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Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 260 (Wiener)
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AWM

SUBJECT

Climate Corporate Accountability Act

DIGEST

This bill requires U.S.-based companies that do business in California and with revenues in excess of \$1 billion to annually report, by January 1, 2024, their direct and indirect greenhouse gas (GHG) emissions from their operations and supply chain to the Air Resources Board (ARB), and for ARB to issue a report that estimates the emissions reductions necessary to maintain climate change below specified levels and make recommendations for how companies can achieve those reductions.

EXECUTIVE SUMMARY

The window to prevent the most catastrophic effects of climate change is rapidly closing. Current law, however, does not give the state or its consumers any insight into what steps, if any, large polluting companies are taking to reduce GHG emissions, which is imperative to avoid the worst effects of climate change. This bill would require the largest U.S.-based companies – those with annual revenues over \$1 billion – doing business in California to annually report, starting in 2024, their scope 1, scope 2, and scope 3 GHG emissions, which encompass emissions from a company's direct operations as well as from its supply chain. The bill would require ARB to set regulations for the reports by January 1, 2023, and, by July 1, 2025, to prepare a report on the reported GHG emissions that provides a reasonable estimate of the required annual aggregated GHG emissions that would be necessary to maintain global temperature within 1.5 degrees Celsius of preindustrial levels, the number generally considered to be the “tipping point” for the worst outcomes of climate change.

This bill is sponsored by the California League of Conservation voters, Carbon Accountable, and Sunrise Bay Area, and supported by a wide range of environmental, labor, and social justice groups. It is opposed by a wide range of industry groups and local governments. The bill passed out of the Senate Environmental Quality Committee with a 4-2 vote.

PROPOSED CHANGES TO THE LAW

Existing state law:

- 1) Establishes the Air Resources Board as the air pollution control agency in California and requires ARB, among other things, to control emissions from a wide array of mobile sources and coordinate, encourage, and review the efforts of all levels of government as they affect air quality. (Health and Saf. Code, div. 26, part 2, §§ 39500 et seq.)
- 2) Establishes the California Global Warming Solutions Act of 2006 (AB 32 (Nunez, Ch. 488, Stats. 2006)), which declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California, and that action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act. (Health & Saf. Code, div. 25.5, §§ 38500 et seq.)
- 3) Requires, as part of the California Global Warming Solutions Act of 2006, ARB to determine the 1990 statewide GHG emissions level and approve a statewide GHG emissions limit that is equivalent to that level to be achieved by 2020. (Health & Saf. Code, § 38550.)
- 4) Requires ARB to prepare and approve a scoping plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020. (Health & Saf. Code, § 38561.)
- 5) Requires ARB to ensure that statewide GHG emissions are reduced to at least 40 percent below the 1990 level by December 31, 2030, and allows ARB, until December 31, 2030, to adopt regulations that utilize market-based compliance mechanisms (i.e., the cap-and-trade program) to reduce GHG emissions. (Health & Saf. Code, §§ 38562, 38566.)
- 6) Requires ARB to adopt regulations that, among other things, require monitoring and annual reporting of GHG emissions from GHG emission sources within the state, beginning with the sources or categories of sources that contribute the most to statewide emissions; and provides that, for the cap-and-trade program, entities that voluntarily participated in the California Climate Action Registry prior to December 31, 2006, and had developed a GHG emission reporting program would not be required to significantly alter their reporting or verification program except as necessary for compliance. (Health & Saf. Code, § 38530.)
- 7) Requires ARB to make available, and update annually, the emissions of GHGs, criteria pollutants, and toxic air contaminants from each facility that reports to ARB,

and requires ARB to make an annual report to the Joint Legislative Committee on Climate Change Policies on the reported emissions of greenhouse gases, criteria pollutants, and toxic air contaminants from all sectors covered by its scoping plan. (Health & Saf. Code, § 38531.)

- 8) Defines “doing business” in California as engaging in any transaction for the purpose of financial gain within California, being organized or commercially domiciled in California, or having California sales, property, or payroll exceed \$610,395, \$61,040, and \$61,040, respectively, as of 2020. (Rev. & Tax. Code, §§17041, 23101.)

Existing federal law:

- 1) Gives Congress the authority to regulate commerce with foreign nations and between states, i.e. the commerce clause. (U.S. Const. art. I, § 8.)
- 2) Establishes the Clean Air Act, which declares as a primary goal encouraging or otherwise promoting reasonable federal, state, and local governmental actions, consistent with the provisions of this Act, for pollution prevention. (42 U.S.C. § 7401.)

This bill:

- 1) Establishes the Climate Corporate Accountability Act (the Act).
- 2) Makes findings and declarations regarding California’s emission reductions, the global-warming-related natural disasters experienced by the state, the state’s economy, the role businesses and consumer consumption play in GHG emissions, the right of consumers to know businesses’ climate impacts, and the need for the proposed legislation.
- 3) Defines relevant terms, including:
 - a) “Reporting entity” is a partnership, corporation, limited liability company, or other business entity formed under the laws of the state, any other state in the United States, the District of Columbia, or under an act of Congress of the United States with total annual revenues in excess of \$1 billion, and that does business in California.
 - b) “Scope 1 emissions” is all direct GHG emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities.
 - c) “Scope 2 emissions” is indirect GHG emissions from electricity purchased and used by a reporting entity, regardless of location.
 - d) “Scope 3 emissions” is indirect GHG emissions, other than scope 2 emissions, from activities of a reporting entity that stem from sources that the reporting entity does not own or directly control and may include emissions associated

with the reporting entity's supply chain, business travel, employee commutes, procurement, waste, and water usage, regardless of location.

