Bill 104: A Statute to Increase the Number of Electric Vehicles on the Québec Market,

June 26, 2016

On June 2, 2016, the Government of Québec tabled Bill 104, entitled *An Act to increase the number of zero-emission motor vehicles in Québec in order to reduce greenhouse gas and other pollutant emissions* (the "ZEV Bill")[1]. This Bill is related to the objectives of Québec's action plan for the electrification of transportation 2015-2020, a plan envisaging a total of 100,000 registered plug-in vehicles in Québec between now and 2020[2]. In this bulletin, we propose to outline the Bill's basic features.

A System of Credits and Charges

The ZEV Bill proposes a market-driven approach similar to a system already known in Québec for the reduction of greenhouse gas emissions: a cap and trade system, but this one designed for motor vehicle manufacturers. In proposing such a measure, Québec is following in the footsteps of a dozen or so American states that have already adopted such a system, including California, Québec's principal partner in the *Western Climate Initiative*.

Under this system, which the Government refers to as the "ZEV Standard", every motor vehicle manufacturer is assigned a sales target for zero-emission motor vehicles ("ZEVs"), which is converted into an annual minimum number of credits required to be attained. That target would be determined by the Government of Québec and would be calculated by applying a percentage to the total number of motor vehicles sold in Québec by that manufacturer[3]. On June 1 following the end of each three consecutive calendar year period (the "Period"), each manufacturer would be required to have accumulated the number of credits required for each of the three model years[4] that corresponds to one of the three calendar years of the Period[5]. A motor vehicle manufacturer failing to accumulate the required credits would be obliged to pay the Minister of Sustainable Development, the Environment and the Fight Against Climate Change (the "MSDEFCC") a charge corresponding to the number of missing credits, the amount of which remains to be determined[6]. The MSDEFCC would determine the number of credits accumulated by each manufacturer on the following June 1 of each Period, based on the information in its possession[7].

A list of eligible electric-powered motor vehicles would be drawn up each year by the MSDEFCC[8]. A certain number of credits would be attributed to each motor vehicle on

the list, in relation to that vehicle's independent driving range when operating in electric mode[9]. For example, the sale of an electric vehicle having a range of 300 km when driven in electric mode would entitle its manufacturer to a greater number of credits than the sale of a hybrid car having a range of only 100 km. when propelled by electricity.

The specific eligibility criteria for entry on this list have not yet been made public, but the ZEV Bill indicates that vehicles the sale of which would permit credits to be accumulated would have to (i) be completely or partially electrically propelled, and (ii) include a battery or cell that powers the electric motor used to propel the vehicle and which would be rechargeable from a source not on board the vehicle[10]. In addition, to be eligible, vehicles would have to be registered in Québec when the manufacturer would be making its report[11]. It must be remembered that under the ZEV Bill, a "motor vehicle" means a motor vehicle that is used to carry up to nine persons at a time, or property, on a public highway, and whose gross vehicle weight rating is less than 4,500 kg. Trucks carrying goods, hydrogen-powered vehicles, mopeds and motorcycles are excluded from the ZEV Bill's scope of application.

A manufacturer subject to the Bill may earn credits in one of two ways: (i) by selling or leasing eligible motor vehicles, or (ii) by acquiring credits from another motor vehicle manufacturer[12]. The credits may be traded by gratuitous or onerous title, but every such trade between manufacturers would have to be reported to the MSDEFCC[13]. A manufacturer who would accumulate a greater number of credits than required during a Period could then use or alienate (sell) them during a subsequent Period[14].

Scope of Application

The ZEV Standard would apply to manufacturers which, on average, have sold or leased more than 4,500 new motor vehicles annually in Québec for three consecutive model years[15]. Although the MSDEFCC believes that this measure would cover approximately 99% of the Québec market[16], a motor vehicle manufacturer not subject to the Bill because of an insufficient sales volume could nevertheless participate voluntarily in the credit and charge system provided for by the ZEV Bill[17].

