

HOUSE BILL REPORT

HB 1719

As Reported by House Committee On:
Labor & Workforce Development

Title: An act relating to drayage truck operators at certain ports.

Brief Description: Addressing drayage truck operators at certain ports.

Sponsors: Representatives Freeman, Sells, Moscoso, Ryu, Green, Fitzgibbon, Stanford, Orwall, Goodman, Pettigrew, Appleton, Roberts, Reykdal, Hunt, Santos, Lias, Hudgins, Van De Wege, Moeller, Upthegrove, Jinkins, Pollet and Bergquist.

Brief History:

Committee Activity:

Labor & Workforce Development: 2/19/13, 2/21/13 [DPS].

Brief Summary of Substitute Bill

- Requires a port district in a county with a population of 800,000 or more to employ drayage truck operators to transport containerized cargo at or through the port.
- Permits the port district to enter into contracts with cargo owners and shippers to provide drayage services, and requires drayage services in the port district to take place under such contracts.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Moeller and Ormsby.

Minority Report: Do not pass. Signed by 4 members: Representatives Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Holy and Short.

Staff: Trudes Tango (786-7384).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Drayage Services in Port Districts.

Typically, drayage truck operators transport cargo from the port to warehouses or railroads for further long-distance transport. Cargo owners, ocean carriers, and other transportation providers generally arrange for drayage services through licensed motor carriers.

Employment standards generally apply only when there is an employer-employee relationship rather than an independent contractor relationship. There are certain statutory and nonstatutory tests to determine whether a person is an "independent contractor."

Port districts have the power to perform all necessary activities related to intermodal movement of cargo. Unless provided otherwise in the statutes governing port districts, employees of port districts are covered by the provisions of the public employee collective bargaining statutes. The Port of Tacoma and the Port of Seattle are located in counties with a population of 800,000 or more.

Federal Aviation Administration Authorization Act.

The Federal Aviation Administration Authorization Act (FAAAA) provides that a state or local government may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier with respect to the transportation of property. Courts have developed a three-part analysis to determine whether the FAAAA preempts a state law. The analysis considers: (1) whether the state law has a connection to the price, route, or service of a motor carrier; (2) whether the law was enacted pursuant to the state's regulation of the market, rather than the state acting as a market participant in a proprietary capacity; and (3) whether any of the FAAAA's express exemptions, such as safety, saves the law from preemption.

A recent Ninth Circuit Court of Appeals case, *American Trucking Association, Inc. v. City of Los Angeles* (2011), addressed preemption issues related to a port district's program that, among other things, required motor carriers to employ drayage drivers, as part of required concession agreements with the port, and conditioned a drayage truck's access to the port on whether it was under a concession agreement. The Ninth Circuit Court of Appeals held that the employee-driver provision did not fall under the market participant exception and was therefore preempted by the FAAAA. The Supreme Court of the United States has accepted review of the case. One issue for review is whether banning a motor carrier's access to the port is a partial suspension of the motor carrier's federally granted authority to operate and thereby outside the state's authority.

Summary of Substitute Bill:

A port district in a county with a population of 800,000 or more must employ drayage truck operators to transport containerized cargo, other than agricultural products, at or through the port. The port district may enter into contracts with cargo owners and shippers to provide drayage services, and all transporting of containerized cargo, other than agricultural products, in a port district must take place under such contracts.

"Drayage truck operator" means the driver of any in-use on-road vehicle with a gross vehicle weight rating greater than 33,000 pounds who enters a port district for the purpose of transporting containerized cargo other than agricultural products.

A severability clause is included.

Substitute Bill Compared to Original Bill:

The original bill was limited to the Port of Seattle and defined drayage truck operators as being engaged in loading and unloading, as well as transporting, cargo.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There are injustices at the Port of Seattle (Port). Drayage drivers are paid very little and must keep their trucks in good condition at their own expense. The costs they pay to do the job keeps them in poverty. Although the Port has a clean truck program, the cost of upgrading trucks is the drivers' responsibility and they do not have the resources to upgrade. The typical drayage driver makes about \$28,000 per year. Adjacent communities suffer from the air quality. Drivers do not have any basic rights around the Port. They have been abused verbally, mentally, and even physically. They are not considered valuable workers. They do not have access to restrooms. Driving these trucks is a very dangerous job. Drivers do not have any protection. Drivers just want fair treatment. This bill is ultimately about the ability of all families to thrive. Drayage drivers are considered independent contractors. Being misclassified as independent contractors means drivers are subjected to long hours and poor working conditions. If they were employed by the port they would be eligible for employment benefits. This bill is taking a different approach from last year's bill that required drayage drivers to be employees of the trucking companies. The federal law says the state cannot require trucking companies to treat their owner operators better. This bill is not requiring that. It does not violate federal law if ports perform the work themselves. Ports already provide police and fire services, so there is a model already in place. Shippers will contract with the ports to provide drayage services.

(With concerns) The bill could take a different approach by requiring ports to work directly with businesses that are partnerships of drayage drivers.

(Opposed) The bill will change how cargo moves and will destroy the intermodal trucking industry. The majority of companies would have to close their doors. Millions of dollars of equipment and equity in trucking businesses would be lost. There are a number of companies that have both employees and independent contractors. This bill raises legal

issues that are still being litigated nationally and will be subject to federal preemption. It also exempts agricultural products, which violates the equal protection clause. This bill imposes conditions on the Port that no other port would have to meet. The Port will become less competitive and could lose business to other nearby ports.

The Port is a landlord port. It is not in the business of moving cargo. This bill treats all ports the same, but the Port of Tacoma does not rely on drayage. Cargo at the Port of Tacoma generally goes directly to and from the rails without touching the roads. If these drivers are employees, the port will have to supervise their activities and there is no way to oversee their work. The ports lack an infrastructure to deal with the increased number of employees.

The bill would also increase the costs of goods being brought into the port. Retailers will relocate their point of entry to a less costly port. This could have a dramatic effect on consumers. Ultimately, this will harm the drivers because there will be a decrease in the volume of cargo moving through the port.

Persons Testifying: (In support) Representative Freeman, prime sponsor; Dmitri Iglitzen, Joint Council of Teamsters No. 28; Samantha Keller, Puget Sound Sage; and Zacharia Abede.

(With concerns) Chris Van Dyk, Liberty Freight LLC.

(Opposed) Larry Pursley, Washington Trucking Association; Linda Styrk, Port of Seattle; Sean Eagan, Port of Tacoma; Bill Stauffacher, BNSF Railway; Mark Johnson, Washington Retail Association; Scott Hazlegrove, Pacific Merchant Shipping Association; and Jan Gee, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: None.