
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 794
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Fiscal: Yes

SUBJECT: Air pollution: purchase of new vehicles: incentive programs: eligibility: labor and workforce standards

DIGEST: Attaches labor and workforce standards to eligibility for various clean vehicle incentive programs administered by the California Air Resources Board (ARB) for fleet purchasing in port drayage and short-haul trucking service.

ANALYSIS:

Existing law:

- 1) Establishes the California Air Resources Board (ARB) as the air pollution control agency in California and requires ARB, among other things, to control emissions from a wide array of mobile sources and implement the Federal Clean Air Act. (HSC §39500 et seq.)
- 2) Designates ARB as the state agency charged with monitoring and regulating statewide greenhouse gas. (GHG) emissions. (HSC §38500 et seq.)
- 3) Requires ARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030 (i.e., SB 32); and allows ARB, until December 31, 2030, to adopt regulations that utilize market-based compliance mechanisms (i.e., the cap-and-trade program) to reduce GHG emissions. (HSC §§ 38566, 38562)
- 4) Establishes the Greenhouse Gas Reduction Fund (GGRF) in the State Treasury, requires all moneys, except for fines and penalties, collected pursuant to a market-based mechanism be deposited in the fund. (Government Code §16428.8)
- 5) Establishes the Air Quality Improvement Program (AQIP), administered by ARB in consultation with local air districts, to fund programs that reduce criteria air pollutants, improve air quality, and provide research for alternative

fuels and vehicles, vessels, and equipment technologies. (HSC §44274 et seq.)

- 6) Establishes the Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer Program), to provide grants to offset the incremental cost of projects that reduce covered emissions from covered sources in California. (HSC § 44280)
- 7) Establishes the Labor and Workforce Development Agency (LWDA) to, among other duties, simplify, strengthen, and improve the operation and management of programs that protect and provide services to California's workers and employers and to ensure there is a cabinet-level voice for workforce-related issues raised for the Governor's consideration and decision. (SB 1236, Alarcon, Chapter 859, Statutes of 2002)
- 8) Establishes the California Workforce Development Board (CWDB) within the LWDA, to be responsible for the oversight and continuous improvement of the workforce system in California. (GOV § 12813)
- 9) Establishes the Division of Labor Standards Enforcement (DLSE), within the Department of Industrial Relations, under leadership by the Labor Commissioner, who is tasked with numerous duties, including to prepare a model notice including information on misclassification of an employee as an independent contractor. (Labor Code §§ 79, 98.10)
- 10) Requires, under SB 1402 (Lara, Chapter 702, Statutes of 2018) DLSE to post on its website a list of port drayage motor carriers with unsatisfied final court judgments, tax assessments or tax liens, and further requires that any customer that engages or uses a company or individual on the list shall share all civil legal responsibility and civil liability owed to a port truck driver for services obtained after the date the carrier appears on the list; the customer is jointly and severally liable for the full amount found due of unpaid wages, unreimbursed expenses, damages, penalties, and any applicable interest. (Labor Code § 2810.4)

This bill:

- 1) Adds implementation of specified labor and workforce standards to the list of records required of a state agency expending GGRF money for the purchase of new vehicles.
- 2) States that it is the intent of the Legislature that ARB maximize economic cobenefits by conditioning eligibility for grant, loan, voucher, or other

incentive programs on compliance with specified labor and workforce standards.

- 3) Directs the ARB to condition eligibility for grant, loan, voucher, or other incentive programs on compliance with specified labor and workforce standards.
- 4) Specifies labor and workforce standards, to be considered as a cobenefit of incentive programs for the purchase of new vehicles that are based on clean air standards.
 - a) Establishes the rationale, implementation, and applicability of these standards by, among other provisions:
 - i) Making findings and declarations regarding the “Putting California on the High Road: A Jobs and Climate Action Plan for 2030” (2020 Action Plan) report, and other climate and labor related considerations;
 - ii) Stating that the intent of the Legislature in enacting this chapter is to, among other things, implement the 2020 Action Plan’s recommendations, require ARB to develop labor and workforce standards, and maximize the environmental benefits of its investments by ensuring that recipients of subsidies operate the equipment in compliance with all state laws rather than taking advantage of state incentives then selling the equipment;
 - iii) Defining the terms administering agency, applicable law violation, clean air standards, fleet operations, incentive, and short-haul trucking service;
 - iv) Directing ARB to, in consultation with LWDA—including CWDB and the Labor Commissioner—to condition eligibility to participate in incentive programs for new vehicle purchasing on compliance with these standards;
 - v) Permitting ARB to solicit recommendations on implementation from and delegate duties to LWDA;
 - vi) Permitting ARB to, if they determine there are any constraints on implementation due to consistency between existing statutory goals for the incentive program to reduce emissions and these labor

