

Date of Hearing: April 8, 2014

ASSEMBLY COMMITTEE ON JUDICIARY  
Bob Wieckowski, Chair  
AB 2042 (Levine) – As Amended: March 27, 2014

SUBJECT: ZERO-EMISSION VEHICLES: CONSUMER OPTION TO PURCHASE

KEY ISSUE: IN ORDER TO PREVENT ANY INADVERTENT UNDERMINING OF THE AIR RESOURCES BOARD'S ZERO EMISSION VEHICLE (ZEV) PROGRAM OBJECTIVES, SHOULD ELECTRIC VEHICLE MANUFACTURERS MAKE SURE TO ALLOW THEIR LEASED ELECTRIC VEHICLES TO BE PURCHASED BY THE LESSEE AT THE END OF THE TERM OF THE LEASE, AS IS THE CASE WITH OTHER TYPES OF VEHICLES, IF THAT IS THE LESSEE'S DESIRE?

**SYNOPSIS**

*This environmental protection measure seeks to clarify the state's Vehicle Leasing Act. Specifically, the bill seeks to ensure that motor vehicle manufacturers who lease electric vehicles (EVs) and thereby receive credits toward the state's Zero Emission Vehicle program, allow EV lessees to purchase the vehicle at the end of the lease term, as is the practice with non-EV leased vehicles – or otherwise reasonably forfeit the credits received initially. Leasing electric vehicles is one way in which many motor vehicle manufacturers fulfill California Air Resources Board (ARB) zero emission requirements which require that a certain percentage of vehicles leased or sold by manufacturers in California be ZEVs.*

*According to the author, the purpose of ARB's ZEV program is to reduce emissions and pollution by turning over the number of vehicles on the road in order to increase the percentage of vehicles that are ZEVs and other lower polluting vehicles. The author states that some auto manufacturers who make EVs have been unreasonably requiring their EV consumers to return their ZEVs to the manufacturer at the end of the lease without the option to purchase them, thereby thwarting the intent of ARB's ZEV program which can effectively take the cars off the road even though the manufacturer already got credit towards keeping the EVs on the road. The author contends that when a consumer is not able to purchase their previously leased vehicle, they are likely to lease a new ZEV model. This phenomenon, the author states, allows manufacturers to get additional credits toward their mandatory percentage without actually putting more ZEVs on the road, thus undermining the ZEV program and the state's important air pollution and greenhouse gas reduction objectives.*

*The bill's supporters, representing several EV user and industry groups, state that the bill will help create a more robust secondary market for electric vehicles, making them more affordable for a broader array of people and furthering the state's environmental goals. Honda North America, Inc., which makes and leases EVs, writes in opposition among other things that if the ARB does not like the company's approach on this issue, it should be the entity to address this issue rather than the Legislature.*

SUMMARY: Requires vehicle manufacturers to allow their leased ZEVs to be purchased by the lessee at the end of the lease term if the vehicle is counted for the purposes of compliance with the ARB's ZEV Program. Specifically, this bill:

- 1) Requires that a lease contract for the lease of a ZEV to contain the option for the lessee to purchase the vehicle at the end of the lease term if that lease was counted by the manufacturer towards meeting the requirements of the California Air Resources Board.
- 2) Exempts a violation of these requirements from the misdemeanor provision of the Act.

EXISTING LAW, under Sections 2985.7 through 2994 of the California Civil Code, also known as the Vehicle Leasing Act, specifies requirements for contracts for leases of motor vehicles. Among other things, the Act:

- 1) Requires that lease contracts be in writing and conform to particular format restrictions, defines required provisions particular to leases of used vehicles, and declares that any person who knowingly and willfully violates any provision of the chapter is guilty of a misdemeanor. (Civil Code Section 2985.5(a), Section 2986.5 and Section 2989.8.)
- 2) Allows a lessee to terminate a vehicle lease at any time prior to the expiration date. (Civil Code Section 2987.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: This environmental protection measure seeks to clarify the state's Vehicle Leasing Act. Specifically, the bill seeks to ensure that motor vehicle manufacturers who lease electric vehicles (EVs) and thereby receive credits toward the state's Zero Emission Vehicle program, allow EV lessees to purchase the vehicle at the end of the lease term, as is the practice with non-EV leased vehicles – or otherwise reasonably forfeit the credits received initially. Leasing electric vehicles is one way in which many motor vehicle manufacturers fulfill California Air Resources Board (ARB) zero emission requirements which require that a certain percentage of vehicles leased or sold by manufacturers in California be ZEVs.

