SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 253 (Wiener)
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Urgency: No
AWM

SUBJECT

Climate Corporate Data Accountability Act

DIGEST

This bill requires 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 (CARB).

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 significant insight into what steps, if any, large companies are taking to reduce GHG emissions, which is imperative to avoid the worst effects of climate change.

This bill requires the CARB to adopt regulations to partner with a nonprofit emissions registry and to require U.S.-based companies with annual revenues over $1 billion and that do business in California to annually report 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—to that registry. CARB must adopt the regulations for the reports by January 1, 2025, and the covered entities would be required to make their disclosures beginning in 2026 or a date to be determined by the CARB. The bill also requires the CARB, by January 1, 2027, to contract with an academic institution to prepare a publicly available report on the disclosures made by the reporting entities.

This bill is substantially similar to SB 260 (Wiener, 2021), which this Committee passed in an early version that required companies to report their emissions directly to the CARB. Following its passage in this Committee, the author continued to work with stakeholders and amended the bill to, among other things, require CARB to work with a third-party entity to create an emissions registry. SB 260 died on the Assembly Floor.

This bill picks up where SB 260 left off, with additional changes made in response to stakeholder concerns.

This bill is sponsored by Carbon Accountable, CA Enviro Voters, Ceres, Sunrise Bay Area, and The Greenlining Institute, and is supported by over 60 environmental organizations, labor groups, businesses, and community groups. This bill is opposed by over 60 organizations including Chambers of Commerce, agricultural and manufacturing groups, and businesses. This bill was passed out of the Senate Environmental Quality Committee with a vote of 4-2.

PROPOSED CHANGES TO THE LAW

Existing state law:

1) Establishes the CARB as the air pollution control agency in California and requires the CARB, 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, the CARB 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 the CARB to ensure that statewide GHG emissions are reduced to at least 40 percent below the 1990 level by December 31, 2030, and allows the CARB, 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.)

5) Requires the CARB 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.)

6) 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. (Health & Saf. Code, § 38531.)

7) Requires the CARB to monitor compliance with and enforce the requirements of the California Global Warming Solutions Act of 2006, and deems any violation to result in an emission of an air contaminant that may result in criminal and civil penalties. (Health & Saf. Code, § 38580.)

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. (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 Data Accountability Act (the Act) within the California Global Warming Solutions Act of 2006.

2) Makes 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.

3) Defines relevant terms, including:
    a) "Emissions registry" is a nonprofit emissions registry organization, contracted by the CARB pursuant to 7), that (1) currently operates a voluntary greenhouse gas emission registry for organizations operating in the United States and (2) has experience with voluntary greenhouse gas emissions disclosure by entities operating in California.

   b) "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.
   c) "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.
   d) "Scope 2 emissions" is indirect GHG emissions from electricity purchased and used by a reporting entity, regardless of location.
   e) "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) Requires the CARB, on or before January 1, 2025, to develop and adopt regulations to require a reporting entity to annually disclose to the emissions registry, and verify, all of the entity's scope 1, 2, and 3 emissions.

5) Requires the CARB to ensure that the regulations adopted pursuant to 4) require, at a minimum, all of the following:
   a) That a reporting entity, starting in 2026 or a date to be determined by the CARB, and annually thereafter, publicly disclose to the emissions registry all of its scope 1 and scope 2 emissions for the prior calendar year, and its scope 3 emissions for that same calendar year no later than 180 days after that date, using the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard and the Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard developed by the World Resources Institute and the World Business Council for Sustainable Development, 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.
   b) That CARB, on or before January 1, 2030, shall review and update as necessary the public disclosure guidelines developed in 5)(a) to evaluate trends in scope 3 emissions reporting and consider changes to the disclosure deadlines to ensure that scope 3 emissions data are disclosed to the emissions registry as close in time as practicable to the deadline for disclosing scope 1 and 2 emissions data.
   c) The reporting timelines shall consider industry stakeholder input and shall take into account the timelines by which reporting entities typically receive scope 1, 2, and 3 emissions data, as well as the capacity for independent

verification to be performed by a third-party auditor, as approved by the CARB.

