

**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: August 6, 2018

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso   
Chief Legislative Analyst  
Council File No.: 18-0002-S92  
Assignment No.: 18-07-0719

SUBJECT: Resolution (Buscaino – Koretz) in support of HR 4147 (Nadler)

CLA RECOMMENDATION: Adopt Resolution (Buscaino – Koretz) to include in the City’s 2017-2018 Federal Legislative Program support for HR 4147, the Clean Ports Act of 2017, which would exempt regulations on motor carriers at ports from federal preemption if the regulations are related to reducing pollution or traffic, improving highway safety, or more efficiently using port facilities.

SUMMARY

HR 4147 (Nadler), the Clean Ports Act of 2017, would declare that the federal law preempting local regulations that affect the “price, route, or service” of motor carriers of property does not apply to regulations on motor carriers at ports if the regulations are reasonably related to pollution and traffic reduction, highway safety, or the efficient use of port facilities.

According to Resolution (Buscaino – Koretz), introduced on July 31, 2018, past attempts by the Port of Los Angeles to protect the rights of port truck drivers have failed due to federal preemption over the regulation of motor carriers. The Resolution argues that this bill would be a step towards supporting local port drivers and strengthening the City’s ability to hold companies accountable for their treatment of workers. The Resolution seeks an official position of the City to support HR 4147.

BACKGROUND

Under existing federal law, states and political subdivisions of states may not enact regulations or laws that would affect the “price, route, or service of any motor carrier” of property. In 2008, the Port included an employee mandate within the Clean Truck Program that would have required port trucking companies to hire drivers as employees rather than as contractors. However, the 9th Circuit Court of Appeals removed this requirement as it was preempted by federal code.

As of 2010, over 1,150 port truck drivers have reportedly filed claims in civil court or with the California Department of Industrial Relations’ Labor Commission. Since then, the Labor Commissioner has awarded over \$40 million in back pay due to labor violations to more than 400 port truck drivers. In the past four years, port workers, including truck drivers, have engaged in 15 labor strikes, which are disruptive to Port activity, delaying cargo and expounding congestion.

In June 2017, USA Today published an investigation revealing that many port trucking companies in the Ports of Los Angeles and Long Beach were routinely violating labor laws including paying unfair wages, misclassifying drivers as contractors instead of employees to avoid paying taxes and benefits, and imposing unlawful expenses on their drivers. Per the investigation, despite hiring the drivers as contractors, trucking companies maintained control of the drivers' assignments, routes, and schedules.

In December 2017, the Council voted to approve a motion requesting that the City Attorney investigate the port trucking companies operating in the port for labor and employment law violations. In January 2018, the City Attorney filed lawsuits against three port trucking companies that operate in the ports of Los Angeles and Long Beach. The lawsuit alleges that the firms were exploiting truck drivers by misclassifying the drivers as independent contractors, rather than regular employees, to avoid paying state taxes and employee benefits.

BILL STATUS

10/26/17	Introduced in House.
10/26/17	Referred to the House Committee on Transportation and Infrastructure.
10/27/17	Referred to the Subcommittee on Coast Guard and Maritime Transportation.
10/27/17	Referred to the Subcommittee on Highways and Transit.
10/27/17	Referred to the Subcommittee on Water Resources and Environment.



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Matthew Shade  
Analyst

Attachments: 1. Resolution (Buscaino – Koretz)

## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, in 2017, USA Today investigations revealed that port trucking companies were routinely requiring port truck drivers to work shifts significantly beyond the federally allowed number of hours and engaging in other abusive practices creating a public safety and health risk in the Ports of Los Angeles and Long Beach; and

WHEREAS, in December this Council voted to approve a plan to investigate the port trucking companies operating in the port and to assess whether the City could deny companies access to the port if they were violating federal, state, or local laws; and

WHEREAS, in 2008, the Port of Los Angeles attempted to mandate that port trucking companies hire drivers as employees rather than as contractors, but the 9th Circuit Court of Appeals removed the requirement since it was preempted by a federal employee mandate; and

WHEREAS, federal law preempts local regulations that affect the "price, route, or service" of motor carriers, making it difficult for the State and City to regulate port trucking companies; and

WHEREAS, currently pending before the House of Representatives is a bill, HR 4147 (Nadler), the Clean Ports Act of 2017, which would declare that this federal preemption does not apply to regulations on motor carriers at ports if the regulations are related to pollution and traffic reduction, highway safety, or efficient use of port facilities; and

WHEREAS, this bill would be a step towards supporting our local port drivers and strengthening the City's ability to hold companies accountable for their treatment of workers;

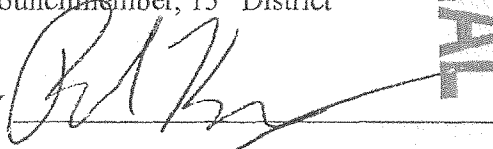
NOW, THEREFORE, BE IT RESOLVED, with concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017-2018 Federal Legislative Program support for HR 4147 (Nadler), the Clean Ports Act of 2017, which would exempt regulations on motor carriers at ports from federal preemption if the regulations are related to reducing pollution or traffic, improving highway safety, or more efficiently using port facilities.

PRESENTED BY

  
 JOE BUSCAINO

Councilmember, 15<sup>th</sup> District

SECONDED BY



ORIGINAL

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JUL 31 2018

