

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kara, Chair

AB 794 (Carrillo) – As Amended March 25, 2021

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

SUMMARY: Attaches labor and workforce standards to eligibility for various clean vehicle incentive programs administered by the California Air Resources Board (CARB) for vehicle manufacturing and fleet purchasing in port drayage and short-haul trucking service. Specifically, **this bill:**

Definitions

- 1) Defines “clean air standards” to include the standards that the CARB sets to reduce air pollution or reduce emissions of greenhouse gases pursuant to Division 25.5 and 26 of the Health and Safety Code.
- 2) Defines “incentive” to include a grant, loan, voucher, or other incentive, regardless of the source of revenue that funds the incentive, for the purchase of motor vehicles or vehicle technology.
- 3) Defines “fleet operations” to include, but not be limited to, port drayage service and short-haul transport of goods.
- 4) Defines “short-haul trucking service” to mean movement of goods by truck within a 150-air-mile radius of the normal working reporting location while in service within the state.

The development, implementation, and enforcement of workforce standards

- 1) Requires the CARB, in collaboration with the Labor and Workforce Development Agency (LWDA), including the California Workforce Development Board (CWDB) and the Labor Commissioner (LC), to develop operational guidelines for applying the workforce standards to incentive programs subject to the bill’s provisions. In these guidelines, the CARB may interpret the scope of applicability, terms of labor and workforce standards, and implementation, consistent with the bill’s provisions.
- 2) Requires the CARB to provide an opportunity for public input before finalizing the operational guidelines to be adopted on or before April 1, 2022.
- 3) States that the bill applies to incentive programs for the purchase of vehicles or vehicle technology that receive funding from, or are administered by, the CARB, including, but not limited to, all of the following:
 - a) An incentive program funded by a fund, including, but not limited to, all of the following funds:
 - i) The Greenhouse Gas Reduction Fund

- ii) The Air Quality Improvement Fund.
 - iii) The Carl Moyer Memorial Air Standards Attainment Trust Fund.
 - iv) The Air Pollution Control Fund.
- b) An incentive program funded wholly or partially by the CARB, including, but not limited to, all of the following:
- i) The Truck Loan Assistance Program under subdivision (c) of Section 44274.
 - ii) A local or regional incentive program.
 - iii) A public-private partnership.
- c) An incentive program funded by a settlement fund under the CARB's jurisdiction, as specified.
- 4) Requires the CARB or an agency administering an incentive program subject to this bill, in collaboration with the LC, to enforce the workforce standards and authorizes the LC, at the request of the agency administering an incentive program or the CARB, to investigate an allegation regarding a violation of the standards, as specified.
- 5) Requires the CARB to develop an internet website that displays public information from manufacturers or fleet purchasers participating in incentive programs that are subject to the provisions of the bill regarding their disclosures and certifications of compliance with the labor and workforce standards.
- 6) States that the CARB or the agency administering an incentive program shall require that manufacturers of a vehicle or vehicle technology eligible for an incentive sign a contract conditioning the eligibility on compliance with the workforce standards. The contract shall state a timeframe for compliance with the standards, as follows:
- a) For manufacturers, the timeframe includes the application process and the three-year period before a vehicle is eligible to receive the incentive.
 - b) For fleet purchasers, the timeframe includes the application process and a multiyear period after receiving the incentive of at least 10 years.
- 7) Requires a manufacturer of a vehicle or vehicle technology that is eligible to participate in, or a fleet purchaser receiving an incentive from, a covered incentive program to apply the workforce standards, as applicable, in its contracts with subcontractors and suppliers.
- 8) Provides that a manufacturer, as specified, that is eligible for an incentive and is in violation of the workforce standards shall lose eligibility for the incentive for their vehicles or vehicle technology and shall be liable for the repayment of an amount that is equal to the total aggregate amount of all incentives provided for the purchase of the vehicle or vehicle technology.
- 9) Provides that a fleet purchaser receiving an incentive that is in violation of workforce standards or has failed to make correct and accurate disclosures, as required, shall be liable for the repayment of an amount that is equal to the total aggregate amount of incentives received by the fleet purchaser during the preceding 10 years.