It is important to add that where the sale or leasing of new motor vehicles is carried on by a legal person, a partnership or an association without legal personality in which a motor vehicle manufacturer holds, directly or indirectly, more than 33% of the voting rights attached to the shares or other equity securities, the provisions of the ZEV Bill would apply with the necessary modifications[18].

The ZEV Bill also provides for the possibility for the MSDEFCC to classify motor vehicle manufacturers by category and to set different conditions, parameters and calculation methods for each category[19].

Furthermore, although they serve as intermediaries between motor vehicle manufacturers and consumers, automobile dealers are not contemplated by the ZEV Bill[20].

The ZEV Standard would apply to vehicles beginning with the 2018 model year[21], and the first date on which the MSDEFCC would determine the number of credits accumulated by a manufacturer would be June 1, 2019[22]. Nevertheless, a manufacturer

could voluntarily accumulate credits for the 2016 and 2017 model years and use them in subsequent years[23].

The Register

As under Québec's cap and trade system for greenhouse gas emission allowances[24], the credit and charge system associated with the ZEV Standard would go hand in hand with compulsory reporting of information by motor vehicle manufacturers subject to the Bill.

The ZEV Bill would oblige the subject manufacturers, no later than June 1 of each year, to report a certain amount of information, to be determined by regulation, which details would be recorded in a register kept by the MSDEFCC[25]. Manufacturers participating voluntarily in the ZEV Standard would be permitted to report this information at any time[26]. Every report of a motor vehicle manufacturer would have to be accompanied by a certificate of a chartered professional accountant attesting to the accuracy of the information reported[27].

This register would also record the credits determined by the MSDEFCC for each motor vehicle manufacturer[28]. A motor vehicle manufacturer disagreeing with the quantum of credits determined by the Minister would be allowed to contest that matter before the Administrative Tribunal of Québec[29].

The ZEV Bill suggests that the information contained in the register would not be public, unless otherwise stated in the regulation[30].

Powers of Investigation and Sanctions

The ZEV Bill sets forth a quite detailed regime of sanctions and recovery measures which appears similar to that provided for under the *Environment Quality Act*[31]. In brief, any motor vehicle manufacturer that would fail to report the required information would be liable to a monetary administrative penalty of $1,000[32] or to a fine of not less than $1,000 nor more than $100,000 in the case of a natural person and to a fine of not less than $3,000 nor more than $600,000 in any other case[33]. Anyone hindering a functionary or investigator in the performance of the functions of the latter's office would be liable to a fine of not less than $2,500 nor more than $250,000 in the case of a natural person and to a fine of not less than $7,500 nor more than $1,500,000 in any other case[34]. It is also provided that other types of contraventions could be determined by regulation as being subject to the imposition of monetary administrative penalties and/or to penal prosecutions[35]. The ZEV Bill further provides investigative powers for persons designated by the Minister to secure compliance with the legislation[36].

Directors and officers of a motor vehicle manufacturer that commits an offence under the Act, or whose agent, mandatory or employee commits such an offence, would themselves be presumed to have committed the offence, unless the directors or officers established that they exercised due diligence and took all necessary precautions to prevent the offence[37]. Similarly, directors and officers of a motor vehicle manufacturer defaulting on the payment of any amount due to the MSDEFCC under the ZEV Bill or its regulations (e.g., a charge, a monetary administrative penalty, etc.) would be jointly and severally liable, together with the manufacturer, for the payment of that amount, unless

they established that they exercised due care and diligence to prevent the failure which led to the claim[38].

Conclusion

A number of features of the proposed credits and charges system for motor vehicle manufacturing remain to be determined. In the first place, the Bill may well be amended in the adoption process. But more particularly, there are many details that will be disclosed only upon publication of its regulation(s). In particular, the number of credits corresponding to each motor vehicle, the number of credits which each motor vehicle manufacturer would have to accumulate, as well as the value of a credit for the purposes of calculating a charge, will be crucial details for securing the proper operation and effectiveness of the regime.

According to the MSDEFCC, the proposed system will permit increasing the market for electric-powered vehicles, as well as reducing the prices of that type of vehicle[39], the objective being that by 2025, 15.5% of all motor vehicle sales in Québec will be of ZEVs[40]. By way of comparison, California's objective is that, by 2025, 22% of sales there will be of ZEVs, including hydrogen-powered vehicles[41].

