
THIRD READING

Bill No: AB 794
Author: Carrillo (D), et al.
Amended: 8/26/21 in Senate
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-0, 7/7/21
AYES: Allen, Gonzalez, Skinner, Stern, Wieckowski
NO VOTE RECORDED: Bates, Dahle

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 7/12/21
AYES: Cortese, Durazo, Laird, Newman
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/26/21
AYES: Portantino, Bradford, Kamlager, Laird, McGuire
NOES: Bates, Jones

ASSEMBLY FLOOR: 52-17, 6/2/21 - See last page for vote

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

SOURCE: Author

DIGEST: Attaches labor 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 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) Requires ARB to ensure that statewide green house gas (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)
- 3) 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)
- 4) 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)
- 5) 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)
- 6) 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)
- 7) 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 an entity 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 standards to the list of records required of a state agency expending GGRF money for the purchase of new vehicles, starting in the 2022-23 fiscal year.
- 2) Specifies labor 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) 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;
 - ii) 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, excluding a settlement fund, court order, or consent decree under ARB's jurisdiction;
 - iii) 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;
 - iv) Making provisions for the above penalty to apply to any successor or assignee of the purchaser; and,
 - v) Requiring fleet purchasers to attest in writing the following upon application for an incentive (and annual updates affirming continued compliance):
 - (1) That it does not have any applicable law violations at the time of applying for the incentive;
 - (2) That it will maintain compliance with applicable laws for at least three years from the date of application or the duration of the incentive agreement, whichever is longer; and,
 - (3) That it will retain direct control over the manner and means for performance of any individual using or driving the vehicle for at least three years from the date of application or the duration of the

incentive agreement, whichever is longer.

- 3) Makes conforming changes to various vehicle incentive programs to comply with the specified labor 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.
- 4) Gives the Employment Development Department (EDD) the authority to share data with ARB to implement and enforce the above standards, while protecting that data from disclosure to the public or on ARB's website.
- 5) Authorizes third parties to report to the ARB that a fleet purchaser is in violation of the eligibility requirements of AB 794, and states they must provide documentation to substantiate their allegation before ARB considers it.

Background

- 1) *"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.

- 2) *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, Chapter 702, Statutes of 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. This 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.

- 3) *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. 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.

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 standard compliance.
- 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. A challenge raised by AB 794 is the prioritization of reducing GHG emissions versus advancing labor 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 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) *ARB implementation.* Recent amendments to AB 794 change how the bill will be implemented. ARB will take the lead in determining eligibility through their normal incentive contracting process. Specifically, the bill now streamlines the eligibility process so that fleet purchasers submit a written attestation that they do not have any law violations, are not on the DIR SB 1402 list, and will retain control of the vehicle and operators. It also streamlines yearly reporting, attestation and document disclosure requirements.

FISCAL EFFECT: Appropriation: No Fiscal Com.:Yes Local:No

According to the Senate Appropriations Committee, "Unknown but likely significant ongoing costs, possibly in the millions of dollars annually (General Fund and Greenhouse Gas Reduction Fund [GGRF]) for ARB to update impacted incentive programs, amend funding guidelines, process and track grant agreements, and enforce the provisions of this bill, among other things.

Unknown costs for the Labor and Workforce Development Agency (LWDA) to collaborate with ARB."

SUPPORT: (Verified 8/27/21)

Bluegreen Alliance
 California Environmental Justice Alliance 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
 Coalition for Clean Air
 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: (8/27/21)

None received

ASSEMBLY FLOOR: 52-17, 6/2/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner
Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooper,
Friedman, Gabriel, Eduardo Garcia, Gipson, Gray, Holden, Irwin, Jones-
Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin,
Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Ramos, Reyes, Luz
Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting,
Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley,
Lackey, Mathis, Nguyen, Patterson, Seyarto, Smith, Valladares, Voepel,
Waldron

NO VOTE RECORDED: Bigelow, Chen, Cooley, Daly, Frazier, Cristina Garcia,
Lorena Gonzalez, Grayson, Mayes, Quirk-Silva

Prepared by: Eric Walters / E.Q. / (916) 651-4108
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