- 4) Provides that, on or before January 1, 2023, ARB shall develop and adopt regulations to require a reporting entity to verify and annually report to ARB all of the reporting entity's scope 1, 2, and 3 GHG emissions. The regulations must include both of the following:
 - a) That a reporting entity, starting in 2024 on a date to be determined by ARB, shall annually publicly disclose all of the entity's scope 1, 2, and 3 GHG emissions for the prior calendar year in a manner that is easily understandable and accessible to residents of the state. The public disclosure shall include the name of the reporting entity and any fictitious names, trade names, assumed names, and logos used by the entity.
 - b) That a reporting entity's public disclosure is independently verified by a third-party auditor, approved by ARB, with expertise in GHG emissions accounting. The reporting entity shall ensure that a copy of the complete, audited GHG emissions inventory for the prior calendar year, including the name of the approved third-party auditor, is provided to ARB as part of, or in connection with, the entity's public disclosure.
- 5) Provides that, on or before July 1, 2025, ARB shall prepare a report on the GHG emissions of reporting entities. ARB must make the report publicly available on a digital platform (discussed below), and submit the report to the relevant policy committees of the Legislature. The report must include, but is not limited to, the following:
 - a) The best reasonable estimate of the required aggregated GHG emissions levels of reporting entities that would be necessary to maintain global temperatures within 1.5 degrees Celsius of preindustrial levels. As part of the estimate, ARB should consider the most current protocols and guidance of the Science Based Targets initiative (SBTi) as they pertain to required emissions reductions, and, where relevant, exclude avoided emissions and offsets as counting toward a reporting entity's emissions reduction's goals.
 - b) The best reasonable estimate of the projected GHG emissions from reporting entities based on successful implementation of the state's existing GHG reduction, clean energy, and other similar regulations to which reporting entities are subject. This estimate shall, at a minimum, include an estimate of the projected GHG emissions from reporting entities for the calendar years 2030 and 2045.
 - c) Recommendations, based on the information submitted by the reporting entities, that reporting entities may consider to effectively reduce their remaining emissions in line with what is recommended by the SBTi to maintain global temperatures within 1.5 degrees Celsius of preindustrial levels.

- 6) Requires ARB to create a digital platform that will house all reports produced by ARB and submitted by reporting entities pursuant to this bill. The digital platform shall be capable of featuring individual reporting entity reports and aggregated data in a manner that is easily understandable and accessible to residents of the state.
- 7) Requires ARB, in developing the required regulations, to consult with a panel of experts, including experts in climate science and corporate carbon emissions accounting, implementing state agency representatives, stakeholders representing consumer and environmental justice interests, and reporting entities that are leaders in collecting, reporting, and setting targets for the reduction of their own carbon footprint, to develop standards and protocols for:
 - a) Establishing that the required public disclosures are made in a manner that is easily understandable and accessible to state residents.
 - b) Collecting data for all scope 1, 2, and 3 emissions by reporting entities.
- 8) Authorizes ARB to adopt or update any other regulations that are necessary and appropriate to implement the bill.
- 9) Provides that the civil and criminal penalties for violations of the California Global Warming Solutions Act of 2006 (Health & Saf. Code, div. 25.5) set forth in Health & Safety Code section 38580 do not apply to violations of this section, and provides that ARB shall adopt regulations relating to the enforcement of the bill, including the imposition of administrative penalties for violations of the bill.
- 10) Provides that the provisions of the bill are severable, and that, if any provision or its application is held invalid, that invalidity shall not affect other provisions or applications of the bill that can be given effect without the invalidated portion.

COMMENTS

1. Author's comment

According to the author:

SB 260, the Climate Corporate Accountability Act, requires public and private US-based corporations who do business in California and which have over \$1 billion in annual revenue to report their greenhouse gas emissions from their direct activities, the activities of their supply chain, and other major emissions sources to the California Air Resources Board (CARB). Once this information is provided, CARB will provide a roadmap for necessary emissions reductions for an entity to align with 1.5 degrees Celsius of warming beyond pre-industrial levels. Further, CARB will provide estimates for 2030 and 2045 emission levels if California's GHG reduction and clean energy goals are met. Both the emissions disclosure and CARB's subsequent report will be published publicly and accessible via an online platform.

California has been at the forefront of climate policy in recent decades, requiring renewable energy targets for electricity providers, committing to preserve 30 percent of California's lands in their natural state, and setting and achieving ambitious emission reduction targets. These reductions were partially met, and continue to be bolstered by the emission reporting requirements as laid out in the California Global Warming Solutions Act. These requirements, however, only apply to electricity generators, industrial facilities, fuel suppliers, and other major emitters, missing many sources of corporate pollution. Without the same requirements for these corporate entities, California is left without proper information and will not be able to accurately regulate and reduce these emissions. Filling this gap with detailed data regarding corporate activities is a crucial next step for the State to ensure that we continue to decrease the rampant greenhouse gases that are destroying our planet.

