SENATE THIRD READING
SB 253 (Wiener, et al.)
As Amended September 7, 2023
Majority vote

SUMMARY

Requires any partnership, corporation, limited liability company, or other United States (U.S.) business entity with total annual revenues in excess of $1 billion and that does business in California to publicly report their annual greenhouse gas (GHG) emissions, as specified by the California Air Resources Board (ARB).

Major Provisions

1) Establishes the Climate Corporate Data Accountability Act.

2) Requires, on or before January 1, 2025, ARB to develop and adopt regulations to require a reporting entity to annually disclose to the emissions reporting organization and verify all of the reporting entity's Scope 1 emissions, Scope 2 emissions, and Scope 3 emissions. Requires ARB to ensure that the regulations establish specified requirements, including conformance with the Greenhouse Gas Protocol standards and guidance, and obtainment of an assurance engagement performed by an independent third-party assurance provider.

3) Requires ARB, during 2026, to review and evaluate trends in third-party assurance requirements for Scope 3 emissions. Authorizes, on or before January 1, 2027, ARB to establish an assurance requirement for third-party assurance engagements of Scope 3 emissions. Requires the assurance engagement for scope 3 emissions to be performed at a limited assurance level beginning in 2030.

4) Requires a third-party assurance provider to have significant experience in measuring, analyzing, reporting, or attesting to the emission of GHGs and sufficient competence and capabilities necessary to perform engagements in accordance with professional standards and applicable legal and regulatory requirements.

5) Requires a reporting entity, upon filing its disclosure, to pay an annual fee that may not exceed the reasonable regulatory costs of ARB for the administration and implementation of this bill. Deposits the proceeds of the fees in the Climate Accountability and Emissions Disclosure Fund.

6) Requires ARB to contract with an emissions reporting organization to develop a reporting program to receive and make publicly available disclosures.

7) Authorizes ARB to adopt or update any other regulations that it deems necessary and appropriate. Requires ARB, in developing the regulations, to consult with specified entities.

8) Provides the bill does not require additional reporting of emissions of greenhouse gases beyond the reporting of scope 1 emissions, scope 2 emissions, and scope 3 emissions required pursuant to the GHG Protocol standards and guidance or an alternative standard, if one is adopted after 2033.

9) Requires, on or before July 1, 2027, ARB to 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 made by reporting entities to the emissions reporting organization and the regulations adopted by ARB

10) Requires ARB to submit the report to the emissions reporting organization to be made publicly available on the digital platform required to be created by the emissions reporting organization.

11) Provides that a reporting entity shall not be subject to an administrative penalty for any misstatements with regard to Scope 3 emissions disclosures made with a reasonable basis and disclosed in good faith.

COMMENTS

On a global scale, the "Scope" framework was introduced in 2001 by the 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 all direct GHGs that stem from sources that a reporting entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities.

Scope 2 covers indirect GHGs from consumed electricity, steam, heating, or cooling purchased or acquired by a reporting entity, regardless of location.

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.

Scope 1 and 2 emissions alone have shortcomings as their sums can be manipulated. These deficiencies can be addressed through the inclusion of Scope 3 emissions.

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

This bill would require companies to use the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard and the Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard to detail its Scope 3 emissions calculations. The emissions disclosures would need to be independently verified by an assurance provider, and businesses would pay an annual fee to cover state administrative costs.

According to Ceres, one of the sponsors of the bill, of the 5,300 U.S. corporations that would have to report their emissions, about 73% are private companies. Many publicly traded companies already report climate risks in their financial disclosure reports.

There are challenges in acquiring comprehensive and consistent Scope 3 emissions data. Businesses will have to report not only the GHGs emitted globally from their operations and energy use, but also from indirect sources, such as emissions from their supply chains, contractors and use of their products. These Scope 3 emissions have raised the concerns of business groups. A 2021 article in the Harvard Business Review said such protocols could lead to the same emissions being reported multiple times by different companies, a critique that the California Chamber of Commerce (CalChamber) echoes.

