

Senate Bill No. 253

Passed the Senate September 12, 2023

Secretary of the Senate

Passed the Assembly September 11, 2023

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2023, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 38532 to the Health and Safety Code, relating to greenhouse gases, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 253, Wiener. Climate Corporate Data Accountability Act.

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 the state board, on or before January 1, 2025, to develop and adopt regulations requiring specified partnerships, corporations, limited liability companies, and other business entities with total annual revenues in excess of \$1,000,000,000 and that do business in California, defined as “reporting entities,” to publicly disclose to the emissions reporting organization, as defined, and obtain an assurance engagement on, starting in 2026 on a date to be determined by the state board, and annually thereafter, their scope 1 and scope 2 greenhouse gas emissions, as defined, and, starting in 2027 and annually thereafter, their scope 3 greenhouse gas emissions, as defined, from the reporting entity’s prior fiscal year, as provided. The bill would require the state board to review during 2029, and update as necessary on or before January 1, 2030, these deadlines to evaluate trends in scope 3 emissions reporting and to consider changes to the deadlines, as provided. The bill would require a reporting entity to obtain an assurance engagement, performed by an independent third-party assurance provider, of the entity’s public disclosure as provided. The bill would require the state board, in developing these regulations, to consult with the Attorney General, other government stakeholders, investors, stakeholders representing consumer and environmental justice interests, and reporting entities that have demonstrated leadership in full-scope greenhouse gas

emissions accounting and public disclosure and greenhouse gas emissions reductions. The bill would also require the state board to ensure that the assurance process minimizes the need for reporting entities to engage multiple assurance providers and ensures sufficient assurance provider capacity, as well as timely reporting implementation, as required. The bill would further require the state board to contract with an emissions reporting organization to develop a reporting program to receive and make publicly available the required disclosures. The bill would authorize the state board, starting in 2033 and every 5 years thereafter, to assess the global greenhouse gas accounting and reporting standards and to adopt an alternative standard if it determines that using the alternative standard would more effectively further the goals of the bill.

This bill would require the state board, 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 reporting organization. The bill would require, in preparing the report, consideration to be given to, at a minimum, greenhouse gas emissions from reporting entities in the context of state greenhouse gas emissions reduction and climate goals. The bill would require the state board to provide the report to the emissions reporting organization to post on a digital platform that would be required to be created by the emissions reporting organization, and publicly accessible, to house the state board's report and the reporting entities' public disclosures. The bill would require the emissions reporting organization to provide the state board's report to the relevant policy committees of the Legislature.

This bill would require a reporting entity, upon filing its disclosure, to pay to the state board an annual fee set by the state board, as provided. The bill would create the Climate Accountability and Emissions 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 create an appropriation. The bill would require the state board to adopt regulations that authorize it to seek administrative penalties for violations of these provisions, as specified.

Appropriation: yes.

The people of the State of California do enact as follows:

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

(a) California has demonstrated its leadership in the battle against climate change and the climate actions of the state have inspired and contributed to bold actions in other states and across the globe.

(b) Californians are already facing devastating wildfires, sea level rise, drought, and other impacts associated with climate change that threaten the health and safety of Californians, undermines the sustainability of our communities, particularly those communities most affected by the negative effects of climate change, and the economic well-being of the state and its residents, including threatening many of the state's largest industries.

(c) Climate change also poses a significant risk to companies' long-term economic success and disrupts the value chains on which they rely. Managing these risks requires investments in decarbonization strategies that unlock emissions reductions and provide economic benefits for Californians and the state economy.

(d) California has achieved record economic growth, is on track to be the fourth largest economy in the world, and is a highly desirable market for the globe's most profitable companies.

(e) California investors, consumers, and other stakeholders deserve transparency from companies regarding their greenhouse gas (GHG) emissions to inform their decisionmaking.

(f) United States companies that have access to California's tremendously valuable consumer market by virtue of exercising their corporate franchise in the state also share responsibility for disclosing their contributions to global GHG emissions.

(g) Companies can increase the state's climate risk through emissions activities that include, but are not limited to, company operations, supply chain activities, employee and consumer transportation, goods production and movement, construction, land use, and natural resource extraction.

(h) Accurate and comprehensive data that is subject to an assurance engagement performed by an independent third-party assurance provider is required to determine a company's direct

and indirect GHG emissions, also known as its carbon footprint, and to effectively identify the sources of the emissions and develop means to reduce the same.

(i) The current approach for disclosure of climate emissions from public and private corporate enterprises relies largely on voluntary reporting of GHG inventories, goals, commitments, and agreements, and lacks the full transparency and consistency needed by residents and financial markets to fully understand these climate risks.

(j) The people, communities, and other stakeholders in California, facing the existential threat of climate change, have a right to know about the sources of carbon pollution, as measured by the comprehensive GHG emissions data of those companies benefiting from doing business in the state, in order to make informed decisions.

