

# STATE OF NEW YORK

4123--B

2023-2024 Regular Sessions

## IN ASSEMBLY

February 9, 2023

Introduced by M. of A. GLICK, CUNNINGHAM, KELLES, LEVENBERG, SIMON, COLTON, PAULIN, SIMONE, K. BROWN, STECK -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to climate corporate data accountability; and to amend the state finance law, in relation to establishing the climate accountability and emissions disclosure fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "climate  
2 corporate data accountability act".

3 § 2. The environmental conservation law is amended by adding a new  
4 article 74 to read as follows:

### ARTICLE 74

#### CLIMATE CORPORATE DATA ACCOUNTABILITY ACT

##### Section 74-0101. Definitions.

##### 74-0102. Climate corporate data accountability act.

##### § 74-0101. Definitions.

10 As used in this section, the following terms shall have the following  
11 meanings:

12 1. "Emissions reporting organization" means a nonprofit emissions  
13 reporting organization contracted by the department pursuant to para-  
14 graph b of subdivision two of section 74-0102 of this article that both:  
15 a. Currently operates a greenhouse gas emissions reporting organiza-  
16 tion for organizations operating in the United States; and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 b. Has experience with greenhouse gas emissions disclosure by entities  
2 operating in New York.

3 2. "Reporting entity" means:

4 a. A partnership, corporation, limited liability company, or other  
5 business entity formed under the laws of this state or any other juris-  
6 isdiction that both:

7 i. Does business in this state and is deriving receipts from activity  
8 in this state within the meaning of section two hundred nine of the tax  
9 law; and

10 ii. Has total revenues in excess of one billion dollars in the preced-  
11 ing fiscal year, including but not limited to revenues received by all  
12 of the business entity's subsidiaries that do business in this state.

13 b. A foreign entity shall not be considered to be doing business in  
14 this state exclusively by reason of carrying on in this state any of the  
15 activities enumerated in subsection (b) of section thirteen hundred one  
16 of the business corporation law. If a reporting entity is included as a  
17 consolidated subsidiary in the consolidated financial statements of an  
18 ultimate parent entity, then such ultimate parent entity shall be the  
19 reporting entity for purposes of this definition.

20 3. "Scope 1 emissions" means all direct greenhouse gas emissions that  
21 stem from sources that a reporting entity owns or directly controls,  
22 regardless of location, including, but not limited to, fuel combustion  
23 activities.

24 4. "Scope 2 emissions" means indirect greenhouse gas emissions from  
25 consumed electricity, steam, heating, or cooling purchased or acquired  
26 by a reporting entity, regardless of location.

27 5. "Scope 3 emissions" means indirect upstream and downstream green-  
28 house gas emissions, other than scope 2 emissions, from sources that the  
29 reporting entity does not own or directly control and may include, but  
30 are not limited to, purchased goods and services, business travel,  
31 employee commutes, and processing and use of sold products and services.

32 6. "Assurance provider" means a firm or entity which carries out an  
33 assurance engagement.

34 7. "Assurance engagement" means an engagement in which an assurance  
35 provider expresses an independent opinion on the reports issued under  
36 this section, to enhance the degree of confidence of the department  
37 about the information disclosed by the reporting entity.

38 § 74-0102. Climate corporate data accountability act.

39 1. a. The department shall adopt regulations to require a reporting  
40 entity to annually disclose to the emissions reporting organization, and  
41 to obtain an assurance engagement performed by an independent third-par-  
42 ty assurance provider on, all of the reporting entity's scope 1 emis-  
43 sions, scope 2 emissions, and scope 3 emissions. The regulations adopted  
44 pursuant to this subdivision shall require that:

45 i. (1) (A) Starting in two thousand twenty-six and annually thereaft-  
46 er, within one hundred eighty days of the end of its fiscal year, a  
47 reporting entity shall publicly disclose to the emissions reporting  
48 organization all of the reporting entity's scope 1 emissions and scope 2  
49 emissions for the prior fiscal year.

50 (B) Starting in two thousand twenty-seven and annually thereafter,  
51 within three hundred sixty-five days of the end of its fiscal year, a  
52 reporting entity shall publicly disclose its scope 3 emissions to the  
53 emissions reporting organization for the prior fiscal year.

