

Date of Hearing: April 4, 2022

ASSEMBLY COMMITTEE ON TRANSPORTATION

Laura Friedman, Chair

AB 2057 (Carrillo) – As Amended March 15, 2022

SUBJECT: Transportation Agency: goods movement data

SUMMARY: Requires the California Transportation Agency (CalSTA) to collect and consolidate data related to goods movement in the transportation supply chain from specified sources. Specifically, **this bill:**

- 1) Requires data to be collected as follows:
 - a. Data collected with the State Air Resources Board (CARB) Drayage Truck Registry.
 - b. The Port Drayage Truck Registry that is part of the Clean Trucks Program at the Port of Los Angeles and Port of Long Beach.
 - c. Recipients of subsidies for purchase of medium- and heavy-duty vehicles for operation at the Ports by CARB.
 - d. Truck make and model reported pursuant to the South Coast Air Quality Management District (SCAQMD) Warehouse Indirect Source Rule.
 - e. Data collected under the Heavy-Duty Vehicle Inspection and Maintenance Program; and,
 - f. Data received from the Chief of the Division of Labor Standards Enforcement (Labor Commissioner) related to this bill (see (5) below).
- 2) Requires all maritime Ports to collect data and statistics from trucking companies on the number of trucks owned, the number of drivers dispatched, the number of drivers classified as independent contractors, and the number classified as employee drivers and requires the Ports to provide the data to CalSTA.
- 3) Requires CalSTA to make the data collected publicly available on its internet website.
- 4) Requires the Labor Commissioner to have access to data from the Department of Industrial Relations (DIR), including employer-reported injury data and enforcement actions in Port drayage, the identity of uninsured employers, and employers who are committing workers' compensation fraud, wage theft, or other information relevant to the authority of the Labor Commissioner.
- 5) Requires the Labor Commissioner to provide data on the number and type of violations collected and data on the number of wage claims and other violations resulting from the Labor Commissioner's enforcement actions involving Port drayage to CalSTA.

EXISTING LAW:

- 1) States the intent of the Legislature that CARB has the responsibility for control of emissions from motor vehicles and shall coordinate, encourage, and review the efforts of all levels of government as they affect air quality.
- 2) Conditions eligibility to participate in grant, loan, voucher, or other incentive programs to purchase new drayage and short-haul trucks on compliance with specified labor standards.
- 3) Requires SCAQMD to adopt a plan to achieve and maintain the state and federal ambient air quality standards for the South Coast Air Basin. Authorizes SCAQMD to adopt indirect sources in those areas of the district in which there are high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin.
- 4) Requires CARB, in consultation with the Bureau of Automotive Repair and the Department of Motor Vehicles, to adopt and implement a regulation for a Heavy-Duty Vehicle Inspection and Maintenance Program for nongasoline heavy-duty on-road motor vehicles that weigh more than 14,000 pounds.

FISCAL EFFECT: Unknown

COMMENTS:

The Port of Los Angeles (POLA), a division of the city of Los Angeles, is the largest port in the country. POLA owns marine terminal facilities, which it leases to “terminal operators” (such as shipping lines and stevedoring companies) that load and unload from docking ships. Short-haul trucks, called “drayage trucks,” move the cargo into and out of the Port.

The City’s Board of Harbor Commissioners runs POLA pursuant to a municipal ordinance known as a tariff, which sets out various regulations and charges. In the late 1990s, the Board decided to enlarge the Port’s facilities to accommodate more ships. Neighborhood and environmental groups objected to the proposed expansion, arguing that it would increase congestion and air pollution and decrease safety in the surrounding area. Lawsuits, realized and threatened, blocked the Board’s development project for almost 10 years. To address the community’s concerns, the Board implemented a Clean Truck Program beginning in 2007. The Clean Truck Program requires all drayage trucks entering Port terminals to comply with state law regulating drayage trucks and with the provisions of the POLA Clean Air Action Plan. Among other actions, the Board devised a standard-form “concession agreement” to govern the relationship between the Port and any trucking company seeking to operate on the premises. Under that contract, a company may transport cargo at the Port in exchange for various requirements.