d) That a reporting entity's public disclosure is made in a manner that is easily understandable to residents, investors, and other stakeholders of the state.
e) That a reporting entity's public disclosure includes the name of the reporting entity and any fictitious names, trade names, assumed names, and logos used by the reporting entity.
f) That a reporting entity's public disclosure is structured in ways that streamline and maximize reporting entities' ability to use reports used in meeting requirements of other leading climate disclosure programs and standards. The CARB shall determine leading program standards based on industry stakeholder and disclosure expert input.
g) That a reporting entity's public disclosure is independently verified by the emissions registry or a third-party auditor approved by the CARB and with expertise in greenhouse gas emissions accounting. The reporting entity shall ensure that a copy of the complete, audited greenhouse gas emissions inventory, including the name of the approved third-party auditor, is provided to the emissions registry as part of or in connection with the reporting entity's public disclosure. The CARB shall establish auditor qualifications and a process for approval of auditors that ensures sufficient auditor capacity and timely reporting implementation for this purpose.

6) Requires the CARB, in developing the regulations in 5), to consult with all of the following:
   a) The Attorney General.
   b) Other government stakeholders, including, but not limited to, experts in climate science and corporate carbon emissions accounting.
   c) Investors.
   d) Stakeholders representing consumer and environmental justice interests.
   e) Reporting entities that have demonstrated leadership in full-scope greenhouse gas emissions accounting and public disclosure and greenhouse gas emissions reductions.

7) Requires the CARB to contract with an emissions registry to develop a reporting and registry program to receive and make publicly available disclosures required by this section pursuant to 4)(a).

8) Authorizes the CARB to adopt or develop any other regulations that it deems necessary and appropriate to implement the requirements of 4)-7).

9) Requires CARB, on or before July 1, 2027, 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 registry pursuant to 4) and the regulations adopted by the CARB.

a) In preparing the report, consideration shall be given to, at a minimum, greenhouse gas emissions from reporting entities in the context of state greenhouse gas emissions reduction and climate goals.
b) The entity preparing the report shall not require reporting entities to report any information beyond what is required pursuant to 5) or the regulations adopted by the CARB pursuant to 8).

10) Requires the CARB to submit the report required by 9) to the emissions registry to be made publicly available on the digital platform required to be created pursuant to 10). The emissions registry must submit the report to the Legislature within 30 days of receipt to the relevant policy committees of the Legislature.

11) Requires the emissions registry contracted with pursuant to 7), on or before a date determined by the CARB, to create a publicly accessible digital platform to house all disclosures submitted by reporting entities to the emissions registry and the report prepared pursuant to 10).
    a) The emissions registry shall make the reporting entities' disclosures and the state board's report available on the digital platform within 30 days of receipt.
    b) The digital platform shall be capable of featuring individual reporting entity disclosures and shall allow consumers view to reported data elements aggregated in a variety of ways, including multiyear data, in a manner that is easily understandable and accessible to residents of the state. All data sets and customized views shall be available in electronic format for access and use by the public.

12) Provides that the criminal and civil 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 bill.

13) Authorizes the Attorney General, if the Attorney General finds that a reporting entity has violated or is violating this section or receives a complaint of noncompliance from the CARB, to bring a civil action against that reporting entity in the name of the State of California seeking civil penalties for the violations of the bill's requirements.

14) Includes a severability clause.

15) Provides that the bill's implementation is contingent upon an appropriation by the Legislature in the annual Budget Act or another statute for its purposes.

