

AMENDED IN ASSEMBLY MARCH 15, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1743

Introduced by Assembly Member Bennett

February 17, 2023

An act to add and repeal Chapter 6 (commencing with Section 39900) of Part 2 of Division 26 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1743, as amended, Bennett. ~~Less-Than-Zero-Emissions Incentive~~ *Lower Emissions Transition Program*.

Existing law imposes various limitations on emissions of air contaminants for the control of air pollution from vehicular and nonvehicular sources. Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution and air pollution control and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources.

Existing law, upon the appropriation of funds by the Legislature, requires the state board to allocate funds on a competitive basis for projects that are shown to achieve the greatest emission reductions from each emission source identified as specified, from activities related to the movement of freight along California's trade corridors, commencing at the state's airports, seaports, and land ports of entry.

This bill would, until January 1, 2035, enact the ~~Less-Than-Zero-Emissions Incentive~~ *Lower Emissions Transition Program*. The program would be administered by the state board and would require the state board to approve projects that reduce *cumulative*

emissions from cargo handling equipment, as defined, ~~and from~~
~~emissions~~ sources at seaports in the ~~state~~. *state during the transition*
period to zero-emissions cargo handling equipment requirements. The
bill would prohibit the approval of a project after the compliance date
required by a state or federal law, as provided, that requires a change
in equipment to a zero-emission standard. The bill would require the
state board to establish guidelines to determine eligibility for project
approvals and would authorize the *state* board to establish an application
fee, as specified. The bill would require the application fees to be
deposited in the Air Pollution Control Fund and made available to the
state board upon appropriation by the Legislature. The bill would
establish eligibility criteria for projects. The bill would require the state
board, by January 1, 2033, to evaluate the impact of the program on
state and local clean air efforts to meet state and local clean air goals
and to hold at least one public workshop before completing the study.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6 (commencing with Section 39900) is
2 added to Part 2 of Division 26 of the Health and Safety Code, to
3 read:

4
5 CHAPTER 6. ~~LESS-THAN-ZERO-EMISSIONS INCENTIVE-LOWER~~
6 *EMISSIONS TRANSITION PROGRAM*
7

8 39900. The Legislature finds and declares all of the following:

9 (a) It is in the best interests of all Californians to find innovative
10 and cost-effective ways to reduce the localized impacts from
11 emissions of air toxic contaminants, including diesel emissions
12 and other criteria pollutants, as quickly as possible, while it is in
13 the best interests of all global citizens to reduce the total volume
14 of greenhouse gas emissions.

15 (b) The state has accelerated emissions reductions in many
16 manners that benefit both local and global emissions goals,
17 including through regulatory enactments and the use of strategic
18 incentives.

19 (c) ~~While the state has adopted aggressive emissions reductions~~
20 ~~goals for greenhouse gases, the short-term priority of many~~

1 communities, industries, and air quality regulators remains a focus
2 on a reduction of *The state must maintain its aggressive long-term*
3 *priority emissions reductions goals for reducing greenhouse gases*
4 *while also addressing the short-term priority of reducing the public*
5 health and air quality impacts of air toxic contaminants and criteria
6 pollutants.

7 (d) ~~Transitional technologies, innovative concepts, and~~
8 ~~near-zero-emissions solutions~~ *Where zero-emission technologies*
9 *are not yet commercially available, transitional technologies can*
10 provide an effective bridging technology that results in significant
11 reductions in air toxic contaminants and criteria pollutants in the
12 short term until ~~the creation of a fully mature environment for~~
13 ~~zero-emissions solutions in the long term.~~ *zero-emissions*
14 *technologies become feasible and available.*

15 (e) The reduction of air toxic contaminants and criteria pollutants
16 earlier and greater than otherwise required by law creates air quality
17 benefits and is a ~~standard~~ *common* basis for the award of public
18 funds to private parties in state incentive programs.

19 (f) The state benefits from the enactment of programs that
20 encourage regulators and regulated industry to work cooperatively
21 in the creation of incentives that successfully result in the utilization
22 and development of innovative new concepts to introduce
23 *zero-emissions and* lower emissions equipment into seaport
24 operations in California.

25 (g) It is in the best interests of the people of the State of
26 California to ensure that the state board establishes an expedited
27 process to administer ~~an incentive~~ *a* program that will achieve
28 ~~cumulative less-than-zero-emissions~~ *lower emission reduction*
29 outcomes by application of innovative concepts in partnership with
30 industry in a manner that protects public health and the
31 environment.

32 39901. It is the intent of the Legislature:

33 (a) To facilitate an innovative program that creates the benefits
34 of a successful incentive program, produces early and extra
35 reductions of local criteria and toxic air contaminant *emissions*
36 *and greenhouse gas* emissions, and that grows and leverages the
37 ability of industry to maximize participation in incentive programs.

