
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Dave Cortese, Chair

2021 - 2022 Regular

Bill No:	AB 794	Hearing Date:	July 12, 2021
Author:	Carrillo		
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Urgency:	No	Fiscal:	Yes
Consultant:	Jake Ferrera		

SUBJECT: Air pollution: purchase of new drayage and short-haul trucks: incentive programs: eligibility: labor and workforce standards.

KEY ISSUE

Should the Legislature require a fleet purchaser of new vehicles to demonstrate that it does not have **any applicable law violations** to be eligible for incentive programs for new vehicle purchases by making certain specified disclosures?

Should the Legislature require the Air Resources Board to condition receipt of funds under their administration on compliance with certain labor and workforce standards?

ANALYSIS

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) Establishes the Greenhouse Gas Reduction Fund (GGRF), funded from the auction or sale of allowances by the State Air Resources Board (CARB). Prohibits money from the General Fund or other special fund from being deposited in the GGRF. (Government Code §16428.8)
- 3) Requires moneys appropriated from the Greenhouse Gas Reduction Fund to be used to facilitate the achievement of reductions of greenhouse gas emissions and, where applicable and feasible:
 - a) Maximize economic, environmental, and public health benefits to the state.
 - b) Foster job creation by promoting in-state greenhouse gas emissions reduction projects carried out by California workers and businesses.
 - c) Complement efforts to improve air quality.
 - d) Direct investment toward the most disadvantaged communities and households in the state.
 - e) Provide opportunities for businesses, public agencies, Native American tribes in the state, nonprofits, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.
 - f) Lessen the impacts and effects of climate change on the state's communities, economy and environment.

- 4) Requires that, before expending any moneys appropriated to it by the Legislature from the Greenhouse Gas Relief Fund (GGRF), a state agency shall prepare a record consisting of all 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 Division 25.5 (commencing with Section 38500) of the Health and Safety Code, including, but not limited to, the limit established under Part 3 (commencing with Section 38550) and other applicable requirements of law.
 - 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.
(Government Code §16428.9)

- 5) Establishes the Air Pollution Control Fund, which is funded from various civil penalties pertaining to vehicle emissions and the operation of unregistered glider vehicles.
(Health and Safety Code §43015, 43024.1)

- 6) Establishes the Air Quality Improvement Fund, which provides funds for air quality improvement projects relating to fuel and vehicle technologies, including the Truck Loan Assistance Program.
 - a) To qualify for the Truck Loan Assistance Program, you must have 100 or fewer employees, \$10 million or less in annual revenue (3yr average), and the truck must operate primarily in California.

(Health and Safety Code §44274)

- 7) Establishes the Carl Moyer Memorial Air Standards Attainment Trust Fund, which is funded out of \$6 fees attached to vehicle registrations in counties that are members of the Sacramento Metropolitan Air Quality Management District. This fund is to be used for programs which reduce the amount of emissions produced by vehicles in the Sacramento Metropolitan Area. (Health and Safety Code §40950, 41081, 44281)

- 8) Requires the Division of Labor Standards Enforcement (DLSE) to post on its website the names, addresses, and essential information for any port drayage motor carrier with an unsatisfied final court judgment, tax assessment, or tax lien, including any order, decision, or award obtained by a public or private person or entity pursuant to Section 98.1.
(Labor Code §2810.4)

This bill:

- 1) Defines the following key terms:
 - a) “Administering agency” means an agency administering an incentive program subject to this chapter.
 - b) “Applicable law violation” means 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,

