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**AB-2705 Labor Commissioner.** (2023-2024)

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**Assembly Bill No. 2705**

**CHAPTER 242**

An act to amend Section 1743 of the Labor Code, relating to public works.

[ Approved by Governor September 14, 2024. Filed with Secretary of State September 14, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2705, Ortega. Labor Commissioner.

Existing law imposes various requirements on work performed on a public works project, as defined, including requirements for minimum wages to be paid. Existing law requires the Labor Commissioner, after determining there has been a violation of these requirements, to issue a civil wage and penalty assessment to the contractor or subcontractor, or both. Existing law requires the assessment to be in writing and served not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last. Existing law provides for this time period to be tolled under specified conditions. Existing law generally limits claimants from commencing an action to enforce the liability on a payment bond at any time after the claimant ceases to provide work, but not later than 6 months after the period in which a stop payment notice may be given.

This bill would provide a limitations period for any action on a payment bond filed by the Labor Commissioner to be governed by the same timing requirements for the Labor Commissioner to serve a civil wage and penalty assessment.

This bill would incorporate additional changes to Section 1743 of the Labor Code proposed by SB 830 to be operative only if this bill and SB 830 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 1743 of the Labor Code is amended to read:

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

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

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

(d) Notwithstanding Section 9558 of the Civil Code, the limitations period of any action on a payment bond filed by the Labor Commissioner shall be governed by the limitations period in Section 1741 and the tolling provisions of Section 1741.1. A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.

**SEC. 1.1.** Section 1743 of the Labor Code is amended to read:

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

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

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

(d) Notwithstanding Section 9558 of the Civil Code, the limitations period of any action on a payment bond filed by the Labor Commissioner shall be governed by the limitations period in Section 1741 and the tolling provisions of Section 1741.1. A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.

(e) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

**SEC. 1.2.** Section 1743 is added to the Labor Code, to read:

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

(b) Wages or penalties due pursuant to a violation of prevailing wage requirements for offsite, custom fabrication of sheet metal ducts at an out-of-state fabrication facility shall be assessed jointly and severally against the contractor and the subcontractor installing such ducts. The out-of-state fabrication facility shall not be directly liable for such violations. A contractor or subcontractor may contractually require a fabrication facility, including an out-of-state fabrication facility, to indemnify them for any liability that arises from failure to pay prevailing wages for custom fabrication of sheet metal ducts for a public works project.

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

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

(e) Notwithstanding Section 9558 of the Civil Code, the limitations period of any action on a payment bond filed by the Labor Commissioner shall be governed by the limitations period in Section 1741 and the tolling provisions of Section 1741.1. A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.

(f) This section shall become operative on January 1, 2026.

**SEC. 2.** Sections 1.1 and 1.2 of this bill incorporate amendments to Section 1743 of the Labor Code proposed by both this bill and Senate Bill 830. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 1743 of the Labor Code, and (3) this bill is enacted after Senate Bill 830, in which case Section 1 of this bill shall not become operative.