38 (b) To create outcomes that maximize local emissions reductions
39 of toxic air contaminants and criteria pollutants through the early
40 adoption of alternative technologies resulting in reductions that

1 are greater than those emissions reductions that would otherwise
2 occur under current law as of the enactment of this chapter, and
3 to accelerate global reductions of greenhouse gas emissions
4 resulting in reductions that are greater than those that would
5 otherwise occur under current law.

6 (c) To ensure that the cumulative emissions reductions from
7 those participating in programs implemented by the state board
8 pursuant to this chapter will result in emissions that are less than
9 the cumulative outcome of acting pursuant to the expected
10 regulatory baseline.

11 (d) To provide owners of cargo handling equipment at California
12 seaports certainty about the useful life of equipment purchased
13 pursuant to programs implemented by the state board pursuant to
14 this chapter to meet required environmental standards.

15 (e) To provide emissions reductions and public health benefits
16 to impacted California communities during the pendency of
17 transition from conventionally fueled and operated cargo handling
18 equipment at seaports to zero-emissions operations. The latest
19 scoping plan update by the state board has identified this transition
20 period as anticipated to last through 2037.

21 (f) That all emission reductions generated by this chapter shall
22 contribute to public health by reducing, for the life of the equipment
23 being approved in a project, the total amount of emissions in the
24 state.

25 39902. This chapter shall be known, and may be cited, as the
26 ~~Less-Than-Zero-Emissions Incentive~~ *Lower Emissions Transition*
27 Program.

28 39903. As used in this chapter, the following definitions apply:

29 (a) “Cargo handling equipment” or “covered equipment” means
30 any off-road, self-propelled vehicle or equipment used at a port or
31 intermodal rail yard to lift or move container, bulk, or liquid cargo
32 carried by ship, train, or another vehicle, or used to perform
33 maintenance and repair activities that are routinely scheduled or
34 that are due to predictable process upsets. Cargo handling
35 equipment includes, but is not limited to, rubber-tired gantry cranes,
36 yard trucks, top handlers, side handlers, reach stackers, forklifts,
37 loaders, aerial lifts, excavators, and dozers. Cargo handling
38 equipment does not include any yard truck that is licensed as an
39 on-road vehicle.

1 (b) ~~“Near-zero-emission~~ “*Lower emission* equipment” means
2 any nondiesel or hybridized diesel equipment that incorporates
3 other technologies that significantly reduce criteria pollutants,
4 toxic air contaminants, or greenhouse gas emissions, utilizes
5 zero-emission technologies, or enables technologies that provide
6 a pathway to zero-emissions operation.

7 (c) “Zero-emission equipment” means any equipment that
8 produces no emissions of criteria pollutants, toxic air contaminants,
9 and greenhouse gases when stationary or operating.

10 39904. (a) There is hereby created the
11 ~~Less-Than-Zero-Emissions Incentive~~ *Lower Emissions Transition*
12 Program.

13 (b) The program shall be administered by the state board in
14 accordance with this chapter.

15 (c) The program shall approve projects that reduce *cumulative*
16 emissions from applicable cargo handling equipment ~~emissions~~
17 sources at seaports in the ~~state~~; *state during the transition period*
18 *to zero-emission cargo handling equipment requirements*.

19 (d) Eligibility for project approvals shall be determined by the
20 state board in accordance with this chapter.

21 39905. (a) A project shall not be approved pursuant to this
22 chapter after the compliance date required by any state or federal
23 statute, regulation, or rule that otherwise requires the change in
24 equipment to a zero-emission standard.

25 (b) For purposes of this chapter, it is a rebuttable presumption
26 that all changes in equipment that occur prior to the compliance
27 date required by any state or federal statute, regulation, or rule that
28 otherwise requires that the change in equipment will occur shall
29 generate surplus emissions reductions.

30 (c) The quantity of surplus emissions reductions that demonstrate
31 lower cumulative and aggregate emissions under a project than
32 from compliance with the change to zero-emission equipment at
33 the compliance date alone shall be evaluated pursuant to the
34 methodology established by the *state* board as required by this
35 chapter.

36 39905.1. (a) Eligible projects include, but are not limited to,
37 any of the following:

38 (1) Purchase of new ~~near-zero-emission~~ *lower emission* or
39 zero-emission covered equipment in operation at a seaport.

1 (2) Emission-reducing retrofit of covered equipment, or
2 replacement of old engines powering covered equipment with
3 newer ~~near-zero-emission~~ *lower emission* or zero-emission engines,
4 motors, or drives.

5 (3) Development and demonstration of ~~near-zero-emission~~ *lower*
6 *emission* and zero-emission retrofit technologies, repower options,
7 and advanced technologies for covered equipment.

8 (b) A project shall not be deemed ineligible for approval *solely*
9 on the basis that *lower emission or zero-emission* equipment is
10 purchased with the use of any state or federal grant funding, funded
11 or used for credit under any state or federal emissions averaging,
12 banking, or trading program, or participates in any other voluntary
13 emission reduction program.

