SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2021 - 2022 Regular

Bill No:	SB 260		
Author:	Wiener		
Version:	4/5/2021	**Hearing Date:**	4/12/21
Urgency:	No	**Fiscal:**	Yes
Consultant:	Eric Walters		

SUBJECT: Climate Corporate Accountability Act

DIGEST: Requires companies, as specified, with over $1 billion in annual revenues who do business in California to report their direct and indirect greenhouse gas (GHG) emissions from their operations and supply chain to the Air Resources Board (ARB). Further requires ARB to develop regulations directing the above companies to also set “science-based emissions targets,” as defined, and to reduce their GHG emissions in line with what is required to maintain global warming of less than 1.5 degrees Celsius above preindustrial levels.

ANALYSIS:

Existing federal law:

1) Gives Congress the authority to regulate commerce with foreign nations and between states, i.e. the commerce clause. (U.S. Const. art. I, § 8)

Existing state law:

2) Establishes the Air Resources Board (ARB) as the air pollution control agency in California and requires ARB, 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 Safety Code (HSC) §39500 et seq.)

3) Requires, under the California Global Warming Solutions Act of 2006 (also known as AB 32), ARB to determine the 1990 statewide greenhouse gas (GHG) emissions level and approve a statewide GHG emissions limit that is equivalent to that level to be achieved by 2020. (HSC §38500 et seq.)

4) Requires ARB to ensure that statewide GHG emissions are reduced to at least 40% below the 1990 level by December 31, 2030 (i.e., SB 32); and allows ARB, until December 31, 2030, to adopt regulations that utilize market-based compliance mechanisms (i.e., the cap-and-trade program) to reduce GHG

emissions. (HSC §§ 38566, 38562)

5) Requires, under AB 32, the monitoring and annual reporting of GHG emissions from GHG emission sources beginning with the sources or categories of sources that contribute the most to statewide emissions; and dictates that for the cap-and-trade program established pursuant to AB 32, 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. (HSC § 38530)

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

7) States that any violation of any rule, regulation, order, emission limitation, emissions reduction measure, or other measure adopted by the state board pursuant to HSC division 25.5 is subject to specified penalties. (HSC § 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 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 Accountability Act:

1) Makes findings and declarations regarding California's emission reductions, the state's economy, the role businesses and consumer consumption plays in greenhouse gas (GHG) emissions, the right of consumers to know businesses' climate impacts, and the need for the proposed legislation.

2) Defines relevant terms, including "reporting entity" to mean 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 State 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) that does business in California, and "science-based emissions target" to mean a GHG emission reduction target for scope 1, 2, and 3 emissions, as defined, that is in line with the scale of reductions required to keep global warming at or below 1.5 degrees Celsius below pre-industrial levels.

3) Requires ARB to, on or before January 1, 2023, adopt regulations requiring reporting entities to verify and annually report all scope 1, 2, and 3 emissions to ARB in an easily understandable and accessible manner, and for that report to be independently verified by a third-party auditor.

4) Requires ARB to, on or before January 1, 2024, adopt regulations requiring reporting entities to set a science-based emissions target based on the above report, and for that target to be independently verified by a third-party auditor.

5) Requires ARB to, in developing the above regulations, consult with specified experts to develop standards and protocols for ARB to utilize to do both:

   a) Collect data for all scope 1, 2, and 3 emissions from a reporting entity.

   b) Set a science-based emissions target for a reporting entity.

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 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, 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.

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

2) *Science-based targets*. SB 260 uses the term "science-based targets" (SBTs) to describe the emission reductions required from reporting entities. This is derived from the work of the Science Based Targets initiative (SBTi), a partnership between CDP (formerly the Carbon Disclosure Project), the United Nations Global Compact, World Resources Institute, and the World Wide Fund for Nature. According to the SBTi website, a "science-based target" for GHG emission reductions is one that is "in line with what the latest climate science deems necessary to meet the goals of the Paris Agreement – limiting global warming to well-below 2°C above pre-industrial levels and pursuing efforts to limit warming to 1.5°C."

   As an example, consider the SBT from Microsoft. According to the SBTi website, "Microsoft commits to continue annually source 100% renewable electricity through 2030. Microsoft also commits to reduce scope 3 GHG emissions intensity per unit of revenue 30% by 2030 from a 2017 base year and to avoid growth in absolute scope 3 emissions." The SBTi further finds that, "The targets covering GHG emissions from company operations (scopes 1 and 2) are consistent with reductions required to keep warming to 1.5°C. The renewable energy procurement target covering scope 2 emissions is consistent with reductions required to keep warming to 1.5°C."

