
**Labor & Workforce Development
Committee**

HB 1719

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, Jenkins, Pollet and Bergquist.

Brief Summary of Bill

- Requires a port district in a county with a population of one million or more to employ drayage truck operators to load, unload, and 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.

Hearing Date: 2/19/13

Staff: Trudes Tango (786-7384).

Background:

Drayage Services in Port Districts.

Typically, drayage truck operators transport cargo from the port, where it was unloaded from ships, 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.

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.

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.

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."

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 use employee drayage drivers rather than independent contractors 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 United States Supreme Court 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 Bill:

A port district in a county with a population of one million or more must employ drayage truck operators to load, unload, and 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 loading, unloading, and 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 loading, unloading, or transporting containerized cargo other than agricultural products.

A severability clause is included.

Appropriation: None.

Fiscal Note: Requested on February 14, 2013.

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