The author contends that double counting in the context of climate emissions accounting is a consideration when there is a need for one comprehensive global or national system level accounting to track aggregate progress and/or implement carbon markets, and there are multiple different entities with GHG emissions chains that are interconnected. In that context, the author believes it is important to have a clear understanding of the actual total emissions contributed by those entire systems.

According to the Author
California has been at the forefront of climate policy in recent decades, establishing a successful cap and trade program, committing to preserve 30% 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 GHGs that are destroying our planet.

California, like the rest of the world, is already deeply impacted by climate change … 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 253 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.

Arguments in Support
Dignity Health, IKEA, Patagonia, Sierra Nevada Brewing Co., and Seventh Generation write, "California is on track to be the fourth-largest economy in the world and this bill would set a global standard for emissions disclosure. SB 253 would level the playing field by ensuring that all major public and private companies disclose their full emissions inventory, creating a pathway for collective reduction strategies."

Arguments in Opposition
CalChamber worries the emissions estimates could be inaccurate, resulting in misguided public policy, while putting an onerous burden on companies, and expresses concerns the reports would

include vulnerabilities to shareholder value, consumer demand, supply chains, employee safety, loans and other economic threats that may be amplified by changing climate and more extreme weather events.

FISCAL COMMENTS

According to the Senate Appropriations Committee, this bill will result in:

1) Estimated costs for ARB of approximately $3 million in fiscal year (FY) 2023-24, $7.7 million in FY 2024-25, and $6.9 million in FY 2025-26 and ongoing (Climate Accountability and Emissions Disclosure Fund) in staffing and contracting costs.

2) Additional costs of approximately $600,000 for ARB in contract funds starting in 2032 and every five years thereafter to conduct the evaluation of alternative GHG protocols, and if needed, adopt new regulations and modify third-party assurance provider training to conform to the new protocol. This bill requires each reporting entity subject to the bill's requirements to pay ARB an annual fee and requires ARB to set the fee at an amount sufficient to cover its full costs of administering and implementing this bill, including reimbursing any loans made from other funds to finance ARB's startup costs.

3) Unknown, but potentially significant costs (Legal Services Revolving Fund) to the Department of Justice (DOJ). The Natural Resources Law Section within DOJ's Public Rights Division anticipates the potential for increased litigation referrals from its client, ARB, for legal challenges arising from this bill. DOJ notes the increased costs associated with this potential litigation are unquantifiable but potentially significant; however, DOJ will bill ARB for these costs, which ARB will reimburse fully.

4) To the extent ARB successfully seeks and recovers administrative penalties from a covered entity in violation of this bill, this bill could result in a potential increase in General Fund revenue of an unknown amount. This bill provides that administrative penalties imposed on a reporting entity shall not exceed $500,000 in a reporting year and that in imposing penalties, ARB shall consider relevant circumstances, such as the violator's past and present compliance with this bill and whether the violator took good faith measures to comply with this bill and when those measures were taken.

VOTES

SENATE FLOOR: 24-9-7
YES: Allen, Archuleta, Atkins, Becker, Blakespear, Bradford, Cortese, Durazo, Eggman, Gonzalez, Hurtado, Laird, Limón, McGuire, Menjivar, Min, Padilla, Portantino, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener
NO: Alvarado-Gil, Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk
ABS, ABST OR NV: Ashby, Caballero, Dodd, Glazer, Newman, Roth, Rubio

ASM NATURAL RESOURCES: 8-3-0
YES: Luz Rivas, Addis, Friedman, Muratsuchi, Pellerin, Ward, Wood, Zbur
NO: Flora, Hoover, Mathis

ASM APPROPRIATIONS: 11-4-1
YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Wilson
NO: Megan Dahle, Dixon, Mathis, Sanchez
ABS, ABST OR NV: Soria

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CONSULTANT: Paige Brokaw / NAT. RES. / (916) 319-2092 FN: 0002055