54 (2) In complying with the requirements of this section, a reporting  
55 entity shall measure and report its emissions of greenhouse gases in  
56 conformance with the Greenhouse Gas Protocol Corporate Accounting and

1 Reporting Standard and the Greenhouse Gas Protocol Corporate Value Chain  
2 (Scope 3) Accounting and Reporting Standard developed by the World  
3 Resources Institute and the World Business Council for Sustainable  
4 Development, including guidance for scope 3 emissions calculations that  
5 detail acceptable use of both primary and secondary data sources,  
6 including the use of industry average data, proxy data, and other gener-  
7 ic data in its scope 3 emissions calculations.

8 (3) (A) Starting in two thousand thirty-three and every five years  
9 thereafter, the department may survey and assess currently available  
10 greenhouse gas accounting and reporting standards. At the conclusion of  
11 this assessment the department may adopt a globally recognized alterna-  
12 tive accounting and reporting standard if it determines its use would  
13 more effectively further the goals of this section. This review process  
14 shall include consultation with the stakeholders identified in paragraph  
15 d of this subdivision.

16 (B) If the department adopts an alternative accounting and reporting  
17 standard, the department shall develop and adopt new regulations, pursu-  
18 ant to paragraph a of this subdivision, to ensure full conformance with  
19 the new standard and reporting of scopes 1, 2, and 3 emissions and other  
20 requirements of this section.

21 (4) On or before January first, two thousand thirty, the department  
22 shall review, and update as necessary, the public disclosure deadlines  
23 established pursuant to clause one of this subparagraph to evaluate  
24 trends in scope 3 emissions reporting and consider changes to the  
25 disclosure deadlines to ensure that scope 3 emissions data is disclosed  
26 to the emissions reporting organization as close in time as practicable  
27 to the deadline for reporting entities to disclose scope 1 emissions and  
28 scope 2 emissions data.

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

33 ii. A reporting entity's public disclosure shall maximize access for  
34 consumers, investors, and other stakeholders to comprehensive and  
35 detailed greenhouse gas emissions data across scope 1 emissions, scope 2  
36 emissions and scope 3 emissions, as defined by this section, and be made  
37 in a manner that is easily understandable and accessible.

38 iii. A reporting entity's public disclosure shall include the name of  
39 the reporting entity and any fictitious names, trade names, assumed  
40 names, subsidiaries and logos used by the reporting entity.

41 iv. A reporting entity's emissions reporting shall be structured in a  
42 way that minimizes duplication of effort and allows a reporting entity  
43 to submit to the emissions reporting organization reports prepared to  
44 meet other state, national, and international reporting requirements,  
45 including any reports required by the federal government or other  
46 states, as long as those reports satisfy all of the requirements of this  
47 section.

48 v. A reporting entity's disclosure shall take into account acquisi-  
49 tions, divestments, mergers, and other structural changes that can  
50 affect the greenhouse gas emissions reporting, and is disclosed in a  
51 manner consistent with the Greenhouse Gas Protocol standards and guid-  
52 ance or an alternative standard, if one is adopted after two thousand  
53 thirty-three.

54 vi. (1) A reporting entity shall obtain an assurance engagement,  
55 performed by an independent third-party assurance provider, of their  
56 public disclosure. The reporting entity shall ensure that a copy of the

1 complete assurance provider's report on the greenhouse gas emissions  
2 inventory, including the name of the third-party assurance provider, is  
3 provided to the emissions reporting organization as part of or in  
4 connection with the reporting entity's public disclosure.

5 (2) The assurance engagement for scope 1 emissions and scope 2 emis-  
6 sions shall be performed at a limited assurance level beginning in two  
7 thousand twenty-six and at a reasonable assurance level beginning in two  
8 thousand thirty.

9 (3) On or before January first, two thousand twenty-seven, the depart-  
10 ment shall review and evaluate trends in third-party assurance require-  
11 ments for scope 3 emissions, and on or before such date, the department  
12 may establish an assurance requirement for third-party assurance engage-  
13 ments of scope 3 emissions. If any such requirement is established, the  
14 assurance engagement for scope 3 emissions shall be performed at a  
15 limited assurance level beginning in two thousand thirty.