- including the failure to pay wages, imposing unlawful expenses on employees, failure to remit payroll taxes, and failure to provide workers' compensation insurance, and that remains unabated or unsatisfied following the period during which an appeal may be made.
- c) "Clean air standards" include the standards that CARB sets to reduce air pollution or reduce emissions of greenhouse gases.
 - d) "Fleet operations" includes, but is not limited to, port drayage service and short-haul transport of goods.
 - e) "Incentive" includes a grant, loan, voucher, or other incentive, regardless of the source of revenue that funds the incentive, for the purchase of new motor vehicles.
 - f) "Short-haul trucking service" means movement of goods by truck within a 150-air-mile radius of the normal working reporting location while in service within the state.
- 2) Requires the State Air Resources Board (CARB) to condition eligibility to participate in incentive programs for new vehicle purchasing on compliance with the labor and workforce standards established under this bill.
 - 3) Requires, by Jan 1, 2023, that CARB develop guidelines for applying labor standards to incentive programs covered by this bill, including the scope of applicability, terms of labor and workforce standards, and implementation. CARB may delegate any duties to the Labor and Workforce Development Agency (LWDA). To that end, establishes the following requirements:
 - a) Requires CARB to provide an opportunity for public input before finalizing the guidelines.
 - b) Exempts the above guidelines from the Administrative Procedure Act
 - c) As part of the development of the guidelines, CARB can make a determination that there are constraints to applying new requirements to an incentive program and delay or suspend the implementation of requirements that are not feasible. If CARB makes this determination, it must make a written report to the Legislature before Jan 1, 2023.
 - 4) Requires a fleet purchaser of new vehicles to demonstrate that it does not have **any applicable law violations** to be eligible for incentive programs. Any fleet purchaser that is on the port drayage labor law violators list maintained by the DLSE under section 2810.4 is rendered ineligible.
 - a) CARB or an administering agency, in collaboration with the Labor Commissioner, will have enforcement authority over this standard.
 - b) The Labor Commissioner, at the request of CARB or an administering agency, may investigate an allegation of a violation of this standard.
 - c) CARB must develop a website that displays public information regarding manufacturers or fleet purchaser disclosures and certifications of compliance.
 - 5) Requires a fleet purchaser who receives an incentive to retain direct control over the manner and means for performance of any individual or entity using or driving the vehicles that was purchased using an incentive program.
 - 6) Requires that fleet purchasers receiving an incentive sign contracts conditioning any incentive received on compliance with the requirements of this bill.

- a) Establishes that a fleet purchaser is in breach of contract and out of compliance with the requirements of this bill if the fleet purchaser uses a vehicle in its operations for which it previously received an incentive and that vehicle is now not under the full ownership and operational control of the fleet purchaser.
- 7) Requires a fleet purchase who applies for an incentive to certify that it does not have **any applicable law violations** and make the following further disclosures:
 - a) On a yearly basis for the life of the applicable contract described in 6), certify compliance with the standards established in 4) and 5).
 - b) Furnish a copy of any judgments, rulings, citations, decisions, orders, or awards finding that the fleet purchaser or any parent company has applicable law violations as of the date of application to CARB or the administering agency.
 - c) Furnish a list of all operating authorities under which the vehicle purchased will be or was operated.
 - d) Certify that the fleet purchaser maintained control of the individuals operating the vehicle, and maintained control of the vehicle.
 - e) Certify that the fleet purchaser has completed all required maintenance and upkeep on the vehicle.
- 8) Establishes that the provisions of this bill apply to all incentive programs for the purchase of new vehicles that receive funding from, or are administrated by, CARB, including:
 - a) The Greenhouse Gas Reduction Fund
 - b) The Air Quality Improvement Fund
 - c) The Carl Moyer Memorial Air Standards Attainment Trust Fund
 - d) The Air Pollution Control Fund
 - e) The Truck Loan Assistance Program
 - f) A local or regional incentive
 - g) A public-private partnership
 - h) An incentive program funded by a settle fund under CARB's jurisdiction
- 9) Clarifies that the baseline standards, job quality standards and eligibility standards for incentive programs apply to fleet purchasers of new vehicles for drayage and short-haul trucking services within the state, **not** to other fleet purchases.
- 10) Requires that, in addition to other recording requirements for state agencies who receive GGRF funds, a state agency must also include a description of how grant, loan, voucher, or other incentive programs for purchase of new vehicles that receive moneys from the fund are implementing the labor and workforce standards.

COMMENTS

1. Need for this bill?

A) Background

The Greenhouse Gas Reduction Fund (GGRF) was established in 2012 by AB 1532 (Pérez), SB 535 (De León), and SB 1018 (Budget and Fiscal Review Cmte), with supporting framework established by the California Global Warming Solutions Act of 2006 (AB 32). This combination of legislation created the foundation for delivering on the state's ambitious climate goals through a cap-and-trade model. This model was the first of its kind in North America, following similar programs in the EU, South Korea and China.

