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SB-261 Greenhouse gases: climate-related financial risk. (2023-2024)

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Senate Bill No. 261

CHAPTER 383

An act to add Section 38533 to the Health and Safety Code, relating to greenhouse gases, and making an appropriation therefor.

[Approved by Governor October 07, 2023. Filed with Secretary of State October 07, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 261, Stern. Greenhouse gases: climate-related financial risk.

The California Global Warming Solutions Act of 2006 requires the State Air Resources Board to adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with the act. The act requires the state board to make available, and update at least annually, on its internet website the emissions of greenhouse gases, criteria pollutants, and toxic air contaminants for each facility that reports to the state board, as provided.

This bill would require, on or before January 1, 2026, and biennially thereafter, a covered entity, as defined, to prepare a climate-related financial risk report disclosing the entity's climate-related financial risk and measures adopted to reduce and adapt to climate-related financial risk. The bill would require the covered entity to make a copy of the report available to the public on its own internet website.

The bill would require the state board to contract with a climate reporting organization, as defined, to biennially prepare a public report that contains specified information, including a review of the disclosure of climate-related financial risk contained in a subset of publicly available climate-related financial risk reports and an analysis of the systemic and sectorwide climate-related financial risks facing the state. The bill would require the state board to adopt regulations that authorize it to seek administrative penalties from covered entities for failing to make the report publicly available on its internet website or publishing an inadequate or insufficient report, as specified.

The bill would require covered entities to pay an annual fee for the state board's actual and reasonable costs to administer and implement the bill. The bill would create the Climate-Related Financial Risk Disclosure Fund, require the proceeds of the fees to be deposited in the fund, and continuously appropriate the moneys in the fund to the state board for purposes of the bill. By creating a continuously appropriated fund, the bill would make an appropriation.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Climate change is affecting California's communities and economy with impacts including wildfires, sea level rise, extreme weather events, extreme droughts, and associated impacts to the global economy.

(b) Global economic and climate policy leaders have conclusively established that the long-term strength of global and local economies will depend on their ability to withstand climate-related risks, including physical impacts, economic transitions, and policy and legal responses.

(c) Failure of economic actors to adequately plan for and adapt to climate-related risks to their businesses and to the economy will result in significant harm to California, residents, and investors, in particular to financially vulnerable Californians who are employed by, live in communities reliant on, or have invested in or obtained financing from these institutions.

(d) California is a global leader in addressing climate risk through state policy, as demonstrated by the requirement for state public pension funds to analyze and report material climate-related financial risks, as required by Section 7510.5 of the Government Code, and the state climate investment framework directed by, and Climate-Related Risk Disclosure Advisory Group established in accordance with, Executive Order No. N-19-19.

(e) Leading voluntary initiatives have begun to develop frameworks for disclosure of climate change- and sustainability-related information. Thousands of companies already disclose their climate-related financial risks.

(f) Other jurisdictions have begun to require certain entities to develop and disclose sustainability policies, including public entities, as required by the State of Illinois' Sustainable Investing Act (PA 101-473), and both public and private entities, as required by France's Energy Transition Law, as set forth in Article 173-VI for institutional investors and Article 173-IV for companies.

(g) On May 20, 2021, President Joseph Biden signed Executive Order 14030, Climate-Related Financial Risk, which directs federal agencies to develop a comprehensive, governmentwide strategy regarding the measurement, assessment, mitigation, and disclosure of climate-related financial risk to federal government programs, assets, and liabilities in order to increase the long-term stability of federal operations.

(h) On March 21, 2022, the United States Securities and Exchange Commission (SEC) proposed a rule that would require publicly traded United States companies to include climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about climate-related risks also would include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to those risks.

(i) On April 8, 2022, the National Association of Insurance Commissioners, which includes California's Insurance Commissioner, adopted a new standard for insurance companies to report their climate-related risks, in alignment with the internationally recognized Task Force on Climate-Related Financial Disclosures (TCFD). The TCFD standard is the international benchmark for climate risk disclosure and will help insurance regulators and the public better understand the climate-related risks to the United States insurance market, which is the largest in the world.

(j) Though a precedent has been set to address climate risk to businesses, corporations, and financial institutions nationwide, current disclosure standards are voluntary, and thus inadequate, for meeting rapidly accelerating climate risks. In order to begin to address the climate crisis, consistent, higher level, and mandatory disclosures are needed from all major economic actors, and California has an opportunity to set mandatory and comprehensive risk disclosure requirements for public and private entities to ensure a sustainable, resilient, and prosperous future for our state.

SEC. 2. Section 38533 is added to the Health and Safety Code, to read:

38533. (a) For purposes of this section, the following definitions apply:

(1) "Climate reporting organization" means a nonprofit climate reporting organization contracted by the state board pursuant to paragraph (2) of subdivision (b) that both:

(A) Currently operates a climate reporting organization for organizations operating in the United States.

(B) Has experience with climate-related financial risk disclosure by entities operating in California.

(2) "Climate-related financial risk" means material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health.

(3) "Climate-related financial risk report" means a report required by subdivision (b).