California, like the rest of the world, is already deeply impacted by climate change, with worsening droughts, floods, and the unforgettable devastation brought on by an influx of massive wildfires – the top five largest wildfires in the State's history have all occurred in 2018 or later. We no longer have the time to rely on massive corporations to voluntarily report their emissions, and cannot afford any possibility that the emissions we are being told about have been altered or manipulated to ensure a positive public-facing appearance for a particular company. Rather, these corporations must be required to transparently report their activities and the emissions associated with them. Californians are watching their State get irrevocably harmed by climate change, and they have a right to know who is at the forefront of the pollution causing this. SB 260 would bolster California's position as a leader on climate change, will allow for consumers to make informed decisions regarding their patronage of these corporations, and will give policymakers the specific data required to significantly decrease corporate emissions.

2. Background: the threat of climate change and California's mitigation efforts

According to the Intergovernmental Panel on Climate Change, human activities have caused between .8 and 1.2 degrees Celsius of global warming.¹ This is an average increase – many regions and seasons have seen higher degrees of warming, with warming being more severe over land than over ocean regions.² Scientific consensus is that warming of 1.5° Celsius or more will cross an irreversible threshold in terms of damage to the planet and life as we know it.³ At 1.5 degrees Celsius, we will face:

- Increased frequency in droughts and increased likelihood of extreme droughts.
- Sea levels rising by multiple meters.

¹ Allen, et al., *Global Warming of 1.5°C*, Intergovernmental Panel on Climate Change (2018), Chapter 1, at p. 51, available at <https://www.ipcc.ch/sr15/> [last visited Apr. 12, 2021].

² *Ibid.*

³ *Id.*, Chapter 3, at p. 208.

- Increased oceanic carbon dioxide, which will damage marine organisms and ecosystems as well as aquaculture and fisheries.
- Increased forest fires and other extreme weather events.
- Increased spread of invasive species, pests, and diseases.
- Reductions in food crop yield.⁴

California is already experiencing the negative effects of global warming. Southern California has warmed about 3 degrees Fahrenheit – about 1.67 degrees Celsius – and the entire state is becoming warmer.⁵ Our snowpack is diminishing, and so is our water, harming agriculture and numerous other industries.⁶ Sea level rise threatens communities; a rise of even 16 inches could threaten the San Francisco and Oakland airports.⁷ And terrifying, deadly wildfires plague the state, with CalFire estimating five of the state’s six largest wildfires happening in 2020 alone.⁸ Estimates for the 2021 fire season are ominous due to the lack of winter rain and the low moisture values for flammable shrubs throughout the state.⁹

Unfortunately, global and national efforts to stem the tide of global warming have been halting.¹⁰ In the absence of national leadership, California – in its role as the fifth-largest economy in the world¹¹ and a general leader on environmental matters – has taken bold steps to impose vital limits on GHG emissions and other causes of climate change. California’s climate-change-reduction measures include reducing GHG emissions to 1990 levels by 2020 (which the state accomplished early, in 2016);¹² implementing a cap-and-trade program;¹³ and requiring the state to be carbon neutral by 2045.¹⁴

⁴ *Id.* at pp. 177-181.

⁵ United States Environmental Protection Agency, *What Climate Change Means for California* (Aug. 2016), available at www.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf&usg=AOvVaw3u20z6aUzNnO_qhapgzXmx [last visited Apr. 12, 2021].

⁶ *Ibid.*

⁷ *Ibid.*

⁸ CalFire, *Top 20 Largest California Wildfires* (Nov. 3, 2020), https://www.fire.ca.gov/media/4jandlhh/top20_acres.pdf [last visited Apr. 12, 2021]. The sixth in the top six was the Mendocino Complex, which occurred in 2018. (*Id.*)

⁹ Leonard & Bolinger, *Drought-plagued California and western U.S. may see another devastating fire season*, Washington Post (Apr. 10, 2021), available at <https://www.washingtonpost.com/weather/2021/04/10/drought-wildfires-california-west/> [last visited Apr. 12, 2021].

¹⁰ E.g., Daley, *U.S. Exits Paris Climate Accord after Trump Stalls Global Warming Action for Four Years*, Scientific American (Nov. 4, 2020), available at <https://www.scientificamerican.com/article/u-s-exits-paris-climate-accord-after-trump-stalls-global-warming-action-for-four-years/> [last visited Apr. 12, 2021].

¹¹ Egel, *California now world’s fifth-largest economy, bigger than Britain*, Sacramento Bee (May 4, 2018), available at <https://www.sacbee.com/news/business/article210466514.html> [last visited Apr. 12, 2021].

¹² AB 32 (Nunez, Ch. 488, Stats. 2006); Kasler, *California beats its 2020 goals for cutting greenhouse gases*, Sacramento Bee (Jul. 11, 2018), available at <https://www.sacbee.com/article214717585.html> [last visited Apr. 12, 2021].

