

AMENDED IN ASSEMBLY APRIL 10, 2023

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. 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~~, 2032, enact the 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, sources at seaports in the 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, *any applicable statute, regulation, or rule* 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 approvals.~~ *The bill would describe certain types of eligible projects and would require the state board to approve projects that meet specified criteria.* The bill would require 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~~, *2027*, and *January 1, 2031*, 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~~: *evaluation.*

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. LOWER EMISSIONS TRANSITION PROGRAM
 6

7 39900. The Legislature finds and declares all of the following:

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

14 (b) The state has accelerated emissions reductions in many
 15 manners that benefit both local and global emissions goals,

1 including through regulatory enactments and the use of strategic
2 incentives.

3 (c) The state must maintain its aggressive long-term priority
4 emissions reductions goals for reducing greenhouse gases *through*
5 *the implementation of zero-emissions technologies* while also
6 addressing the ~~short-term~~ priority of reducing the public health
7 and air quality impacts of air toxic contaminants and criteria
8 ~~pollutants~~. *pollutants during the intervening years leading up to*
9 *and during the implementation of zero-emissions technologies.*

10 (d) ~~Where~~ *In those instances where* zero-emission technologies
11 are not yet commercially available, *required by law, or*
12 *economically feasible*, transitional technologies can provide an
13 effective bridging technology that results in significant reductions
14 in air toxic contaminants and criteria pollutants in the short term
15 until zero-emissions technologies ~~become feasible and available~~.
16 *are implemented.*

17 (e) ~~The~~ *Impacted California communities benefit from the*
18 reduction of air toxic contaminants and criteria pollutants earlier
19 and greater than otherwise required by ~~law~~ *creates air quality*
20 ~~benefits and is a common basis for the award of public funds to~~
21 ~~private parties in state incentive programs.~~ *law.*

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

28 (g) It is in the best interests of the people of the State of
29 California to ensure that the state board establishes an expedited
30 process to administer a program that will achieve cumulative lower
31 emission reduction outcomes by application of innovative concepts
32 in partnership with industry in a manner that protects public health
33 and the environment.

34 39901. It is the intent of the Legislature:

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

1 (b) To create outcomes that maximize *near-term* local emissions
2 reductions of toxic air contaminants and criteria pollutants ~~through~~
3 ~~the early adoption of alternative technologies resulting in reductions~~
4 ~~that are greater than those emissions reductions that would~~
5 ~~otherwise occur under current law as of the enactment of this~~
6 ~~chapter~~, and to accelerate global reductions of greenhouse gas
7 emissions resulting in reductions that are greater than those that
8 would otherwise occur under current law.

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

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

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

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

28 39902. This chapter shall be known, and may be cited, as the
29 Lower Emissions Transition Program.

30 39903. As used in this chapter, the following definitions apply:

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

1 equipment does not include any yard truck that is licensed as an
2 on-road vehicle.

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

9 (c) “Repower” means to replace an existing engine with a newer
10 engine or power source.

11 (e)
12 (d) “Zero-emission equipment” means any equipment that
13 produces no emissions of criteria pollutants, toxic air contaminants,
14 and greenhouse gases when stationary or operating.

15 39904. (a) There is hereby created the Lower Emissions
16 Transition Program.

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

19 (c) The program shall approve projects that reduce cumulative
20 emissions from applicable cargo handling equipment sources at
21 seaports in the state during the transition period to zero-emission
22 cargo handling equipment requirements.

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

25 39905. (a) A project shall not be approved pursuant to this
26 chapter after the compliance date required by any ~~state or federal~~
27 *applicable* statute, regulation, or rule that otherwise requires the
28 change in equipment to a zero-emission standard.

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

34 (e)
35 (b) The quantity of surplus emissions reductions that
36 demonstrate lower cumulative ~~and aggregate~~ emissions under a
37 project than from compliance with the ~~change to applicable~~
38 zero-emission equipment ~~at the compliance date alone~~ *statute,*
39 *regulation, or rule* shall be evaluated *by the state board* pursuant

1 to the methodology established by the state board as required by
2 this chapter.

3 39905.1. (a) Eligible projects include, but are not limited to,
4 any of the following:

5 (1) Purchase of new lower emission or zero-emission covered
6 equipment in operation at a seaport.

7 (2) Emission-reducing retrofit of covered equipment, or
8 replacement of old engines powering covered equipment with
9 newer lower emission or zero-emission engines, motors, or drives.

10 (3) Development and demonstration of lower emission and
11 zero-emission retrofit technologies, repower options, and advanced
12 technologies for covered equipment.

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

19 (c) A project shall not be deemed ineligible for approval solely
20 on the basis that the purchase of lower emission or zero-emission
21 equipment is entered into pursuant to a corporate or a controlling
22 board's policy, *plan*, tenancy agreement, port lease, or any other
23 contract, so long as the project is approvable pursuant to Section
24 39905.

25 (d) Eligible applicants may be any individual, company, or
26 public agency that owns one or more pieces of cargo handling
27 equipment that operate at a seaport in the state and that is not out
28 of compliance with existing state board regulations that cover
29 cargo handling equipment.