standards, notify the Legislature in a written report of their findings and any possible remedies for the constraints;

- vii) Defining the scope of applicable new vehicle purchase incentive programs to include, but not be limited to, any incentive program funded by specified funds, by ARB, or by a settlement fund under ARB's jurisdiction;
 - viii) Stating that this chapter applies these standards only to fleet purchasers of new vehicles for drayage and short-haul truck services within the state, and that these standards explicitly do not apply to other fleet purchasers outside this scope;
 - ix) Requiring fleet purchasers to enter into a contract with ARB (or the administering agency), lasting the longer of either the length of the contract or three years, stating they will comply with these labor and workforce standards, under pain of being required to repay the incentive for the period the purchaser was out of compliance; and,
 - x) Making provisions for the above penalty to apply to any successor or assignee of the purchaser, and to have processes in place for appealing the decision and reinstating eligibility.
- b) States that it is the intent of the Legislature to, in subsequent amendments to this chapter, establish labor and workforce standards for manufacturers of motor vehicles.
- c) Specifies labor and workforce standards for fleet purchasers, including that a fleet purchaser:
- i) Must be able to demonstrate that it does not have any applicable law violations at the time of applying for the incentive;
 - ii) Cannot be on the list created by SB 1402 (Lara, Chapter 702, Statutes of 2018);
 - iii) Must have the vehicle(s) purchased with the incentive under its full ownership and operational control for the duration of the contract;
 - iv) Must, upon applying for an incentive, certify compliance with all the above, and over the course of the contract disclose any judgements, rulings, citations, decisions, orders, or awards finding the fleet

purchaser (or a parent, subsidiary, or commonly controlled entity) has any applicable law violations; and,

- v) Must also certify that it maintained control of the individuals operating the incentive-supported vehicle and the vehicle itself, and that all required maintenance and upkeep was performed.
- 5) Makes conforming changes to various vehicle incentive programs to comply with the specified labor and workforce standards, specifically those programs codified within or otherwise funded by: the GGRF Investment Plan and Revitalization Act, the Air Pollution Control Fund, the Air Quality Improvement Fund, and the Carl Moyer Program.

Background

- 1) *California Climate Investments*. CCI is the umbrella initiative for all programs funded by cap-and-trade dollars, which flow into the GGRF. The Legislature and Governor annually appropriate funds from the GGRF to state agencies such as the ARB and the California Department of Transportation (Caltrans). These agencies use the money to fund programs in areas like community air quality improvement, public transit expansion, and more. CCI has grown to include more than 20 state agencies that work collaboratively to further the purposes of AB & SB 32 and contribute to statewide GHG emission reductions. The administering agencies send data and updates to ARB throughout the process. Those data are used to inform a report to the Legislature each year from the Department of Finance.
- 2) *“Putting California on the High Road”*. As required by AB 398 (E. Garcia, Chapter 135, Statutes of 2017), CWDB, in consultation with ARB, commissioned the Center for Labor Research and Education at the University of California, Berkeley to prepare a report on jobs and climate action. The report, *“Putting California on the High Road: A Jobs and Climate Action Plan for 2030,”* was published in June of 2020, and has numerous recommendations. The three key messages of the report were that 1) labor should be considered an investment rather than a cost – and investments in growing, diversifying, and upskilling California’s workforce could positively affect returns on climate mitigation efforts; 2) California can achieve greater social equity in labor market outcomes for disadvantaged workers and communities when policymakers pay attention to job quality; and 3) deliberate policy interventions are necessary to advance job quality and social equity during the transition to a

carbon neutral economy.

