

SEP 11 2019

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S253574

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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LEOPOLDO PENA MENDOZA, ET AL.,

*Plaintiffs and Appellants,*

v.

FONSECA MCELROY GRINDING CO., INC., ET AL.,

*Defendants and Respondents.*

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On Appeal from the Ninth Circuit Court of Appeals,  
Case No.: 17-15221  
United States District Court  
for the Northern District of California, San Francisco  
Case No. 3:15-cv-05143-WHO  
The Hon. William Horsley Orrick, District Judge

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**RESPONDENTS' MOTION FOR JUDICIAL NOTICE;  
DECLARATION IN SUPPORT THEREOF; [PROPOSED] ORDER**

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FONSECA MCELROY GRINDING,  
CO., INC. and GRANITE ROCK  
COMPANY

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S253574

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Pursuant to Evidence Code sections 452 and 453 and California Rule of Court 8.252, Defendants and Respondents Fonseca McElroy Grinding Co., Inc. and Granite Rock Company (collectively “Respondents”) hereby move the Court to take judicial notice of the documents attached hereto as Exhibits A-D, identified below, offered in support of its Answer Brief on the Merits. Exhibits A-D consist of legislative history documents which are relevant to the interpretation of Labor Code section 1720, as well as Labor Code sections 1772 and 1774, and the Legislature’s intention in enacting those provisions, which are directly at issue in this appeal.

Judicial notice may be taken of the “[o]fficial acts of the legislative, executive, and judicial departments of . . . any state of the United States.” Evid. Code § 452(c). The Court may also judicially notice “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Evid. Code § 452(h). Here, Respondents seek judicial notice of the following documents:

**Exhibit A** is the text of Senate Bill 1999 (Reg. Sess. 1999-2000), as amended August 18, 2000, retrieved from the official California Legislative Information website, <http://leginfo.legislature.ca.gov>.

**Exhibit B** is the Bill Analysis of Senate Bill 1999 prepared by the Assembly Committee on Labor and Employment, dated August 18, 2000, retrieved from the official California Legislative Information website

**Exhibit C** is the text of Senate Bill 1999 (Reg. Sess. 1999-2000), as amended August 23, 2000, retrieved from the official California Legislative Information website.

**Exhibit D** is the Assembly Floor Bill Analysis of Senate Bill 1999, dated August 23, 2000, retrieved from the official California Legislative Information website.

These legislative history materials were not presented to the trial court and do not relate to proceedings occurring after the order granting summary judgment in favor of Respondents which is the subject of this appeal.

Judicial notice of the documents identified above—California legislative bills and official analyses of those bills—is appropriate under Evidence Code section 452, subdivisions (c) and (h), because each document constitutes an official act of a public agency and is not reasonably subject to dispute. Indeed, this Court has previously stated that a request for judicial notice of bills and committee reports may be unnecessary, and that citation to such materials is sufficient. *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal. 4th 26, 45 n. 9. In an abundance of caution, however, Respondents provide the following authorities to support of their request.

Granting judicial notice of the unenacted versions of S.B. 1999 (Exhibits A and C) is consistent with this Court’s decision in *Quintano v. Mercury Casualty Com.* (1996) 11 Cal. 4th 1049, 1062 n. 5. In *Quintano*, the Court took judicial notice of the various versions of a bill that the legislature considering in adopting legislation. *Id.* In taking notice of all versions of the bill, rather than just the bill as enacted, the Court concluded that previous versions of the bill aided the interpretation of the adopted bill. *Id.*; see also, *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal. 4th 553, 571 n. 9 (taking judicial notice of two bills, only one of which was signed into law, in order to under the Legislature’s rejection of certain amendments). The same is true here.

The Court has also repeatedly taken judicial notice of bill analyses and committee reports such as Exhibit B and D. See, e.g., *County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal. 4th 905, 923 n. 16; *St. John's Well Child & Family Center v.*

*Schwarzenegger* (2010) 50 Cal 4th 960, 967 n. 5; *Doe v. City of Los Angeles* (2007) 42 Cal. 4th 531, 544 (“Because the [legislative history] materials are relevant to a material issue in this case, we grant the request.”) (quoting *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1). The Court should continue the long line of cases taking judicial notice of bill analyses and committee reports.