(k) The Greenhouse Gas Protocol is the globally recognized GHG emissions accounting and reporting standard developed and updated by the World Resources Institute and the World Business Council for Sustainable Development and provides the framework for corporate GHG emissions accounting and reporting. The framework defines and categorizes emissions as scopes 1, 2, and 3 emissions. Many companies already partially or fully disclose their emissions data.

(l) Mandating annual, full-scope GHG emissions data reporting to the emissions reporting organization for all United States companies with total annual revenues in excess of \$1,000,000,000 that do business in California, as well as ensuring public access to the data in a manner that is easily understandable and accessible, will inform investors, empower consumers, and activate companies to improve risk management in order to move towards a net-zero carbon economy and is a critical next step that California must take to protect the state and its residents.

SEC. 2. Section 38532 is added to the Health and Safety Code, to read:

38532. (a) This section shall be known, and may be cited, as the Climate Corporate Data Accountability Act.

(b) For purposes of this section, the following terms have the following definitions:

(1) “Emissions reporting organization” means a nonprofit emissions reporting organization contracted by the state board pursuant to paragraph (2) of subdivision (c) that both:

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

(B) Has experience with greenhouse gas emissions disclosure by entities operating in California.

(2) “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. Applicability shall be determined based on the reporting entity’s revenue for the prior fiscal year.

(3) “Scope 1 emissions” means all direct greenhouse gas emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities.

(4) “Scope 2 emissions” means indirect greenhouse gas emissions from consumed electricity, steam, heating, or cooling purchased or acquired by a reporting entity, regardless of location.

(5) “Scope 3 emissions” means indirect upstream and downstream greenhouse gas emissions, other than scope 2 emissions, from sources that the reporting entity does not own or directly control and may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products.

(c) (1) On or before January 1, 2025, the state board shall develop and adopt regulations to require a reporting entity to annually disclose to the emissions reporting organization, and obtain an assurance engagement performed by an independent third-party assurance provider on all of the reporting entity’s scope 1 emissions, scope 2 emissions, and scope 3 emissions. The state board shall ensure that the regulations adopted pursuant to this subdivision require all of the following:

(A) (i) (I) That a reporting entity, starting in 2026 on or by a date to be determined by the state board, and annually thereafter on or by that date, publicly disclose to the emissions reporting

organization all of the reporting entity's scope 1 emissions and scope 2 emissions for the reporting entity's prior fiscal year.

(II) That a reporting entity, starting in 2027 and annually thereafter, publicly disclose its scope 3 emissions no later than 180 days after its scope 1 emissions and scope 2 emissions are publicly disclosed to the emissions reporting organization for the prior fiscal year.

(ii) A reporting entity shall, beginning in 2026, measure and report its emissions of greenhouse gases in conformance with the Greenhouse Gas Protocol standards and guidance, including 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.

(iii) (I) Starting in 2033 and every five years thereafter, the state board may survey and assess currently available greenhouse gas accounting and reporting standards. At the conclusion of this assessment the state board may adopt a globally recognized alternative accounting and reporting standard if it determines its use would more effectively further the goals of this section. This review process shall include consultation with the stakeholders identified in paragraph (4).

(II) If the state board adopts an alternative accounting and reporting standard, the state board shall develop and adopt new regulations, pursuant to paragraph (1), to ensure full conformance with the new standard and reporting of scopes 1, 2, and 3 emissions and other requirements of this section.

(iv) During 2029 the state board shall review, and on or before January 1, 2030, the state board shall update as necessary, the public disclosure deadlines established pursuant to clause (i) to evaluate trends in scope 3 emissions reporting and consider changes to the disclosure deadlines to ensure that scope 3 emissions data is disclosed to the emissions reporting organization as close in time as practicable to the deadline for reporting entities to disclose scope 1 emissions and scope 2 emissions data.

(v) The reporting timelines shall consider industry stakeholder input and shall take into account the timelines by which reporting entities typically receive scope 1, scope 2, and scope 3 emissions data, as well as the capacity for an independent assurance engagement to be performed by a third-party assurance provider.

(B) That a reporting entity's public disclosure maximizes access for consumers, investors, and other stakeholders to comprehensive and detailed greenhouse gas emissions data across scopes 1, 2, and 3 emissions, as defined by this section, and is made in a manner that is easily understandable and accessible.

(C) 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.

(D) (i) That the emissions reporting is structured in a way that minimizes duplication of effort and allows a reporting entity to submit to the emissions reporting organization reports prepared to meet other national and international reporting requirements, including any reports required by the federal government, as long as those reports satisfy all of the requirements of this section.

(ii) Reporting entities that are required to report mandatory industrial emissions pursuant to regulations adopted pursuant to Section 38530 may provide that data with the disclosure required pursuant to this section.

