

Date of Hearing: April 22, 2019

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 735 (Melendez) – As Amended April 1, 2019

SUBJECT: Vehicular air pollution: child labor

SUMMARY: Requires the Air Resources Board (ARB) by July 1, 2020, to certify that vehicles that are subject to the zero-emission vehicle (ZEV) mandate are free of materials made using child labor, and prohibits ARB from enforcing the ZEV mandate until it has adopted those certifications.

Specifically, **this bill:**

- 1) Requires ARB by July 1, 2020, to certify that vehicles that are subject to the ZEV mandate are free of materials made using child labor and prohibits ARB from enforcing the ZEV mandate until it has adopted those certifications. The ZEV mandate (also known as the ZEV regulation or the ZEV standard) is an ARB regulation that requires manufacturers to produce and sale a number of ZEVs and plug-in hybrids each year, based on the total number of cars sold in California by the manufacturer.
- 2) Requires ARB to adopt the certifications at a public meeting and post the adopted certifications on its internet website.
- 3) Delays the implementation of this bill until ARB has submitted an amended state implementation plan (SIP) to the United States (U.S) Environmental Protection Agency for approval, if ARB makes a determination at a public hearing that the implementation of this bill would violate the SIP, as required by the federal Clean Air Act (FCAA).

EXISTING LAW:

- 1) Provides ARB with primary responsibility for control of mobile source air pollution, including adoption of rules for reducing vehicle emissions and the specification of vehicular fuel composition.
- 2) Requires ARB to adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution, which ARB has found to be necessary, cost effective, and technologically feasible, to carry out specified purposes.
- 3) Requires ARB to develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas (GHG) emissions from motor vehicles
- 4) Establishes the Charge Ahead California Initiative pursuant to SB 1275 (de León), Chapter 530, Statutes of 2014, that, among other things, includes the goal of placing at least one million ZEVs and near-zero emission vehicles (NZEV, i.e. plug-in hybrids) into service by January 1, 2023, and increasing access to these vehicles for disadvantaged, low-income, and moderate-income communities and consumers.
- 5) Establishes the FCAA, with its implementing regulations:
 - a) Setting National Ambient Air Quality Standards (NAAQS) for six criteria pollutants,

- b) Designating air basins that do not achieve NAAQS as non-attainment, and,
- c) requiring states with non-attainment areas to submit a SIP detailing how they will achieve compliance with NAAQS.

FISCAL EFFECT: Unknown

COMMENTS: The transportation sector accounts for roughly 39% the state's GHG emissions, of which 69% come from light-duty passenger vehicles. To reduce GHG emissions from the transportation sector, the state is advancing efforts to increase the number of ZEVs on California roads. Several state regulations, such as the ZEV mandate, and incentives, such as the Clean Vehicle Rebate Project, have been established to accelerate the purchase and use of ZEVs and NZEVs to help improve air quality, reduce GHG emissions, and achieve the Legislature's goal of placing 1 million ZEVs on California's roadways by 2023, Governor Brown's 2012 goal of placing 1.5 million ZEVs on California's roadways by 2025 (Executive Order B-16-12) and the goal of 5 million ZEVs on the road by 2030 (Executive Order B-48-18). Further, last year, Governor Brown issued EO B-55-18, which establishes the goal to achieve carbon neutrality by 2045.

In particular, the ZEV mandate is an ARB regulation that requires increased ZEV sales. Manufacturers are required to produce a number of ZEVs and plug-in hybrids each year, based on the total number of cars sold in California by the manufacturer. ARB first established the program in 1990, and it has been modified several times in subsequent years. Manufacturers with higher overall sales of all vehicles are required to make more ZEVs. Requirements are in terms of percent credits, ranging from 4.5% in 2018 to 22% by 2025. Manufacturers are to produce vehicles, and each vehicle receives credits based on its electric driving range. The more range a vehicle has, the more credit it receives. Credits not needed for compliance in any given year can be banked for future use, traded or sold to other manufacturers. Manufacturers that do not meet their annual targets are required to make up the deficit in subsequent years or face a financial penalty. Auto manufacturers have over complied with the mandate's regulatory requirements to date. According to Legislative Analyst Office, "through 2017, they have generated a net balance of 1.2 million unused credits, which can be used for future compliance. For context, we estimate manufacturers will need to have roughly 100,000 credits to meet the 4.5 percent regulatory requirement in 2018." Other states are allowed to adopt this ZEV regulation through the FCAA. Currently nine states have adopted California's ZEV regulations.

Manufacturers subject to the ZEV mandate include BMW, Fiat Chrysler, Ford, General Motors, Honda, Hyundai, Kia, Mercedes, Nissan, Toyota, and Volkswagen. Five smaller manufacturers (Jaguar Land Rover, Mitsubishi, Mazda, Subaru, and Volvo) are also required to comply with the ZEV requirements, but may meet their obligation with plug-in hybrids.