16 (4) A third-party assurance provider shall have significant experience  
17 in measuring, analyzing, reporting, or attesting to the emission of  
18 greenhouse gases and sufficient competence and capabilities necessary to  
19 perform engagements in accordance with professional standards and appli-  
20 cable legal and regulatory requirements. The assurance provider shall be  
21 able to issue reports that are appropriate under the circumstances and  
22 independent with respect to the reporting entity, and any of the report-  
23 ing entity's affiliates for which it is providing the assurance report.  
24 On or before January first, two thousand thirty, the department shall  
25 review, and update as necessary, the qualifications for third-party  
26 assurance providers based on an evaluation of trends in education relat-  
27 ing to the emission of greenhouse gases and the qualifications of third-  
28 party assurance providers.

29 (5) The department shall ensure that the assurance process minimizes  
30 the need for reporting entities to engage multiple assurance providers  
31 and ensures sufficient assurance provider capacity, as well as timely  
32 reporting implementation as required under clause one of subparagraph i  
33 of this paragraph.

34 vii. (1) A reporting entity upon filing its disclosure, shall pay an  
35 annual fee to the department for the administration and implementation  
36 of this section.

37 (2) The department shall set the fee established pursuant to clause  
38 one of this subparagraph in an amount sufficient to cover the depart-  
39 ment's full costs of administrating and implementing this section. The  
40 total amount of fees collected shall not exceed the department's actual  
41 and reasonable costs to administer and implement this section.

42 (3) The proceeds of the fees imposed pursuant to clause one of this  
43 subparagraph shall be deposited in the climate accountability and emis-  
44 sions disclosure fund established by section ninety-nine-ss of the state  
45 finance law.

46 b. The department shall create or contract with an emissions reporting  
47 organization to develop a reporting program to receive and make publicly  
48 available disclosures required by this section. Emissions reporting  
49 organizations shall not be authorized to provide services to a company  
50 where a conflict of interest exists. A conflict of interest shall  
51 include:

52 i. The emissions reporting organization and reporting entity sharing  
53 any management staff or board of directors membership, or any of the  
54 senior management staff of the reporting entity having been employed by  
55 the emissions reporting organization or reporting entity within the  
56 previous five years.

1 ii. Any employee of the emissions reporting organization, or any  
2 employee of a related entity, or a subcontractor who is a member of the  
3 emissions reporting organization having provided the reporting entity  
4 with services related to the areas of emissions reporting organization,  
5 or any services designated by the department, within the previous five  
6 years.

7 iii. Any staff member of the emissions reporting organization provid-  
8 ing any type of non-monetary incentive to a reporting entity to secure a  
9 services contract.

10 c. The department may adopt or update any other regulations that it  
11 deems necessary and appropriate to implement this subdivision.

12 d. In developing the regulations required pursuant to this subdivi-  
13 sion, the department shall consult with all of the following:

14 i. the attorney general;

15 ii. other government stakeholders, including, but not limited to,  
16 experts in climate science and corporate carbon emissions accounting and  
17 reporting;

18 iii. investors;

19 iv. stakeholders representing consumer and environmental justice  
20 interests; and

21 v. reporting entities that have demonstrated leadership in full-scope  
22 greenhouse gas emissions accounting and public disclosure and greenhouse  
23 gas emissions reductions.

24 e. This section does not require additional reporting of emissions of  
25 greenhouse gases beyond the reporting of scope 1 emissions, scope 2  
26 emissions, and scope 3 emissions required pursuant to the Greenhouse Gas  
27 Protocol standards and guidance or an alternative standard, if one is  
28 adopted after two thousand thirty-three.

29 2. a. The department shall prepare a report on the public disclosures  
30 made by reporting entities to the emissions reporting organization  
31 pursuant to subdivision one of this section and the regulations adopted  
32 by the department pursuant to such subdivision. In preparing the report,  
33 consideration shall be given to, at a minimum, greenhouse gas emissions  
34 from reporting entities in the context of state greenhouse gas emissions  
35 reduction and climate goals. The department shall issue the report of  
36 its findings to the governor, the speaker of the assembly and the tempo-  
37 rary president of the senate and shall publish such report on its  
38 website.

39 b. The emissions reporting organization shall make the reporting enti-  
40 ties' disclosures publicly available on the digital platform required to  
41 be created by the emissions reporting organization pursuant to subdivi-  
42 sion four of this section.