14 (c) A project ~~is not~~ *shall not be deemed* ineligible for approval
15 *solely* on the basis that the purchase of ~~near-zero-emission~~ *lower*
16 *emission* or zero-emission equipment is entered into pursuant to
17 a corporate or a controlling board's policy, tenancy agreement,
18 port lease, or any other contract, so long as the project is approvable
19 pursuant to Section 39905.

20 (d) Eligible applicants may be any individual, company, or
21 public agency that owns one or more pieces of cargo handling
22 equipment that operate at a seaport in the state and that is not out
23 of compliance with existing *state* board regulations that cover
24 cargo handling equipment.

25 39905.2. (a) The state board shall establish guidelines for
26 determining eligibility for projects under this chapter.

27 (b) The guidelines shall include all of the following:

28 (1) A methodology for evaluating cumulative emissions
29 reductions of nitrous oxides emissions.

30 (2) A methodology for evaluating cumulative emissions
31 reductions of diesel particulate matter.

32 (3) A methodology for evaluating cumulative emissions
33 reductions of greenhouse gasses.

34 (4) A methodology for determining the useful life for a piece
35 of cargo handling equipment.

36 (5) A baseline emissions profile for regulated emissions
37 reductions of nitrous oxides, diesel particulate matter, and
38 greenhouse gases based on the application of both the current
39 applicable state cargo handling equipment regulation and the future
40 state and federal compliance date established pursuant to

1 subdivision (a) of Section 39905 or, if a date is not yet adopted,
2 the 2037 target date for zero-emission cargo handling equipment
3 established in the ~~AB 32 state implementation plan~~, *scoping plan*
4 *adopted by the state board pursuant to the California Global*
5 *Warming Solutions Act of 2006 (Division 25.5 (commencing with*
6 *Section 38500))* or that date as amended and updated by the *state*
7 board pursuant to applicable law.

8 (c) The establishment of guidelines by this section is not subject
9 to the rulemaking requirements of the Administrative Procedure
10 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of
11 Division 3 of Title 2 of the Government Code).

12 39905.3. (a) Projects shall be approved by the *state* board if
13 they meet all of the following:

14 (1) Demonstrate cumulative emissions reductions of nitrous
15 oxides greater than the regulatory baseline over the useful life of
16 the cargo handling equipment identified in a project application.

17 (2) Demonstrate cumulative emissions reductions of diesel
18 particulate matter greater than the regulatory baseline over the
19 useful life of the cargo handling equipment identified in a project
20 application.

21 (3) Demonstrate either of the following:

22 (A) Cumulative emissions reductions of greenhouse gases
23 greater than the regulatory baseline over the useful life of the cargo
24 handling equipment identified in a project application.

25 (B) Commitment of payment to purchase greenhouse gas offsets
26 of at least 10 percent greater than the regulatory baseline over the
27 useful life of the cargo handling ~~equipment~~. *equipment in the time,*
28 *place, and manner established by the state board.* The offset
29 amount shall include the difference in and be reflective of any
30 actual emissions changes that result from the operations of the
31 cargo handling equipment over its useful life. Demonstration of
32 commitment with this compliance pathway will require the full
33 value of this amount to be proven to be paid or bonded as a
34 condition of approval at the discretion of the *state* board. To the
35 extent that this commitment is conditionally approved but not
36 executed, no project approvals shall be deemed effective.

37 (b) *The state board shall not approve a project that fails to*
38 *demonstrate emissions reductions of nitrous oxides and diesel*
39 *particulate matter that are at least 10 percent greater than the*
40 *regulatory baseline at the time of project application.*

1 ~~(b)~~

2 (c) Project applicants shall submit all information required by
3 the *state* board at the time of submission and upon subsequent
4 request as necessary to process the application.

5 ~~(e)~~

6 (d) The *state* board shall establish an application fee limited to
7 an amount that will partially offset the administrative costs of
8 processing project applications. Application fees collected pursuant
9 to this subdivision shall be deposited in the Air Pollution Control
10 Fund and made available to the state board for those purposes upon
11 appropriation by the Legislature.

12 39905.4. The retirement, replacement, retrofit, or repower of
13 cargo handling equipment purchased pursuant to an approved
14 project under this chapter shall not be required by any rule or
15 regulation adopted by the *state* board until the end of the useful
16 life of the equipment as established by the *state* board for each
17 piece of equipment pursuant to Section 39905.2.

18 39905.5. (a) The state board shall, by January 1, 2033, evaluate
19 the impact of the provisions of this chapter on state and local clean
20 air efforts to meet state and local clean air goals.

21 (b) The state board shall hold at least one public workshop prior
22 to the completion of the study required pursuant to subdivision
23 (a).

24 39905.6. This chapter shall remain in effect only until January
25 1, 2035, and as of that date is repealed.