



DATE: May 3, 2011

TO: Assembly Labor & Employment Committee

FROM:

California Trucking Association
 California Chamber of Commerce
 California Business Properties Association
 California Farm Bureau Federation
 California Retailers Association
 California Trade Coalition
 National Federation of Independent Business
 Pacific Merchant Shipping Association (PMSA)
 Agriculture Transportation Coalition (AgTC)
 American Apparel & Footwear Association
 American Association of Exporters and Importers
 American Import Shippers Association
 American Trucking Associations
 Express Association of America (EAA)
 Foreign Trade Association
 Health & Personal Care Logistics Conference
 International Warehouse Logistics Association

National Retail Federation
 National Shippers Strategic Transportation Council
 Retail Industry Leaders Association
 Travel Goods Association
 The Waterfront Coalition
 Customs Brokers and Forwarders Association of
 Northern California
 Los Angeles Customs Brokers & Freight
 Forwarders Association
 Pacific Coast Council of Customs Brokers and
 Freight Forwarders Association (PCC)
 Long Beach Area Chamber of Commerce
 Harbor Association of Industry & Commerce
 Harbor Trucking Association
 Propeller Club of Los Angeles-Long Beach
 West State Alliance

RE: OPPOSE AB 950 (Pérez and Swanson) Port Drayage Owner-Operator Ban

The organizations listed above **OPPOSE AB 950 (Pérez/Swanson)** that eliminates the jobs and rights of owner-operators to conduct business at California's ports.

AB 950 declares that any drayage truck operator is an employee of the company who arranges for or engages their services. The practical effect of this bill is to ban all independent contractors, also known as owner-operators, from California ports and negatively impact activity at our ports.

Owner-operators work for the ports and for themselves

Today, thousands of independent owner-operators provide critical goods movement services at each of California's ports. Container activity at the ports varies daily by as much as 30 percent and annually such activity is closely tied to state, national and international economic conditions. Owner operators provide necessary capacity and flexibility to meet the varying demands of port drayage. To impose an employee drive mandate on the companies who arrange for drayage services is simply not consistent with reality of port activity and places California ports at another financial disadvantage to other North American ports.

Under **AB 950**, owner-operators would be left with the choice of finding work outside the port or become an employee of a company if a job is available. These owner-operators have chosen not to be an employee for their own economic reasons and **AB 950** goes against their free will to choose where they work. Choosing when to work or spend time with their families gives owner-operators flexibility that employee drivers lack. The opportunity to work for another company that pays a better rate or whose route keeps the driver closer to home are also important personal considerations.

Safe drivers are safe drivers

Additionally, no practical public or driver safety argument has been made for outright banning owner-operators from California ports. In fact, California leads the nation in safety with less than one fatality per 100 million miles, more than 20 percent below the national average. Currently, commercial drivers undergo stringent state and federal inspections of their trucks and driving records. Companies cannot afford to contract with or employ unsafe or unreliable drivers due to liability and profitability concerns.

Mandating employee drivers will not eliminate the need for trucks to haul cargo out of the ports to railheads or distribution centers, nor does it affect the routes used by drivers to accomplish their deliveries. Existing law provides the Department of Transportation and local municipalities with the authority to set certain restrictions on routes for various reasons. **AB 950** proves unnecessary under both driver and public safety arguments.

Overreach

If the main concern is misclassification, as the proponents of **AB 950** claim, then California should focus on existing and established enforcement mechanisms. Rather than address potential misclassification, this bill reaches too far in eliminating a class of drivers and small businesses that represent the dominate model for the drayage industry. Clear and uniform criteria for classifying independent contractors serve the interests of all parties. Elimination is a one-size-fits-all approach in a highly variable industry.

Impact on California Port Activity

California already faces numerous challenges in maintaining its dominance in world trade with threats coming from other states and nations. The Gulf Region and East Coast states actively promote their ports as a cost effective alternative to California ports. The widening of the Panama Canal and increased facility construction in Florida, Texas, Virginia, Washington and other coastal states along with Canada and Mexico provide cargo interests with a number of options.

Further, an anticipated drayage truck shortage in the coming years will be exacerbated by mandates like **AB 950** that force a specific business model that results in higher, uncompetitive costs. According to a report by Dr. John Husing on the employee mandate in the San Pedro Bay ports, the cost of drayage would increase 167 percent over the current use of owner-operators. A second report by the Boston Consulting Group on the same mandate stated that annual drayage costs would rise by at least \$500 million. Increased California costs and easier access to out-of-state ports will draw cargo from California ports resulting in lost jobs and tax revenue.

Federal Preemption

The fact of the matter is that an employee driver mandate proposed in **AB 950** is preempted by federal law. Federal law prohibits states from taking actions that impact the rates, routes, or services of trucking companies absent qualification under a specified “safety exception.” In August 2010, the U.S. District Court for the Central District of California reaffirmed its earlier finding in a case regarding the Port of Los Angeles Clean Trucks Program that the employee mandate does not meet the safety exception and is preempted by federal law. The same facts that led the District and Ninth Circuit Courts to reject that employee mandate would apply to **AB 950**.

We respectfully **OPPOSE AB 950** and request your “No” vote when the measure comes before you.

cc: Assembly Speaker John A. Pérez
Assembly Member Sandré Swanson
Benjamin Ebbink, Assembly Labor Committee
Terry Mast, Assembly Republican Caucus
Gareth Elliot, Office of Governor Jerry Brown