According to the author, the purpose of ARB's ZEV program is to reduce emissions and pollution by turning over the number of vehicles on the road in order to increase the percentage of vehicles that are ZEVs and other lower polluting vehicles. The author states that some auto manufacturers who make EVs have been unreasonably requiring their EV consumers to return their ZEVs to the manufacturer at the end of the lease without the option to purchase them, thereby thwarting the intent of ARB's ZEV program which can effectively take the cars off the road even though the manufacturer already got credit towards keeping the EVs on the road. The author contends that when a consumer is not able to purchase their previously leased vehicle, they are likely to lease a new ZEV model. This phenomenon, the author states, allows manufacturers to get additional credits toward their mandatory percentage without actually putting more ZEVs on the road, thus undermining the ZEV program and the state's important air pollution and greenhouse gas reduction objectives.

The Governor Has Set Ambitious Goals for the Widespread Public Adoption of Zero-Emission Vehicle Technologies: In March of 2012 Governor Brown signed Executive Order B-16-2012 (“the Order”) declaring that California should encourage the development and success of zero-emission vehicles (“ZEVs”) to protect the environment, stimulate economic growth and improve the quality of life in the State. The Order states that the State should support and encourage car manufacturers’ plans to build and affordably sell tens of thousands of zero-emission vehicles in California in the coming years and directs state agencies to support and facilitate the rapid commercialization of ZEVs, with a target of having 1 million ZEVs on California roadways by 2020 and 1.5 million ZEVs by 2025. (Cal. Exec. Order No. B-16-2012 (Mar. 23, 2012), <http://gov.ca.gov/news.php?id=17472>.)

The Air Resources Board’s ZEV Program Has The Potential To Contribute Significantly To The Success of the Governor’s Goals: In 1990 the ARB first adopted regulations establishing its Zero-Emission Vehicle Program. The ZEV Program required large manufacturers of motor vehicles to produce a certain amount of ZEVs based on a percentage of the overall number of vehicles that each manufacturer makes for sale in California, among other factors. At that time, the Board required that in 1998, 2% of the vehicles that large manufacturers produced for sale in California had to be ZEVs, increasing to 5% in 2001 and 10% in 2003. The vehicle production percentages and standards set up by the regulation have been modified several times since their 1990 introduction, but the ZEV mandate remains in place. (See “Air Resources Board Zero-Emission Vehicle Legal and Regulatory Activities and Background,” <http://www.arb.ca.gov/msprog/zevprog/zevregs/zevregs.htm>; See also Cal. Code Regs., tit. 13, § 1962.)

The ZEV Program’s System of Manufacturer Credits and Arguable Loophole: As noted, the overarching goal of the Zero-Emission Vehicle Program is to reduce emissions from mobile sources. By requiring that manufacturers place into service a certain number of vehicles every year that have little to no harmful emissions, a significant number of pollution-causing conventional vehicles are intended to be taken off of California roadways. Under the ZEV Program, the ARB also grants special credits to vehicle manufacturers who produce and place into service in California more ZEVs than they are required to by law. These credits are awarded based on equations that take into account the specific type of ZEV produced, among other factors. Credits for the vehicles, however, are earned in the same amount irrespective of whether the ZEV is sold or leased. (Cal. Code Regs., tit. 13, § 1962(g).)

In an apparent loophole, under current law, a ZEV can be leased for a set term and, at the end of the term, the EV manufacturer may refuse to allow the lessee to purchase the vehicle in order to keep the non-polluting vehicle on the road. Instead, EV manufacturers may currently reclaim the EV, remove it from use, sell or lease another one and get additional ZEV program credits. The loophole is such that under this set of facts the EV manufacturer will have earned the same amount of credit for this temporary lease as it would have had it sold the ZEV instead. This creates an apparent unintended incentive for EV manufacturers to lease EVs and then pull them out of service in order to get additional credits by leasing new EVs instead.

