

David (and his friends) Versus Goliath

by Sean D. Shields

Component manufacturers take on the California Legislature.

In biblical times it only took one man, one smooth stone and a lot of faith. Today, it probably takes more like a group of friends, a pallet of bricks and a lot of prayer. Yet, the story of David versus Goliath still resonates with us as we each take on the impossible and succeed. This concept certainly applied as a small group of component manufacturers, framers and homebuilders took on the California Highway Patrol (CHP) and California Legislature in an attempt to fix a broken law, and actually won.

It has been said in the past that getting a law through the California Legislature (which represents the seventh largest economy in the world) is more difficult than getting a law through the United States Congress. However, as the issue unfolded and a coalition of related industries came together to address it, David (the California component manufacturers) and his friends succeeded in slaying the giant.

A Permit Not Permitted

It all started in February 2006, when an Erickson Components' truck (based in Roseville, CA) hauling stacks of 9' wall panels laying horizontally was pulled over and cited for having an invalid wide load permit. Erickson Components, and the rest of the industry in California, had been using these exact wide load permits issued by the California Department of Transportation (Caltrans) for years, so they contested the citation in court.

Both in court and at the roadside when the citation was issued, the CHP officer argued that given the standard height of a flatbed trailer, 9' wall panels could be reoriented vertically on the trailer and still be under the overall legal height limit (13' 6") in California. Jim Damme, Erickson's Plant Manger at the time, argued successfully that he had been operating under the requirements of his permit and that orienting the load vertically would create a significant safety risk.

Even though Erickson won the court case, the CHP officer told Damme he would continue to issue similar citations, and pledged as a CHP academy instructor that he would advise all his students to issue citations for trucks hauling 9' foot wall panels stacked horizontally.

"It was a frustrating situation," said Damme. "We had a valid permit from Caltrans, but CHP suddenly wouldn't recognize it. I wasn't sure what we could do, but I had a strong feeling the situation wouldn't just go away."

Government Run Amok

Now, I know what you're thinking, "why would they get a citation if they have a valid permit?" It was the same thing everyone was wondering at the time of the first citation. The reason is complex, but simply put, someone made a mistake. In 1997, a bill that was intended to simplify the California Vehicle Code (CVC) and eliminate duplication inadvertently repealed Section 35780.5. [See [Support Docs](#) at www.sbcmag.info to view this language.]

Unfortunately, that portion of the CVC was what gave Caltrans the authority to issue the annual and single trip permits allowing component manufacturers to transport wall panels up to 14' stacked horizontally. For a reason unknown to us, Caltrans

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at a glance

- In early 2006, a northern California manufacturer hauling wall panels laying horizontally was cited for an invalid wide load permit.
- A bill was repealed in 1997 that allowed Caltrans to issue permits for transporting wall panels stacked horizontally.
- A coalition of CalESCA members, building contractors and homebuilders rallied to restore the bill that would allow wall panels to be hauled horizontally.
- In October 2007, AB 1612 was signed into law by Governor Schwarzenegger.

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never reflected this repeal in their code manual, and continued to issue these permits to component manufacturers who requested them. Further, the CHP did not recognize the repeal or enforce it until February 2006, nearly nine years later.

"When we looked up the law, it was obvious that someone had made a mistake," said Allen Erickson of Cal-Asia Truss. "The bill that passed in 1997 wasn't supposed to have any opposition, but you can bet that Caltrans would have opposed it if they had known it would take away their authority."

The repeal of Section 35780.5 created a curious loophole that only affected wall panel sections 9' in length (see Figure 1). Eight-foot wall panels could be hauled horizontally because they didn't exceed the 8'8" width allowed in California. Yet, 9' wall panels were considered an "extralegal" load because they could be reoriented in the vertical position and be at or below the legal height of 13'6" (assuming a standard 4'6" trailer bed height). Because they were "extralegal" and not "non-reducible," nine-foot wall panels needed the special permit allowed under the repealed Section 35780.5. Ten-, twelve- and fourteen-foot wall panels could not be reoriented because they would exceed the height restriction and therefore qualified as a "non-reducible" load. Fortunately, the "non-reducible" load permit was not affected by the 1997 repeal.