COMMENTS

1. Author's comment

According to the author:

> SB 253, the Climate Corporate Data 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 emission sources by 2025. This emissions data will be published publicly and accessible via an online platform.
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> 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.
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> 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. Background: the threat of climate change and California's mitigation efforts

According to the National Oceanic and Atmospheric Administration (NOAA), global temperatures rose 1.8 degrees Fahrenheit between 1901 and 2020.[1] While that might not sound like much, global warming to date has caused dramatic global climate change, including increasingly rapid sea level rise, shrinking glaciers, and more erratic weather (such as floods and droughts).[2] The NOAA reports that "[g]reenhouse gases from human activities are the most significant driver of observed climate change since the mid-20th century."[3]

"California is one of the most 'climate-challenged' regions of North America."[4] Climate change will "have effects on all parts of California's society,"[5] with the effects disproportionately felt by "the State's most vulnerable citizens and communities."[6] While California has already taken steps to impose limits on GHG emissions and other causes of climate change—such as reducing GHG emissions to 1990 levels by 2020 (which the state accomplished early, in 2016);[7] implementing a cap-and-trade program;[8] and requiring the state to be carbon neutral by 2045[9]—research indicates that, without "[g]lobal warming of 1.5ºC and 2ºC will be exceeded during the 21st century unless deep reductions in CO_2 and other greenhouse gas emissions occur in the coming decades."[10]

3. The "scope" framework for GHG emissions and existing reporting requirements

The Senate Environmental Quality Committee's analysis of this bill, which is incorporated here by reference, explains the three-scope emissions framework employed in this bill as follows:

> The "scope" framework was introduced in 2001 by the World Resources Institute (WRI) and World Business Council for Sustainable Development as part of their

[1] NOAA, Climate change impacts (last updated Aug. 13, 2021), https://www.noaa.gov/education/resource-collections/climate/climate-change-impacts. All links in this analysis are current as of April 14, 2023.
[2] *Ibid.*
[3] NOAA, Climate Change Indicators: Greenhouse Gases (last updated Aug. 1, 2022), https://www.epa.gov/climate-indicators/greenhouse-gases.
[4] California's Fourth Climate Change Assessment (Fourth Assessment), Statewide Summary Report (Jan. 16, 2019), p. 13.
[5] *Ibid.*
[6] *Id.* at p. 16.
[7] 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.
[8] Cal. Code Regs., tit. 17, div. 3, ch. 1, subchapter 10, art. 5, §§ 95801 et seq.
[9] Governor's Exec. Order No. B-55-18 (Sept. 10, 2018).
[10] Intergovernmental Panel on Climate Change, Report, *Climate Change 2021: The Physical Science Basis: Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Palen on Climate Change* (2021), p. 14.

> 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.
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> 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.
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> 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.
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> 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.

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.[11] 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.[12] The SEC propounded the proposed rule after concluding that the existing

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[11] 40 C.F.R. pt.98, §§ 98.1-98.478.
[12] *See* SEC Proposed Rules, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed.Reg. 21334-01, 21345 (Apr. 11, 2022).

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."[13]

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."[14] 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.[15] 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.[16] 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.[17]

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.

4. <u>This bill requires the most profitable U.S.-based companies to disclose their enterprise-wide GHG emissions</u>

This bill implements an annual three-scope GHG emissions reporting requirement for companies with annual gross revenues in excess of $1 billion and that do business in California. Specifically, the bill requires the CARB to contract with an existing emissions registry for the receipt of the disclosure reports; beginning in 2026 or on a date later determined by the CARB, companies will be required to provide to the registry disclosures of their scope 1, 2, and 3 emissions, which must be either verified by the emissions registry or a third-party auditor with expertise in GHG emissions accounting. The CARB must consult with stakeholders including the Attorney General, investors,

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[13] *Id.* at p. 21342.
[14] *See* Directive (EU) 2022/2464 of Eur. Parliament and the Council of 14 Dec. 2022, amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (OJ L. 322 (12/16/2022), pp. 15-80).
[15] *Ibid.*
[16] The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 (Jan. 17. 2022).
[17] *Ibid.*

and representatives of consumer and environmental interest groups in developing regulations pursuant to this bill.