In sum, because Evidence Code 452 and the clear weight of authority favor granting judicial notice, the Court should grant this motion and take judicial notice of the documents attached hereto as Exhibits A-D.

Dated: September 11, 2019

SIMPSON, GARRITY, INNES &  
JACUZZI, P.C.

By: \_\_\_\_\_



Paul V. Simpson  
Sarah E. Lucas  
Attorneys for  
Defendants/Respondents  
Fonseca McElroy Grinding Co. Inc.

## DECLARATION OF SARAH E. LUCAS

I, Sarah E. Lucas, declare as follows

1. I am an attorney duly licensed to practice law in the State of California and before this Court. I am an attorney with the law firm Simpson, Garrity Innes & Jacuzzi, PC, counsel of record for Respondents Fonseca McElroy Grinding Co., Inc. and Granite Rock Company. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of the text of Senate Bill 1999 (Reg. Sess. 1999-2000), as amended August 18, 2000, which I retrieved from the official California Legislative Information website, <http://leginfo.legislature.ca.gov>, on or about August 14, 2019.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Bill Analysis of Senate Bill 1999 prepared by the Assembly Committee on Labor and Employment, dated August 18, 2000, which I retrieved from the official California Legislative Information website, <http://leginfo.legislature.ca.gov>, on or about August 14, 2019.

4. Attached hereto as **Exhibit C** is a true and correct copy of the text of Senate Bill 1999 (Reg. Sess. 1999-2000), as amended August 23, 2000, which I retrieved from the official California Legislative Information website, <http://leginfo.legislature.ca.gov>, on August 14, 2019.

5. Attached hereto as **Exhibit D** is the Assembly Floor Bill Analysis of Senate Bill 1999, dated August 23, 2000, which I retrieved from the official California Legislative Information website, <http://leginfo.legislature.ca.gov>, on August 14, 2019.

I declare under penalty and perjury under the laws of the state of California that the foregoing is true and correct. Executed this 11<sup>th</sup> day of September 2019, at South San Francisco, California.

  
\_\_\_\_\_  
Sarah E. Lucas

# **EXHIBIT A**



# California

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### SB-1999 Public work. (1999-2000)

SHARE THIS:



AMENDED IN SENATE APRIL 24, 2000

AMENDED IN ASSEMBLY AUGUST 07, 2000

AMENDED IN ASSEMBLY AUGUST 18, 2000

CALIFORNIA LEGISLATURE— 1999–2000 REGULAR SESSION

## SENATE BILL

## NO. 1999

Introduced by Senator Burton

February 25, 2000

~~An act to amend and renumber the heading of Article 1 (commencing with Section 7370) and Article 2 (commencing with Section 7375) of Chapter 5 of Part 3 of Division 5 of, to add Section 144.8 to, and to add Article 1 (commencing with Section 7360) to Chapter 5 of Part 3 of Division 5 of, the Labor Code, relating to crane and hoisting apparatus operators. An act to amend Section 1720 of the Labor Code, relating to public contracts.~~

### LEGISLATIVE COUNSEL'S DIGEST

SB 1999, as amended, Burton. ~~Certification of crane and hoisting apparatus operators; occupational safety orders. Public works: architectural, engineering, and inspection services.~~

*Existing law defines public works and establishes certain requirements that must be met by persons who enter into contracts for public works. Those requirements include provisions generally known as the prevailing wage laws. The prevailing wage laws require that all workers employed on public works be paid the general prevailing rate of per diem wages, as determined by the Director of Industrial Relations.*

*This bill would add to the definition of public works architectural, engineering, and inspection services, as defined. By requiring local government entities to comply with the provisions affecting public works, including the prevailing wage laws, this bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*



~~Existing law establishes the Occupational Safety and Health Standards Board in the Department of Industrial Relations, and authorizes the board to adopt, amend, or repeal occupational safety and health standards and orders.~~

~~This bill would provide that if the board adopts or amends a general industry safety order governing the qualifications of construction crane operators, the order shall not be construed to affect the liability of any construction crane operator.~~