(4) "Covered entity" means a corporation, partnership, limited liability company, or other business entity formed under the laws of the 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 five hundred million United States dollars (\$500,000,000) and that does business in California. Applicability shall be determined based on the business entity's revenue for the prior fiscal year. "Covered entity" does not include a business entity that is subject to regulation by the Department of Insurance in this state, or that is in the business of insurance in any other state.

(b) (1) (A) On or before January 1, 2026, and biennially thereafter, a covered entity shall prepare a climate-related financial risk report disclosing both of the following:

(i) Its climate-related financial risk, in accordance with the recommended framework and disclosures contained in the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017) published by the Task Force on Climate-related Financial Disclosures, or any successor thereto, or pursuant to an equivalent reporting requirement as described in paragraph (4).

(ii) Its measures adopted to reduce and adapt to climate-related financial risk disclosed pursuant to clause (i).

(B) If a covered entity does not complete a report consistent with all required disclosures pursuant to clause (i) of subparagraph (A), the covered entity shall provide the recommended disclosures to the best of its ability, provide a detailed explanation for any reporting gaps, and describe steps the covered entity will take to prepare complete disclosures.

(2) Climate-related financial risk reports may be consolidated at the parent company level. If a subsidiary of a parent company qualifies as a covered entity pursuant to paragraph (4) of subdivision (a), the subsidiary is not required to prepare a separate climate-related financial risk report.

(3) The state board shall contract with a climate reporting organization to prepare a biennial public report on the climate-related financial risk disclosures required by this section.

(4) Notwithstanding paragraph (1), a covered entity satisfies the requirements of paragraph (1) if it prepares a publicly accessible biennial report that includes climate-related financial risk disclosure information by any of the following methods:

(A) Pursuant to a law, regulation, or listing requirement issued by any regulated exchange, national government, or other governmental entity, including a law or regulation issued by the United States government, incorporating disclosure requirements consistent with clause (i) of subparagraph (A) of paragraph (1), including the International Financial Reporting Standards Sustainability Disclosure Standards, as issued by the International Sustainability Standards Board.

(B) Voluntarily using a framework that meets the requirements of clause (i) of subparagraph (A) of paragraph (1) or the International Financial Reporting Standards Sustainability Disclosure Standards, as issued by the International Sustainability Standards Board.

(5) To the extent a climate-related financial risk report contains a description of a covered entity's greenhouse gases or voluntary mitigation of greenhouse gases, the state board may consider covered entity's claims if those claims are verified by a third-party independent verifier.

(c) (1) On or before January 1, 2026, and biennially thereafter, a covered entity shall make available to the public, on its own internet website, a copy of the report required by this section.

(2) (A) On or before January 1, 2026, and annually thereafter, a covered entity shall pay a fee, upon filing its disclosure, to the state board for the administration and implementation of this section.

(B) (i) The state board shall set the fee described in subparagraph (A) at an amount adequate to cover the state board's full costs of administering and implementing this section. The total amount of fees collected shall not exceed the state board's actual and reasonable costs to administer and implement this section.

(ii) The state board may adjust the fee in any year to reflect changes in the California Consumer Price Index during the prior year.

(C) The proceeds of the fees imposed pursuant to this paragraph shall be deposited in the Climate-Related Financial Risk Disclosure Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the fund is continuously appropriated to the state board and shall be expended by the state board for the state board's activities pursuant to this section and to reimburse any outstanding loans made from other funds used to finance the initial costs of the state board's activities pursuant to this section. Money in the fund shall not be expended for any other purpose not described in this subparagraph.

(d) The climate reporting organization shall be contracted to do all of the following:

(1) Biennially prepare a public report that contains all of the following elements:

(A) A review of the disclosure of climate-related financial risk contained in a subset of publicly available climate-related financial risk reports by industry.

(B) Analysis of the systemic and sectorwide climate-related financial risks facing the state based on the contents of climate-related financial risk reports, including, but not limited to, potential impacts on economically vulnerable communities.

(C) Identification of inadequate or insufficient reports.

(2) Regularly convene representatives of sectors responsible for reporting climate-related financial risks, state agencies responsible for oversight of reporting sectors, investment managers, academic experts, standard-setting organizations, climate and corporate sustainability organizations, labor union representatives whose members work in impacted sectors, and other stakeholders to offer input on current best practices regarding the disclosure of financial risks resulting from climate change, including, but not limited to, proposals to update the definition of "climate-related financial risk," and the framework or disclosure standard of "climate-related financial risk reports" that meets the requirements of clause (i) of subparagraph (A) of paragraph (1) of subdivision (b).

(3) Monitor federal regulatory actions among agency members of the federal Financial Stability Oversight Council, as well as nonindependent regulators overseen by the White House.

(e) (1) Section 38580 does not apply to a violation of this section.

(2) The state board shall adopt regulations that authorize it to seek administrative penalties from a covered entity that fails to make the report required by this section publicly available on its internet website or publishes an inadequate or insufficient report. The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings conducted pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations. The administrative penalties imposed on a reporting entity shall not exceed fifty thousand dollars (\$50,000) in a reporting year. In imposing penalties for a violation of this section, the state board shall consider all relevant circumstances, including both of the following:

(A) The violator's past and present compliance with this section.

(B) Whether the violator took good faith measures to comply with this section and when those measures were taken.