¹³ Cal. Code Regs., tit. 17, div. 3, ch. 1, subchapter 10, art. 5, §§ 95801 et seq.

¹⁴ Governor’s Exec. Order No. B-55-18 (Sept. 10, 2018).

3. This bill requires the most profitable U.S.-based companies to disclose their enterprise-wide GHG emissions, providing the state and consumers with valuable information about corporate contribution to climate change

This bill adds a new approach to California’s climate change efforts, not by regulating GHG emissions, but by requiring very large companies to report their supply-chain-wide GHG emissions. Federal GHG emissions reporting requirements are currently limited to certain large GHG emissions sources, fuel and industrial gas suppliers, and carbon dioxide injection sites in the United States.¹⁵ This bill would require companies with annual gross revenues in excess of \$1 billion and that do business in California to file – starting in 2024 – a report setting forth their audited scope 1, scope 2, and scope 3 emissions.

This explanation of scope 1, scope 2, and scope 3 emissions is taken from the Senate Environmental Quality Committee’s analysis of this bill, which is incorporated here by reference:

The “scope” framework was introduced in 2001 by the World Resources Institute (WRI) and World Business Council for Sustainable Development as part of their Greenhouse Gas Protocol Corporate Accounting and Reporting Standard. The goal was to create a universal method for companies to measure and report the emissions associated with their business. The three scopes allow companies to differentiate between the emissions they emit directly into the air, which they have the most control over, and the emissions they contribute to indirectly.

Scope 1 covers direct emissions from owned or controlled sources, such as fuel combustion, company vehicles, or fugitive emissions. Scope 2 covers indirect emissions from the generation of purchased electricity, steam, heating and cooling consumed by the reporting company. Scope 3 includes all other indirect emissions that occur in a company’s value chain, such as purchased goods and services, business travel, employee commuting, waste disposal, use of sold products, transportation and distribution (up- and downstream), investments, and leased assets and franchises.

Recent research from CDP (formerly the Carbon Disclosure Project) found that scope 3 supply chain emissions are on average 11.4 times higher than operational (scope 1 and 2) emissions, which is more than double the previous estimate.

To close the information gap of unreported scope 3 emissions, this bill would require very large companies to provide a complete picture of the GHG emissions produced in the operation of their businesses. According to the author, this information will help the state combat global warming in two ways.

¹⁵ 40 C.F.R. pt.98, §§ 98.1-98.478.

First, as more people and companies wake up to the critical need to reduce global warming caused by GHG emissions, it has become common for companies to advertise eco-friendly measures as a way to gain customers. But many of these efforts are more about public perception than actual, meaningful change – a tactic known as “greenwashing.”¹⁶ For example, in the absence of clear regulations on environmental claims and terms, companies can use words like “green” that have little meaning, or label products as “recyclable” even though few people have access to the facilities necessary to actually recycle the product.¹⁷ Companies may also trumpet allegedly green initiatives that increase their profits but do not stand up to scrutiny.¹⁸

Some companies have already started reporting scope 1, 2, and 3 GHG emissions on a voluntary basis, but they are a minority.¹⁹ By requiring companies to provide an audited report of scope 1, scope 2, and especially scope 3 emissions – which, as noted above, can comprise the majority of a company’s GHG emissions – this bill is intended to give consumers actual information about companies’ GHG emissions and let them compare a company’s public claims about its environmental initiatives to the reality of its emissions.

Second, this bill will require ARB in 2025 to use the data from the 2024 corporate GHG emissions disclosures and prepare a report on the GHG emissions of the reporting entities. Among other things, the report must include a best reasonable estimate of the required annual aggregated GHG emissions levels of the reporting entities that would be necessary to maintain global temperatures within 1.5 degrees Celsius of preindustrial levels; a best reasonable estimate of projected GHG emissions based on successful implementation of the state’s existing GHG and related regulations; and recommendations for reporting companies to consider to effectively reduce their remaining emissions in line with what is recommended by the SBTi, a nonprofit that assists companies develop GHG emissions reductions plans. This report could provide useful guidance for next steps in how to continue to reduce GHG emissions in order to avoid the most disastrous effects of climate change.

¹⁶ E.g., Watson, *The troubling evolution of corporate greenwashing*, The Guardian (Aug. 20, 2016), available at <https://www.theguardian.com/sustainable-business/2016/aug/20/greenwashing-environmentalism-lies-companies> [last visited Apr. 12, 2021].

¹⁷ E.g., Ro, *Some of the Favorite Corporate Greenwashing Tactics of Clothing Companies*, Forbes (Apr. 12, 2021), <https://www.forbes.com/sites/christinero/2021/04/12/some-of-the-favorite-greenwashing-tactics-of-clothing-companies/?sh=60918e647609> [last visited Apr. 12, 2021]; see also SB 343 (Allen, 2021), which would limit the use of the “chasing arrow” symbol indicating a product is recyclable to products that can actually be recycled in the state.

¹⁸ E.g., MacDonald, *Coke claims to give back as much water as it uses. An investigation shows it isn’t even close*, The Verge (May 31, 2018), <https://www.theverge.com/2018/5/31/17377964/coca-cola-water-sustainability-recycling-controversy-investigation> [last visited Apr. 12, 2021].