Searching for a Solution

In May 2006, members of WTCA and California Engineered Structural Component Association (CaESCA), the California chapter of WTCA, attempted to resolve this issue by approaching the California Transportation Permit Advisory Council (CTPAC). Made up of representatives from Caltrans, CHP and the trucking industry, this committee is charged with reviewing permit issues and making recommendations to Caltrans.

After attending a CTPAC meeting and sharing this dilemma, Simon Evans (Bay Truss) characterized the meeting as disappointing, saying, "They agreed we had a problem, but also seemed to agree they couldn't or wouldn't do anything about it. Instead, they encouraged us to work directly with the CHP to find a resolution."

After Erickson Components received a second citation in August 2006, (which the court eventually upheld), WTCA drafted a *Management Note* which outlined the wall panel

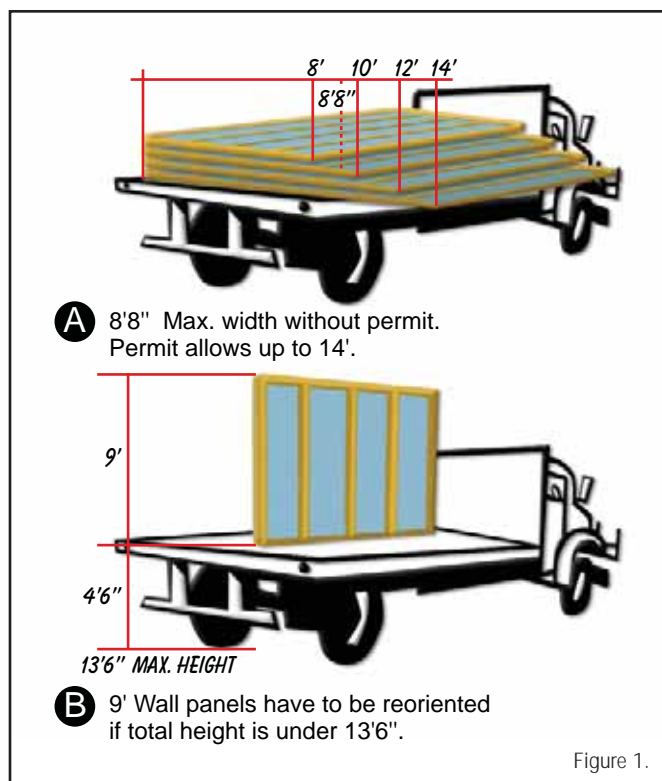


Figure 1.

manufacturing and transport process and provided a reasoned argument as to why they should be stacked horizontally versus vertically. The *Management Note* was then used in preliminary discussions with the CHP in November 2006. Unfortunately, their final response in February 2007 was simply that they were enforcing the law as it was written and there was nothing that could be done until the law was changed.

Soon after the CHP explained there was only one solution to the problem, two additional wall panel manufacturers were cited in May for using the invalid permit still being issued by Caltrans. One of those manufacturers was Select Build, a large supplier of wall panels in California. In response, Dan Cordero, their Pacific Region Director of Business Integration, hosted a meeting in June with regional wall panel manufacturers to raise awareness of the issue.

Building a Coalition

At this meeting, Select Build invited another organization to the table, the California Professional Association of Specialty Contractors (CALPASC). Dave Loudon, CALPASC's Director of Government Affairs, was a former legislative staff person in the California Legislature and used his connections to quickly arrange a meeting later in June with California State Senator Dave Cox (R-District 1).

Based on the meeting with Senator Cox's office, WTCA began drafting language in July that would eliminate the loophole created by the 1997 repeal and could be amended (added) into an existing bill currently before the California Legislature. However, time was running out on the 2007 session and the California Legislature was struggling through a standoff on the state budget. The initial reaction from the Senate Transportation Committee staff was that an amendment to an existing bill would not be possible this year; it would have to wait until 2008.

