

HOUSE BILL REPORT

SHB 2395

As Passed House:
February 11, 2012

Title: An act relating to drayage truck operators.

Brief Description: Regulating drayage truck operators.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representatives Sells, Reykdal, Upthegrove, Ryu, Moscoso, Ormsby, Hasegawa, Fitzgibbon, Hudgins, Darneille, Cody, Kenney, Santos, Roberts, Green, Miloscia, Pettigrew, Dickerson, Moeller, Appleton, Liias, Jinkins, Dunshee, Van De Wege, Goodman, Orwall, Hunt, Wylie, Billig and Probst).

Brief History:

Committee Activity:

Labor & Workforce Development: 1/24/12, 1/30/12 [DPS].

Floor Activity:

Passed House: 2/11/12, 52-43.

Brief Summary of Substitute Bill

- Makes certain truck drivers moving cargo through larger ports or intermodal rail yard property within 50 miles of such ports statutory employees for purposes of specified employment laws.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Reykdal, Vice Chair; Green, Kenney, Miloscia, Moeller, Ormsby and Roberts.

Minority Report: Do not pass. Signed by 6 members: Representatives Sells, Chair; Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Taylor and Warnick.

Staff: Joan Elgee (786-7106).

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.

Background:

Employment standards generally apply only if there is an employer-employee relationship rather than an independent contractor relationship. The term "independent contractor" is not used in the law; instead, the concept is embodied in statutory and non-statutory tests used to determine if a worker is not an employee or a covered worker under a particular law. The laws for which status as an "employee" is required for the standards to apply include the Minimum Wage Act, the Industrial Welfare Act, the Wage Payment Act, the Washington Law Against Discrimination, and the Washington Industrial Safety and Health Act. For purposes of unemployment insurance laws, services must be in employment.

The Minimum Wage Act establishes standards for employee minimum wage, overtime compensation, and recordkeeping. The Industrial Welfare Act is the authority for the employee meal and rest break standards adopted by Department of Labor and Industries (L&I), and also covers such employment standards as use of paid leave for care of family members. Under the Wage Payment Act, the L&I investigates wage complaints and may order payment of wages owed.

The Washington Industrial Safety and Health Act gives the L&I authority to adopt safety and health standards governing conditions of employment.

Under the Washington Law Against Discrimination, the Human Rights Commission may investigate claims of discrimination by employers based on any of several prohibited reasons.

For purposes of unemployment insurance, a person receiving remuneration for services is covered, and contributions (taxes) by employers due, unless exception tests are met establishing that services are not in employment.

The term "drayage trucks" typically refers to a truck doing short-haul transporting of goods.

Summary of Substitute Bill:

Legislative intent is stated that under applicable legal standards, drayage truck workers are covered workers for purposes of various employment protections. The Legislature finds that in addition to violating the law, misclassification of drayage drivers as independent contractors results in drivers working in unsafe conditions and without employment protections, and that misclassification is unfair to law-abiding businesses and results in lost revenue to the state. The Legislature finds that current enforcement mechanisms have proven inadequate. By defining drayage drivers as statutory employees, the Legislature intends to enforce current law, avoid litigation, increase safety to drivers and the public, insure drivers receive employment protections, and facilitate tax collection. The Legislature does not intend to exclude drayage drivers from the protection of other employment standards.

Drayage truck operators are defined to be employees for purposes of the Industrial Welfare Act, the Minimum Wage Act, the Wage Payment Act, the Washington Industrial Safety and Health Act, and the Washington Law Against Discrimination. The motor carrier that directly engages the services of the driver is an employer. Services performed by a drayage truck

operator are similarly defined to be services in employment for purposes of unemployment compensation, and the exception tests do not apply.

A drayage truck operator is the driver of any in-use, on-road vehicle with a gross vehicle weight rating greater than 33,000 pounds operating on or transgressing through a port that handles in excess of 1,000,020 foot equivalent units of containerized cargo or an intermodal rail yard property within 50 miles of such a port for the purpose of loading, unloading, or transporting containerized cargo.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The average wage for drivers is \$28,000 and they have to buy their own trucks. Pay rates have not changed in nine years. Drivers have no health insurance or retirement. They work long hours, have long waits and cannot exit trucks for basic needs. Drivers do not have a way to know the truck is too heavy but get tickets for heavy loads. If they are really owner-operators, they should be able to refuse a load but they cannot. About 85 percent of drivers in the industry are misclassified as independent contractors under the strictest tests. Drivers work under direction which means they are employees. Drivers are predominantly immigrants. They are exploited, have no means of redress, and cannot work together without the threat of anti-trust litigation. This bill is a way to help the drivers.

Misclassification is problematic for our economy and our state and workers, and this industry is one of the worst. The bill may not be perfect. Irresponsible employers now have an unfair advantage. Do not drive work into the underground economy.

The problem is enforcement. The bill is not a great change in the law; it gives the state an enforcement tool and makes trucking companies responsible. The problem has been brought to the attention of Seattle and Tacoma ports but conditions of drivers have not changed.

Drivers cannot afford to maintain trucks so tires go bald and other problems occur. The Washington State Patrol found that these trucks had to be pulled off the road at twice the rate of other trucks. Nearby communities, which are immigrant communities, are exposed to pollutants 30 times the standards. Port hauling is where trucks go to die.

The bill is a common sense policy to improve the lives of drivers, families, and communities. Some language may need to be changed to meet the needs of smaller ports. The main purpose is to capture the drivers at the major ports.

(Opposed) Drivers are independent owner-operators, some of which have fleets. Motor carriers are held to standards by federal law. Carriers must impose hours of service, maintenance records, drug/alcohol testing, and other standards on the owner-operators.

Drivers want to be owner-operators so they can be independent and set their own hours; for example, some will not pull some loads because of religious beliefs. A study showed 85 percent of owner-operators used to be employees. If an individual wants to be an employee, jobs are available. Before the recession, employees were getting \$5,000 to \$8,000 signing bonuses. Being an owner-operator is profitable. At one company, drivers make average net wages of \$65,000, with a high gross of \$176,000.

There are implementation concerns. Many entities, including smaller ports, "arrange for" drayage of cargo. Does the bill make these people employees? The bill places drivers in a chapter of law that does not apply to public entities.

This bill will result in litigation because of a recent 9th Circuit case. The federal government has preempted the field with respect to prices, routes, and services, which this bill will affect. California's similar law was found preempted. A state has no ability to restructure the trucking industry.

It would be cost prohibitive and it does not make sense to make drivers employees. Some of the complaints are about port rules. This bill will be costly to ports.

Persons Testifying: (In support) Representative Sells, prime sponsor; Paul Marvy, Changetown; Michael Kidane; Bendneub Mekonnen; David Mendoza, Puget Sound Sage; Toby Guevin, One America; and Teresa Mosqueda, Washington State Labor Council.

(Opposed) Larry Pursley and Tom Fitzpatrick, Washington Trucking Association; Steve Stilvala and Greg Laurentuel, MacMillon-Piper; Lloyd Williams, Zenith Drayage; Kent Christopher, Western Port Transportation; and Eric Johnson, Washington Public Ports Association.

Persons Signed In To Testify But Not Testifying: Scott Hazlegrove, Pacific Merchant Shipping Association; and Mark Johnson, Washington Retail Association.