¹⁹ See Bolton & Kacperczyk, *Signaling Through Carbon Disclosure*, Harvard Law School Forum on Corporate Governance (Mar. 30, 2021), <https://corpgov.law.harvard.edu/2021/03/30/signaling-through-carbon-disclosure/> [last visited Apr. 16, 2021] (*Signaling Through Carbon Disclosure*) (estimating more than 15 percent of publicly traded companies globally disclose carbon emissions).

4. The bill's reporting requirement for very large companies doing business in California does not present clear constitutional problems

Section 8 of Article I of the United States Constitution grants the United States Congress the power to regulate interstate commerce.²⁰ The obverse proposition – that states may not usurp Congress's express power to regulate interstate commerce – is known as the "Dormant Commerce Clause."²¹ The Dormant Commerce Clause serves as an absolute bar to regulations that discriminate against interstate commerce, i.e., by favoring in-state businesses or excluding out-of-state businesses.²² But "[s]tate laws that 'regulat[e] even-handedly [across all in-state and out-of-state businesses] to effectuate a legitimate local public interest... will be upheld unless the burden imposed upon such commerce is clearly excessive in relation to the putative local benefits.' "²³

This bill grants no favoritism for in-state companies – all U.S.-based companies doing business in California with annual gross revenues in excess of \$1 billion will be subject to the bill's reporting requirement. The question for whether the bill runs afoul of the Dormant Commerce Clause is, therefore, whether the bill's reporting requirement serves a legitimate local interest, and whether the burden imposed by the reporting requirement is clearly excessive in relation to the benefits conferred.

With respect to the first prong – whether requiring very large companies to report scope 1, 2, and 3 emissions serves a legitimate local interest – the answer must be yes. As discussed above in Part 2, the world is teetering on the brink of a climate apocalypse, one which cannot be avoided without meaningful efforts. The climate change does not care about state lines; all of California's efforts to reduce GHG emissions within its own borders could still be for naught if companies based elsewhere do not also reduce their GHG emissions. California has a clear interest in ensuring its residents can make informed, environmentally sound consumer decisions. By imposing the reporting requirement, California and its residents will learn the full scope of GHG emissions from the country's largest companies that profit from California's substantial market power, as well as whether those companies are improving their emissions rates on a year-to-year basis. Providing the state and its residents with this information will empower them to differentiate between companies actually committed to climate change and those attempting to curry favor with consumers through superficial "greenwashed" publicity campaigns. For companies, the knowledge that their emissions will be publicly available might encourage them to take meaningful steps to reduce GHG emissions.

Additionally, the bill requires ARB to synthesize the information provided by the reporting companies and provide estimates of what additional GHG emissions reductions would be necessary to maintain warming at 1.5 degrees Celsius above

²⁰ U.S. Const., art. I, § 8, cl. 3.

²¹ See *Gibbons v. Ogden* (1824) 22 U.S. 1.

²² E.g., *Dean Milk Co. v. Madison* (1951) 340 U.S. 349, 354.

²³ *South Dakota v. Wayfair, Inc.* (2018) 138 S.Ct. 2080, 2091.

preindustrial levels. This information serves California's vital interest in determining the effectiveness of its existing climate change mitigation measures and what additional steps will be necessary to prevent the worst effects of climate change.

For the second prong – whether the burden imposed by the reporting requirement is clearly excessive in relation to the benefit – the answer is likely no. The bill does not impose any new *restrictions* on GHG emissions – the affected companies are required only to tabulate and report on what is already there, i.e., a full account of their GHG emissions on an enterprise-wide bases. Moreover, the bill limits its application to only the most profitable companies in the country, so the added economic cost of tabulating and auditing scope 1, 2, and 3 GHG emissions is unlikely to impose a significant burden on the affected companies.²⁴ By comparison, California reaches out and requires out-of-state companies to pay state sales taxes when their revenues exceed \$610,395 in California;²⁵ imposing a GHG reporting requirement only on companies with annual revenues in excess of \$1 billion appears to be a proportional burden.

The bill's opponents argue that the economic impact of GHG reporting will be felt by smaller companies to the extent those companies' emissions will have to be counted as part of the reporting companies' scope 3 emissions. Is unclear how difficult it would be for a small company to calculate its scope 1 emissions only, or whether the reporting companies could assist with the financial burden posed by companies in their supply chains. The bill does, however, appear to give ARB the authority to develop regulations that would permit scope 3 emissions to be determined using methods other than direct calculation, such modeling and sampling, rather than requiring each individual entity in a company's supply chain to perform its own audit. This approach would significantly reduce the burden on small and medium companies and, in turn, decrease the likelihood that the burden imposed by the bill is clearly excessive in relation to the benefits conferred. Moreover, allowing modeling and sampling would ensure that the costs are primarily borne by the very large entities who are the target of the bill. The author and stakeholders are continuing to discuss possible amendments that could provide additional clarity with respect to how scope 3 emissions may be calculated.