ZEVs are considered "zero-emission" because they produce no tailpipe exhaust of any criteria pollutant or GHG. There are currently two types of ZEVs available: battery electric vehicles and fuel cell electric vehicles. Both battery electric vehicles and plug-in hybrid electric vehicles use a battery to propel the vehicle and have to be recharged from an external power source. Fuel cell vehicles use electrochemical reaction to combine hydrogen fuel and oxygen to produce electricity to propel the vehicle, with water being the other by-product of the reaction. Because electric vehicles use lithium-ion batteries, which contain certain metals, such as cobalt, there have been human rights, child labor and poor worker condition concerns associated with how these metals are mined and the ethics of using battery-powered vehicles. Cobalt is a bluish-gray metal found in the Earth's crust and is a key

component to make the lithium-ion batteries that power laptops, cell phones and electric vehicles. According to a 2017 article by the Union of Concerned Scientists, “cobalt is mined all over the world, but 50 to 60% of the global supply comes from the Democratic Republic of Congo (DRC), which has a poor human rights track record. According to UNICEF and Amnesty International, around 40,000 children are involved in cobalt mining in DRC where they make only \$1–\$2 USD per day. DRC’s cobalt trade has been the target of criticism for nearly a decade, and the U.S. Labor Department lists Congolese cobalt as a product it has reason to think is produced by child labor. More troubling, cobalt demand has tripled in the past five years and is projected to at least double again by 2020”.

In response, many industries have tried to reduce their reliance of DRC cobalt. Certain cell phone and car manufactures have either pledged to not use DRC cobalt, to only use renewable resources or recycled materials; or have committed to sourcing materials from countries outside of DRC. However, because cobalt mining is somewhat removed from the overall supply chain it may be difficult for any entity, including a regulatory agency, to 100% ensure that the cobalt used in the final product was not mined using child labor in a faraway country.

This bill requires ARB to ensure that vehicles subject to the ZEV mandate are free of materials made from child labor. According to the author, “Car manufacturers who make electric vehicles, and politicians who want to motivate electric vehicle ownership, should hold themselves to a higher standard and prevent the use of child labor. Period. It would be shameful if we used taxpayer dollars to promote child labor when making the batteries for electric cars. California should not place our lofty environmental goals on the shoulders and backs of child labor.”

In opposition, the Alliance of Automobile Manufacturers writes, “Notwithstanding the serious nature of the issue you raise in the bill, we believe singling out electric vehicles and suspending the ZEV mandate as a consequence is ineffective, harmful to the goals of getting more ZEVs on California’s roads, and does little to address the issue...our vehicle development timelines are years long...a confusing start-stop approach to annual mandates is of no benefit to anyone.”

Committee Concerns: Due to the various regulations and incentives in place, California’s ZEV market has grown significantly. The number of ZEV and NZEVs passenger vehicles sold in California expanded from approximately 25,000 in 2012 to over 500,000 now—more than any other state, and about half of all the ZEVs nationwide. There are over 40 ZEV/NZEV models on the California market. Although California has made major strides in advancing ZEVs, it still has a long way to go to reach the goals laid out in current law and various executive orders. While it is imperative that we hold any industry to certain ethical and worker condition standards, it is also important to reach our GHG and air quality goals. Absent a regulation that encourages the sale of these vehicles, manufacturers may not be enticed to put more of these vehicles on the road jeopardizing the state’s ability to reduce GHGs and improve air quality.

Further, the provisions of this bill may be infeasible for ARB to execute. Because cobalt mining is somewhat removed from the overall supply chain it may be difficult for ARB, who currently does not enforce labor standards nor is an expert on international supply chains and labor laws, to certify with 100% certainty that the cobalt used in the final product (in these case a ZEV or NZEV) was not mined using child labor in a faraway country.

This bill is targeting one specified product- ZEVs and NZEVs. Numerous industries are using/producing/selling products that were made using child or forced labor. According to the U.S. International Labor Affairs Bureau, “As of September 20, 2018, the List of Goods Produced by Child Labor or Forced Labor comprises 148 goods from 76 countries”. Products include but are not limited

to coal, cocoa, sugarcane, bricks, rubber, silver, timber, surgical instruments and cotton. Given the myriad statewide incentive programs, tax credits and state procurement contracts, it would be impossible to ensure that any state agency or private entity that materials purchased materials with state funds were free of materials acquired by child labor.

Lastly, to comply with this bill, ARB may have to amend the SIP. California is currently in non-attainment. If a certain number of vehicles (and the emissions associated with those vehicles) are exempt from the ZEV mandate, ARB may have to identify and implement substitute emission control measures to make up for those lost emission reductions.

Previous legislation: SB 32 (Pavley), Chapter 249, Statute of 2016, required ARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by 2030.

SB 1275 (de León), Chapter 530, Statutes of 2014, established the Charge Ahead California Initiative, administered by ARB, in consultation with CEC, air pollution control and air quality management districts, and the public. Specifies that the goals of the initiative is to, among other things, place in service at least one million ZEVs by January 1, 2023, and to increase access for disadvantaged, low-income, and moderate-income communities and consumers.

SB 657 (Steinberg) Chapter 556, Statutes of 2010, requires every retail seller and manufacturer doing business in this state and having annual worldwide gross receipts that exceed \$100 million to disclose its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale.

AB 32 (Núñez), Chapter 488, Statutes of 2006, required ARB to develop and implement regulations necessary to reduce emissions to 1990 levels by the year 2020.

AB 1493 (Pavley), Chapter 200 of 2002 required ARB to develop regulations to reduce emissions from noncommercial passenger cars and light-duty trucks.

REGISTERED SUPPORT / OPPOSITION

Support

None on File

Opposition

Alliance of Automobile Manufacturers
Sierra Club California (unless amended)

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