43 3. a. i. The emissions reporting organization, on or before July  
44 first, two thousand twenty-six pursuant to clause one of subparagraph i  
45 of paragraph a of subdivision one of this section, shall create a  
46 digital platform, which shall be accessible to the public, that will  
47 feature the emissions data of reporting entities in conformance with the  
48 regulations adopted by the department pursuant to subdivision one of  
49 this section and the report prepared for the department pursuant to  
50 subdivision two of this section. The emissions reporting organization  
51 shall make the reporting entities' disclosures and the department's  
52 report available on the digital platform within thirty days of receipt.

53 ii. The digital platform shall be capable of featuring individual  
54 reporting entity disclosures, and shall allow consumers, investors, and  
55 other stakeholders to view reported data elements aggregated in a varie-  
56 ty of ways, including multiyear data, in a manner that is easily under-

1 standable and accessible to residents of the state. All data sets and  
2 customized views shall be available in electronic format for access and  
3 use by the public.

4 b. The emissions reporting organization shall submit, within thirty  
5 days of receipt, the report prepared for the department pursuant to this  
6 subdivision to the temporary president of the senate, the speaker of the  
7 assembly, and the governor.

8 4. a. The attorney general may bring a civil action against a report-  
9 ing entity seeking civil penalties of up to one hundred thousand dollars  
10 per day for willful failure to comply with the requirements of this  
11 section or regulations set forth by the department, including for  
12 nonfiling, late filing, or other failure to meet the requirements of  
13 this section. The civil penalties imposed on a reporting entity for  
14 such violations shall not exceed five hundred thousand dollars in a  
15 reporting year. In seeking civil penalties for a violation of this  
16 section, the attorney general shall consider all relevant circumstances,  
17 including both of the following:

18 i. the violator's past and present compliance with this section; and  
19 ii. whether the violator took any good faith measures to comply with  
20 this section and when those measures were taken.

21 b. A reporting entity shall not be subject to a civil action under  
22 this section for any misstatements with regard to scope 3 emissions  
23 disclosures made with a reasonable basis and disclosed in good faith.

24 c. Penalties assessed on scope 3 reporting, between two thousand twenty-  
25 seven and two thousand thirty, shall only occur for nonfiling.

26 5. This section applies to the state university and city university of  
27 New York only to the extent that the regents of the state university or  
28 city university, by resolution, make any of these provisions applicable  
29 to the university.

30 § 3. The state finance law is amended by adding a new section 99-ss to  
31 read as follows:

32 § 99-ss. Climate accountability and emissions disclosure fund. 1.  
33 There is hereby established in the joint custody of the state comp-  
34 troller and the department of tax and finance a special fund to be known  
35 as the "climate accountability and emissions disclosure fund". Moneys in  
36 this account shall be kept separate and not commingled with any other  
37 moneys in the custody of the comptroller.

38 2. Such fund shall consist of all revenues received by the department  
39 of taxation and finance, pursuant to the provisions of section 75-0121  
40 of the environmental conservation law, the tax law and all other moneys  
41 credited or transferred thereto from any other fund or source pursuant  
42 to law. Nothing contained in this section shall prevent the state from  
43 receiving grants, gifts or bequests for the purposes of the fund as  
44 defined in this section and depositing them into the fund according to  
45 law. Any interest received by the comptroller on moneys on deposit  
46 shall be retained and become part of the fund, unless otherwise directed  
47 by law.

48 § 4. Severability. If any clause, sentence, paragraph, subdivision,  
49 section or part of this act shall be adjudged by any court of competent  
50 jurisdiction to be invalid, such judgment shall not affect, impair, or  
51 invalidate the remainder thereof, but shall be confined in its operation  
52 to the clause, sentence, paragraph, subdivision, section or part thereof  
53 directly involved in the controversy in which such judgment shall have  
54 been rendered. It is hereby declared to be the intent of the legislature  
55 that this act would have been enacted even if such invalid provisions  
56 had not been included herein.

1 § 5. This act shall take effect two years after it shall have become a  
2 law. Effective immediately, the addition, amendment and/or repeal of any  
3 rule or regulation necessary for the implementation of this act on its  
4 effective date are authorized to be made and completed on or before such  
5 effective date.