Office of Senate Floor Analyses
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UNFINISHED BUSINESS

Bill No: SB 253
Author: Wiener (D), Gonzalez (D) and Stern (D), et al.
Amended: 9/7/23
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 4-2, 3/15/23
AYES: Allen, Gonzalez, Menjivar, Skinner
NOES: Dahle, Nguyen
NO VOTE RECORDED: Hurtado

SENATE JUDICIARY COMMITTEE: 8-1, 4/18/23
AYES: Umberg, Allen, Ashby, Durazo, Laird, McGuire, Min, Wiener
NOES: Niello
NO VOTE RECORDED: Wilk, Caballero

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/18/23
AYES: Portantino, Ashby, Bradford, Wahab, Wiener
NOES: Jones, Seyarto

SENATE FLOOR: 24-9, 5/30/23
AYES: 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
NOES: Alvarado-Gil, Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk
NO VOTE RECORDED: Ashby, Caballero, Dodd, Glazer, Newman, Roth, Rubio

ASSEMBLY FLOOR: 49-20, 9/11/23 - See last page for vote

SUBJECT: Climate Corporate Data Accountability Act

SOURCE: California Environmental Voters
Carbon Accountable
Ceres
Greenlining Institute

Sunrise Bay Area

DIGEST: This bill requires any partnership, corporation, limited liability company, or other 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 (CARB).

Assembly Amendments, among other things, narrow the definition of scope 3 emissions, delay the requirement for scope 3 emissions to be reported by one year, provide for CARB to adopt different accounting and reporting standards if appropriate, permit certain data to be provided to comply with the reporting requirements, stipulate the role of an assurance provider, add a filing fee and reduce the extent of violations which would incur a specified penalty.

ANALYSIS:

Existing law:

1) Requires, under AB 32, the monitoring and annual reporting of GHG emissions from specified sources that contribute the most to statewide emissions. (Health and Safety Code (HSC) § 38530)

2) Requires the CARB to make available, and update annually, the emissions of GHGs, criteria pollutants, and toxic air contaminants from each facility that reports to the statute pursuant to AB 32. (HSC § 38531)

3) 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 specified amounts: as of 2020 being $610,395, $61,040, and $61,040, respectively. (Revenue and Tax Code (RTC) § 23101)

This bill, the Climate Corporate Data Accountability Act:

1) Requires, on or before January 1, 2025, CARB 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 CARB to ensure that the regulations establish specified requirements, including conformance with the GHG Protocol standards and guidance, and obtainment of an assurance engagement performed by an independent third-party assurance provider.

2) Requires CARB, during 2026, to review and evaluate trends in third-party assurance requirements for scope 3 emissions. Authorizes, on or before January 1, 2027, CARB 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.

3) 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.

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

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

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

7) Provides this 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.

8) Requires, on or before July 1, 2027, CARB 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 CARB.

9) Requires CARB 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.

10) 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.

Background

1) *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 GHG 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.

2) *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.

3) *Transparency guides action*. Emission-reducing actions like shifting to cleaner power or greening supply chains—whether they are initiated by activists, board members, or investors—depend 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.

Comments

1) *Purpose of Bill.* According to the author, "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 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."

2) *Corporate Climate Accountability redux*. Two years ago, the Senate heard and passed SB 260 (Wiener, 2021), which had a nearly identical aim. That bill made it through the policy and fiscal committees of both houses (albeit after a six-month hold in the Senate Appropriations Committee), before ultimately falling several votes short of passage on the Assembly Floor on the last night of session. SB 253 is a reintroduction of that bill, and the introduced language mirrored what was heard on the Assembly floor. However, that does still represent some significant changes.

   Compared to last session's effort, SB 253 eases the burden on reporting entities by permitting other specified data to be used in scope 3 emission reporting, and aids CARB in enforcing the provisions by requiring the billion-dollar companies reporting under the bill to also provide a filing fee to offset expenses.

3) *Scope 3 is still big*. Despite the changes described above, the fact remains that mandating scope 3 emissions reporting will make life harder for the affected billion-dollar companies. The ability to use certain generic data (such as the EF tables provided by the EPA described above in the background section) significantly simplifies the endeavor, but it is still not trivial.

   Some companies (both below and above the SB 253 threshold) already do voluntarily report full-scope emissions today, but it is a minority of the estimated 5,344 companies that would be required to report under this bill. There is value in applying the same requirements across all those companies though; it will result in a less-fragmented view of corporate emissions and enable more meaningful comparisons between companies.

   Ultimately, the Senate should consider the trade-offs involved in this bill. Greater transparency of full-scope emissions from billion-dollar companies will allow the public, stakeholders, and investors to understand and act upon a company's GHG emissions and trends. However, requiring full-scope emission reporting will incur additional costs for the reporting entities.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

1) Estimated costs for CARB 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 CARB 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 this bill's requirements to pay CARB an annual fee and requires CARB 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 CARB'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, CARB, 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 CARB for these costs, which CARB will reimburse fully.

4) To the extent CARB 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, CARB 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.