"Because of term limits, California lawmakers aren't able to hold onto leadership positions for very long," said Loudon. "As a result, even the Chairs of the various committees usually defer to the judgment of the committee staff, who have generally been around for a long time. In this case, if the staff of the Transportation Committee said they didn't think it was going to happen, it likely wasn't going to happen."

Meanwhile, additional wall panel manufacturers were cited during the summer months by a handful of CHP officers, and one company even had their truck "red flagged," or taken out of service, because of the permit violation. It was becoming evident that component manufacturers and framers were not the only ones being affected by this issue—homebuilders were suffering as well. As a consequence, Gregg McKenzie, Director of Government Affairs for the Western U.S. at Pulte Homes, joined the fray and brought with him the support of the California Building Industries Association (CBIA) and their strong presence in the California Legislature.

In a last ditch effort to find a short-term solution until the law could be changed, members of this coalition of affiliated industries met in August with representatives of the CHP, Caltrans and the Senate Transportation Committee to explore possible options. However, at the conclusion of the meeting, the government officials all agreed there was no short-term solution available.

Relying on Relationships

Just when it appeared we were at a dead end, a legislator stepped forward and offered his help. California Assemblyman Pedro Nava (D-Santa Barbara), Chairman of the Assembly Transportation Committee, agreed to add our amendment to one of his existing bills, AB 1612. It turned out he was a good friend of a Select Build employee and when he heard of the need for a legislative solution he offered to try to help.

"Relationships proved to be key every step of the way," said Cordero. "From relationships with lawmakers to key agency staff, we would not have been successful without having the ability to raise this issue to the people in a position of authority to take action."

After a week of negotiation, the CHP and Caltrans agreed to support the drafted amendment to AB 1612 (see sidebar for final language), and it was successfully added to the bill during a hearing before the Senate Transportation Committee. Only then did everyone learn that the California Trucking Association (CTA), which has a strong presence in the California Legislature, opposed the whole bill!

In short, CTA did not support a portion of the original AB 1612 that dealt with requirements for drivers hauling hazardous materials. Assemblyman Nava had worked with CTA months earlier to address this objection and thought, at the time he suggested adding our amendment to the bill, that CTA's concerns had been met. Needless to say, CTA's last-minute opposition to the bill surprised everyone involved.

Due to this opposition, WTCA, CALPASC and the CBIA all rallied their members to contact key members of the California Legislature to ask for their support of AB 1612. Many WTCA members wrote letters and made phone calls to their legislators, which was helpful in raising awareness of the importance of the bill and the need for its passage and

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(the final language)

Below is the final version of the amendment that was added to AB 1612, as approved by the California Legislature and signed by the Governor:

An Act to establish Section 35780.5 of the Vehicle Code.

LEGISLATIVE COUNSEL'S DIGEST

Existing law (Section 35780) authorizes the Department of Transportation or local authorities, as applicable, to issue a special permit authorizing the applicant to operate or move vehicles with specified loads.

This bill would authorize the Department of Transportation or local authorities to issue a special permit which would allow for the transport of manufactured structural building components laid in the horizontal position up to 12 feet in width.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

Section 1. Section 35780.5 of the Vehicle Code is established to read:

35780.5 (a) Notwithstanding Section 320.5, the Department of Transportation or local authorities, with respect to highways under their respective jurisdictions, may, upon application, issue a special permit authorizing the applicant to operate or move a vehicle carrying a load, lying in the horizontal position, of stacked trusses or wall panels that are used as single width components in the manufacture of a finished product, that exceeds the maximum width specified by this code, if the load does not exceed 12 feet in width and the permittee complies with the regulations of the Department of Transportation or local authorities, as the case may be, governing the transportation of such loads.

