SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Wieckowski, Chair
2021 - 2022 Regular

Bill No:	AB 2737		
Author:	Carrillo		
Version:	4/7/2022	**Hearing Date:**	6/22/2022
Urgency:	No	**Fiscal:**	Yes
Consultant:	Eric Walters		

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

DIGEST: This bill makes existing labor standards for the disbursement of specified clean vehicle incentives that currently apply to fleet purchasers for port drayage and short-haul trucks instead apply to lessees in the event those vehicles are rented or leased.

ANALYSIS:

Existing law:

1) Requires the California Air Resources Board (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)

2) 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)

3) 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.)

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)

This bill:

1) Defines "rental or leasing entity" to mean an entity in the trade or business of renting or leasing, as defined, vehicles to other persons for use or operation, but excluding those whose primary purpose is to rent or lease vehicles to an affiliated motor carrier, such as a parent company or subsidiary.

2) Stipulates that the requirements of AB 794 (Carrillo, Chapter 748, Statutes of 2021) apply to the lessees, and not the rental or leasing entity, of applicable vehicles.

3) Subjects fleet purchasers and rental or leasing entities to specified penalties if ARB determines that a fleet purchaser and rental or leasing entity entered into a rental agreement of less than one year for the express purpose of circumventing these requirements.

Background

1) AB 794. Last year, Assemblymember Carrillo introduced AB 794, which attached labor and workforce standards to eligibility for various clean vehicle incentive programs administered by ARB for fleet purchasing in port drayage and short-haul trucking service. The bill was supported by this committee on a 5-0 vote, and it was signed into law by the Governor.

   According to the supporters of AB 2737, due to certain provisions of AB 794, truck rental and leasing entities would have been excluded from participating in the state's zero-emission vehicle incentive programs to the extent those vehicles would have been utilized in the short-haul or port drayage markets. Truck rental and leasing entities will be key participants in advancing the state's zero-emission goals. AB 2737 is intended to allow for truck rental and leasing entities to participate in these programs while also ensuring the intent of the labor provisions of AB 794 remain intact.

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.

   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.

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. 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.

Comments

1) *Purpose of Bill.* According to the author, "Governor Newsom's Executive Order N-79-20 requires that 100% of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks. To help accomplish this goal, the EO requires the California Air Resources Board to develop passenger and medium- and heavy-duty vehicle regulations that would increase over time of new ZEVs sold in the state. Some of the larger truck rental and leasing entities have already begun to make significant investments in ZEVs and infrastructure. This sector is key in helping the state meets its clean energy goals as it pertains to the transportation and good movement industry. AB 2737 is another needed step to keep California on track to meet these goals while also protecting workers."

2) *Which incentives are covered?* AB 794—and this bill by extension—applied to the following incentive programs administered by ARB that support the purchase of new drayage and short-haul trucks:
   a) An incentive program funded by any 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 state board, including, but not limited to, all of the following:
      i) The Truck Loan Assistance Program.
      ii) A local or regional incentive program.
      iii) A public-private partnership.

   As explained the background, significant academic research has shown that in the absence of labor standards (such as those created by AB 794), misclassified drivers often are unable to bear the cost of compliance with clean vehicle requirements. These standards help ensure that the companies receiving state dollars to purchase new, clean vehicles are not simultaneously contributing to the problem by misclassifying their workers and stymieing the roll-out of clean vehicles.

   Extending these same standards to lessees ensures that the original policy's goals are still achieved, even when recipients' business model entails vehicle rental.

Related/Prior Legislation

AB 794 (Carrillo), Chapter 748, Statutes of 2021 established labor standards that a fleet purchaser is required to meet in order to be eligible to receive incentives for new drayage and short-haul trucks under CARB incentive programs beginning with the 2022-23 fiscal year.

SOURCE: author

SUPPORT:

California Trucking Association
Truck Renting and Leasing Association

OPPOSITION:

None received

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