Workforce standards for manufacturers of clean vehicles

- 1) Provides that a light-duty vehicle or vehicle technology is eligible for up to 60 percent of the incentive amount, as defined, if a manufacturer meets all of the following requirements:
 - a) Complies, for a least three years, with the labor laws of the state where the vehicle or vehicle technology is manufactured. State labor laws are defined to include, but are not limited to, classification of employees, wages and hours, unemployment compensation, and occupational safety and health.
 - i) A manufacturer shall certify this compliance with the agency administering the incentive program.
 - b) Respects internationally recognized labor rights which include, but are not limited to, prohibitions on forced labor, child labor, and discrimination with respect to work, and the freedom of association and right to organize.
 - i) A manufacturer shall certify to the agency administering the incentive program and the CARB compliance with these internationally recognized labor rights. The CARB may provide standards for this certification, as specified.
 - c) Achieves both of the following:
 - i) Assembles 100 percent of the vehicle, at the final assembly point, in the United States.
 - ii) Produces battery and nonbattery domestic content for light-duty vehicles, as specified, or for medium- or heavy-duty vehicles, as specified.
 - d) Discloses data that supports the certification of compliance with these provisions.
- 2) Provides that a light duty vehicle or vehicle technology is eligible for an additional 40 percent of the incentive amount, as specified, if a manufacturer meets all of the following requirements related to job quality:
 - a) Demonstrate to the agency administering the incentive program and the CARB its commitment to hiring disadvantaged workers by doing both of the following:
 - i) Demonstrate that it has commitments through a community partnership to recruit, hire, and train individuals with employment barriers, as specified, and workers displaced from the fossil fuel industry, as specified.
 - ii) Disclose to the agency administering the incentive program and the CARB a community benefit or workforce agreement, as specified, and data showing that the manufacturer has hired disadvantaged workers, as specified.
 - b) Demonstrate to the agency administering the incentive program and the CARB participation in job training programs by utilizing state or federally certified apprentices, as specified, and certifying the use of such apprentices.

- c) Demonstrate to the agency administering the incentive program and the CARB that it pays all workers at least 120 percent of the California minimum wage and for production workers, the prevailing wage for specific occupational titles. The manufacturer shall also disclose the wage average and range that it pays for specific occupational titles.
 - d) Preserve employee access to dispute settlement options available under the laws of the state where the vehicle or vehicle technology is assembled and disclose contract terms that preserve dispute options, as specified.
 - e) Demonstrate to the agency administering the incentive program and the CARB its commitment to using full-time employees by disclosing:
 - i) A community benefit or workforce agreement with a goal of full-time employment.
 - ii) The number and percentage of workers who are full-time and part-time, permanent and temporary, and direct hire and contractor employees.
- 3) Provides that a medium- or heavy-duty vehicle or vehicle technology shall be eligible for incentives if the manufacturer complies with the requirements in (1) **and** (2). The incentive provided shall be based on the model year of the vehicle or vehicle technology and the percentage of nonbattery components produced in the United States, as specified.

Workforce standards for fleet purchasers of clean trucks

- 1) Provides that a fleet purchaser of vehicles or vehicle technologies is eligible to participate in an incentive program under this bill if it meets the following requirements:
 - a) Is in compliance with all applicable laws, including but not limited to, classification of employees, wages and hours, unemployment compensation, and occupational health and safety, at the time of application.
 - b) Preserves for its employees access to dispute settlement options under state law, including access to state agencies and the courts, and judicial remedies.
- 2) Provides that a fleet purchaser is not eligible to participate in an incentive program subject to this bill if there are final unsatisfied or unabated judgments, rulings, citations, decisions, orders, or awards finding that the fleet purchaser has violated applicable law with regards to its fleet operations.
- 3) Prohibits a fleet purchaser that receives incentives for the purchase of vehicles or vehicle technologies to sublease or otherwise transfer the interest in the vehicle or vehicle technology within 10 years of the purchase.
- 4) Requires a fleet purchaser to retain direct control over the manner and means for performance of any individual or entity using or driving the vehicle or vehicle technology.
- 5) Requires a fleet purchaser, upon application for an incentive, to certify compliance, as specified, with the above workplace standards.
- 6) Requires a fleet purchaser applying for an incentive, upon application, to disclose to the agency administering the incentive program and to the CARB all of the following:

- a) A copy of any judgments, rulings, citations, decisions, orders, or awards finding that the fleet purchaser or any parent company or subsidiary or other commonly controlled entity has violated any applicable law that remains unsatisfied or unabated as of the date of application, even if they are being appealed.
 - b) A copy of any judgments, rulings, citations, decisions, orders, or award findings, after the date of application, that the fleet purchaser or any parent company or subsidiary or other commonly controlled entity has violated any labor, employment, or health and safety law or regulation.
 - c) A list of all operating authorities under which the vehicle or vehicle technology purchased will be or was operated.
- 7) Requires a fleet purchaser that receives incentives, as specified, to make disclosures and certifications on a yearly basis for the life of the incentive regarding compliance with the workforce standards and other information, as specified.

EXISTING LAW:

- 1) Establishes the California Global Warming Solutions Act (Act) of 2006, which requires California to reduce its greenhouse gas (GHG) emissions to 1990 levels by 2020, as specified.
- 2) Requires the CARB to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions, as specified.
- 3) Requires the CARB to monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by it, pursuant to specified provisions of existing law.
- 4) Requires state agencies, prior to expending any moneys from the Greenhouse Gas Reduction Fund appropriated by the Legislature to prepare a record consisting of the following:
 - a) A description of each expenditure proposed to be made by the state agency pursuant to the appropriation.
 - b) A description of how a proposed expenditure will further the regulatory purposes of the Act.
 - c) A description of how a proposed expenditure will contribute to achieving and maintaining greenhouse gas emission reductions.
 - d) A description of how the state agency considered the applicability and feasibility of other nongreenhouse gas reduction objectives.
 - e) A description of how the state agency will document the result achieved from the expenditure.

- 5) Establishes and designates the CWDB as the state entity responsible for assisting the state in meeting the requirements of the federal Workforce Innovation and Opportunity Act of 2014 (WIOA), as well as assisting the Governor in the development, oversight, and continuous improvement of California's workforce investment system.
- 6) Establishes the LC within the Department of Industrial Relations, to enforce, among other things, wage and hour law, anti-retaliation provisions, and employer notice requirements.

FISCAL EFFECT: Unknown

COMMENTS: Note: This bill is double-referred to the Assembly Transportation Committee upon passage out of this committee.

The State Auditor recently issued a report evaluating CARB's implementation of a number of transportation-based incentive programs for greenhouse gas 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. The audit recommended, among other things, that the CARB "develop a process to define, collect, and evaluate data that will translate to metrics showing the socioeconomic benefits that result from each of the incentive programs."¹

Currently, CARB 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. Attaching incentives to converting trucks at our ports highlights concerns over the current working conditions of drivers. Port truck drivers are often susceptible to health and safety violations and abusive labor practices. An investigative report by USA Today in 2017 listed the following as common abusive practices: 1) drivers being forced to work against their will, 2) employers physically barring drivers from going home, 3) employers charging not just for the truck lease but for a host of other expenses including insurance and fuel, and 4) companies forcing workers to work such long hours so as to violate federal safety laws.

The misclassification of port truck drivers as independent contractors is another tactic to keep workers indebted to their employers and without financial recourse when subject to wage theft. Port drivers who are misclassified as independent contractors lose essential rights enjoyed by employees, such as the ability to file wage and benefit claims and to be covered by workers' compensation insurance.