(b) Under conditions prescribed by the Department of Transportation or the local authority, the Department of Transportation or local authority may accept applications made, and issue permits directly to an applicant or permit service, by any of the following processes:

- In writing.
- By an authorized facsimile process.
- Through an authorized computer and modem connection.

(c) The special permit allowed under this Section shall, under conditions prescribed by the Department of Transportation or local authorities, be granted on either a per trip or annual basis.

(d) As used in this section a "truss" is designed and manufactured assemblage of structural elements typically arranged in a triangle or combination of triangles to form a rigid framework and used as a structural support in buildings.

(e) As used in this section a "wall panel" is a designed and manufactured assemblage of structural elements constructed in the same manner as site-built walls to form a rigid framework and used as a structural support in buildings. "Wall panel" may have attached various types of sheathing products including wood structural panels, foam panels and gypsum board that do not extend more than one foot beyond the main structural elements.

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all others bring data.

—W. Edwards Deming, American Statistician



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(the coalition)

Component Manufacturers (WTCA & CalESCA Members):

- Dan Cordero, Select Build
- Jim Damme, Erickson Components
- Mark Durk, Erickson Components
- Allen Erickson, Cal-Asia Truss
- Simon Evans, Bay Truss

Simon, Allen and Jim initially brought this issue to WTCA and raised awareness by attending a Caltrans meeting in May 2006. Allen played a significant role throughout the process from legislative research to attending key meetings with other manufacturers and the CHP and Caltrans. Dan brought a considerable amount of expertise and passion, and used his key relationships in California to help build a successful coalition. Once he replaced Jim, Mark also provided valuable feedback and perspective, particularly at key meetings with CHP and Caltrans.

Building Contractors:

- Dave Loudon, California Professional Association of Specialty Contractors
- John Benton, Government Strategies, Inc.

Dave and John spent a considerable amount of time working with individual lawmakers to illustrate how this issue affected building contractors and built support for AB 1612. Dave, a former California legislative staffer, utilized his relationships to arrange meetings with lawmakers and agency representatives from CHP and Caltrans. John was also instrumental in educating the Governor's Office on this issue and gaining their support.

Homebuilders:

- Gregg McKenzie, Pulte Homes
- Tim Coyle, California Building Industries Association (CBIA)

Gregg educated his colleagues on the impacts this issue would have on home builders and was key in bringing on the support of CBIA. Both Gregg and Tim spent time educating lawmakers on the impact this issue would have on the residential construction industry and economy in California and building support for AB 1612 among key lawmakers and legislative staff.

David vs. Goliath

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was instrumental in overcoming CTA's opposition to the bill.

At the same time, Dave Loudon, John Benton of CALPASC, Gregg McKenzie and Tim Coyle of CBIA, visited one-on-one with numerous lawmakers leading up to each and every vote as AB 1612 wound its way through the legislative process. All the while, WTCA provided information and logistical support when necessary. Each organization utilized its strengths to help out.

V Is for Victory

After AB 1612 passed out of the Senate Transportation Committee, the bill was approved with the amendment on a 28-11 vote. The vote was close because when the bill came up for a vote, all the members of the Senate Transportation Committee were holding a hearing on a different bill and therefore were not in the room to rally support of its passage. The bill then went back to the Assembly, where it was approved unanimously by the Assembly Transportation Committee and then approved on a 70-3 vote by the entire Assembly.

On October 10, 2008, AB 1612 was signed into law by Governor Schwarzenegger, officially amending Section 35780 of the California Vehicle Code (CVC). The resulting change to the CVC will now allow California truss and wall panel manufacturers to obtain an annual or single-trip permit from Caltrans and local governments to haul components between 104" (8'8") and up to 12' in height, stacked and oriented in the horizontal position on a flat-bed trailer.

