

AMENDED IN ASSEMBLY APRIL 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1741

Introduced by Assembly Member Frazier

February 14, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1741, as amended, 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~~. *bond issued by a surety company admitted to do business in California in a form acceptable to the Director of the Department of Industrial Relations. The bill would require the director to prescribe the requirements for a bond deposited pursuant to these provisions.*

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~~

1 ~~of Industrial Relations~~, department, in the form of cash or a bond
2 *issued by a surety company admitted to do business in this state*
3 *in a form acceptable to the director*, within 60 days following
4 service of the assessment or notice, for the department to hold in
5 escrow pending administrative and judicial review. The department
6 shall release the funds in escrow, plus any interest earned, at the
7 conclusion of all administrative and judicial review to the persons
8 and entities who are found to be entitled to those funds. *The*
9 *director shall prescribe the requirements for a bond deposited*
10 *pursuant to this subdivision.*

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

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