Company reports provided under this bill will be public. The bill also requires the emissions registry to create a public online portal that will allow the information provided to be viewed in a variety of ways, such as comparing companies' emissions year-to-year and presenting data by industry. Additionally, in 2027, the CARB must contract with an academic institution to develop a report on the disclosures that will consider the reported emissions in the context of the state's GHG reduction and climate goals. Collectively, these requirements will provide the public and policymakers with valuable information about companies' emissions and what further steps can be taken to decrease GHG emissions.

This bill is similar to SB 260 (Wiener, 2021), which this Committee heard and passed two years ago. SB 260 made it through the policy and fiscal committees in both houses but failed passage on the Assembly floor. For purposes of this Committee's jurisdiction, the relevant changes are: (1) unlike SB 260, this bill explicitly permits industry average, proxy, and other data to be used in scope 3 emissions calculations, and (2) the enforcement mechanism has changed from a penalty regime to be determined by the CARB to allowing the Attorney General to seek civil penalties for violations.

The environmental impact of this bill, including the debate over the value of disclosing scope 3 emissions, is discussed more thoroughly in the Senate Environmental Quality Committee's analysis of this bill. Relevant to this Committee's jurisdiction are the civil penalty provision and the potential constitutional issues raised by the bill. These are discussed below in Parts 5 and 6.

5. <u>This bill authorizes the Attorney General to seek civil penalties from an entity that fails to comply with the disclosure requirements; the author is continuing to work with stakeholders to craft a more specific penalty framework</u>

As currently in print, this bill provides that the Attorney General can seek a civil penalty in a civil action against an entity that violates the bill's disclosure requirements. The lack of specificity of the penalty poses concerns about whether a covered entity has adequate notice about the consequences of a violation and whether a court would have adequate guidance in how to assess a penalty. The author, however, is committed to continuing to work with stakeholders as the bill works its way through the legislative process to develop a more specific penalty framework that implements proportional penalties in light of the harm caused by the failure to report and the size of the companies covered by this bill.

6. The bill does not present clear dormant interstate commerce clause issues

Section 8 of Article I of the United States Constitution grants the United States Congress the power to regulate interstate commerce.[18] Since the early nineteenth century, the Supreme Court has held that obverse proposition—that states may not usurp Congress's express power to regulate interstate commerce—must also be true.[19] This rule against state interference in interstate commerce, sometimes known as 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.[20] But when a state passes a law that " 'regulat[es] even-handedly [across all in-state and out-of-state businesses] to effectuate a legitimate local public interest,' " that law " 'will be upheld unless the burden imposed upon such commerce is clearly excessive in relation to the putative local benefits.' "[21]

There is no facial dormant Commerce Clause issue here. 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 are subject to the bill's reporting requirement. That leaves only the questions of 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, serious efforts are needed to prevent catastrophic levels of global warming. California thus has a clear interest in ensuring its residents can make informed, environmentally sound consumer decisions about companies that do business in the state, particularly when so many companies make unverified climate "pledges" that may help sell products without making a meaningful difference. This bill's reporting requirement and resulting academic assessment of the reported emissions will inform California and its residents with about 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 reducing emissions on a year-to-year basis. For companies, the knowledge that their emissions will be publicly available might encourage them to take meaningful steps to reduce GHG emissions.