The bill's approach to the borderless problem of climate change is not novel: California already has laws that reach companies based outside the state where the state has deemed it necessary to resolve pressing global or national problems. In order to help eradicate slavery and human trafficking, California requires manufacturers and retail sellers with \$100 million in gross revenue that do business in the state to disclose on their websites their efforts, if any, to prevent slavery and human trafficking within their supply chains.²⁶ In order to bring to light, and more effectively combat, the gender pay gap, California requires in-state companies with more than 100 employees located

²⁴ Research conducted on 14,400 publicly listed companies in 77 countries between 2005 and 2018 shows that voluntarily disclosing emissions actually reduces the cost of capital for the companies that do so, and provides greater market efficiency overall. (*Signaling Through Carbon Disclosure*, *supra*, fn. 19.)

²⁵ Rev. & Tax. Code, §§17041, 23101, 23151.

²⁶ Civil Code, § 1714.43.

anywhere to report on pay data across the company, not just within California.²⁷ California's interest in helping itself and its consumers make informed decisions that will help avoid the most severe impacts of climate change is surely as significant as its interest in these other social issues, and the burden it imposes on only the country's most profitable companies does not appear to be clearly excessive in light of that interest. It is therefore likely that this bill does not violate the Dormant Commerce Clause of the United States Constitution.

Certain opponents also argue that this bill is preempted by the Clean Air Act – which preempts states from imposing emissions standards on aircraft and certain other sources – and other federal laws granting the federal government the sole authority to regulate emissions.²⁸ The bill, however, does not impose any emissions standards or otherwise regulate emissions – it merely requires certain companies to report their existing emissions, whatever they may be. Accordingly, it does not appear that this bill is preempted by federal law.

5. The author's most recent amendments eliminate the civil and criminal penalties for violations of this bill

This bill will be added to the existing California Global Warming Solutions Act of 2006, which implements many of the state's global warming mitigation efforts.²⁹ Violations of that act are subject to a range of civil and criminal penalties.³⁰ The author recently amended the bill to clarify that those civil and criminal penalties are not available for violations of the bill. In lieu of these civil and criminal penalties, the bill instructs ARB to develop regulations establishing penalties for violations of the bill, which could include administrative sanctions for failure to file a required report or failing to include the requisite information.

6. Arguments in support

According to a coalition of bill sponsors California League of Conservation Voters and Sunrise Bay Area, and bill supporters Change Begins with ME (Indivisible), CleanEarth4Kids.org, Climate Action Campaign, Climate Equity Policy Center, Courage California, Friends of Public Banking Santa Rosa, Green New Deal at UC San Diego, Romero Institute:

Many communities in California are on the front lines of the climate crisis, facing the human impacts head-on. In 2020 alone, wildfires burned over 4 million acres and the state struggled with the impacts of historic drought, loss of snowpack, continuing sea level rise, deadly heat waves, diminishing regional agricultural returns, exacerbated air and water pollution, and related climate impacts. And

²⁷ Gov. Code, § 12999.

²⁸ See, e.g., 42 U.S.C. § 7573.

²⁹ Health & Saf. Code, div. 25.5, §§ 38500 et seq.

³⁰ See id., §§ 38580, 42400 et seq., 43025 et seq.

while all of California is impacted, we know that climate impacts fall disproportionately on Black, Indigenous, and People of Color. Yet, the very corporations who are most responsible for the pollution which has caused the climate crisis ask individuals to make changes in their own lives to solve the problem, rather than own the responsibility to change their own practices.

This crisis is the direct result of the cumulative and growing emissions of greenhouse gases (GHG) into our atmosphere and the private sector continues to play an outsized role in contributing to the crisis... But the full picture of corporate climate emissions remains fragmented, incomplete and unverified. When we do get corporate disclosures they are often limited to a corporation's operations and other direct emissions, but supply chain emissions are now estimated to be 11.4 times more than a company's emissions from their direct operations on average. Without specific and comprehensive data detailing the sources and levels of corporate pollution, and whether emissions are increasing or decreasing, we will remain unable to effectively regulate, reduce, and restrict these sources of climate pollution that are threatening California and its residents.

By requiring reporting of both direct emissions from these corporations, and any emissions produced from their supply chains and other indirect emissions, SB 260 creates the data infrastructure to drive down corporate carbon emissions. This mandate of comprehensive climate pollution transparency would be the first in the nation, and would establish a public right to know which companies are polluting our environmental commons, how much they are polluting, and if they are decreasing – or increasing – their climate emissions, offering a transparent and public way of verifying corporate claims of climate leadership.

