

STATE OF NEW YORK

7705

2023-2024 Regular Sessions

IN SENATE

October 16, 2023

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to requiring reporting and verification of greenhouse gas emissions by certain entities

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

1 Section 1. The environmental conservation law is amended by adding a
2 new section 75-0121 to read as follows:

3 § 75-0121. Climate corporate data accountability.

4 1. For purposes of this section, the following terms have the follow-
5 ing definitions:

6 a. "Emissions reporting organization" means a nonprofit emissions
7 reporting organization contracted by the council pursuant to this
8 section that both:

9 (i) currently operates a greenhouse gas emission reporting organiza-
10 tion for organizations operating in the United States; and

11 (ii) has experience with greenhouse gas emissions disclosure by enti-
12 ties operating in New York.

13 b. "Reporting entity" means a partnership, corporation, limited
14 liability company, or other business entity formed under the laws of
15 this state, the laws of any other state of the United States or the
16 District of Columbia, or under an act of the Congress of the United
17 States with total annual revenues in excess of one billion dollars
18 (\$1,000,000,000) and that does business in New York. Applicability shall
19 be determined based on the reporting entity's revenue for the prior
20 fiscal year.

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

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

LBD13422-01-3

1 d. "Scope 2 emissions" means indirect greenhouse gas emissions from
2 consumed electricity, steam, heating, or cooling purchased or acquired
3 by a reporting entity, regardless of location.

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

9 2. a. On or before January first, two thousand twenty-five, the
10 department, in consultation with the New York state climate action coun-
11 cil, shall develop and adopt regulations to require a reporting entity
12 to annually disclose to the emissions reporting organization, and obtain
13 an assurance engagement performed by an independent third-party assur-
14 ance provider on all of the reporting entity's scope 1 emissions, scope
15 2 emissions, and scope 3 emissions. The council shall ensure that the
16 regulations adopted pursuant to this subdivision require all of the
17 following:

18 (i) (A) (I) That a reporting entity, starting in two thousand twenty-
19 six on or by a date to be determined by the department, and annually
20 thereafter on or by that date, publicly disclose to the emissions
21 reporting organization all of the reporting entity's scope 1 emissions
22 and scope 2 emissions for the reporting entity's prior fiscal year.

23 (II) That a reporting entity, starting in two thousand twenty-seven
24 and annually thereafter, publicly disclose its scope 3 emissions no
25 later than one hundred eighty days after its scope 1 emissions and scope
26 2 emissions are publicly disclosed to the emissions reporting organiza-
27 tion for the prior fiscal year.

28 (B) A reporting entity shall, beginning in two thousand twenty-six,
29 measure and report its emissions of greenhouse gases in conformance with
30 the Greenhouse Gas Protocol standards and guidance, including the Green-
31 house Gas Protocol Corporate Accounting and Reporting Standard and the
32 Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and
33 Reporting Standard developed by the World Resources Institute and the
34 World Business Council for Sustainable Development, including guidance
35 for scope 3 emissions calculations that detail acceptable use of both
36 primary and secondary data sources, including the use of industry aver-
37 age data, proxy data, and other generic data in its scope 3 emissions
38 calculations.

39 (C) (I) Starting in two thousand thirty-three and every five years
40 thereafter, the department may survey and assess currently available
41 greenhouse gas accounting and reporting standards. At the conclusion of
42 this assessment the department may adopt a globally recognized alterna-
43 tive accounting and reporting standard if it determines its use would
44 more effectively further the goals of this section. This review process
45 shall include consultation with the stakeholders identified in paragraph
46 d of this subdivision.

47 (II) If the department adopts an alternative accounting and reporting
48 standard, the department shall develop and adopt new regulations, pursu-
49 ant to this paragraph, to ensure full conformance with the new standard
50 and reporting of scopes 1, 2, and 3 emissions and other requirements of
51 this section.

52 (D) During two thousand twenty-nine the department shall review, and
53 on or before January first, two thousand thirty, the department shall
54 update as necessary, the public disclosure deadlines established pursu-
55 ant to item (I) of clause (A) of this subparagraph to evaluate trends in
56 scope 3 emissions reporting and consider changes to the disclosure dead-

1 lines to ensure that scope 3 emissions data is disclosed to the emis-
2 sions reporting organization as close in time as practicable to the
3 deadline for reporting entities to disclose scope 1 emissions and scope
4 2 emissions data.

