CALIFORNIA BILL SEEKS ADDITIONAL GREENHOUSE GAS DISCLOSURES FROM MAJOR PUBLIC CORPORATIONS

Date: 2 February 2021

Environment, Land, and Natural Resources Alert

State Senator Scott Weiner recently introduced the Climate Corporation Accountability Act (SB 260 or the Bill) on the California Senate floor. If enacted, SB 260 would create mandatory reporting of greenhouse gas (GHG) emissions for large corporations that do business in California. While California regulations currently encourage private entities to volunteer GHG emissions information regarding their inventories, goals, and agreements, SB 260 would make this disclosure mandatory for large corporations and would require those entities to produce a comprehensive, publicly available report detailing a wide array of GHG emissions directly generated by the company or incidental to business operations.[1] Companies would also be required to adopt GHG emissions targets and employ measures to reduce those emissions.

SB 260 would apply to all publicly traded, domestic and foreign corporations with annual revenues in excess of US$1 billion that do business in California. The Bill envisions a two-prong approach, mandating (1) accurate and science-based reporting of all associated GHG emissions from covered entities and (2) a measured approach to reduce those emissions starting in 2025. Each covered entity under the Bill would be required to provide GHG emissions data in three scopes:

- Scope One – All direct GHG emissions from sources that an entity owns or directly controls, such as fuel combustion;
- Scope Two – Indirect GHG emissions related to electricity that is purchased and consumed by an entity; and
- Scope Three – Indirect GHG emissions the entity does not directly control or own, which may include emissions associated with supply chain, business travel, water usage, employee commuting, and waste.

All three sources of emissions would need to be verified by a third-party auditor, approved by the California Air Resources Board (CARB), and publicly disclosed on widely available digital platform at the beginning of each calendar year, starting 1 January 2024. By the time the first reporting period ends, the Bill would require CARB to have developed and adopted regulations setting reduced annual emissions targets for each entity, derivative of the entity's reported emissions. Emissions targets would be based upon the scale of reductions required to keep global warming at or below 1.5° C above preindustrial levels. While calculating Scope 1 emissions are relatively straightforward to determine, there is significant complexity in determining the scope of emissions under Scope 2 and 3—for instance, how a reporting entity would account for an upstream or downstream entity within its supply chain that is also subject to the Bill and required to report its emissions (e.g., how reporting entities will avoid duplicative emissions reporting).

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SB 260 is still in its legislative infancy and must undergo the scrutiny of floor debate and voting. But this proposal aligns with many of the significant legislative and executive actions taken by the California legislature and Governor Newsom to combat climate change, making its passage a real possibility.[2] Should the Bill survive the California State Senate and State Assembly, SB 260 may be signed into law in fall 2021 at the earliest. If the Bill is passed this year, it would become effective 1 January 2022, unless it is passed as an urgency measure or it specifies a different date. Public corporations doing business in California that would be covered by the Bill should closely track the Bill, as it would significantly change both GHG reporting and reduction requirements in California.

FOOTNOTES

[1]Climate Corporate Accountability Act, Cal. S.B. 260, 2021–2022 Sess. (2021).

[2]*See generally* Combatting the Climate Crisis, Exec. Order N-79-20 (Sep. 23, 2020); *see also* Combatting the Climate and Biodiversity Crises, Exec. Order N-82-20 (Oct. 7, 2020).

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