7. Arguments in opposition

According to a coalition of bill opponents Agricultural Council of California, Alliance for Automotive Innovation, American Forest & Paper Association, American Property and Casualty Insurance Association, Brea Chamber of Commerce, Building Owners and Managers Association of California, California Apartment Association, California Bankers Association, California Building Industry Association, California Business Properties Association, California Cement Manufacturers Environmental Coalition, California Chamber of Commerce, California Construction and Industrial Materials Association, California Independent Petroleum Association, California League of Food Producers, California Manufacturers & Technology Association, California Restaurant Association, California Retailers Association, California Trucking Association, Carlsbad Chamber of Commerce, Chemical Industry Council of California, El Dorado Hills Chamber of Commerce , EMA Truck & Engine Manufacturers Association, Garden Grove Chamber of Commerce, Harbor Association of Industry and Commerce, Household and Commercial Products Association, International Council of Shopping Centers, Lodi Chamber of Commerce, Long Beach Area Chamber of Commerce, NAIOP

of California, Orange County Business Council, Oxnard Chamber of Commerce, Personal Insurance Federation of California, Pleasanton Chamber of Commerce, Rancho Cordova Area Chamber of Commerce, Redondo Beach Chamber of Commerce, San Gabriel Valley Economic Partnership, South Bay Association of Chambers of Commerce, Tulare Chamber of Commerce, Western Independent Refiners Association, Western States Petroleum Association, Western Wood Preservers Institute, and Wilmington Chamber of Commerce:

At first glance, SB 260 appears to limit its application to very large companies and the fact sheet and rhetoric in announcements and publications from the sponsors suggest that this is the intent. While we appreciate the intent not to impact businesses already struggling from the COVID-19 pandemic and economic decline, as one drills down into the definitions in the bill it becomes clear that SB 260 will have an impact all through the economy, including small and medium businesses, and that the majority of the burden will fall on California companies...

Requiring reporting of emission associated with a company's entire supply chain will necessarily require that large businesses stop doing business with small and medium businesses that cannot meet the onerous reporting requirements required by the bill, leaving those companies without contracts that enable them to grow and employ more workers. Although the bill alleviates small and medium businesses from the administrative burden of reporting to the Air Resources Board, these companies still must report up the supply chain. Growing companies must then increase their costs, limiting their access to larger market shares. Forcing companies to make these decisions would have the effect of consolidating market share in the largest of companies rather than fostering competition and growth of smaller industries.

SUPPORT

California League of Conservation Voters (co-sponsor)

Carbon Accountable (co-sponsor)

Sunrise Bay Area (co-sponsor)

350 Bay Area Action

350 Humboldt

350 Sacramento

350 Silicon Valley

Alliance of Nurses for Healthy Environments

As You Sow

Audubon California

BAN SUP

California Alliance for Retired Americans

California Environmental Justice League

California Interfaith Power & Light

Change Begins with ME (Indivisible)
City of Berkeley
Clean Earth 4 Kids
Climate Action Campaign
Climate Equity Policy Center
Climate Reality San Francisco Bay Area Chapter
Cloverdale Indivisible
Coalition for a California Green New Deal
Coalition for Clean Air
Courage California
Defenders of Wildlife
Elders Climate Action, NorCal and SoCal Chapters
Environmental Defense Fund
Environmental Justice League
Feminists in Action
Fossil Free California
Friends Committee on Legislation of California
Friends of Harbors, Beaches and Parks
Friends of Public Banking Santa Rosa
Friends of the Earth U.S.
Green New Deal at UC San Diego
Greenbelt Alliance
Indivisible Alta Pasadena
Indivisible CA-37
Indivisible CA-43
Indivisible California 39
Indivisible California Green Team
Indivisible Claremont/Inland Valley
Indivisible East Bay
Indivisible Euclid
Indivisible Marin
Indivisible Ross Valley
Indivisible San Francisco
Indivisible San Jose
Indivisible San Pedro
Indivisible Santa Barbara
Indivisible SF Peninsula & CA-14
Indivisible Ventura
Indivisible Yolo
Los Angeles County Democratic Party
Mountain Progressive Frazier Park
Natural Resources Defense Council/NRDC Action Fund
Normal Heights Indivisible
Persefoni
Plug In America

Postcards for America, California
Rising Sun Center for Opportunity
Romero Institute
Rooted in Resistance
Sacramento Area Congregations Together
San Francisco Baykeeper
Save the Bay
Service Employees International Union California (SEIU)
Sierra Club California
Silicon Valley Youth Climate Action
Sunrise Berkeley High School
Sunrise Chico
Sunrise Claremont Colleges
Sunrise Contra Costa
Sunrise Glendale
Sunrise Kern County
Sunrise La Crescenta
Sunrise LA Youth
Sunrise Los Angeles
Sunrise Orange County
Sunrise Redding
Sunrise Sacramento
Sunrise San Francisco University High School
Sunrise Santa Barbara
Sunrise Silicon Valley
Sunrise UC Berkeley
Sunrise UC Irvine
The Climate Center
The Climate Reality Project, San Diego Chapter
The Kitchen Rainmakers
The Nature Conservancy
Together We Will/ Indivisible – Los Gatos
UC Green New Deal Coalition
Union of Concerned Scientists
University Professional and Technical Employees
Venice Resistance
Wildfires to Wildflowers

OPPOSITION

Agricultural Council of California
Airlines for America
Alliance for Automotive Innovation
American Forest & Paper Association
American Property Casualty Insurance Association

