SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

SB 253 (Wiener) - Climate Corporate Data Accountability Act

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Policy Vote: E.Q. 4 - 2, JUD. 8 - 1
Mandate: No
Consultant: Ashley Ames

Bill Summary: This bill would require any partnership, corporation, limited liability company, or other U.S. business entity with total annual revenues in excess of one billion dollars and that does business in California to publicly report their annual greenhouse gas (GHG) emissions, as specified by the California Air Resources Board (ARB).

Fiscal Impact:

- ARB estimates costs of approximately $3.1 million in fiscal year (FY) 2023-24, $6.4 million in FY 2024-25, and $6.0 million in FY 2025-26 and ongoing (General Fund) in staffing and contracting costs, to implement the bill.
- Unknown ongoing costs, likely in the upper hundreds of thousands of dollars annually (General Fund), for the Department of Justice (DOJ) to enforce violations of this bill under the Attorney General’s independent authority.
- To the extent the Attorney General successfully brings civil action against reporting entities in violation of the provisions of this bill, potential increases in state revenues of an unknown amount due to the collection of civil penalties.

Background:

Scope 1, 2, and 3 emissions. 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. Recent research from CDP (formerly the Carbon Disclosure Project) found that among full-scope (i.e. 1, 2, and 3) reports, scope 3 supply chain emissions are on average 11.4 times higher than combined scope 1 and 2 emissions.

Scope 3 emissions are divided into fifteen categories: Purchased goods and services; capital goods; fuel-and energy-related activities; upstream transportation and distribution; waste generated in operations; business travel; employee commuting;

upstream leased assets; downstream transportation and distribution; processing of sold products; end-of-life treatment of sold products; downstream leased assets; franchises; and investments.

While the range of categories is daunting, the U.S. Environmental Protection Agency (EPA) provides an extensive list of accepted emission factor (EF) values for common items. For instance, a business would not need to measure and calculate the GHG emissions associated with each and every vehicle its employees used to calculate "employee commuting", they could instead determine the total vehicle-miles traveled by their employees via different modes, then multiply those miles by the provided EF to get an acceptable estimation of the CO2 associated with that travel.

Emissions from businesses. It should come as no surprise that, when considering scope 1, 2, and 3 emissions, businesses are responsible for a large share of GHG emissions. One frequently cited statistic from CDP states that 71% of all GHG emissions worldwide since 1988 are the result of a mere 100 companies. Those 100 companies are all fossil fuel producers, and given that scope 3 emissions include subsequent use of sold products, it follows that they would have tremendous scope 3 emissions. The scope 3 emissions for one organization are often the scope 1 and scope 2 emissions of another. For example, the emissions created by burning natural gas in a power plant would be accounted for as scope 1 emissions for the power plant, as scope 3 emissions for the company responsible for initially extracting the natural gas from the earth, and as scope 2 emissions for any business who purchased the electricity made by that power plant.

Transparency guides action. In recent years, many companies have made or increased their commitments to climate action. Between December 2019 and September 2020, the number of corporations with net-zero emission goals tripled. The Climate Pledge, which calls for companies to commit to net zero carbon emissions by 2040, boasts 400 signatories as of March 2023. This is up from 53 signatories when SB 260 (Wiener, 2021) was previously heard in this committee.

Emission-reducing actions like shifting to cleaner power or greening supply chains—whether they are initiated by activists, board members, or investors—depends on transparency. Without an accurate accounting of a business's real emissions, it is nigh impossible to target meaningful climate action. Scope 1, scope 2, and scope 3 emissions are all required for this transparency. Even existing voluntary reporting frameworks like CDP are neither necessarily public nor independently audited. Reducing scope 1 and 2 emissions by outsourcing polluting processes does not lead to a real, global reduction of GHG emissions and underscores the need for scope 3 reporting to capture the climate impacts of a business's full supply chain.

Federal considerations. The "scope" framework is not currently employed in federal law; federal GHG emissions reporting requirements are limited to certain large GHG emissions sources, fuel and industrial gas suppliers, and carbon dioxide injection sites in the United States. The United States Securities and Exchange Commission (SEC), however, is considering a proposed rule that would require all publicly traded companies in the U.S. to disclose, as part of their initial offering materials and annually thereafter, information about their scope 1 and 2 emissions, and their scope 3 emissions if they are material or if the company has made a commitment that included reference to scope 3 emissions. The SEC propounded the proposed rule after concluding that the existing framework for emissions disclosures—much of it voluntary "has failed to produce the consistent, comparable, and reliable information that investors need. Instead, the proliferation of third-party reporting frameworks has contributed to reporting fragmentation, which can hinder investors' ability to understand and compare registrants' climate-related disclosures."