30 39905.2. (a) The state board shall establish guidelines for
31 determining eligibility for projects under this chapter.

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

33 (1) A methodology for evaluating cumulative emissions
34 reductions of nitrous oxides emissions.

35 (2) A methodology for evaluating cumulative emissions
36 reductions of diesel particulate matter.

37 (3) A methodology for evaluating cumulative emissions
38 reductions of greenhouse gasses.

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

1 (5) A methodology for evaluating the cumulative emission
2 reductions specified in paragraphs (1) to (3), inclusive, for the
3 repower of cargo handling equipment purchased pursuant to an
4 approved project under this chapter.

5 ~~(5)~~

6 (6) A baseline emissions profile for regulated emissions
7 reductions of nitrous oxides, diesel particulate matter, and
8 greenhouse gases based on the application of both the current
9 applicable ~~state statutes, regulations, and rules regarding~~ cargo
10 handling equipment regulation and the future ~~state and federal~~
11 compliance date ~~for zero-emission cargo handling equipment~~
12 ~~applicable as~~ established pursuant to subdivision (a) of Section
13 39905 or, if ~~a~~ that date is not yet adopted, the 2037 target date for
14 zero-emission cargo handling equipment established in the scoping
15 plan adopted by the state board pursuant to the California Global
16 Warming Solutions Act of 2006 (Division 25.5 (commencing with
17 Section 38500)) or that date as amended and updated by the state
18 board pursuant to applicable law.

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

23 39905.3. (a) Projects shall be approved by the state board if
24 they meet all of the following:

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

28 (2) Demonstrate cumulative emissions reductions of diesel
29 particulate matter greater than the regulatory baseline over the
30 useful life of the cargo handling equipment identified in a project
31 application.

32 ~~(3) Demonstrate either of the following:~~

33 ~~(A) Cumulative emissions reductions of greenhouse gases~~
34 ~~greater than the regulatory baseline over the useful life of the cargo~~
35 ~~handling equipment identified in a project application.~~

36 ~~(B) Commitment of payment to purchase greenhouse gas offsets~~
37 ~~of at least 10 percent greater than the regulatory baseline over the~~
38 ~~useful life of the cargo handling equipment in the time, place, and~~
39 ~~manner established by the state board. The offset amount shall~~
40 ~~include the difference in and be reflective of any actual emissions~~

1 ~~changes that result from the operations of the cargo handling~~
2 ~~equipment over its useful life. Demonstration of commitment with~~
3 ~~this compliance pathway will require the full value of this amount~~
4 ~~to be proven to be paid or bonded as a condition of approval at the~~
5 ~~discretion of the state board. To the extent that this commitment~~
6 ~~is conditionally approved but not executed, no project approvals~~
7 ~~shall be deemed effective.~~

8 *(3) Demonstrate cumulative emissions reductions of greenhouse*
9 *gases greater than the regulatory baseline over the useful life of*
10 *the cargo handling equipment identified in a project application.*
11 *At the discretion of the state board, cumulative emissions*
12 *reductions of greenhouse gases pursuant to this section may be*
13 *required to include a commitment of payment to purchase*
14 *greenhouse gas offsets of at least 10 percent greater than the*
15 *regulatory baseline over the useful life of the cargo handling*
16 *equipment in the time, place, and manner established by the state*
17 *board. If required by the state board, the full value of this amount*
18 *shall be paid or bonded as a condition of approval at the discretion*
19 *of the state board.*

20 *(4) An application was provided to the state board for a project*
21 *approval under this section prior to January 1, 2030.*

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

26 *(c) The state board shall maintain discretion to approve the*
27 *repower of cargo handling equipment purchased pursuant to an*
28 *approved project under this chapter based on the evaluation*
29 *methodology specified in paragraph (5) of subdivision (b) of*
30 *Section 39905.2.*

31 ~~(e)~~

32 (d) Project applicants shall submit all information required by
33 the state board at the time of submission and upon subsequent
34 request as necessary to process the application.

35 ~~(d)~~

36 (e) The state board shall establish an application fee limited to
37 an amount that will partially offset the administrative costs of
38 processing project applications. Application fees collected pursuant
39 to this subdivision shall be deposited in the Air Pollution Control

1 Fund and made available to the state board for those purposes upon
2 appropriation by the Legislature.

3 39905.4. The retirement, replacement, retrofit, or repower of
4 cargo handling equipment purchased pursuant to an approved
5 project under this chapter shall not be required by any rule or
6 regulation adopted by the state board until the end of the useful
7 life of the equipment as established by the state board for each
8 piece of equipment pursuant to ~~Section 39905.2.~~ *39905.2 or*
9 *January 1, 2045, whichever date is earlier.*

10 39905.5. (a) The state board shall, by January 1, ~~2033,~~ *2027,*
11 *and January 1, 2031,* evaluate the impact of the provisions of this
12 chapter on state and local clean air efforts to meet state and local
13 clean air goals.

14 (b) The state board shall hold at least one public workshop prior
15 to the completion of the ~~study~~ *evaluations* required pursuant to
16 subdivision (a).

17 39905.6. This chapter shall remain in effect only until January
18 1, ~~2035,~~ *2032,* and as of that date is repealed.

O