SUPPORT: (Verified 9/11/23)

California Environmental Voters (co-source)
Carbon Accountable (co-source)
Ceres (co-source)
Greenlining Institute (co-source)
Sunrise Bay Area (co-source)
1000 Grandmothers for Future Generations
350 Bay Area Action
350 Conejo / San Fernando Valley
350 Marin
350 Sacramento
Active San Gabriel Valley
Alameda County Democratic Party
Asian Pacific Environmental Network

Avocado Green Brands
Bay Area Youth Lobbying Initiative
Breathe California
California Faculty Association
California Interfaith Power & Light
California Nurses for Environmental Health and Justice
California Reinvestment Coalition
Californians Against Waste
Californians for Energy Choice
CALPIRG
Center for Biological Diversity
Center for Climate Change & Health
Citizens' Climate Lobby Santa Cruz
Cleanearth4kids.org
Climate Action California
Climate Action Campaign
Climate Equity Policy Center
Climate Hawks Vote
Climate Reality Project, San Fernando Valley
ClimatePlan
Dignity Health
Earthjustice
Elders Climate Action, NorCal and SoCal Chapters
Environmental Defense Fund
Environmental Working Group
Everlane
Fossil Free California
Friends Committee on Legislation of California
Friends of the Earth
Green New Deal at UC San Diego
Greenbelt Alliance
Grove Collaborative
Human Impact Partners
Ikea
Mono Lake Committee
Natural Resources Defense Council
Northern California Recycling Association
Patagonia Inc.
Persefoni Ai, Inc.
Pesticide Action Network

Planning and Conservation League
Sacramento Area Congregations Together
San Diego 350
San Francisco Baykeeper
SEIU California
Sierra Club
Sierra Nevada Brewing Company
Sunflower Alliance
Sunrise Movement Bay Area
Sunrise Movement San Diego
The Climate Center
Transformative Wealth Management LLC
University Professional and Technical Employees
Voices for Progress
Watershed Climate

OPPOSITION: (Verified 9/11/23)

ACLI
Advanced Medical Technology Association
African American Farmers of California
Agricultural Council of California
Agricultural Energy Consumer Association
American Beverage Association
American Chemistry Council
American Composites Manufacturers Association
American Pistachio Growers
American Property Casualty Insurance Association
Antelope Valley Chambers of Commerce
Association of General Contractors of America
B. Braun Medical Inc.
Building Owners and Managers Association
Cal Asian Chamber of Commerce
California Apartment Association
California Apple Commission
California Bankers Association
California Blueberry Association
California Blueberry Commission
California Building Industry Association
California Business Properties Association
California Cattlemen's Association

California Cement Manufacturers Environmental Coalition
California Chamber of Commerce
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association
California Date Commission
California Fresh Fruit Association
California Fuels and Convenience Alliance
California Hispanic Chamber of Commerce
California Hospital Association
California Independent Petroleum Association
California Life Sciences
California Manufacturers & Technology Association
California Poultry Federation
California Railroads
California Restaurant Association
California Retailers Association
California Taxpayers Association
California Trucking Association
California Walnut Commission
Carlsbad Chamber of Commerce
Chemical Industry Council of California
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
City of Huntington Beach
Coalition for Renewable Natural Gas
Costa Mesa Chamber of Commerce
Danville Area Chamber of Commerce
Far West Equipment Dealers Association
Financial Services Institute
Greater High Desert Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles County Business Federation
NAIOP of California
National Association of Mutual Insurance Companies
Nisei Farmers League
North San Diego Business Chamber
Oceanside Chamber of Commerce
Olive Growers Council of California

Orange County Business Council
Pacific Merchant Shipping Association
Palos Verdes Peninsula Chamber of Commerce
PCI West - Chapter of the Precast/Prestressed Concrete Institute
Personal Insurance Federation of California
Plumbing Manufacturers International
Rancho Cordova Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santee Chamber of Commerce
Securities Industry and Financial Markets Association
Specialty Equipment Market Association
Technet
Tenaska
Torrance Area Chamber of Commerce
Truck and Engine Manufacturers Association
Walnut Creek Chamber of Commerce
West Ventura County Business Alliance
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Western States Petroleum Association
Wine Institute

ARGUMENTS IN SUPPORT: According to a coalition of groups in support, "By requiring reporting of both direct emissions from these corporations, and any emissions produced from their supply chains and other indirect emissions SB 253 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 emitting, and if they are decreasing - or increasing - their climate emissions, offering a transparent and public way of verifying corporate claims of climate leadership."

ARGUMENTS IN OPPOSITION: According to a coalition of groups in opposition, "Requiring reporting and limiting emissions associated with a company's entire supply chain will necessarily require that large businesses stop doing business with small and medium businesses that will struggle to accurately measure their greenhouse gas emissions let alone meet ambitious carbon emission requirements, leaving these companies without the contracts that enable them to grow and employ more workers. Further, the inability to meet the emission objectives may fall outside of the sphere of influence of small and medium businesses as the technology to transition to carbon neutrality may not yet even exist for their line of business. Yet, they will be subject to increasing costs and the potential loss of market opportunity. 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."

ASSEMBLY FLOOR: 49-20, 9/11/23
AYES: Addis, Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Haney, Hart, Holden, Irwin, Jackson, Jones-Sawyer, Kalra, Lee, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Rendon, Reyes, Luz Rivas, Santiago, Schiavo, Ting, Ward, Wicks, Wilson, Wood, Zbur, Robert Rivas
NOES: Alanis, Bains, Chen, Megan Dahle, Davies, Dixon, Essayli, Flora, Vince Fong, Gallagher, Hoover, Lackey, Mathis, Jim Patterson, Joe Patterson, Ramos, Sanchez, Ta, Waldron, Wallis
NO VOTE RECORDED: Cervantes, Gipson, Grayson, Low, Stephanie Nguyen, Rodriguez, Blanca Rubio, Soria, Valencia, Villapudua, Weber

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