Brea Chamber of Commerce
Building Owners and Managers Association of California
California Apartment Association
California Bankers Association
California Building Industry Association
California Business Properties Association
California Cement Manufacturers Environmental Coalition
California Chamber of Commerce
California Chapter of the National Electrical Contractors Association
California Construction and Industrial Materials Association
California Independent Petroleum Association
California League of Food Producers
California Legislative Council of the Plumbing, Heating and Piping Industry
California Manufacturers & Technology Association
California Restaurant Association
California Retailers Association
California Trucking Association
Carlsbad Chamber of Commerce
Chemical Industry Council of California
County of Madera
El Dorado Hills Chamber of Commerce
EMA Truck & Engine Manufacturers Association
Garden Grove Chamber of Commerce
Harbor Association of Industry and Commerce
Household and Commercial Products Association
International Council of Shopping Centers
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
NAIOP of California
Orange County Business Council
Oxnard Chamber of Commerce
Personal Insurance Federation of California
Pleasanton Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
Redondo Beach Chamber of Commerce
San Gabriel Valley Economic Partnership
Silicon Valley Leadership Group
South Bay Association of Chambers of Commerce
Tulare Chamber of Commerce
United Contractors
Western Independent Refiners Association
Western Line Constructors
Western States Petroleum Association
Western Wood Preservers Institute
Wilmington Chamber of Commerce

RELATED LEGISLATION

Pending Legislation:

SB 449 (Stern, 2021) requires certain California-based financial institutions to prepare and disclose climate-related financial risk reports disclosing the institution's climate-related financial risk and its measures to reduce and adapt to those risks; and establish the Climate Change Financial Risk Task Force require certain California-based financial institutions to review the institutions' reports and prepare analysis of the systemic and sectorwide climate-related financial risk. SB 449 is pending before the Senate Banking and Financial Institutions Committee.

SB 32 (Cortese, 2021) requires a city or county to amend, by January 1, 2023, the appropriate elements of its general plan to include goals, policies, objectives, targets, and feasible implementation strategies, as specified, to decarbonize newly constructed commercial and residential buildings, in furtherance of the goal of reducing California's GHG emissions to 40 percent below its 1990 levels by 2030 and carbon neutrality by 2045. SB 32 is pending before the Senate Appropriations Committee.

AB 284 (Rivas, 2021) requires the ARB, as part of its next scoping plan, to identify a 2045 climate goal for the state's natural and working lands to sequester carbon and reduce atmospheric GHG emissions, and to develop practices and recommendations for achieving that goal (including interim targets). AB 284 is pending before the Assembly Appropriations Committee.

AB 52 (Frazier, 2021) requires the ARB to identify and make recommendations for achieving the maximum technologically feasible and cost-effective reductions of emissions of greenhouse gases and black carbon from wildfires in its scoping plans. AB 52 is pending before the Assembly Natural Resources Committee.

Prior Legislation:

SB 100 (De León, Ch. 312, Stats. 2018), the 100 Percent Clean Energy Act, established a plan to have 100 percent of retail sales of electricity within California to come from qualified renewable energy and zero-carbon resources by December 31, 2045, and directed state agencies to take such actions as necessary to implement that plan.

SB 775 (Wieckowski, 2017) would have imposed legislatively mandated requirements for the State's emissions cap-and-trade program adopted by the ARB under the California Global Warming Solutions Act of 2006 and created several funds to accomplish climate-change-related goals. SB 775 was held in the Senate Environmental Quality Committee.

AB 1516 (Cunningham, Ch. 561, Stats. 2017) required the ARB to adopt regulations requiring the monitoring and reporting of GHG emissions within the state, including accounting for GHG emissions from all electricity sources within the state.

AB 617 (Cristina Garcia, Ch. 136, Stats. 2017) required ARB to establish a uniform, statewide system for stationary sources to report their emissions of pollutants and toxic air contaminants; created an expedited schedule for certain facilities covered under the state's cap-and-trade program to implement best achievable retrofit control technology for criteria pollutants and toxic air contaminants; required ARB to establish a clearinghouse of information on best achievable control technology and best achievable retrofit control technology; increased civil and criminal penalties for certain types of emissions; and created community emissions reduction programs for communities with a heavy exposure to criteria pollutants and toxic air contaminants.

AB 398 (Eduardo Garcia, Ch. 135, Stats. 2017) set legislatively mandated requirements for the State's emissions cap-and-trade program adopted by the ARB under the California Global Warming Solutions Act of 2006 and extended certain tax relief to businesses to help offset the costs of complying with reduced emissions requirements.

SB 32 (Pavley, Ch. 249, Stats. 2016) amended the California Global Warming Solutions Act of 2006 to add an additional GHG reduction goal, requiring the State to reduce its GHG emissions to at least 40 percent below the State's 1990 emissions level by December 31, 2030.

AB 197 (Eduardo Garcia, Ch. 250, Stats. 2016), amended the California Global Warming Solutions Act of 2006 to require the ARB to publish the GHG emissions and other pollutant information from facilities that report to it, and to require the ARB, when adopting GHG reductions, to follow certain requirements and consider particular social costs.

AB 32 (Nunez, Ch. 488, Stats. 2006), the California Global Warming Solutions Act of 2006, required the ARB to adopt regulations to require the reporting and verification of statewide GHG emissions and to monitor and enforce compliance with this program, and to adopt a statewide GHG emissions limit to reduce the State's GHG emissions to its 1990 levels by 2020.

PRIOR VOTES:

Senate Environmental Quality Committee (Ayes 4, Noes 2)