~~Existing law provides for the certification of all cranes and derricks used in lifting service, exceeding 3 tons rated capacity, and for the licensure by the Division of Occupational Safety and Health of the Department of Industrial Relations of crane or derrick certifiers. Existing law also prohibits a tower crane, as defined, from being operated at any worksite unless an employer obtains a permit from the division.~~

~~This bill would add provisions requiring the certification of crane and hoisting apparatus operators, subject to certain exceptions, by specified entities approved by the department, and would require the department to develop minimum criteria for certification testing, including minimum criteria for written examination, in consultation with interested parties.~~

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

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

~~SECTION 1. Section 144.8 is added to the Labor~~

*Section 1720 of the Labor Code is amended to read:*

**1720.** *As used in this chapter, "public works" means:*

- (a) Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority.*
- (b) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.*
- (c) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.*
- (d) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.*
- (e) The laying of carpet in a public building done under contract and paid for in whole or part out of public funds.*
- (f) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.*
- (g) Architectural, engineering, and inspection services including, but not limited to, those services specified in subdivisions (d), (e), and (f) of Section 4525 of the Government Code.*

**SEC. 2.** *Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.*

~~Code, to read:~~

~~144.8. Notwithstanding any other provision of law, if the board adopts or amends a general industry safety order governing the qualifications of those who operate construction cranes, the order shall not be construed in any manner to affect the liability of any construction crane operator.~~

SEC. 2. Article 1 (commencing with Section 7360) is added to Chapter 5 of Part 3 of Division 5 of the Labor Code, to read:

1. Certification of Crane and Hoisting Apparatus Operators

~~7360. (a) Only an employee who has been issued a certificate of competence as described in subdivision (g) and a trainee under the direct supervision of a certified employee shall be permitted to operate a crane or hoisting apparatus. However, maintenance and test personnel shall be permitted to operate a crane or hoisting apparatus when it is necessary to the performance of their duties as maintenance or test personnel.~~

~~(b) A person other than a person specified in subdivision (a) may not enter the operator's cab of a crane or hoisting apparatus during any lifting operations, except for oilers, supervisors, and persons authorized by the employer, when their duties require them to enter the crane or hoisting apparatus cab and they notify the operator in advance that they will be entering the cab to perform those duties.~~

~~(c) Prior to permitting an employee to operate a crane or hoisting apparatus or to supervise a trainee in doing so, an employer shall verify that the employee holds a valid certificate of competence as described in subdivision (g).~~

~~(d) At a minimum, employee training leading to the issuance of a certificate of competence as described in subdivision (g) shall include, but not be limited to, all of the following elements:~~

~~(1) The information contained in the crane or hoisting apparatus manufacturer's instructions and operation manual for the type of crane or hoisting apparatus the employee will be authorized to operate.~~

~~(2) Specific operating procedures contained in the applicable ANSI/ASNB standard for the crane or hoisting apparatus the employee will operate.~~

~~(3) Other applicable operating procedures for the crane or hoisting apparatus being operated, such as overhead high voltage clearances, use of crane or hoisting apparatus operating controls, general operating requirements, and safety devices.~~

~~(e) Each employer of certified crane or hoisting apparatus operators shall apply to all crane or hoisting apparatus operators in their employ the Department of Transportation Federal Highway Administration Controlled Substances and Alcohol Use and Testing Program (49 CFR Part 382 Sections 382.101 et seq.). Procedures for that use and testing program shall be consistent with the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40 Sections 40.1 et seq.).~~

~~(f) The Department of Industrial Relations shall develop minimum criteria for crane or hoisting apparatus operator certification testing including minimum criteria for written examinations. In developing the test criteria, the department shall consult with interested parties.~~

~~(g) A certificate of competence to operate a crane and hoisting apparatus may only be issued by the following entities, if they are approved by the Department of Industrial Relations, to persons having the following qualifications:~~

~~(1) State certified employer-employee apprenticeship committees to persons who have completed a state-approved training program of at least 6000 hours including at least 8 hours of classroom work, and who have passed a state approved written examination administered by the committee.~~