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

10 (ii) That a reporting entity's public disclosure maximizes access for
11 consumers, investors, and other stakeholders to comprehensive and
12 detailed greenhouse gas emissions data across scopes 1, 2, and 3 emis-
13 sions, as defined by this section, and is made in a manner that is easi-
14 ly understandable and accessible;

15 (iii) That a reporting entity's public disclosure includes the name of
16 the reporting entity and any fictitious names, trade names, assumed
17 names, and logos used by the reporting entity;

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

24 (B) Reporting entities that are required to report mandatory indus-
25 trial emissions pursuant to regulations adopted by the commissioner may
26 provide that data with the disclosure required pursuant to this section;

27 (v) That a reporting entity's disclosure takes into account acquisi-
28 tions, divestments, mergers, and other structural changes that can
29 affect the greenhouse gas emissions reporting, and is disclosed in a
30 manner consistent with the Greenhouse Gas Protocol standards and guid-
31 ance or an alternative standard, if one is adopted after two thousand
32 thirty-three;

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

40 (B) The assurance engagement for scope 1 emissions and scope 2 emis-
41 sions shall be performed at a limited assurance level beginning in two
42 thousand twenty-six and at a reasonable assurance level beginning in two
43 thousand thirty.

44 (C) During two thousand twenty-six, the department shall review and
45 evaluate trends in third-party assurance requirements for scope 3 emis-
46 sions. On or before January first, two thousand twenty-seven, the
47 department may establish an assurance requirement for third-party assur-
48 ance engagements of scope 3 emissions. The assurance engagement for
49 scope 3 emissions shall be performed at a limited assurance level begin-
50 ning in two thousand thirty.

51 (D) A third-party assurance provider shall have significant experience
52 in measuring, analyzing, reporting, or attesting to the emission of
53 greenhouse gasses and sufficient competence and capabilities necessary
54 to perform engagements in accordance with professional standards and
55 applicable legal and regulatory requirements. The assurance provider
56 shall be able to issue reports that are appropriate under the circum-

1 stances and independent with respect to the reporting entity, and any of
2 the reporting entity's affiliates for which it is providing the assur-
3 ance report. During two thousand twenty-nine the department shall review
4 and, on or before January first, two thousand thirty, shall update as
5 necessary, the qualifications for third-party assurance providers based
6 on an evaluation of trends in education relating to the emission of
7 greenhouse gases and the qualifications of third-party assurance provid-
8 ers.

9 (E) The department shall ensure that the assurance process minimizes
10 the need for reporting entities to engage multiple assurance providers
11 and ensures sufficient assurance provider capacity, as well as timely
12 reporting implementation as required under item (I) of clause (A) of
13 subparagraph (i) of this paragraph;

14 (vii) (A) That a reporting entity, upon filing its disclosure, shall
15 pay an annual fee to the department for the administration and implemen-
16 tation of this section.

17 (B) The department shall set the fee established pursuant to this
18 subparagraph in an amount sufficient to cover the department's full
19 costs of administrating and implementing this section. The total amount
20 of fees collected shall not exceed the department's actual and reason-
21 able costs to administer and implement this section.

22 (C) The proceeds of the fees imposed pursuant to this subparagraph
23 shall be deposited in a climate accountability and emissions disclosure
24 account within the department. The moneys in the account shall be
25 continuously appropriated to the department and shall be expended by the
26 department for the department's activities pursuant to this section and
27 to reimburse any outstanding loans made from other funds used to finance
28 the initial costs of the department's activities pursuant to this
29 section. Moneys in the account shall not be expended for any purpose not
30 enumerated in this section.

31 (D) The department may adjust the fee in any year to reflect changes
32 in the consumer price index during the prior year.

33 b. The department shall contract with an emissions reporting organiza-
34 tion to develop a reporting program to receive and make publicly avail-
35 able disclosures required pursuant to paragraph a of this subdivision.

36 c. The department may adopt or update any other regulations that it
37 deems necessary and appropriate to implement this section.

