

## ASSEMBLY THIRD READING

AB 794 (Carrillo)

As Amended May 24, 2021

Majority vote

**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.

**Major Provisions***Definitions*

- 1) Defines "applicable law violation" as a violation that has a final determination, order, judgment, or award issued against a fleet purchaser of vehicles for engaging in illegal conduct related to the misclassification of employees as independent contractors, as specified, and that remains unabated or unsatisfied following the period during which an appeal may be made.
- 2) Defines "clean air standards" to include the standards that the CARB sets to reduce air pollution or reduce emissions of greenhouse gases pursuant to Health and Safety Code Division 25.5 and 26.
- 3) 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 new motor vehicles.
- 4) Defines "fleet operations" to include, but not be limited to, port drayage service and short-haul transport of goods.
- 5) 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 January 1, 2023.
- 3) States that the operational guidelines for light-duty vehicles shall be effective upon their adoption and for medium- and heavy-duty vehicles, on January 1, 2025.
- 4) States that the bill applies to incentive programs for the purchase of vehicles that receive funding from, or are administered by, the CARB, as specified.

- 5) Requires the CARB or an administering agency, as defined, in collaboration with the LC, to enforce the workforce standards and authorizes the LC, at the request of the administering agency or the CARB, to investigate an allegation regarding a violation of the standards, as specified.
- 6) 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.
- 7) States that the CARB or the agency administering an incentive program shall require that manufacturers of a new vehicle 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 six-month 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 three years or the duration of the incentive received, whichever is longer.
- 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 and shall be liable for the repayment of an amount that is equal to the total aggregate amount of the incentives provided for the purchase of the vehicles that were awarded rebates during the six-month period before the noncompliance.
- 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, is in breach of contract and shall be liable for the repayment of any incentive for which the contract entered into was still in effect during the time period of noncompliance, as specified.
- 10) Requires the CARB and the LWDA to implement an appeals process and an incentive eligibility reinstatement process for vehicle manufacturers or fleet purchasers.

*Workforce standards for manufacturers of clean vehicles*

- 1) Provides that a new light-duty vehicle is eligible for 100% of the amount of incentive, as defined, if a manufacturer meets all of the following requirements:
  - a) Respects internationally recognized labor rights, as defined.
    - i) Complies with internationally recognized labor rights in its supply chain of imported components.
    - ii) Certifies to the administering agency and the CARB compliance with these internationally recognized labor rights. The CARB may provide standards for this certification, as specified.

- b) Assembles, beginning January 1, 2025, 100% of the vehicle, at the final assembly point, in the United States.
  - c) Discloses data annually that supports the certification of compliance with these provisions.
- 2) Provides that a light-duty vehicle is eligible for an additional 40% of an incentive amount, as specified, if a manufacturer meets all of the following requirements related to job quality:
- a) Demonstrate to the administering agency 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 administering agency 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 administering agency 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 administering agency and the CARB that it pays all workers at least 120% 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 is assembled and disclose contract terms that preserve dispute options, as specified.
  - e) Demonstrate to the administering agency 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 new light-duty vehicle is eligible for additional incentive amounts, as specified, based on whether the vehicle's components are manufactured domestically and assembled in California.
- 4) Provides that a new medium- or heavy-duty vehicle shall be eligible for 100% of the amount of an incentive if the manufacturer complies with the requirements in (1). The vehicle may be eligible for additional incentive amounts, as specified, by meeting the requirements in (2) or if the vehicle's components are manufactured domestically and assembled in California.

- 1) Provides that a fleet purchaser of new vehicles is eligible to participate in an incentive program under this bill if it can demonstrate that it does not have any applicable law violation, as defined, at the time of applying for the incentive.
- 2) Provides that a fleet purchaser is not eligible to participate in an incentive program subject to this bill if it has final unsatisfied judgments under Labor Code Section 2810.4.
- 3) Provides that a fleet purchaser is in breach of contract, if during the term of the contract, it uses a vehicle in its operations for which the purchaser has previously received an incentive and the vehicle is not under the purchaser's full ownership and operational control.
- 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.
- 5) Requires a fleet purchaser, upon application for an incentive, to certify compliance, as specified, with 1) and 2), above.
- 6) Requires a fleet purchaser applying for an incentive, upon application, to disclose to the administering agency 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 applicable law violations as of the date of application or disclosure, whichever is applicable.
  - b) A list of all operating authorities under which the vehicle purchased will be or was operated.
  - c) A certification that the fleet purchaser:
    - i) Maintained control of the operators of the vehicle and the vehicle itself.
    - ii) Completed all required maintenance on the vehicle purchased with the incentive.
- 7) Requires a fleet purchaser that receives incentives, as specified, to make disclosures and certifications on a yearly basis for the life of the contract regarding compliance with the workforce standards and other information, as specified.

## COMMENTS

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.<sup>1</sup>"

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 susceptible to well-documented health and safety violations and abusive labor practices.

### **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 this 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."

### **Arguments in Opposition**

The California Trucking Association is opposed to this 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..."

Accordingly, by eliminating the state's ability to help defray the high up-front incremental cost of zero-emission vehicles for early adopters, AB 794 would hurt both the environment and economy, while also failing to achieve the sponsor's goal. For those reasons, we are opposed to AB 794."

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<sup>1</sup> 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."

## FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs of up to approximately \$10 million annually to CARB for staff to develop operational guidelines, implement standards, update application materials and technology systems and ensure ongoing compliance with incentive program requirements (General Fund).
- 2) Costs of approximately \$160,000 annually for LWDA, including the California Workforce Development Board (CWDB), to collaborate with ARB to develop operational guidelines and implement contract remedies if standards are breached.
- 3) Costs of an unknown, but potentially significant amount, for the LC to collaborate with CARB to develop operational guidelines, implement contract remedies if standards are breached and provide enforcement. The scope of enforcement required by this bill is unclear.

## VOTES

### **ASM LABOR AND EMPLOYMENT: 5-2-0**

**YES:** Kalra, Lorena Gonzalez, Jones-Sawyer, Stone, Ward

**NO:** Flora, Seyarto

### **ASM TRANSPORTATION: 11-4-0**

**YES:** Friedman, Berman, Daly, Gipson, Kalra, Lee, Medina, Nazarian, O'Donnell, Ward, Wicks

**NO:** Fong, Cunningham, Davies, Nguyen

### **ASM APPROPRIATIONS: 12-4-0**

**YES:** Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

**NO:** Bigelow, Megan Dahle, Davies, Fong

## UPDATED

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CONSULTANT: Megan Lane / L. & E. / (916) 319-2091

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