Thanks to the amazing work of so many people (see sidebar of role players), this coalition of wall panel manufacturers, framers and homebuilders were successful at convincing the California Legislature to help them out and right a wrong that had been done nearly a decade ago. It was a great testament to what can be accomplished when affiliated industries work together instead of apart. **SBC**

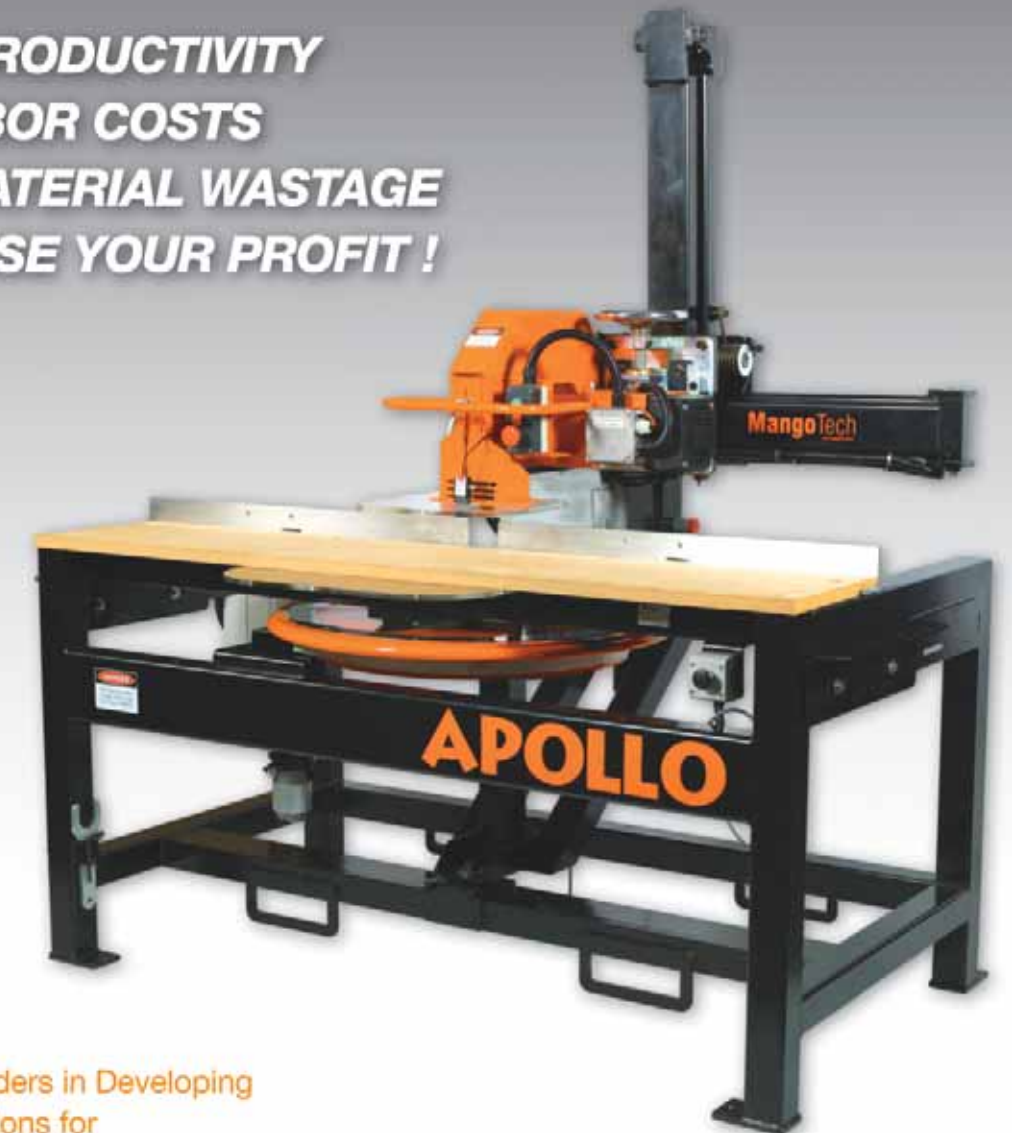
Sean Shields is WTCA's Legislative & Political Affairs Manager. He drafted the amendment and provided support to members of the coalition.

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