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—covered companies are required only to tabulate and report on what is already there, i.e., their enterprise-wide GHG emissions. Moreover, the bill limits its application to only the most profitable

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[18] U.S. Const., art. I, § 8, cl. 3.
[19] *See Gibbons v. Ogden* (1824) 22 U.S. 1.
[20] *E.g., Dean Milk Co. v. Madison* (1951) 340 U.S. 349, 354.
[21] *South Dakota v. Wayfair, Inc.* (2018) 138 S.Ct. 2080, 2091.

companies in the country and which do business in California, 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.[22] By comparison, California reaches out and requires out-of-state companies to pay state sales taxes when their revenues exceed $610,395 in California;[23] imposing a GHG reporting requirement only on companies with annual revenues in excess of $1 billion appears to be a proportional burden.[24]

This bill, unlike SB 260, also explicitly allows scope 3 emissions to be calculated using approved indirect methods, such as using industry average data, proxy data, and other generic data. As the Senate Environmental Quality Committee's analysis notes, this mode of calculation is still a nontrivial endeavor, but this bill's express allowance of indirect calculation methods significantly simplifies the reporting requirement as compared to SB 260.

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. As an initial matter, as discussed in Part 3, many of the companies covered by this bill are already required, or may soon be required, to report material scope 3 emissions, so it is unclear how many new burdens this bill will impose. It is also unclear to what extent smaller companies will need to be involved in reporting companies' calculations of scope 3 emissions, because the bill authorizes a reporting entity to use industry data and other generic data in its scope 3 calculations. The use of indirect scope 3 calculation methods should significantly reduce the bill's 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. 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.

6. <u>Arguments in support</u>

According to a coalition of over 50 organizations, including the bill's sponsors:

> Many communities in California are on the front lines of the climate crisis, facing the human impacts head-on…And while all of California is impacted, we know

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[22] 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. (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/).

[23] Rev. & Tax. Code, §§17041, 23101, 23151.

[24] California also already imposes extra-territorial reporting requirements, including requiring 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. (Civ. Code, § 1714.43.)

> that climate impacts fall disproportionately on low-income communities and on Black people, Indigenous people, 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 [GHG] into our atmosphere and the private sector continues to play an outsized role in contributing to the crisis. For example, we know that 100 active fossil fuel producers are linked to 71% of global industrial GHG emissions since 1988. But the full picture of corporate climate emissions remains fragmented, complete, 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 direct 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.
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> 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.

7. <u>Arguments in opposition</u>

According to a coalition of over 60 organizations writing 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…

At this juncture, Scope 3 emissions reporting is more of an art than it is a science. Due to the likelihood of double counting, assessing Scope 3 emissions data with any degree of accuracy is not yet possible. For example, the guidelines were updated last fall to focus on Scope 3 emissions associated with land use and biogenic carbon and thus will impact Scope 3 emissions data for any materials derived from bio-based sources such as food/agricultural materials, etc. These updated guidelines not only underscore that Scope 3 emissions data reporting is still in its infancy stage, but it also raises compliance issues in terms of what guidance reporting entities must follow in the event the guidance, or portions thereof, are in the process of being updated in the future. Further, the State of California itself via CalPERS has requested at the Securities and Exchange Commission's (SEC) ongoing rulemaking process relating to climate-related disclosures that the information disclosed should be "material" to a financial investment.

Finally, we are not aware of any statutory authority that would provide the [CARB] the authority to regulate foreign and out-of-state companies delivering goods to California. It seems likely that out-of-state or non-California companies would challenge such authority. Because of this uncertainty, the burden will fall on California-based companies, giving out-of-state and foreign companies a market advantage, driving production out-of-state and increasing the cost of goods for California residents…California should continue to implement and build upon existing programs and policies to regulate in-state emissions rather than seek to obtain emissions data throughout the international supply chain, especially seeing how it would have no authority to regulate emissions beyond the California border.