Notably, the report had several recommendations on demand-side strategies for agencies implementing climate measures. The report argues that California's state government can use its power not only to drive low-carbon economic growth but also to support equitable development. Most relevant to AB 794, the 2030 Action Plan called for the state to "include responsible employer standards in all climate incentive programs," stating that responsible employer standards can screen out unwanted behavior and help prevent public funds from supporting low-wage jobs or unfair and illegal labor practices.

- 3) *Drayage labor issues.* According to a 2019 report from the UC Berkeley Labor Center, misclassification of truck drivers as independent contractors has climate, labor, and environmental justice impacts. Contracting out truck driving shifts the costs of truck ownership and operation from trucking companies to individual truck drivers – as much as 30% of payroll, equipment, and benefits costs. Because it is illegal to misclassify drivers, highly accurate data are not readily available on the prevalence of the practice. A number of academic studies analyzing ports across the country suggest that between 75% and 85% of workers likely meet core misclassification criteria.

Port drivers in California have filed more than 1,000 claims with DLSE for violations related to misclassification. The Labor Commissioner has issued 448 decisions in these cases and found drivers were owed more than \$50 million in damages collectively. Under SB 1402 (Lara, 2018), DLSE maintains a list of drayage motor carriers with unsatisfied court judgements, tax assessments, or tax liens, with whom any customer engaging with will be jointly liable for all liability owed to a port truck driver. As of publication of this analysis, the SB 1402 list currently contains 53 carriers with such liabilities.

Contract truck drivers, particularly misclassified contractors, earn low incomes and face high capital costs. While regulatory compliance costs for large trucking firms represent a small percent of total revenue, contract truck drivers can face compliance expenses far in excess of their yearly income. The difference between the average incomes of port drivers who are employed (\$35,000) versus contracted (\$28,783) illustrates how even seemingly modest compliance costs could significantly impact these drivers' earnings.

Under the contractor business model, the truck drivers least equipped financially to buy and maintain clean vehicles disproportionately bear the financial burden of attaining the state's climate goals in this sector. The bill's supporters assert that misclassification of workers slows adoption of cleaner

trucks, citing that although misclassified drivers are approximately 20% of the truck driver labor pool, they represent nearly half of the noncompliant vehicles.

- 4) *Cleaning up trucking emissions.* The transportation sector accounts for over 40% of all GHG emissions in California—the most of any economic sector in our state—and consistent and significant reductions in vehicle emissions remain elusive. Commercial trucking in particular is a critical focus area for climate policy. Heavy-duty vehicles emit a fifth of all transportation-related GHGs. They also produce toxic air pollutants that significantly increase risk of cancer and other severe health challenges for California residents, particularly in low-income communities of color.

To meet these challenges, California has passed and continues to develop new policies designed to accelerate the adoption of low- and zero-emissions vehicles in the commercial trucking subsector. Currently, there are at least 15 state programs that provide financial incentives for medium- and heavy-duty ZEVs. These include 12 administered by ARB, one administered by the California Energy Commission (CEC), one administered by the California Alternative Energy and Advanced Transportation Financing Authority, and one administered by California Pollution Control Financing Authority.

Currently, ARB is in the process of adopting regulations for the conversion of truck fleets to zero-emission by 2045. The proposed Advanced Fleet Rule, expected to be approved by the end of 2021, will provide fleet purchasers monetary incentives to purchase new clean trucks for short-haul trucking and port drayage service.

- 5) *ARB audit.* On February 23, 2021, The State Auditor issued a report evaluating ARB's implementation of a number of transportation-based incentive programs for GHG reduction. A key finding of the audit was that the board has failed to adequately evaluate these programs in regards to their socioeconomic benefits, number of jobs created, or the extent that workers benefited from job-training.

