

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 1063 (Senator Hershey)  
Education, Energy, and the Environment

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**Environment - Advanced Clean Cars II Program - Application and Enforcement**

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This bill prohibits the Maryland Department of the Environment (MDE) from adopting the California Advanced Clean Cars II regulations prior to motor vehicle model year 2030. In addition, MDE may not apply the enforcement or penalty provisions of Title 2, Subtitle 6 of the Environment Article to a motor vehicle manufacturer for failing to meet the minimum electric vehicle or plug-in hybrid electric vehicle delivery requirements under the California Advanced Clean Cars II Program for an applicable model year.

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**Fiscal Summary**

**State Effect:** The bill does not affect MDE’s expenditures; however, it significantly affects MDE’s operations and the ability of the State to maintain compliance with federal air quality standards and meet its commitments to reducing greenhouse gas (GHG) emissions under the Climate Solutions Now Act (CSNA), as discussed below. Revenues are not directly affected.

**Local Effect:** The bill may delay some expenditures on electric vehicles and associated infrastructure that local governments would otherwise incur. Revenues are not affected.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Current Law:**

*Advanced Clean Cars II Program and the Adoption of California Regulations*

Pursuant to the federal Clean Air Act (CAA), vehicles sold in the United States must be certified under one of two certification programs: (1) the federal program (Tier 2); or

(2) the California program (the Clean Car Program). Section 177 of the CAA Amendments of 1990 provides states the ability to adopt the California program in lieu of the federal program as long as the adopted state program is *identical* to the California program and the state allows two model years lead time from adoption to implementation.

The Maryland Clean Cars Act of 2007 (Chapters 111 and 112) requires MDE to adopt regulations implementing the California Clean Car Program (also referred to as the California Low Emissions Vehicle Program, or CAL LEV) in Maryland. Maryland's implementing regulations adopted, through incorporation by reference in COMAR 26.11.34.02, the applicable California regulations. The CAL LEV Program is a dynamic, changing program in which many of the relevant California regulations are continuously updated. To retain California's standards, Maryland must remain consistent with its regulations, which means when California updates its regulations, Maryland must reflect those changes by amending State regulations.

On August 25, 2022, the California Air Resources Board (CARB) adopted the Advanced Clean Cars II regulations requiring that (1) all new cars and light trucks sold in California be zero-emission vehicles by model year 2035 and (2) internal combustion engine vehicles meet increasingly stringent pollution standards during the period in which they continue to be sold. CARB's regulation affects vehicles beginning with the 2026 model year.

Pursuant to the requirements of the Maryland Clean Cars Act of 2007, MDE adopted California's Advanced Clean Cars II regulations effective September 18, 2023. Maryland's implementation of the Advanced Clean Cars II Program will begin with the 2027 model year.

### *Federally Mandated Air Quality Standards and State Implementation Plans*

CAA regulates air emissions from stationary and mobile sources and authorizes the U.S. Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards to limit levels of "criteria pollutants" to protect public health and public welfare and to regulate emissions of hazardous pollutants. A geographic area that meets or exceeds the primary standard is an "attainment area"; those that do not are "nonattainment areas." A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants.

Under § 110 of CAA, each state must develop applicable state implementation plans (SIPs) for primary and secondary ambient air quality standards adopted by EPA for various air pollutants. A SIP must identify sources of air pollution and determine what emissions reductions are needed to meet federal air quality standards for a particular air pollutant. Within three years (or as otherwise specified by EPA) after the promulgation of a national primary ambient air quality standard for any air pollutant, each state must submit a plan,

which provides for implementation, maintenance, and enforcement of that standard, as specified.

MDE's Air and Radiation Management Administration operates the State's air pollution control programs. Among other things, the administration monitors ambient air pollution levels, develops plans to maintain air quality standards, develops and enforces regulations to control air emissions, and provides technical assistance to businesses attempting to comply with CAA requirements. Pursuant to COMAR 26.11.04, MDE sets ambient air quality standards for specified pollutants, including particulate matter, sulfur oxides, nitrogen dioxide, and lead.

### *Maryland Greenhouse Gas Emissions Reduction Targets and the Climate Solutions Now Act*

CSNA (Chapter 38 of 2022) made broad changes to the State's approach to reducing statewide GHG emissions and addressing climate change. Among other things, the Act accelerated previous statewide GHG emissions reductions targets originally established under the Greenhouse Gas Emissions Reduction Act by requiring the State to develop plans, adopt regulations, and implement programs to (1) reduce GHG emissions by 60% from 2006 levels by 2031 and (2) achieve net-zero statewide GHG emissions by 2045. In December 2023, MDE published [\*Maryland's Climate Pollution Reduction Plan\*](#), which was developed to implement CSNA.