   This SBT has several key features worth noting. It states an explicit base year to compare reductions, describes goals both in terms of GHG emissions per unit of revenue and in absolute terms, and it was determined by SBTi to be in line with 1.5°C warming. Importantly, the SBTi description explicitly states that scope 1 and 2 emissions are in line with reductions required to keep warming under 1.5°C. According to the SBT Manual released by SBTi: "Scope 3 targets generally need not be science-based, but should be ambitious, measurable and clearly demonstrate how a company is addressing the main sources of value chain GHG emissions in line with current best practice." The considerations for each of these factors vary significantly across businesses and sectors, but that is one illustrative example of what a SBT could look like at a high level.

3) *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.

The SBTi has already worked with many businesses to establish GHG emission reduction targets. As of March 24th, 2021, 1,274 businesses worldwide have SBT commitments available on the SBTi website.

Regarding scope 3 emission reduction targets, it is notable that SBTi only requires them from business whose scope 3 emissions are greater than 40% of the business's total emissions. Further, for businesses who are required to set scope 3 emission reduction goals to qualify as an SBT, the boundary is intended to be set such that it covers two thirds of scope 3 emissions. Taken together, this means that instead of directing emission reduction efforts on minor, tangentially related sources, businesses are directed to focus on their more tractable scope 1 and 2 emissions when those are the dominant source, and to prioritize the most substantial scope 3 sources when those must be addressed.

Another notable aspect of SBTi's guidance is their explicit omission of offsets and avoided emissions for the purposes of meeting SBTs. While net zero goals represent a heartening increase in ambition on climate action, it remains to be seen exactly how businesses and localities will achieve net zero. Drastically reducing the tonnage of GHGs emitted is the most certain approach to achieving a lower atmospheric CO2 concentration, but doing so will generally require real changes in how companies conduct business. Purchasing offsets (particularly if those offsets are generated by accounting for "avoided emissions" and not a real removal of CO2 from the air) can be done at a lower cost and with less disruption to existing operations. However, as an example, even today the total number of trees pledged to be planted to reduce atmospheric GHG concentrations greatly exceeds estimates of how many more trees could feasibly be grown on Earth. If businesses and governments intend to achieve net zero emissions without real, substantial reductions in their GHG emissions, offsets and avoided emissions (as they are currently accounted for) will likely be insufficient to limit global warming to required levels.

4) *Transparency guides action*. In the last year, 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 (ten years earlier than what the Intergovernmental Panel on Climate Change (IPCC) has called for), boasts 53 signatories as of March 2021. Activism from 350.org, among others, has led to widespread divestment of capital from highly-polluting businesses, driving climate action with financial incentives as well. These are only a few samples of the work that is being done to bring about what IPCC referred to as the "[required] rapid and far-reaching transitions in energy, land, urban and infrastructure, and industrial systems… unprecedented in terms of scale," to maintain global warming of only 1.5 degrees Celsius. For reference, best estimates of current global temperature show the planet is already 1.1 degrees warmer.

All of these actions, whether initiated by activists, board members, or investors, depends on transparency. Without an accurate accounting of a business's real emissions, it is 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, "SB 260, the Climate Corporate 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 2024. Once this information is reported to the California Air Resources Board (CARB), a covered corporation will then have to work within a framework established by CARB to set a science-based emissions reduction target. Both the emissions disclosure and the emissions reduction target will be published publicly and accessible via an online platform.

   "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 greenhouse gases that are destroying our planet.

"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 260 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) *Sufficiency – is doing a lot doing enough*? California prides itself as a leader in climate policy. As such, businesses in the state are generally subject to more ambitious climate regulations than in other states. Whether it takes the form of needing to purchase compliance instruments in quarterly cap-and-trade auctions, electrifying a company's vehicle fleet earlier than planned, ensuring a greener supply chain, or any number of other requirements, this committee is no stranger to the added difficulties of running a business in California.

   That being said, the best estimates of global warming tell us that we need to reduce GHG emissions much more drastically than ever before, while also pursuing ways to drawdown CO2 from the atmosphere, to have any chance of keeping global warming under 1.5 degrees Celsius above preindustrial levels. To do their part in controlling runaway warming, many businesses that have already reduced their GHG emissions will need to significantly increase their goals. Businesses that have heretofore delayed reducing emissions will need to make difficult changes as well. Figuring out what entities should be responsible for what share of emissions reductions is an important consideration to be made while continuing to increase ambition across the board. This bill represents an important piece of that conversation, and can provide valuable data going forward to support further policymaking decisions.

Moreover, while SB 260 refers to existing science-based targets, the committee has an opportunity to explicitly choose elements of that guidance for ARB to include in its implementing regulations as it considers this bill. As noted in the background, the current guidance from the SBTi explicitly excludes offsets or avoided emissions from counting towards a company's progress towards their SBT. That decision helps ensure that ambitious climate goals are achieved largely through ambitious emission reductions.