The Bill Addresses This Apparent Loophole to Increase the ZEV Program’s Effectiveness: The purpose of this bill is to close this gap in the regulation and to eliminate the unwarranted earning

or duplication of ZEV Program credits in the case of EV leases. In further describing the bill's purpose, the author states:

AB 2042 strengthens the ZEV mandate by providing an avenue that will help keep more clean cars on the roadways. Currently, the law allows manufacturers to take back electric vehicles that customers wish to purchase. Under existing law CARB mandates that auto manufacturers produce ZEV vehicles. The purpose of the mandate is to reduce emissions and pollution by turning over the number of vehicles on the road to increase the percentage of vehicles that are ZEV. However, nothing in current California law requires that manufacturers allow motorists to purchase their perfectly good ZEVs and nothing prevents them from receiving credit for lease only vehicles.

Unfortunately this has allowed for some manufacturers to require that their consumers return ZEVs to the manufacturer at the end of the lease, which effectively takes the cars off the road and does not help meet the long-term goals of the mandate. We all remember that this occurred in 1996 with the General Motors EV1, where vehicles were leased and then later reclaimed and destroyed. AB 2042 would prevent history from repeating itself in this manner.

Moreover, when a customer is not able to purchase their vehicle, they are likely going to lease a new ZEV model allowing the automaker to be eligible for additional credits. This weakens the mandate because automakers could be getting additional credits, without actually putting more cars on the road. Under AB 2042, consumers would have the option of purchasing their leased zero-emission vehicle (ZEV) when the lease ends, if their vehicle earned the manufacturer credits towards to the California Air Resources Board (CARB) Vehicle mandates.

The Bill Exempts Violations of Its Provisions From The Enforcement Provision of The Vehicle Lease Act: Because the bill expressly exempts enforcement of violations through the misdemeanor criminal provisions of the Act, it is apparently envisioned that its primary enforcement will be achieved through ARB's awarding/denial of credits to manufacturers through the existing Zero-Emission Vehicle Program.

ARGUMENTS IN SUPPORT: Supporters state that the bill is an important step in continuing to get more electric vehicles on California roadways. The Golden Gate Electric Vehicle Association states:

California drivers cannot switch to zero-emission electric vehicles if the manufacturers are not making these vehicles available to consumers. AB 2042 ensures that those manufacturers who are receiving CARB credits actually do make the vehicles available for consumers to drive for the life of the vehicle

Many drivers attending our events promoting electric vehicles have expressed their desire to purchase used electric vehicles that are typically lower priced than new vehicles. AB 2042 will help to ensure that there will be more used electric vehicles on the market and therefore more California drivers will have the opportunity to switch to a zero-emission vehicle.

The North Bay Chapter Electric Auto Association states:

It has come to our attention that the auto manufacturers are not complying with the spirit of the existing laws requiring that they provide zero emission vehicles in California by not allowing the lessees of their zero emission vehicles to purchase their leased vehicle when the lease period ended. The lessees of these manufacturer's gas vehicles would not accept this obligation and neither should the lessees of electric vehicles. The purpose of the law is to get electric vehicles on the road and not allowing the lessee of the electric vehicle to purchase the vehicle at the end of the lease discourages the use of electric vehicles.

The Sacramento Electric Vehicle Association (SacEV) states:

One important step in the integration of EV's in the California fleet is the creation of a secondary, or used car market. Many people choose to purchase used cars instead of new cars as they are less expensive than new cars. Your legislation will strengthen California's mandate by requiring that all EVs manufactured and leased to receive credit for complying with that mandate be made available for purchase at the end of the lease term. By creating that secondary market we will make EVs affordable to a broader array of people and increase the stock of vehicles on the road.

As you know, EVs are significantly better than gas powered cars for the environment and public health, with zero toxic or greenhouse gas tailpipe emissions. Additionally, the electricity that powers them is cleaner and cheaper to produce than gasoline, especially in California. In addition to those benefits, EVs are much less expensive to operate than a gas powered car. These benefits should not be available only to those who can afford a new car. Nor should we reduce the benefits to California's air quality by removing perfectly viable, clean vehicles from the road.

