

## **POLICY BRIEF**

# **AB 219 (DALY) PUBLIC WORKS: CONCRETE DELIVERY**

## **POSITION**

The Chamber's Board of Directors voted to **OPPOSE** AB 219 on September 24, 2015.

***STATUS:*** AB 219 was introduced by Assemblymember Sam Daly on February 2, 2015. It was approved by the Assembly on June 3, 2015. Senate amendments were concurred in and the bill has been referred to the Governor on September 16, 2015.

## **SUMMARY**

Current law requires that the "prevailing wage" be paid to all workers employed on public works projects. Public works includes construction, alteration, installation, or repair work done under contract and in whole or in part out of public funds. Public Works Case No. 99-037 established in 1999 that concrete entities were material suppliers and not subcontractors based on three criteria:

- A material supplier must be in the business of selling supplies to the general public
- The plant from which the material is obtained must not be established specially for the particular contract
- Plant may not be located at the site of the work

This bill expands the definition of "public works" to include the hauling and delivery of ready-mixed concrete or asphaltic concrete to carry out a public works contract, with respect to contracts involving any state agency or any political subdivision of the state.

Specifically, this bill would do all of the following:

- Provide that "ready-mixed concrete" means concrete that is manufactured in a factory or batching plant, then delivered in a liquefied state for immediate incorporation into a project

## **Overview:**

Expands the definition of "public works" to include the hauling and delivery of ready-mixed concrete, as specified.

Ready-mix concrete delivery drivers would thus receive prevailing wage based on state prevailing wage law.

AB 219 would cause the state to incur significant support and enforcement costs, ignores longstanding distinctions in labor law between drivers and construction workers, and imposes significant liability and administrative burden on prime contractors.

- Provide that the applicable prevailing wage rate shall be the current prevailing wage rate as determined for the geographic area in which the factory or batching plant is located
- Provide that the entity hauling or delivering ready-mixed concrete to carry out a public works contract shall enter into a written subcontract agreement with the party that engaged the entity to supply concrete

This bill would increase administrative costs of approximately \$125,000 (special funds) for the DIR Compliance Monitoring Unit to monitor and enforce prevailing wage requirements for this measure.

## ANALYSIS

Caltrans indicates that it currently has 652 ongoing construction contracts valued at \$10.6 billion, and uses 4.6 million cubic yard of concrete annually. Based on assumptions of average hourly rate, the average amount of concrete carried per truck, and delivery job time, Caltrans estimates that the bill would result in an increase in materials (concrete) costs in the range of \$27.6 million to \$49.4 million annually.

Additional staff to administer projects and accept concrete delivery on site would, based on assumptions of average yards of concrete placed per day, require an additional 21 personnel years at approximately \$3.15 million ongoing.

Because state construction costs are often paid for using General Obligation (GO) Bonds, this measure that increases cost on ready-mix concrete projects would likely lead to GO bond issuances that need to be upsized, potentially leading to higher debt service payments.

This bill would create inconsistency in prevailing wage rate amongst drivers on the same public works project, if from different sources, as the current prevailing wage rate would be determined for the geographic area in which the factory or batching plant is located, not the public works project.

By ignoring longstanding distinctions in labor law between drivers and construction workers, AB 219 is inconsistent with the contract between a supplier and a contractor. Furthermore, this bill contravenes longstanding and well-established legal precedent that material suppliers are not subject to prevailing wage law.

This bill thus impose significant new liability and administrative burdens on prime contractors since they are jointly and severally liable for the payment of prevailing wages by all subcontractors on a public work project. Prime contractors cannot practically monitoring prevailing wage compliance because of the overwhelming majority of time concrete drivers spend off the jobsite. Moreover, ready-mixed concrete drivers may perform delivery services for several public works projects in a single workweek, which may not be consistent with other public works projects.

## SUPPORT

Co-sponsored by Teamsters Union and the State Building Trades

## OPPOSITION

AGC of California (as well as San Diego Chapter), CalCIMA, SCCA, UCON, Engineering Contractor's Association