Moreover, the Auditor found that although ARB has identified specific socioeconomic benefits it intends its programs to achieve, such as jobs benefits, it does not consistently collect the data it needs to demonstrate those benefits. In its response to the audit's findings, ARB committed to expanding its data collection and socioeconomic cobenefits analyses. However, it is clear that expanding the scope of data under consideration for each ARB program to include numerous non-air quality metrics will require more resources to implement and time to develop best practices.

Comments

- 1) *Purpose of Bill.* According to the author, “In order to create high-road quality jobs while moving closer to meet climate goals, AB 794 will ensure that public funding to manufacture and purchase cleaner vehicles is tied to labor standards. California should not subsidize companies that violate workers’ rights or shift costs onto the backs of workers or the state safety net. Public funding should reward companies that follow the law and respect workers. This bill allows California to meet its climate goals while using public funds to support good job creation in communities of color. Public subsidies should reduce income and racial inequality, not widen the gaps.”
- 2) *Labor & economic development as a cobenefit.* Money spent to reduce GHGs can do much more than just that. Cobenefits to GHG emission reductions, such as criteria pollutant and air toxic reductions, economic development, preservation of biodiversity, and numerous other quality of life improvements can be achieved simultaneously. AB 794 proposes to explicitly add another cobenefit to those considered when money is spent on reducing GHG emissions: labor and workforce development.
- 3) *Getting climate money out the door.* The scale of the changes needed across all sectors of our economy to stymie our contributions to the climate crisis cannot be understated. California prides itself as a climate leader and spends billions of dollars annually to reduce GHG emissions. A challenge raised by AB 794 is the prioritization of reducing GHG emissions versus advancing labor and workforce cobenefits. There are advantages to both GHG emission reductions and improving workforce labor standards, but ARB’s primary obligations are for the former.

Fortunately, AB 794 includes important provisions allowing ARB to, if they determine there are constraints to applying the labor and workforce requirements based on other requirements for their incentive programs, they may delay or suspend implementation and reevaluate feasibility. Importantly, should that be the case, ARB will be required to report to the Legislature regarding those constraints and possible remedies.

- 4) *What happens with vehicle manufacturing?* The original contents of article 2 of the labor and workforce standards chapter created by this bill were stricken in amendments made after policy committee deliberations on the Assembly floor. The article now only states that it is the intent of the Legislature, in subsequent amendments to this chapter, to establish labor and workforce standards for motor vehicle manufacturers. The committee is not aware of any other example

in statute of the use of the language “in subsequent amendments to this chapter.” Stakeholders in the light-duty vehicle space have expressed apprehension that their omission from AB 794, as written, is not entirely explicit or complete.

Given the importance of having multiple policy committees analyze any proposed labor and workforce standards for incentives to vehicle manufacturers and the unprecedented nature of including intent language for subsequent amendments in statute, the committee may wish to clarify that the Article 2 created by this bill will be amended with “subsequent legislation,” rather than “subsequent amendments.”

- 5) *ARB’s role.* As written, AB 794 requires ARB to lead implementation of the specified labor and workforce standards. Some of the requirements placed upon ARB under the bill are to enforce the specified labor and workforce standards (in collaboration with the Labor Commissioner), develop a website to display public information on the labor and workforce-related disclosures and certifications of compliance from reporting entities, accept information from any person regarding a fleet purchaser’s eligibility under these labor and workforce standards, and to affirmatively collaborate with the Department of Industrial Relations or the Labor Commissioner to identify fleet purchasers that have applicable law violations. These duties would represent a major expansion of ARB’s responsibilities.

Given ARB’s appointed role as the state’s air pollution control agency, it is questionable if requiring them to devise and enforce labor standards is effective or appropriate. Indeed, given the recent report from the California State Auditor and subsequent response from ARB, it is clear there are shortfalls in ARB’s ability to evaluate the job-quality and labor impacts of their transportation incentive monies, let alone determine compliance with labor laws. While ARB no doubt has a role to play in assessing GGRF applications and disbursing funds, they are not experts in enforcing labor laws.