**State Fiscal Effect:** MDE advises that the bill does not have a fiscal impact on the department; however, it does have a significant impact on departmental operations, as discussed in more detail below. As a result of the bill, MDE advises that it must (1) repeal the existing Advanced Clean Cars II regulations that became effective September 18, 2023, and affect model year 2027 to 2035 vehicles and (2) readopt the regulations to comply with the bill's requirement that the regulations not be applied prior to model year 2030. According to MDE, this work can be handled with existing staff.

### *Compliance with the Climate Solutions Now Act*

According to *Maryland's Climate Pollution Reduction Plan*, the transportation sector accounted for 35% of the State's GHG emissions in 2020, with most emissions (82%) in this sector coming from on-road vehicles powered by gasoline or diesel. MDE advises that in order to achieve CSNA's GHG emissions reduction requirements, significant reductions in GHG emissions from the transportation sector are needed. According to MDE, electrification of the transportation sector is an essential part of its overall emissions reduction strategy; without implementation of the Advanced Clean Cars II regulations, MDE advises that the State will not be able to meet the requirement in CSNA to reduce

GHG emissions by 60% by 2031. The extent to which this may affect State finances is unknown and is not reflected in this analysis.

### *Compliance with Federal Air Quality Standards*

MDE advises that the transportation sector is a significant source of nitrogen oxides emissions that contribute to ground-level ozone pollution. MDE further advises that the State is now in attainment of all federal air quality standards for all criteria pollutants, including ozone, and that to maintain compliance with federal air quality standards in the coming years, the State must achieve further reductions in transportation-sector emissions.

According to MDE, the Advanced Clean Cars II Program is an integral component of Maryland's SIP under CAA. By delaying implementation of the program, MDE advises that if Maryland does not find a way to otherwise meet its SIP, the State could be subject to certain federal sanctions, including a loss of federal highway funds.

### *Enforcement of Advanced Clean Cars II Regulations*

The bill prohibits MDE from applying the enforcement or penalty provisions of Title 2, Subtitle 6 of the Environment Article to a motor vehicle manufacturer for failing to meet the minimum electric vehicle or plug-in hybrid electric vehicle delivery requirements under the California Advanced Clean Cars II Program for an applicable model year. Under Title 2, Subtitle 6 of the Environment Article, MDE is authorized to issue corrective orders and bring an action to enjoin any conduct that violates any provision of the Title 2 (Ambient Air Quality Control), or any rule, regulation, or order adopted under the title. Violators are also subject to specified administrative, civil, and criminal penalties. Any penalties collected pursuant to these provisions are paid into the Maryland Clean Air Fund.

Accordingly, although any effect on State finances from the bill's prohibition relating to enforcement is beyond the five-year period covered by this fiscal and policy note, special fund revenues may decrease minimally in the out-years to the extent that MDE otherwise would have collected any monetary penalties in the absence of the bill. MDE notes that neither Maryland nor any other state that has implemented the Advanced Clean Cars I regulations has ever assessed a monetary penalty for non-compliance with zero-emission vehicle requirements. MDE further notes that the Advanced Clean Cars II Program has significant regulatory flexibility that facilitates manufacturer compliance with the program without triggering any enforcement processes. For example, MDE advises that a vehicle manufacturer has three model years to make-up for any shortfalls that could trigger non-compliance.

**Small Business Effect:** Small businesses involved in the manufacture, installation, and maintenance of electric vehicle infrastructure may be contracted for fewer projects in the

State as a result of the bill. Additionally, small businesses involved in servicing or repairing electric vehicles may experience a decrease in the demand for their services.

Conversely, small businesses that sell, lease, service, or repair motor vehicles with internal combustion engines may benefit from the bill's delayed implementation of the Advanced Clean Cars II Program in Maryland.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** HB 1247 (Delegate Adams, *et al.*) - Environment and Transportation and Economic Matters.

**Information Source(s):** Maryland Association of Counties; Maryland Municipal League; Department of Budget and Management; Maryland Department of the Environment; Department of General Services; Maryland Department of Transportation; U.S. Environmental Protection Agency; California Air Resources Board; Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2024  
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