This bill will attach critical labor standards to clean vehicle manufacturing and fleet operations in short-haul and port drayage trucking. In doing so, it is closely aligned with key recommendations from the 2020 report by the Center for Labor Research and Education at the University of California, Berkeley, entitled, "Putting California on the High Road: A Jobs and Climate Action Plan for 2030." The UC Berkeley report recommends that public investment in climate change policy be tied to workforce standards that create high-quality jobs. In addition, it specifically points to the need for workplace standards in industry sectors benefiting from clean air incentives

¹ California State Auditor Report Number 2020-114, "California Air Resources Board: Improved Program Measurement Would Help California Work More Strategically to Meet its Climate Change Goals."

that are high-risk for labor abuses such as misclassification, unpaid wages, and denial of basic employee benefits.

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.”

Arguments in Support

According to the California Teamsters Public Affairs Council, the Teamsters Port Division, LAANE, and the Blue Green Alliance, co-sponsors of the bill, “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 transition 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 meeting climate goals by ensuring that state funds are not being used to support fleet purchasers who violate the law and impede climate goals through rampant misclassifying. Fleet purchaser eligibility for CARB clean vehicle subsidies is conditioned on compliance with state law, including laws regarding the proper classification of employees, wage & hour, unemployment and workers compensation insurance, occupational safety & health, and payroll taxes, along with on-going disclosure of compliance. These requirements support the transition to clean vehicles while at the same time ensuring that public funds create high-quality jobs.”

Arguments in Opposition

The California Trucking Association is opposed to the bill and states, “While ensuring compliance with the law prior to the issuance of government grants or incentives is a laudable goal, we do not believe AB 794 will increase compliance with state laws. Instead, the conditions imposed by AB 794 will ensure that **no** fleet purchasers subject to the conditions of this bill would ever utilize California’s environmental incentive programs.

Between onerous annual reporting, much of which has little to do with demonstrating compliance with the law, and a requirement to repay ten years worth of incentives for violations of ‘applicable laws’ with no clarity as to whether it matters that compliance with those laws was ultimately achieved, AB 794 will set back California’s climate goals by eliminating state support to purchase substantially more expensive zero-emission vehicles. Indeed, the short-haul and drayage operations this bill targets are among the state’s first fleets who are expected to transition to zero-emission technology.”

Committee Comments

The author intends to make technical amendments to the bill subsequent to this committee. In proposed Health and Safety Code Section 39698, any references to **Section 39695** should instead reference **Section 39696**. Additionally, under Section 39698, the disclosure requirements should be separated into the following three time frames: 1) disclosures upon application for an incentive, 2) disclosures for 10 years or the life of an incentive that is multi-year, and 3) disclosures for 10 years after a one-time rebate.

Related Legislation

AB 680 (Burke) of 2021 would enact the California Just Transition Act which requires the Labor and Workforce Development Agency to update, by July 1, 2023, the funding guidelines for administering agencies to ensure that all applicants to grant programs funded by the Greenhouse Gas Reduction Fund meet fair and responsible employer standards and provide inclusive procurement policies. The bill is pending a hearing in the Assembly Natural Resources Committee.

SB 674 (Durazo) of 2021 would require, among other things, the LWDA, with input from the relevant public agencies, to create procedures and criteria to evaluate applicants for covered public contracts that would award additional consideration to applicants who meet specified criteria related to job quality and worker protections. The bill would require the applicant's California Jobs Plan to be scored as part of the overall application. The bill would also require applicants for subsidies and noncompetitive contracts to complete the form. This bill is pending before the Senate Transportation Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Bluegreen Alliance (Co-Sponsor)
California Teamsters Public Affairs Council (Co-Sponsor)
Laane (Los Angeles Alliance for a New Economy) (Co-Sponsor)
Teamsters Port Division (Co-Sponsor)
Bluegreen Alliance
California Faculty Association
California League of Conservation Voters
Clergy and Laity United for Economic Justice
Communities for a Better Environment
Earthjustice
East Area Progressive Democrats
Garment Worker Center
Latinos in Action
LAX Area Democratic Club
Long Beach Young Democrats
Natural Resources Defense Council
Northeast Democratic Club
People's Collective for Environmental Justice
Policy Link

Policylink
Progressive Democratic Club
Sierra Club California
Stonewall Democratic Club
Strategic Actions for A Just Economy
UAW Region 8

Oppose

California Trucking Association

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