~~(2) State certified employer-employee apprenticeship committees to persons who have passed a state approved written examination administered by the committee and who have proven to the committee that they have at least 2000 hours of experience in operating cranes and hoisting apparatus.~~

~~(3) A state approved testing center to persons who have passed a state approved written examination administered by the center and have proven to the center that they have at least 4000 hours of experience in operating cranes and hoisting apparatus.~~

~~(h) (1) An employer subject to this article shall ensure that a crane or hoisting apparatus operation manual in a language understood by the operator is maintained in the cab of the crane or hoisting apparatus during all periods of operation.~~

~~(2) All written instructions to the crane or hoisting apparatus operator shall be in a language understood by the operator.~~

7361. The requirements of this article shall not apply to any of the following:

~~(a) A crane or hoisting apparatus operator who operates a crane or hoisting apparatus that is not moved from a permanent site and is owned or leased for at least one year, or a crane or hoisting apparatus which does not exceed three tons rated capacity.~~

~~(b) A person who is employed by an electric, gas, telephone, or railroad corporation as defined in Sections 218, 222, 229, and 234 of the Public Utilities Code, and who is operating equipment either owned or exclusively leased for at least one year by the corporation, and has adequate skill and knowledge of crane or hoisting apparatus safety practices, including applicable occupational safety standards, to safely operate the crane or hoisting apparatus.~~

~~(c) A person who is employed in logging or sawmill operations which are subject to the logging and sawmill safety orders adopted pursuant to Chapter 6 (commencing with Section 140) of Division 1.~~

~~(d) The operation of cranes or hoisting apparatus in marine terminal operations, or to persons employed in marine terminal operations with respect to those operations, or to employers of persons employed in marine terminal operations with respect to those operations. For the purpose of this subdivision, "marine terminal operations" means the loading, unloading, moving, or handling of cargo, ships stores, gear, or other material on a marine terminal, as defined in the general safety orders adopted pursuant to Chapter 6 (commencing with Section 140) of Division 1.~~

~~SEC. 3. The heading of Article 1 (commencing with Section 7370) of Chapter 5 of Part 3 of Division 5 of the Labor Code is amended and renumbered to read:~~

~~2. Permits for Tower Cranes~~

~~SEC. 4. The heading of Article 2 (commencing with Section 7375) of Chapter 5 of Part 3 of Division 5 of the Labor Code is amended and renumbered to read:~~

~~3. Licensure of Certifiers~~

# **EXHIBIT B**

SB 1999  
Page 1

Date of Hearing: August 18, 2000

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT  
Darrell Steinberg, Chair  
SB 1999 (Burton) - As Amended: August 18, 2000

SENATE VOTE : 23-13 (Not relevant.)

SUMMARY : Provides that "architectural, engineering, and inspection services" shall be included in the definition of "public works." Specifically, this bill provides that "architectural, engineering, and inspection services" includes:

- 1)The professional services of an architectural, engineering, environmental, and land surveying nature, including services incidental to the performance of architectural, engineering, environmental, and land surveying services that members of these professions and those in their employ may logically or justifiably perform;
- 2)Construction project management provided by a licensed architect, registered engineer, or licensed general contractor, as defined; and
- 3)Environmental services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

EXISTING LAW:

- 1)Provides that "public works" includes construction, demolition, or repair work done under contract and paid for in whole or in part out of public funds. (Labor Code 1720)
- 2)Defines "public works contract" as "an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind." (Pub. Contract Code 1101.)
- 3)Provides that workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work. (Labor Code 1772)
- 4)Provides that "workman" includes "laborer, workman, or

SB 1999  
Page 2

mechanic." (Labor Code 1723)

- 5)Provides that "contractor" and "subcontractor" include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works projects, as defined. (Labor Code 1722.1)
- 6)Provides that all workers employed on public works shall be paid prevailing wage. (Labor Code 1771.)
- 7)Provides that the Department of Industrial Relations (Department) has the authority to determine whether a project is a "public works" and shall determine the prevailing wage for workers employed on public works.

FISCAL EFFECT : Unknown

COMMENTS :

- 1)The bill codifies current Department practice by including inspectors and surveyors among those workers deemed to be employed upon public works and by insuring that workers entitled to prevailing wage during the construction phase of a public works project will get prevailing wage on the design and pre-construction phases of a project.