(E) That a reporting entity's disclosure takes into account acquisitions, divestments, mergers, and other structural changes that can affect the greenhouse gas emissions reporting, and is disclosed in a manner consistent with the Greenhouse Gas Protocol standards and guidance or an alternative standard, if one is adopted after 2033.

(F) (i) That a reporting entity obtains an assurance engagement, performed by an independent third-party assurance provider, of their public disclosure. The reporting entity shall ensure that a copy of the complete assurance provider's report on the greenhouse gas emissions inventory, including the name of the third-party assurance provider, is provided to the emissions reporting organization as part of or in connection with the reporting entity's public disclosure.

(ii) The assurance engagement for scope 1 emissions and scope 2 emissions shall be performed at a limited assurance level

beginning in 2026 and at a reasonable assurance level beginning in 2030.

(iii) During 2026, the state board shall review and evaluate trends in third-party assurance requirements for scope 3 emissions. On or before January 1, 2027, the state board may establish an assurance requirement for third-party assurance engagements of scope 3 emissions. The assurance engagement for scope 3 emissions shall be performed at a limited assurance level beginning in 2030.

(iv) A third-party assurance provider shall have significant experience in measuring, analyzing, reporting, or attesting to the emission of greenhouse gasses and sufficient competence and capabilities necessary to perform engagements in accordance with professional standards and applicable legal and regulatory requirements. The assurance provider shall be able to issue reports that are appropriate under the circumstances and independent with respect to the reporting entity, and any of the reporting entity's affiliates for which it is providing the assurance report. During 2029 the state board shall review and, on or before January 1, 2030, shall update as necessary, the qualifications for third-party assurance providers based on an evaluation of trends in education relating to the emission of greenhouse gases and the qualifications of third-party assurance providers.

(v) The state board shall ensure that the assurance process minimizes the need for reporting entities to engage multiple assurance providers and ensures sufficient assurance provider capacity, as well as timely reporting implementation as required under clause (i) of subparagraph (A).

(G) (i) That a reporting entity, upon filing its disclosure, shall pay an annual fee to the state board for the administration and implementation of this section.

(ii) The state board shall set the fee established pursuant to clause (i) in an amount sufficient 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.

(iii) The proceeds of the fees imposed pursuant to clause (i) shall be deposited in the Climate Accountability and Emissions 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. Moneys in the fund shall not be expended for any purpose not enumerated in this section.

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

(2) The state board shall contract with an emissions reporting organization to develop a reporting program to receive and make publicly available disclosures required by this section pursuant to paragraph (1).

(3) The state board may adopt or update any other regulations that it deems necessary and appropriate to implement this section.

(4) In developing the regulations required pursuant to this subdivision, the state board shall 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 and reporting.

(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.

(5) This section does not require additional reporting of emissions of greenhouse gases beyond the reporting of scope 1 emissions, scope 2 emissions, and scope 3 emissions required pursuant to the Greenhouse Gas Protocol standards and guidance or an alternative standard, if one is adopted after 2033.

(d) (1) On or before July 1, 2027, the state board shall 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 reporting organization pursuant to subdivision (c) and the regulations adopted by the state board pursuant to that subdivision. 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. The entity preparing the report shall not require reporting entities to report any information beyond what is required pursuant to subdivision (c) or the regulations adopted by the state board pursuant to that subdivision.

(2) The state board shall submit the report required by this subdivision to the emissions reporting organization to be made publicly available on the digital platform required to be created by the emissions reporting organization pursuant to subdivision (e).

(e) (1) (A) The emissions reporting organization, on or before the date determined by the state board pursuant to clause (i) of subparagraph (A) of paragraph (1) of subdivision (c), shall create a digital platform, which shall be accessible to the public, that will feature the emissions data of reporting entities in conformance with the regulations adopted by the state board pursuant to subdivision (c) and the report prepared for the state board pursuant to subdivision (d). The emissions reporting organization 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, investors, and other stakeholders to view 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.

(2) The emissions reporting organization shall submit, within 30 days of receipt, the report prepared for the state board pursuant to subdivision (d) to the relevant policy committees of the Legislature.

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

(2) (A) The state board shall adopt regulations that authorize it to seek administrative penalties for nonfiling, late filing, or other failure to meet the requirements of this section. 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 five hundred thousand dollars (\$500,000) 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:

- (i) The violator's past and present compliance with this section.
 - (ii) Whether the violator took good faith measures to comply with this section and when those measures were taken.
- (B) A reporting entity shall not be subject to an administrative penalty under this section for any misstatements with regard to scope 3 emissions disclosures made with a reasonable basis and disclosed in good faith.
- (C) Penalties assessed on scope 3 reporting, between 2027 and 2030, shall only occur for nonfiling.
- (g) This section applies to the University of California only to the extent that the Regents of the University of California, by resolution, make any of these provisions applicable to the university.
- (h) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Approved _____, 2023

Governor