38 d. In developing the regulations required pursuant to this section,
39 the department shall consult with all of the following:

40 (i) the attorney general;

41 (ii) other government stakeholders, including, but not limited to,
42 experts in climate science and corporate carbon emissions accounting and
43 reporting;

44 (iii) investors;

45 (iv) stakeholders representing consumer and environmental justice
46 interests; and

47 (v) reporting entities that have demonstrated leadership in full-scope
48 greenhouse gas emissions accounting and public disclosure and greenhouse
49 gas emissions reductions.

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

55 3. a. On or before July first, two thousand twenty-seven, the depart-
56 ment shall contract with the state university of New York, a national

1 laboratory, or another equivalent academic institution to prepare a
2 report on the public disclosures made by reporting entities to the emis-
3 sions reporting organization pursuant to subdivision one of this section
4 and the regulations adopted by the department pursuant to that subdivi-
5 sion. In preparing the report, consideration shall be given to, at a
6 minimum, greenhouse gas emissions from reporting entities in the context
7 of state greenhouse gas emissions reduction and climate goals. The
8 entity preparing the report shall not require reporting entities to
9 report any information beyond what is required pursuant to such subdivi-
10 sion one or the regulations adopted by the department pursuant to that
11 subdivision.

12 b. The department shall submit the report required by this subdivision
13 to the emissions reporting organization to be made publicly available on
14 the digital platform required to be created by the emissions reporting
15 organization pursuant to subdivision three of this section.

16 4. a. (i) The emissions reporting organization, on or before the date
17 determined by the department pursuant to subparagraph (i) of paragraph a
18 of subdivision two of this section, shall create a digital platform,
19 which shall be accessible to the public, that will feature the emissions
20 data of reporting entities in conformance with the regulations adopted
21 by the department pursuant to subdivision two of this section and the
22 report prepared for the department pursuant to such subdivision. The
23 emissions reporting organization shall make the reporting entities'
24 disclosures and the department's report available on the digital plat-
25 form within thirty days of receipt.

26 (ii) The digital platform shall be capable of featuring individual
27 reporting entity disclosures, and shall allow consumers, investors, and
28 other stakeholders to view reported data elements aggregated in a varie-
29 ty of ways, including multiyear data, in a manner that is easily under-
30 standable and accessible to residents of the state. All data sets and
31 customized views shall be available in electronic format for access and
32 use by the public.

33 b. The emissions reporting organization shall submit, within thirty
34 days of receipt, the report prepared for the department pursuant to
35 subdivision four of this section to the relevant policy committees of
36 the legislature.

37 5. a. The department shall adopt regulations that authorize it to seek
38 administrative penalties for non-filing, late filing, or other failure
39 to meet the requirements of this section. The administrative penalties
40 authorized by this section shall be imposed and recovered by the depart-
41 ment in administrative proceedings. The administrative penalties imposed
42 on a reporting entity shall not exceed five hundred thousand dollars
43 (\$500,000) in a reporting year. In imposing penalties for a violation of
44 this section, the department shall consider all relevant circumstances,
45 including both of the following:

46 (i) the violator's past and present compliance with this section; and
47 (ii) whether the violator took good faith measures to comply with this
48 section and when those measures were taken.

49 b. A reporting entity shall not be subject to an administrative penal-
50 ty under this section for any misstatements with regard to scope 3 emis-
51 sions disclosures made with a reasonable basis and disclosed in good
52 faith.

53 c. Penalties assessed on scope 3 reporting, between two thousand twen-
54 ty-seven and two thousand thirty, shall only occur for non-filing.

1 6. This section applies to the university of New York only to the
2 extent that the regents of the university of New York, by resolution,
3 make any of these provisions applicable to the university.

4 § 2. Severability. If any clause, sentence, paragraph, subdivision,
5 section or part of this act shall be adjudged by any court of competent
6 jurisdiction to be invalid, such judgment shall not affect, impair, or
7 invalidate the remainder thereof, but shall be confined in its operation
8 to the clause, sentence, paragraph, subdivision, section or part thereof
9 directly involved in the controversy in which such judgment shall have
10 been rendered. It is hereby declared to be the intent of the legislature
11 that this act would have been enacted even if such invalid provisions
12 had not been included herein.

13 § 3. This act shall take effect immediately.