The committee may wish to consider ensuring implementation of SB 260 also explicitly excludes emission offsets and avoided emissions from determining compliance. This will help ensure companies are making meaningful, material changes to reduce GHG emissions from their operations.

3) *Enforcement*. Without appropriate enforcement, voluntary and mandatory GHG emission reporting requirements are a distinction without a difference. By making scope 1, 2, and 3 emissions reporting mandatory, SB 260 seeks to greatly expand the information certain businesses are required to provide publicly. The bill's supporters contend that the public have a right to know the emissions (and plans to reduce them) produced by large companies since they are contributing to real climate harms.

   SB 260 does not explicitly include enforcement provisions – it simply creates reporting and goal setting requirements. By virtue of where the proposed language is included in the Health and Safety Code, however, the implementing regulations would carry the same enforcement powers as the rest of the California Global Warming Solutions Act of 2006, as well as other ARB enforcement powers. As such, failure to comply with either the reporting or the goal setting provisions of this bill would constitute a misdemeanor.

   Going forward, the author may wish to consider if the implicit enforcement provisions in SB 260 appropriately align with the bill's goals and the state's authority.

4) *What can California do?* The set of business entities covered by SB 260, those with over a billion dollars of gross annual revenue and who do business in California, are important in terms of global GHG emissions, but also challenging to regulate under state law. It means many businesses that already are committed to reporting and reducing greenhouse gas emissions under a number of California laws would also be subject to SB 260. However, it also means that a business could not avoid SB 260's requirements by leaving the state; any billion-dollar company that wants access to Californian markets must

comply with SB 260, regardless of where they are domiciled.

However, as a state, California does not have the power to regulate interstate commerce – that authority rests with the US Congress. While this subject may be more appropriately discussed in SB 260's subsequent hearing in the Senate Judiciary Committee, it merits discussion here. The goal-setting portion of SB 260, in particular, requires businesses incorporated in other states to make significant, material changes to their operations.

It is beyond question that large businesses emit large amounts of GHGs in their operations. Many of those emissions are difficult, if not impossible, to eliminate using today's technology, though some businesses are already working to decarbonize where possible. As part of California's climate leadership, many businesses in the state are already subject to requirements for the reporting and reduction of GHG emissions. However, science tells us that we still must further increase our emissions reductions, drastically and economy-wide. In order to focus further emission reductions where they will be most impactful and most cost-effective, transparency is essential. SB 260 represents a far-reaching, ambitious approach to providing that transparency, and it also attempts to set further emission reduction targets across the board on reporting entities. What remains uncertain is (1) whether the benefits of the added transparency justify the burden on reporting entities, and (2) whether the method of setting goals using SBTs is effective, fair, and appropriately executed at the state level.

Given the issue of the authority the state has in matters of interstate trade, the expertise ARB has regarding primarily in-state emissions, the contentions of the opposition about SBTs being potentially duplicative, and the great value that more transparency in this space provides to the state, the committee may wish to consider amending SB 260. The author's goals of driving custom-tailored, company-by-company emission reduction targets through increased, full-scope transparency are laudable, but the current SBT framework may be unworkable in terms of enforcement and ARB workload.

Instead of setting SBTs as emission reduction goals for reporting entities, the committee may wish to amend SB 260 to instead require ARB to prepare a one-time report addressing the uncertainties remaining in many of the same topics. In order to support efficient, equitable policymaking going forward, and to better align any current or future emission reduction targets imposed on businesses with the best climate science, the committee may wish to direct ARB to report publicly on topics including, but not limited to:

a) ***The best reasonable estimate of the required annual aggregated GHG emission levels of reporting entities that would be necessary to maintain global temperatures within 1.5 degrees Celsius of preindustrial levels, considering protocols from SBTi and other organizations.***

b) ***The best reasonable projection of greenhouse gas emissions from reporting entities, for at least 2030 and 2045, based on successful implementation of the state's existing greenhouse gas emission reduction, clean energy, and other such regulations to which reporting entities are subject.***

c) ***Recommendations, based on the scope 1, scope 2, and scope 3 emissions reports submitted pursuant to SB 260, that reporting entities may consider to effectively reduce their remaining emissions in line with what is required to maintain sub 1.5 degree warming.***

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

Related/Prior Legislation

SB 449 (Stern, 2021) requires specified financial institutions to disclose climate-related financial risks, and establishes an advisory task force to assess climate-related financial risks facing the state. SB 449 is currently in the Senate Banking and Financial Institutions committee.

AB 766 (Gabriel, 2021) in part requires covered corporations, as defined, to report on their potential financial impacts and risk exposure from climate change, as well as estimated total GHG emissions attributable to assets they own or manage. AB 766 is currently in the Assembly Natural Resources committee.