Richard Titus, Executive Producer of "Who Killed the Electric Car?" states in support of the bill:

While I strongly support your AB 2042, I am chagrined that it is even necessary. When we made the film "Who Killed the Electric Car" we assumed its success would mean that no car company would make that mistake again. Unfortunately that doesn't appear to be the case... I understand this bill doesn't address the current situation, but I'm glad to know that companies will be prohibited from doing this again in the future. Electric Vehicles are superior to gas powered vehicles and are increasing in their market share, but if not for the leadership of California's policy makers, the manufacturers would not have made any electric vehicles. The manufacturers must continually be pushed and held accountable.

ARGUMENTS IN OPPOSITION: Honda North America, Inc. writes in opposition to the bill. Among other things, they contend that the ZEV Mandate is a product of the ARB's administrative regulations and thus any changes that impact the mandate should go through, and be made by, the ARB. However it must be noted that the Legislature clearly has the authority to make changes, as it has done on frequent occasions to the state's Leasing Act. Honda also contends that it uses leased cars that are returned to them after the lease for analysis and research to study the effects of wear on the vehicle, and that the bill would eliminate their ability to use

these cars for studies and impedes their research and development. However it should be noted that this measure does not eliminate Honda and other EV manufacturers' ability to prohibit their EV lessees from purchasing their EVs at the end of the lease. Rather the measure states in such instances the manufacturer simply can't keep the earlier credits received under the ZEV program. It thus appears that Honda and other EV manufacturers could, under this measure, still prohibit some of their EV lessees from purchasing their EVs but they would in turn be choosing to extinguish their earlier-received ZEV credits.

The Association of Global Automakers currently opposes the measure. They write that while the Association supports the author's intent behind the bill, namely that California policy should encourage a long life for ZEV vehicles, they see a problem with the bill:

The problem is this: ZEV technology is in its earliest stages of development. Electric vehicles are fairly new to the market and the first hydrogen fuel cell vehicles won't even hit the market until May of 2014. With notable exceptions, our vehicles are typically leased to consumers. We lease our ZEV vehicles (from here on out acknowledging several exceptions) in order to learn and perfect battery electric and hydrogen fuel technology vehicles after the first and second generation of these vehicles. As these technologies mature, and are improved from the earliest generations of experience, our cars will become better and cheaper... In short, a mandate to offer a buy option at the end of the lease for a nascent technology ZEV sounds better in theory than it actually would result in practice. We want to learn from the experience of the first and second generation of our vehicles and eventually build ZEVs that consumers have confidence in based on that experience and will be eager to buy.

POSSIBLE COMMITTEE AMENDMENT: In order to clarify the bill's intent that EV manufacturers shall relinquish the ZEV credits they received when they leased an EV if they refuse to allow the lessee to purchase the EV at the end of the lease, the Committee may wish to discuss with the author amending the bill as follows:

SECTION 1. Section 2986.55 is added to the Civil Code, to read:

2986.55. (a)(1) A lease contract for the lease of a zero-emission vehicle that was counted by the manufacturer towards meeting the requirements of the zero-emission vehicle standards of the State Air Resources Board shall contain the option for the lessee to purchase the vehicle at the end of the lease term.

(2) A leased zero-emission vehicle, the lease contract for which is not in conformity with paragraph (1), may not be counted toward meeting the requirements of the zero-emission vehicle standards of the State Air Resources Board or toward the earning of ZEV credits pursuant to Section 1962 of Title 13 of the California Code of Regulations.

(b) Section 2989.8 shall not apply to a violation of subdivision (a).

REGISTERED SUPPORT/OPPOSITION:

Support

Electric Auto Association – North Bay Chapter  
Golden Gate Electric Vehicle Association  
Sacramento Electric Vehicle Association

Opposition

Association of Global Automakers  
Honda North America, Inc.

Analysis Prepared by: Drew Liebert and Drew Williams / JUD. / (916) 319-2334