In its current form, this bill also expands the definition of "public works" to include architects, engineers, general contractors and others in their employ who have not previously been subject to prevailing wage laws.

- 2)On June 9, 2000, the Department issued a decision in Public Works Case No. 99-046, (Northridge Earthquake Recovery Project California State University, Northridge Inspection Work

(CSUN)) finding that construction inspectors hired to do inspection for compliance with applicable building codes and other standards for a public works project were deemed to be employed upon public works and therefore entitled to prevailing wage. In the case, CSUN contracted with a general contractor to reconstruct and repair major earthquake damage suffered in 1994. Part of the contract provided for "construction inspection for compliance with applicable building codes" and other standards. The inspectors, hired by a subcontractor, argued that they should be paid prevailing wage pursuant to the state's public works laws because their

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Page 3

work was part of a public works contract. The general contractor and the subcontractor argued that because the inspectors were not involved in actual construction, demolition, or repair work, as specified in section 1720 of the Labor Code, they were not covered by the prevailing wage laws.

The Department declined to interpret section 1720 so narrowly, finding that the inspectors were covered under prevailing wage law because "workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." (Labor Code 1772.) The Department rejected an argument that section 1723 of the Labor Code (which states that "workmen" entitled to prevailing wage includes laborers, workmen and mechanics) precluded a finding that inspectors were also covered by the prevailing wage laws, noting that section 1723 does not state that "inspectors" are not "workmen" that can be covered by the prevailing wage laws. The Department also found that the subcontractor employing the inspectors fit squarely under the definition of subcontractor in the prevailing wage laws despite the fact that the subcontract involved construction management duties.

- 3) This bill codifies much of the Department's June 9, 2000, decision. First, it includes "inspection services" in the definition of "public works". It also states that services performed as part of "construction project management" and "environmental services", including those services performed in connection with project development and permit processing, are "public works". Thus the bill insures that workers earning the prevailing wage in the construction phase of a project will also be entitled to that wage for the same type of work done during the design and pre-construction phases of a project, even if that work is done pursuant to a services contract or otherwise.
- 4) This bill also codifies Department regulation and practice of covering surveyors under prevailing wage law. Department regulations state that "field survey work traditionally covered by collective bargaining agreements is subject to prevailing wage rates when it is integral to the specific public works project in the design, pre-construction, or construction phase." 8 CCR 16001(c). An opinion of the Attorney General in 1987 cites a 1978 letter by the Department director stating that "surveyors are included in the

SB 1999  
Page 4

prevailing wage law pertaining to public works, 1720 et seq. and 1770 et seq. of the Labor Code. . . . Surveying, whether performed in the preparation or construction stage, is a necessary prerequisite and integral part of construction without which the work could not proceed and is performed by the type of classification or worker intended to be covered by the Act ( 1723 and 1772 of the Labor Code)." 70 Ops. Atty. Gen. Cal. 92 (1987).

- 5) Historically, workers entitled to prevailing wages under the public works laws are blue collar workers including journeyman and apprentices in trades such as carpenters, iron workers, electric utility linemen, telephone installation workers, tree trimmers, asbestos workers, laborers, pile drivers and cement masons.

The proponents of the bill have indicated that it is not their intent to expand the definition of public works to include traditionally white collar workers such as architects and engineers and others in their employ who primarily work

off-sight.

The bill should be amended to make the author's intent clear.

REGISTERED SUPPORT / OPPOSITION :

Support

California State Association of Electrical Workers  
\_ California State Council of Laborers  
California State Pipe Trades Council  
California-Nevada Conference of Operating Engineers  
State Building and Construction Trades Council of California  
Western States Council of Sheet Metal Workers

Opposition

None registered.

