~such~~ *the funds in escrow*,  
29 plus any interest earned, at the conclusion of all administrative

1 and judicial review to the persons and entities who are found to  
2 be entitled to ~~such~~ *those* funds.

3 (c) The Labor Commissioner shall, upon receipt of a request  
4 from the affected contractor or subcontractor within 30 days  
5 following the service of a civil wage and penalty assessment under  
6 Section 1741, afford the contractor or subcontractor the opportunity  
7 to meet with the Labor Commissioner or his or her designee to  
8 attempt to settle a dispute regarding the assessment without the  
9 need for formal proceedings. The awarding body shall, upon receipt  
10 of a request from the affected contractor or subcontractor within  
11 30 days following the service of a notice of withholding under  
12 subdivision (a) of Section 1771.6, afford the contractor or  
13 subcontractor the opportunity to meet with the designee of the  
14 awarding body to attempt to settle a dispute regarding the notice  
15 without the need for formal proceedings. The settlement meeting  
16 may be held in person or by telephone and shall take place before  
17 the expiration of the 60-day period for seeking administrative  
18 review. No evidence of anything said or any admission made for  
19 the purpose of, in the course of, or pursuant to, the settlement  
20 meeting is admissible or subject to discovery in any administrative  
21 or civil proceeding. No writing prepared for the purpose of, in the  
22 course of, or pursuant to, the settlement meeting, other than a final  
23 settlement agreement, is admissible or subject to discovery in any  
24 administrative or civil proceeding. The assessment or notice shall  
25 advise the contractor or subcontractor of the opportunity to request  
26 a settlement meeting.

27 ~~(d) This section shall become operative on January 1, 2007.~~

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