The ZEV Standard could constitute a challenge for manufacturers, because they would be the parties responsible for increasing ZEV sales. Manufacturers must therefore make sure that dealers, but especially consumers, get on board, at a time when sales of fuel-inefficient vehicles are increasing in Québec[42]. Although there has been no official announcement, it is probable that the Bill will be submitted to particular consultations, which will give all those interested the opportunity to share their comments and recommendations on the ZEV Bill with the Québec Government.

[1] Bill 104, *An Act to increase the number of zero-emission motor vehicles in Québec in order to reduce greenhouse gas and other pollutant emissions*, 1st Session, 41s Legislature, Québec, 2016 (webpage visited June 7, 2016) [ZEV Bill].

[2] It is said that there are close to 5 million light vehicles registered in Québec, of which 9,763 are electric vehicles. See *ZEV Bill, Summary of measures in the bill tabled in the National Assembly*, p.1, (webpage visited June 7,2016) [Summary of measures]. See also: Ministry of Transport of Québec, *Transportation Electrification Action Plan 2015-2020*, p. 15, (webpage visited June 7, 2016).

[3]Summary of measures, p. 1.

[4] Section 2 of the ZEV Bill defines "model year" as follows: *the year used by a motor vehicle manufacturer to designate a particular vehicle model irrespective of the year in which the vehicle was produced*.

[5]ZEV Bill, s. 8, para. 1.

[6]ZEV Bill, s. 8, paras. 2 and 3.

[7]ZEV Bill, s. 8, para. 1.

[8]ZEV Bill, s. 5.

[9]Summary of measures, p. 1 The MSDEFCC already has a list of electric vehicles for the purposes of its rebate program for the purchase or leasing of electric vehicles, (webpage visited June 7, 2016).

[10]ZEV Bill, s. 6.

[11]ZEV Bill, s. 13.

[12]ZEV Bill, s. 6.

[13]ZEV Bill, s. 7.

[14]ZEV Bill, s. 9.

[15]ZEV Bill, s. 3, para. 1.

[16]Summary of measures, p. 2.

[17] ZEV Bill, s. 3, para. 2.

[18] ZEV Bill, s. 60.

[19] ZEV Bill, s. 4.

[20]Summary of measures, p. 2.

[21]ZEV Bill, s. 64, para. 1.

[22]ZEV Bill, s. 64, para. 2.

[23]ZEV Bill, s. 64, para. 3.

[24] In this regard, see in particular: MSDEFCC, *Système de plafonnement et d'échange de droits d'émission de gaz à effet de serre du Québec*(in French), (webpage visited June 7, 2016).

[25]ZEV Bill, s. 10, para. 1 and s. 11.

[26]ZEV Bill, s. 10, para. 1.

[27]ZEV Bill, s. 10, para. 2.

[28]ZEV Bill, s. 12.

[29]ZEV Bill, s. 30.

[30]ZEV Bill, s. 15.

[31] See in particular sections 115.13 to 115.57, 116.1.1 and 118.5.1 to 118.5.3 of the *Environment Quality Act*, R.S.Q., c. Q-2, (webpage visited June 27, 2016).

[32]ZEV Bill, s. 19.

[33]ZEV Bill, s. 33.

[34]ZEV Bill, s. 34.

[35]ZEV Bill, ss. 20 and 35.

[36]ZEV Bill, ss. 16-18.

[37]ZEV Bill, s. 41.

[38]ZEV Bill, s. 48.

[39]Summary of measures, p. 1.

[40]Summary of measures, p. 2.

[41] 13 CCR s. 1962.6, *Zero-Emission Vehicle Standards for 2018 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.* See also California Environmental Protection Agency – Air Resources Board, *Zero Emission Vehicle Program*, (webpage visited June 7, 2016).

[42] See in particular Gérard Fillion, *Toujours plus de pétrole, plus d'essence, plus de VUS*, Radio-Canada, June 1, 2016, (webpage visited June 7, 2016).

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