In contrast, the Labor and Workforce Development Agency (LWDA) has had ample experience and success assessing employers’ compliance with labor laws. An alternative method of implementation could be for LWDA to devise and primarily enforce the labor and workforce standards set forth in this bill, but with ARB ensuring those standards apply to the specified GGRF recipients. In this way, LWDA—the regulators with the most expertise in labor law and related issues—could take the lead in establishing appropriate labor and workforce standards, while ARB—the regulators with the most experience in assessing GHG reductions and GGRF-funded project outcomes—could

implement those standards alongside their other considerations for assessing GGRF expenditures.

Given the specialized expertise of both entities, the importance of devising appropriate labor and workforce standards, and the value of ensuring labor and workforce impacts are evaluated alongside other GGRF cobenefits, the author should seek technical assistance from the appropriate agencies and subsequently amend this bill to be implemented in a way that is more harmonious with existing regulatory authorities.

Related/Prior Legislation

SB 338 (Gonzalez, 2021) would add final orders from the Occupational Safety and Health Appeals Board to the list of actions that get a port drayage motor carrier put on the list DLSE maintains pursuant to SB 1402 (Lara, 2018). SB 338 is currently before the Assembly Judiciary Committee.

AB 680 (Burke, 2021) would direct LWDA to, by January 1, 2023, work with ARB to update GGRF funding guidelines to include specified labor standards for all applicants to grant programs funded by GGRF. AB 680 will be heard alongside AB 794 in the 7/7/2021 Senate Environmental Quality Committee hearing.

SOURCE: California Teamsters Public Affairs Council
Port Division, International Brotherhood of Teamsters,
Blue-Green Alliance

SUPPORT:

Bluegreen Alliance
California Environmental Justice Alliance (CEJA) Action
California Faculty Association
California Labor Federation, Afl-cio
California League of Conservation Voters
California Teamsters Public Affairs Council
Center for Community Action & Environmental Justice
Clergy and Laity United for Economic Justice
Earthjustice
East Area Progressive Democrats
Garment Worker Center
Jobs to Move America
Latinos in Action
LAX Area Democratic Club

Long Beach Young Democrats
Los Angeles County Federation of Labor
Natural Resources Defense Council
Northeast Democratic Club
People's Collective for Environmental Justice
Policylink
Progressive Democratic Club
Sierra Club California
Stonewall Democratic Club
Strategic Actions for A Just Economy
Teamsters Port Division
UAW Region 8
Union of Concerned Scientists

OPPOSITION:

Tesla Motors

ARGUMENTS IN SUPPORT: According to the sponsors of this bill, “The ability of the state to meet ambitious climate goals depends in large part on fleet purchasers transitioning to zero emissions vehicles. Truck drivers move almost half of the nation’s container imports out of the Ports of Los Angeles and Long Beach, and the diesel and gas trucks they use are a major source of pollution.

“A major obstacle to meeting climate, clean air and environmental justice goals is the misclassification of drayage truck drivers. Trucking companies intentionally and illegally misclassify drivers as independent contractors, unlawfully forcing them to bear all the costs of transitioning to clean trucks. Misclassified drivers earn low wages and face prohibitively high financing costs to transition to clean vehicles. Driver misclassification stalls progress on clean air and climate goals because misclassified drivers simply cannot afford new clean or electric trucks nor required maintenance and upkeep when the trucks and associated expenses are pushed on them by the trucking companies who misclassify them.

“AB 794 removes the obstacle to progress on climate goals by ensuring that state funds are not being used to support fleet purchasers who violate the law and impede climate goals through deliberate worker misclassification schemes.”

ARGUMENTS IN OPPOSITION: According to the Alliance for Automotive Innovation, “After careful and thorough review, the Alliance for Automotive Innovation (“Auto Innovators”) requests that AB 794 be amended to remove all light duty vehicle and automaker provisions or that the bill in its current form be held for further consideration. In either case, this would allow time for the ZEV

market to strengthen and to allow conversations happening with the Biden Administration and Congress to continue. Those conversations include the focus of AB 794 – the consideration of incentives for domestic job creation. Putting into place policies that accelerate our nation’s movement toward a net zero-carbon transportation future while supporting a consumer-driven marketplace and keeping the U.S. at the forefront of automotive innovation, research and development is a goal we all share.”

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