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California Climate Disclosure Legislation Clears Critical Hurdles

Jul 13, 2022

Reading Time : **2 min**

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If enacted, SB 260, the Climate Corporate Accountability Act, would require U.S.-based corporations, partnerships, limited liability companies or other business entities with total annual revenues exceeding one billion dollars that are doing business in California to disclose all of the reporting entity's scope 1 and scope 2 emissions for the prior calendar year, and its scope 3 emissions for the current calendar year.[1] Reporting would begin in 2025.

The bill would require independent third-party validation of a reporting entity's disclosure information by an entity approved by the California Air Resources Board (CARB) and would require the Secretary of State to post the disclosure data on a state website for public inspection.

Recently adopted amendments to the bill would authorize administrative and civil penalties for a reporting entity's failure to comply with the bill's reporting requirements, as follows:

1. a. An administrative penalty of $25,000 per day for the first 30 days, and $50,000 per day thereafter, for late or incomplete reports to be imposed by the Secretary of State.
2. b. A civil penalty of $1,000,000 per violation, to be assessed by the Attorney General in a civil action for a reporting entity that repeatedly or intentionally violates the reporting regulations adopted by the Secretary of State.

SB 260 is arguably stricter than the climate-related disclosure rules proposed by the United States Securities and Exchange Commission (SEC) in that the bill explicitly covers privately held companies while the SEC's proposed rules only target companies with publicly traded securities; the bill mandates reporting of scope 3 emissions while the SEC's proposed rules only require scope 3 emissions if “material” or included in a reporting company’s publicly announced goal; and because the bill imposes no phase in of reporting obligations, coupled with significant administrative penalties for non-compliance.[2]

SB 260 passed out of the Assembly Judiciary Committee on June 21 and the Committee on Natural Resources on June 13. Opponents argue that the bill constitutes a major departure from existing state GHG emission disclosure laws which focus on emissions generated by in-state sources. Moreover, they contend that because scope 3 emissions reporting methodology is nascent, it will be difficult if not impossible for CARB to accurately verify the scope 3 emissions reported by regulated parties as required by the bill.

The bill will be heard in the Assembly Appropriations Committee in early August, where it may face opposition from the state Department of Finance, which is concerned about ongoing costs of new mandates as California’s finances are expected to decline in the next two budget years

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[1] “Reporting entity” means a partnership, corporation, limited liability company or other business entity formed under the laws of this state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States with total annual revenues in excess of one billion dollars ($1,000,000,000) and that does business in California.

[2] Proposed changes to 17 CFR Sections 210, 229, 232, 239 & 249, Securities and Exchange Commission Release Nos. 33- 11042; 34-94478; File No. S7-10-22.

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