Analysis Prepared by : Frances Fort / L. & E. / (916)319-2091

# **EXHIBIT C**





# California

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### SB-1999 Public work. (1999-2000)

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AMENDED IN SENATE APRIL 24, 2000

AMENDED IN ASSEMBLY AUGUST 07, 2000

AMENDED IN ASSEMBLY AUGUST 18, 2000

AMENDED IN ASSEMBLY AUGUST 23, 2000

CALIFORNIA LEGISLATURE— 1999–2000 REGULAR SESSION

**SENATE BILL**

**NO. 1999**

**Introduced by Senator Burton**

**February 25, 2000**

An act to amend Section 1720 of the Labor Code, relating to public contracts.

### LEGISLATIVE COUNSEL'S DIGEST

SB 1999, as amended, Burton. Public works: ~~architectural, engineering, and inspection services.~~

Existing law defines public works and establishes certain requirements that must be met by persons who enter into contracts for public works. Those requirements include provisions generally known as the prevailing wage laws. The prevailing wage laws require that all workers employed on public works be paid the general prevailing rate of per diem wages, as determined by the Director of Industrial Relations.

This bill would add to the definition of public works ~~architectural, engineering, and inspection services, as defined by providing that "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.~~ By requiring local government entities to comply with the provisions affecting public works, including the prevailing wage laws, this bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

**SECTION 1.** Section 1720 of the Labor Code is amended to read:**1720.** As used in this chapter, "public works" means:

- (a) Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. *For purposes of this subdivision, 'construction' includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.*
- (b) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.
- (c) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.
- (d) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.
- (e) The laying of carpet in a public building done uchool districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

# **EXHIBIT D**

SENATE THIRD READING  
SB 1999 (Burton)  
As Amended August 23, 2000  
Majority vote

SENATE VOTE :23-13 \_

LABOR AND EMPLOYMENT 6-2 APPROPRIATIONS 13-5

|   |  |
|---|--|
| Ayes: Steinberg, Gallegos,<br>Keeley, Migden, Wildman,<br>Shelley | Ayes: Migden, Alquist, Aroner,<br>Cedillo, Corbett, Kuehl,<br>Papan, Romero, Shelley,<br>Thomson, Wesson, Wiggins,<br>Wright |
| Nays: Margett, Oller  | Nays: Campbell, Ackerman,<br>Ashburn, Maldonado,<br>Zettel   |

SUMMARY : Provides that for purposes of public works laws, "construction" includes work performed during the design and pre-construction phases of construction including, but not limited to, inspection and land surveying work. Specifically, this bill :

- 1) Clarifies that workers entitled to prevailing wage on construction jobs, are entitled to prevailing wage rates during the design and pre-construction phases of a public works construction projects.
- 2) Clarifies that workers providing construction inspection and land surveying work on public works projects are entitled to prevailing wage.

EXISTING LAW :

- 1) Provides that "public works" includes construction, demolition, or repair work done under contract and paid for in whole or in part out of public funds. (Labor Code Section 1720)
- 2) Defines "public works contract" as "an agreement for the

erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind." (Public Contract Code Section 1101)

- 3) Provides that workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work. (Labor Code Section 1772)
- 4) Provides that "workman" includes "laborer, workman, or mechanic." (Labor Code Section 1723)
- 5) Provides that "contractor" and "subcontractor" include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works projects, as defined. (Labor Code Section 1722.1)
- 6) Provides that all workers employed on public works shall be paid prevailing wage. (Labor Code Section 1771) Requires that public works contractors employ workers in any apprenticeable trade or craft to employ apprentices at a ratio, as defined.
- 7) Provides that the Department of Industrial Relations (Department) has the authority to determine whether a project is a "public works" and shall determine the prevailing wage for workers employed on public works.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis this bill has no direct state fiscal impact, but merely codifies current administrative decisions of the Department interpreting prevailing wage law.

COMMENTS : This bill codifies current Department practice by including construction inspectors and land surveyors among those workers deemed to be employed upon public works and by insuring that workers entitled to prevailing wage during the construction phase of a public works project will get prevailing wage on the design and pre-construction phases of a project.

On June 9, 2000, the Department issued a decision in Public Works Case No. 99-046 finding that construction inspectors hired to do inspection for compliance with applicable building codes

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and other standards for a public works project were deemed to be employed upon public works and therefore entitled to prevailing wage. In the case, part of the public works contract provided for "construction inspection for compliance with applicable building codes" and other standards. The inspectors argued that they should be paid prevailing wage pursuant to the state's public works laws because their work was part of a public works contract. The general contractor and the subcontractor that hired the inspectors argued that because the inspectors were not involved in actual construction, demolition, or repair work, as specified in Section 1720 of the Labor Code, they were not covered by the prevailing wage laws.