The POLA Clean Truck Concession Agreement establishes a contractual relationship between POLA and Licensed Motor Carriers (LMCs) providing POLA drayage service. All LMCs making regular calls at POLA terminals are required to have an approved POLA concession agreement. Under the agreement, LMCs ensure that all drayage truck drivers operating and dispatched to the Port under its motor carrier permit are licensed with a valid commercial driver’s license and valid Transportation Worker Identification Credential, and comply with all federal and state environmental, safety security laws and regulations. Additionally, LMCs are required to ensure that all drayage trucks and their drivers, when entering and leaving Port property and while on Port property, comply with POLA Tariff #4 and all applicable federal,

state and municipal environmental laws, statutes, ordinances, rules and regulations that govern drayage trucks and operations. As a part of the concession, LMCs agree that drayage trucks and drivers may be inspected for environmental compliance while on Port property by the City of Los Angeles Harbor Department or other federal, state, or local authorities, including CARB or its agents.

A recent report documents the direct relationship between truck driver misclassification and climate and clean air impacts. The Clean Truck Program has reduced air pollution from harbor trucks by more than 90% by voluntary early action to comply with state law. However, a 2019 University of California Berkeley Labor Center report found that compliance is not 100%. The report states that “Drivers that meet the legal standard to be classified as employees, but are misclassified as independent contractors earn very low wages and must finance expensive vehicles with high interest loans to comply with clean vehicle rules. As a result of the capital barriers contractors face, this segment of the trucking industry has the lowest compliance rates with California’s clean vehicle regulations, with compliance rates of 61% for the Truck and Bus Rule, compared to 83% for large firms that directly employ truck drivers. Non-compliant trucks in the contractor segment represent 44% of all non-compliant trucks, a significantly greater share than their share of all operating trucks.”

Legal challenges to the Clean Truck Program. The Clean Truck Program, as originally designed, contained an employee-driver mandate, an off-street parking provision proposed by the Port to lessen the impact of trucks in surrounding neighborhoods, and a placard requirement for trucks (the “How am I driving?” placards). The American Trucking Association (ATA) contested these provisions, arguing that federal law prohibits state and local entities from regulating motor carriers engaged in interstate commerce. POLA defended the provisions as necessary for the Port to successfully enforce its clean-air program. Initially, the Ninth Circuit Court of Appeals sided with the Ports stating that their interest was as a market participant, not a regulator. The Supreme Court ultimately found that the ports were acting with regulatory power and sided with ATA which resulted in the removal of the employee mandate from the Clean Truck Program (*ATA v. City of Los Angeles*). The case brought attention to the drayage industry and misclassification issues.

State regulations related to drayage trucks. Drayage trucks are on-road, predominately diesel-fueled, heavy duty trucks that transport containers and bulk to and from the Ports and intermodal railyards, as well as to many other locations. Beginning January 1, 2023, drayage trucks are subject to the Truck and Bus Regulation which requires in-use on-road diesel vehicles to have a 2010 model year emissions equivalent engine by January 1, 2023. Additionally, Executive Order N-79-20 establishes as a goal of the state that 100% of drayage trucks be zero-emission by 2035.

Ports Drayage Truck Registry. As a part of the Clean Truck Program, all trucks entering marine terminals must be on the Ports Drayage Truck Registry (PDTR). LMCs are required to confirm their concession status and maintain accurate truck data in the PDTR.

CalSTA largely focuses on state’ transportation issues. Under this bill, CalSTA would be responsible for collecting, consolidating, and making publicly available, data related to goods movement in the transportation supply chain. In making the data publicly available, CalSTA may be faced with questions related to programs that it does not administer. For example, most of the data this bill would require CalSTA to collect and consolidate is from programs administered by CARB and the Ports. CalSTA does not have control over influencing necessary programmatic

changes that may be illuminated by analyzing the data. The author/sponsors have indicated their intent is not to expand CalSTA's responsibilities and they will work to clarify CalSTA's role should the bill proceed.

More specificity about data to be collected is needed. This bill requires CARB to share data regarding 1) the Drayage Truck Registry, 2) recipients of subsidies for the purchase of medium- and heavy-duty vehicles for operation at the Ports, and 3) the Heavy-Duty Vehicle Inspection and Maintenance Program (Heavy Duty Smog Check). Although the bill lacks detail on exactly what data CARB is to provide to CalSTA, there could be confidentiality and feasibility concerns for each of these categories. For example, many vehicles receive rebates under the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP). For HVIP and other programs, CARB may not know how any owner will use their truck, so it may be impossible to determine which trucks would be operated at the Ports (with the exception of the drayage set-aside funds).

Entities cannot be compelled to share data that they do not have. This bill requires Ports to collect data and statistics from trucking companies on the number of trucks owned, the number of drivers dispatched, the number of drivers classified as independent contractors, and the number classified as employee drivers. Ports currently do not collect this information and fleets are not going to be inclined to share it given these would be considered proprietary/trade secrets. Another issue is that Ports would not have an ability to compel fleets to give this information to them, even where the Port authority runs a concessionaire program. (See 2013 Supreme Court decision that speaks to the limited capability of the Ports to restrict access or otherwise levy penalties with the "force and effect of law" on truckers due to federal preemption.)