SUPPORT

California Environmental Voters (co-sponsor)
Carbon Accountable (co-sponsor
Ceres (co-sponsor)
Sunrise Movement Bay Area (co-sponsor)
The Greenlining Institute (co-sponsor)
350 Bay Area Action
350 Conejo/San Fernando Valley
350 Sacramento
350Marin.org
1000 Grandmothers for Future Generations
Active San Gabriel Valley
Alameda County Democratic Party

Arcadia
Asian Pacific Environmental Network
Avocado Green Brands
California Alliance for Retired Americans
California Interfaith Power & Light
California Nurses for Environmental Health and Justice
California Public Interest Research Group
California Reinvestment Coalition
Californians Against Waste
Californians for Energy Choice
Center for Biological Diversity
Center for Climate Change and Health
Citizens' Climate Lobby Santa Cruz
CleanEarth4Kids.org
Climate Action California
Climate Action Campaign
Climate Equity Policy Center
Climate Hawks Vote
ClimatePlan
Coalition for Clean Air
Dignity Health
Elders Climate Action
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
Hammond Climate Solutions Foundation
Human Impact Partners
IKEA USA
Los Angeles County Democratic Party
Mono Lake Committee
Move LA
Natural Resources Defense Council
Patagonia
Pesticide Action Network
Planning and Conservation League
Sacramento Area Congregations Together
San Diego 350
San Fernando Valley Climate Reality Project

San Francisco Baykeeper
SEIU California
Sierra Club California
Sierra Nevada Brewing Co.
Sunflower Alliance
Sunrise Movement San Diego
The Climate Center
Transformative Wealth Management, LLC
University Professional & Technical Employees
Voices for Progress
One individual

OPPOSITION

Advanced Medical Technology Association
African American Farmers of California
Agricultural Council of California
Agricultural Energy Consumers Association
American Beverage Association
American Chemistry Council
American Composites Manufacturers Association
American Pistachio Growers
American Property Casualty Insurance Corporation
Antelope Valley Chambers of Commerce
Association of California Life and Health Insurance Companies
Association of General Contractors
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 Food Producers
California Fresh Fruit Association

California Fuels and Convenience Alliance
California Hispanic Chamber of Commerce
California Independent Petroleum Assocation
California Life Sciences
California Manufacturers and Technology Association
California Poultry Federation
California Restaurant Association
California Retailers Association
California Trucking Association
California Walnut Commission
California Water Association
CalCIMA
CalTax
Carlsbad Chamber of Commerce
Chemical Industry Council of California
Chino Valley Chamber of Commerce
Citrus Heights Chamber
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 Cañada Flintridge Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
National Association of Industrial and Office Properties
National Association of Mutual Insurance Companies
Nisei Farmers League
North San Diego Business Chamber of Commerce
Oceanside Chamber of Commerce
Olive Growers Council of California
Orange County Business Council
Pacific Merchant Shipping Association
Palos Verdes Peninsula Chamber of Commerce
Personal Insurance Federation of California
Plumbing Manufacturers International
Rancho Cordova Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santee Chamber of Commerce
Securities Industry and Financial markets Association
Specialty Equipment Market Association
Tenaska
TechNet
Torrance Area Chamber of Commerce

Truck and Engine Manufacturers Association
Walnut Creek Chamber
West Precast Prestressed Concrete Institute
West Ventura County Business Alliance
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Western States Petroleum Association
Wine Institute

RELATED LEGISLATION

Pending Legislation:

SB 390 (Limón, 2023) makes 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 390 is pending before the Senate Environmental Quality Committee.

SB 261 (Stern, 2023) requires 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; and requires the Climate-Related Risk Disclosure Advisory Group to review the information submitted by the covered businesses and annually report to the public on the data received and proposals for regulatory actions or reforms needed to mitigate climate-related financial risks. SB 261 is pending before this Committee.

SB 252 (Gonzalez, 2023) prohibits 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 252 is pending before the Senate Labor, Public Employment, and Retirement Committee.

Prior Legislation:

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 died in the Senate Appropriations Committee.

SB 260 (Wiener, 2021) would have required the CARB 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 CARB 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 CARB 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 CARB 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 CARB 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 CARB 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.

PRIOR VOTES:

Senate Environmental Quality Committee (Ayes 4, Noes 2)

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