STATE OF NEW YORK

4123--B

2023-2024 Regular Sessions

IN ASSEMBLY

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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:

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

§ 2. The environmental conservation law is amended by adding a new 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.

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

1. "Emissions reporting organization" means a nonprofit emissions reporting organization contracted by the department pursuant to paragraph b of subdivision two of section 74-0102 of this article that both:

a. Currently operates a greenhouse gas emissions reporting organization 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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b. Has experience with greenhouse gas emissions disclosure by entities operating in New York.

2. "Reporting entity" means:

a. A partnership, corporation, limited liability company, or other business entity formed under the laws of this state or any other jurisdiction that both:

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

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

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

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 and services.

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

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

§ 74-0102. Climate corporate data accountability act.

1. a. The department shall adopt regulations to require a reporting entity to annually disclose to the emissions reporting organization, and to 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 regulations adopted pursuant to this subdivision shall require that:

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

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

(2) In complying with the requirements of this section, a reporting entity shall measure and report its emissions of greenhouse gases in conformance with 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.

(3) (A) Starting in two thousand thirty-three and every five years thereafter, the department may survey and assess currently available greenhouse gas accounting and reporting standards. At the conclusion of this assessment the department 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 d of this subdivision.

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

(4) On or before January first, two thousand thirty, the department shall review, and update as necessary, the public disclosure deadlines established pursuant to clause one of this subparagraph 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.

(5) The reporting timelines 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.

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

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

iv. A reporting entity's emissions reporting shall be 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 state, national, and international reporting requirements, including any reports required by the federal government or other states, as long as those reports satisfy all of the requirements of this section.

v. A reporting entity's disclosure shall take 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 two thousand thirty-three.

vi. (1) A reporting entity shall obtain 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.

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

(3) On or before January first, two thousand twenty-seven, the department shall review and evaluate trends in third-party assurance requirements for scope 3 emissions, and on or before such date, the department may establish an assurance requirement for third-party assurance engagements of scope 3 emissions. If any such requirement is established, the assurance engagement for scope 3 emissions shall be performed at a limited assurance level beginning in two thousand thirty.

(4) A third-party assurance provider shall have significant experience in measuring, analyzing, reporting, or attesting to the emission of greenhouse gases 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. On or before January first, two thousand thirty, the department shall review, and 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.

(5) The department 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 one of subparagraph i of this paragraph.

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

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

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

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

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

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

iii. Any staff member of the emissions reporting organization providing any type of non-monetary incentive to a reporting entity to secure a services contract.

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

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

i. the attorney general;

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

iii. investors;

iv. stakeholders representing consumer and environmental justice interests; and

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

e. 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 two thousand thirty-three.

2. a. The department shall prepare a report on the public disclosures made by reporting entities to the emissions reporting organization pursuant to subdivision one of this section and the regulations adopted by the department pursuant to such 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 department shall issue the report of its findings to the governor, the speaker of the assembly and the temporary president of the senate and shall publish such report on its website.

b. The emissions reporting organization shall make the reporting entities' disclosures publicly available on the digital platform required to be created by the emissions reporting organization pursuant to subdivision four of this section.

3. a. i. The emissions reporting organization, on or before July first, two thousand twenty-six pursuant to clause one of subparagraph i of paragraph a of subdivision one of this section, 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 department pursuant to subdivision one of this section and the report prepared for the department pursuant to subdivision two of this section. The emissions reporting organization shall make the reporting entities' disclosures and the department's report available on the digital platform within thirty days of receipt.

ii. 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 under-

standable 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.

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

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

i. the violator's past and present compliance with this section; and

ii. whether the violator took any good faith measures to comply with this section and when those measures were taken.

b. A reporting entity shall not be subject to a civil action 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 two thousand twenty-seven and two thousand thirty, shall only occur for nonfiling.

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

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

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

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

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

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