What will the data be used for? It is not immediately apparent what outcome is intended for the data collection this bill requires. Will it be used to inform potential future legislation? Will it necessitate programmatic changes? Knowing their data is to be shared, some rebate recipients may be wary to provide data not knowing how it will be used. Additionally, this bill does not require ongoing data collection, so it is unclear whether this one-time data collection effort will provide the type of information that the author is seeking.

Labor provisions in this bill may need more scrutiny. This bill has not been double referred; however, it requires the Labor Commissioner to have access to data from DIR. This bill also requires the Labor Commissioner to provide data to CalSTA on violations, the identity of uninsured employers, and employers who are committing workers' compensation fraud, wage theft, or other relevant information. This committee has not checked in with DIR nor the Labor Commissioner on the feasibility of these requirements.

Committee comments. The author has cast a wide net to collect data related to trucking operations, particularly at the Ports. Ultimately there may be legal, feasibility, and confidentiality challenges to the data being collected, and the state should carefully consider what value add the data will provide, and what purpose it will serve.

According to the author, "California is home to some of the largest and busiest ports in the nation and can lead in the effort to improve data and transparency. Trucks and truck drivers are a key part of the logistics chain at the ports, yet there is no central entity tracking data on the number of trucks dispatched by each company, the types of vehicles (ZEV) used, job quality, employment status, and other data points. AB 2057 would increase transparency in the goods movement and transportation supply chain by allowing for data sharing with relevant state agencies to increase supply chain resilience and sustainability. Recent supply chain delays highlight the struggle to

maintain efficient goods movement at our nation's ports. President Biden's infrastructure plan will invest billions on modernizing ports and his Administration has called for increased transparency and data collection to improve efficiency and identify bottlenecks. This bill attempts to do just that."

In support the coalition of labor sponsors writes, "While some of California's ports collect significant data on port drayage trucking, there are gaps in what information is collected and what data is ultimately shared with state agencies or policy makers. CARB and the Labor Agency both collect data on some aspects of the industry but increased data sharing and consolidation within the Department of Transportation will help policy makers address the major economic, environmental and labor challenges we face at the Ports."

In opposition the California Trucking Association writes, "AB 2057 shifts the administrative and cost burden of voluminous information gathering to the State for a questionable benefit to the general public that is not otherwise provided for by existing law, regulation and enforcement of said laws and regulations. As the State considers the transition to zero-emission drayage trucks, it will need to deploy as much public support for these goals as possible. We are concerned that taxpayer dollars spent on data gathering could be put to better use towards reducing the high upfront costs of vehicles and charging infrastructure. For instance, CARB has estimated the implementation cost for AB 794 as \$2.3 million annually from the General Fund, which is the equivalent of 15 vouchers for zero-emission trucks foregone."

Previous legislation: AB 794 (Carillo), Chapter 748, Statutes of 2021 establishes specified labor standards that a fleet purchaser is required to meet in order to be eligible to receive incentives for new drayage and short-haul trucks under incentive programs beginning with the 2022–23 fiscal year.

SB 210 (Leyva), Chapter 298, Statutes of 2019 requires CARB to implement a pilot program that develops and demonstrates technologies for bringing heavy-duty vehicles into an inspection and maintenance program. Two years upon completion of the pilot, requires CARB to develop and implement a Heavy-Duty Vehicle Inspection and Maintenance Program for nongasoline heavy-duty onroad motor vehicles.

AB 5 (Gonzalez), Chapter 296, Statutes of 2019 codifies the decision of the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) that presumes a worker is an employee unless a hiring entity satisfies a three-factor test, and exempts from the test certain professions and business to business relationships.

REGISTERED SUPPORT / OPPOSITION:

Support

California Teamsters Public Affairs Council (sponsor)
Bluegreen Alliance
California Labor Federation, Afl-cio
California State Association of Electrical Workers
Clergy and Laity United for Economic Justice
Laane (Los Angeles Alliance for a New Economy)
Latinos in Action
Los Angeles County Federation of Labor

NRDC
SEIU California
Sierra Club California
Warehouse Worker Resource Center

Opposition

California Trucking Association
Harbor Trucking Association

Analysis Prepared by: Christine Casey / TRANS. / (916) 319-2093