International considerations. Scope-based reporting requirements are being adopted internationally as well. At the beginning of 2023, the European Union finalized and implemented the Corporate Sustainability Reporting Directive (CSRD), which requires certain EU-based and non-EU companies to file sustainability disclosures that include, among other things, the company's scope 1 and 2 emissions and their scope 3 emissions if they are "material." The CSRD's reporting requirement applies to EU-based companies, non-EU companies with a net annual turnover of €150 million or more, and companies with securities listed on a qualified EU market. The United Kingdom has adopted a similar climate disclosure requirement for UK-incorporated companies with 500 or more employees and is (1) traded on a UK-regulated market, (2) a banking company, (3) an authorized insurance company, or (4) has a turnover of more than £500 million. Specifically, companies must disclose scope 1 and scope 2 emissions, and disclose scope 3 emissions if they are "material" or if the company has set an emissions target or other climate-related goal.

According to the sponsors of the bill, the EU's CSRD will cover approximately 50,000 companies, and the SEC rules, if adopted, would cover between 5,000 and 7,000 publicly traded companies.

Proposed Law: This bill would require any partnership, corporation, limited liability company, or other U.S. business entity with total annual revenues in excess of one billion dollars and that does business in California to publicly report their annual GHG emissions, as specified by ARB. Specifically, this bill would enact the Climate Corporate Data Accountability Act, and would:

1. Make findings and declarations regarding, among other things, the impacts of climate change, the strength of California's economy, and the importance of accurate emissions data in informing investors, consumers, and companies.
2. Define the following terms:
    a. "Emissions registry" to mean a nonprofit emissions registry organization, as specified, contracted by ARB;
    b. "Reporting entity" to mean a partnership, corporation, limited liability company, or other U.S. business entity with total annual revenues in excess of one billion dollars and that does business in California;
    c. "Scope 1 emissions" to mean 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;
    d. "Scope 2 emissions" to mean indirect GHG emissions from electricity purchased and used by a reporting entity, regardless of location; and

   e. "Scope 3 emissions" to mean 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, but are not limited to, emissions associated with the reporting entity's supply chain, business travel, employee commutes, procurement, waste, and water usage, regardless of location.

3. Require ARB to, on or before January 1, 2025, develop and adopt regulations to require a reporting entity to annually disclose to the emissions registry, and verify, all of the reporting entity's scope 1 emissions, scope 2 emissions, and scope 3 emissions. And further require ARB to ensure:
   a. That a reporting entity, starting in 2026 or a date determined by ARB, publicly disclose their scope 1, 2, and 3 emissions annually, as specified;
   b. That specified scope 3 guidance documents are incorporated, including guidance for scope 3 emissions calculations that detail acceptable use of both primary and secondary data sources, including the use of industry average data, proxy data, and other generic data in its scope 3 emissions calculations;
   c. The collected data is appropriately understandable, complete, and minimizes redundant reporting, as specified; and
   d. That specified stakeholders are engaged in the rulemaking proces
4. Require ARB to, on or before January 1, 2027, contract with the University of California, the California State University, a national laboratory, or another equivalent academic institution to prepare a report on the public disclosures the emissions registry has received, as specified.
5. Require the emissions registry to create a digital platform to house the public disclosures it receives, as specified.
6. Permit the Attorney General to, upon finding that a reporting entity has violated or is violating this section, or upon a complaint received by ARB, bring a civil action against that entity, seeking civil penalties.
7. Become implemented contingent upon an appropriation from the Legislature.

Related Legislation:

SB 390 (Limón, 2023) would make it unlawful for a person to certify or issue a voluntary carbon offset, to maintain on a registry a voluntary carbon offset, or to market, make available or offer for sale, or sell a voluntary carbon offset if the person knows or should know that the greenhouse gas reductions or greenhouse gas removal enhancements of the offset project related to the voluntary carbon offset are unlikely to be quantifiable, real, additional, and permanent.

SB 261 (Stern, 2023) would require businesses with total annual revenues over $500,000,000 and doing business in California to report the institution's climate-related financial risk and the measures it has taken to reduce and adapt to those risks.

SB 252 (Gonzalez, 2023) would prohibit the boards of the Public Employees' Retirement System and the State Teachers' Retirement System from making new investments or renewing existing investments of public employee retirement funds in a fossil fuel company, as defined, and would require the boards to liquidate investments in a fossil fuel company on or before July 1, 2030.

SB 449 (Stern, 2021) would have required 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 established 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 sector-wide climate-related financial risk. SB 449 was held on the Suspense File in this committee.

SB 260 (Wiener, 2021) would have required the ARB to develop regulations to require a reporting entity—defined as a business entity with total annual revenues over one billion dollars that does business in California—to report to an emissions registry, as defined, their Scope 1, Scope 2, and Scope 3 emissions, as defined. The bill also would have required the ARB to prepare a report by January 1, 2026, on those disclosures, and it requires the emissions registry to establish a public data platform to view the disclosures. SB 260 died on the Assembly Floor.

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 the 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.

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