The Department declined to interpret Section 1720 so narrowly, finding that the inspectors were covered under prevailing wage law because "workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." (Labor Code Section 1772.) The Department rejected an argument that Section 1723 of the Labor Code (which states that "workmen" entitled to prevailing wage includes laborers, workmen and mechanics) precluded a finding that inspectors were also covered by the prevailing wage laws, noting that Section 1723 does not state that "inspectors" are not "workmen" that can be covered by the prevailing wage laws. The Department also found that the subcontractor employing the inspectors fit squarely under the definition of subcontractor in the prevailing wage laws despite the fact that the subcontract involved construction management duties.

This bill codifies much of the Department's June 9, 2000, decision by including "inspectors" in the definition of "construction" for purposes of public works. This bill also insures that workers earning the prevailing wage in the construction phase of a project will also be entitled to that wage for the same type of work done during the design and pre-construction phases of a project, even if that work is done pursuant to a services contract or otherwise, as the Department found.

This bill also codifies Department regulation and practice of covering land surveyors under prevailing wage law. (8 Cal.Code Reg. 16001(c); 70 Ops. Atty. Gen. Cal. 92 (1987).)

Analysis Prepared by : Frances Fort / L. & E. / (916) 319-2091

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FN: 0006298



[PROPOSED]

**ORDER GRANTING MOTION FOR JUDICIAL NOTICE**

Good cause appearing,

IT IS HEREBY ORDERED that Respondents Fonseca McElroy Grinding Co., Inc.'s and Granite Rock Company's Motion for Judicial Notice in support of Respondent's Brief is GRANTED. IT IS ORDERED that this Court shall take judicial notice of the following items, copies of which are attached as Exhibits A-D to Respondent's Motion for Judicial Notice:

1. The text of Senate Bill 1999 (Reg. Sess. 1999-2000), as amended August 18, 2000.
2. The Bill Analysis of Senate Bill 1999 prepared by the Assembly Committee on Labor and Employment, dated August 18, 2000.
3. The text of Senate Bill 1999 (Reg. Sess. 1999-2000), as amended August 23, 2000, which I retrieved from the official California Legislative Information website.
4. The Assembly Floor Bill Analysis of Senate Bill 1999, dated August 23, 2000.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Chief Justice of the  
Supreme Court of California

## PROOF OF SERVICE

I, Estelle M. Franklin, am employed in the County of San Mateo, California. I am over the age of 18 years and not a party to the within action. My business address is 601 Gateway Boulevard, Suite 950, South San Francisco, California 94080. On September 11, 2019, I served the **RESPONDENTS' MOTION FOR JUDICIAL NOTICE** by mailing a copy by first class mail in separate envelopes addressed as follows:

United States Court of Appeals for the  
Ninth Circuit  
The James R. Browning Courthouse  
95 7th Street  
San Francisco, CA 94103  
Tel: (415) 355-8000

Case No.: 17-15221

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and Jose Armando Cortes

Hon. William H. Orrick  
District Judge  
United States District Court for the  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102  
Tel: (415) 522-2000

Case No.: 3:15-cv-05143-WHO

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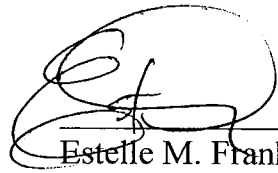
I am readily familiar with the practice of this business for collection and processing of documents for mailing with the United States Postal Service. Documents so collected and processed are placed for collection and deposit with the United States Postal Service that same day in the ordinary course of business. The above-referenced document(s) were



placed in (a) sealed envelope(s) with postage thereon fully prepaid, addressed to each of the below listed parties and such envelope(s) was (were) placed for collection and deposit with the United States Postal Service on the date listed below at South San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 11, 2019, at South San Francisco, California.

  
\_\_\_\_\_  
Estelle M. Franklin