With Cap-and-Trade program working as the revenue generator of the state's climate plan, policymakers worked towards directing these funds to further greenhouse gas reduction investments that would realize an even greater impact than Cap-and-Trade alone. The Greenhouse Gas Reduction fund represents this investment direction. The revenue collected from the sale of allowances is placed in the GGRF, which has requirements under existing law that dictate what GGRF funds can be appropriated for. Under the law, funds are required to go toward projects which "maximize economic, environmental, and public health benefits to the state" and "foster job creation by promoting in-state greenhouse gas emissions reduction... carried out by California workers and businesses."¹ Furthermore, specific standards established under SB 535 (De León) require that 35% of available funds must go towards projects that are located in or very near disadvantaged communities or that benefit disadvantaged communities or individuals in the state.

Though the mechanisms of revenue generation and project specifications can vary widely, the GGRF model is roughly similar to the other funds covered by AB 794. For example, the Carl Moyer Memorial Air Standards Attainment Trust Fund is funded out of \$6 fees attached to vehicle registrations in counties that are members of the Sacramento Metropolitan Air Quality Management District. The fund then makes those funds available for programs which reduce the amount of emissions produced by vehicles in the Sacramento Metropolitan Area.

The debate on what action should be taken on climate change continues, with the vast majority of scientific experts arguing for aggressive action while large businesses insist that averting climate disaster would be too costly. At this point, enough time has passed to have a foundation of data to indicate the overall efficacy of Cap-and-Trade and the GGRF. This data indicates that industrial sources have either increased or maintained output while reducing GHG emissions, with a roughly 100% compliance rate with associated regulations. California also managed to achieve its 2020 GHG reduction targets 4 years early, a good sign for future targets.²

B) Potential Impacts of AB 794 (Carrillo)

To begin, it is worth noting that AB 794 limit its provisions to short-haul trucking and port drayage and further to new purchases. These industries have been the subject of several specific pieces of legislation to curb the abusive labor practices that had become the norm. Largely, the new labor standards introduced under AB 794 attempt to hold recipients of state climate funds to existing law in 3 ways:

¹ Government Code 39712 (b) (1-2)

² "FAQ Cap-and-Trade Program", California Air Resources Board, 2020

- 1) A requirement that a recipient of climate funds for a new vehicle purchase retain direct control over the vehicle and anyone operating the vehicle.
- 2) A condition of climate funds that recipients sign contracts that stipulate a breach if they violate labor standards under existing law.
- 3) More frequent disclosures and updates that a recipient is continuing to honor the above standards.

These changes directly target the common practice within the trucking industry to misclassify truck drivers as independent contractors, rather than employees. Independent contractors are not subject to certain payroll requirements and are not eligible for benefits like Workers' Compensation and Unemployment Insurance; there is therefore a financial incentive for employers to misclassify. AB 794 would require more disclosures of past violations of law and further certification that an employer receiving climate funds is following labor law. This being said, AB 794 is somewhat vague about how exactly these new requirements would be enforced. Placing responsibility for these new standards solely with the Air Resources Board would be a huge burden, both in workload and in expansion of their jurisdiction into labor standards enforcement. Seemingly recognizing this, the author has included several sections that allow the Labor and Workforce Development Agency to weigh in and share some of the regulatory burden. This is more prudent, but still leaves many of the details unspecified. The author could consider amendments to more clearly delineate enforcement authority and responsibility to develop workforce standards for climate funds.

2. Proponent Arguments

The California Teamsters Public Affairs Council writes in support:

“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. 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.”

3. Opponent Arguments:

None received.

4. Prior/Related 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).

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 32 (Nuñez) Chapter 488, Statutes of 2006: created the California Global Warming Solutions Act of 2006.

5. Double Referral

This bill has been double referred and prior to today's hearing, was heard and passed by the Environmental Quality Committee.

SUPPORT

Bluegreen Alliance (Co-sponsor)
California Environmental Justice Alliance (CEJA) Action
California Teamsters Public Affairs Council (Co-sponsor)
Teamsters Port Division (Co-sponsor)
Los Angeles Alliance for a New Economy (Co-sponsor)
Center for Community Action & Environmental Justice
Los Angeles County Federation of Labor
Natural Resources Defense Council
Policylink
California Faculty Association
Union of Concerned Scientists

OPPOSITION

None received.

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