AB 572 (Kalra, 2019) would have established the Deforestation-Free Procurement Act and required a contractor that is contracting with a state agency for the procurement of products comprised of forest-risk commodities to certify that the commodities were not grown, derived, harvested, reared, or produced on land where tropical deforestation occurred, as specified. AB 572 died in the Senate Appropriations committee.

SB 43 (Allen, 2018) would have evaluated replacing the state Sales and Use Tax with a revenue-neutral tax levied based on the carbon intensity of consumer goods. SB 43 died in the Assembly Revenue and Taxation Committee.

AB 262 (Bonta, Chapter 816, Statutes of 2017), as the Buy Clean California Act, requires the Department of General Services to establish standards used in the bid process related to GHG emissions when certain eligible materials are used in state public works projects.

SOURCE: California League of Conservation Votes
Carbon Accountable
Sunrise Bay Area

SUPPORT:

350 Bay Area Action
350 Sacramento
Alliance of Nurses for Healthy Environments
Audubon California
Berkeley; City of
California Alliance for Retired Americans
California Environmental Justice League
California Interfaith Power & Light
California League of Conservation Voters
Carbon Accountable
Change Begins With Me Indivisible Group
Cleanearth4kids.org
Climate Action Campaign
Climate Center; the
Climate Equity Policy Center
Climate Reality San Francisco Bay Area Chapter
Coalition for A California Green New Deal
Coalition for Clean Air
Courage California
Defenders of Wildlife
Elders Climate Action Nor Cal and Socal Chapters
Environmental Defense Fund
Fossil Free California
Friends Committee on Legislation of California
Friends of Harbors, Beaches and Parks
Friends of Public Banking - Santa Rosa
Friends of The Earth U.s.

Green New Deal At Ucsd
Greenbelt Alliance
Los Angeles County Democratic Party
Nature Conservancy; the
Plug in America
Rising Sun Center for Opportunity
Romero Institute
Sacramento Area Congregations Together
San Francisco Baykeeper
Save the Bay
Sierra Club California
Silicon Valley Youth Climate Action
Sunrise Bay Area
Sunrise Movement - Silicon Valley
Sunrise Movement Bay Area
UC Green New Deal Coalition
Union of Concerned Scientists
Upte-cwa
1 Individual

OPPOSITION:

Agricultural Council of California
Alliance for Automotive Innovation
American Forest & Paper Association
American Property Casualty Insurance Association
Brea Chamber of Commerce
Building Owners and Managers Association of California
California Apartment Association
California Bankers Association
California Building Industry Association (CBIA)
California Business Properties Association
California Cement Manufacturers Environmental Coalition
California Chamber of Commerce
California Construction and Industrial Materials Association
California Independent Petroleum Association (CIPA)
California League of Food Producers
California Manufacturers & Technology Association
California Restaurant Association
California Retailers Associaiton
Carlsbad Chamber of Commerce
Chemical Industry Council of California
El Dorado Hills Chamber of Commerce
Ema Truck & Engine Manufacturers Association

Garden Grove Chamber of Commerce
Harbor Association of Industry & Commerce
Household and Commercial Products Association
International Council of Shopping Centers
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Madera; County of
Naiop of California
Orange County Business Council
Oxnard Chamber of Commerce
Personal Insurance Federation of California
Pleasanton Chamber of Commerce
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
San Gabriel Valley Economic Partnership
Silicon Valley Leadership Group
South Bay Association of Chambers of Commerce
Tulare Chamber of Commerce
Western Independent Refiners Association
Western States Petroleum Association
Western Wood Preservers Institute

ARGUMENTS IN SUPPORT: According to one of the bill's sponsors, Carbon Accountable, "… There is a gaping hole in California's climate regulatory regime that allows major corporate GHG polluters to continue business as usual, without transparency or accountability. Filling the climate emissions information gap with detailed data from the activities of corporate emitters is a crucial next step for the state to achieve it…"

"We estimate that the Climate Corporate Accountability Act would cover approximately 5,200 US public and private corporations, with combined annual revenues of over $32 trillion USD, the vast majority of which do not report any of their GHG emissions publicly."

ARGUMENTS IN OPPOSITION: According to the Silicon Valley Leadership Group, "The scale of GHG reductions emissions called for in the bill – Scopes 1 through 3, inclusive – also presents significant challenges. Scope 3 emissions, for instance, are extremely difficult to calculate and reduce. Further, companies covered by SB 260 that have operations and supply chains in states other than California and in other countries cannot consistently rely on a clean energy grid and other factors to reduce their emissions.

"The Leadership Group has led among business organizations on numerous occasions to support other greenhouse gas reduction public policies. However, SB 260 would impose provisions that are duplicative, restrictive and better implemented in a uniform way at a national or international level. For this and the other previously stated reasons, the Leadership Group opposes SB 260."

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