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:

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

§ 75-0121. Climate corporate data accountability.

1. For purposes of this section, the following terms have the following definitions:

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

(i) currently operates a greenhouse gas emission reporting organization for organizations operating in the United States; and

(ii) has experience with greenhouse gas emissions disclosure by entities operating in New York.

b. "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 New York. Applicability shall be determined based on the reporting entity's revenue for the prior fiscal year.

c. "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.

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

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d. "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.

e. "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.

2. a. On or before January first, two thousand twenty-five, the department, in consultation with the New York state climate action council, 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 council shall ensure that the regulations adopted pursuant to this subdivision require all of the following:

(i) (A) (I) That a reporting entity, starting in two thousand twenty-six on or by a date to be determined by the department, 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 two thousand twenty-seven and annually thereafter, publicly disclose its scope 3 emissions no later than one hundred eighty days after its scope 1 emissions and scope 2 emissions are publicly disclosed to the emissions reporting organization for the prior fiscal year.

(B) A reporting entity shall, beginning in two thousand twenty-six, 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.

(C) (I) 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.

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

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

lines 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.

(E) 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;

(ii) 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;

(iii) 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;

(iv) (A) 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.

(B) Reporting entities that are required to report mandatory industrial emissions pursuant to regulations adopted by the commissioner may provide that data with the disclosure required pursuant to this section;

(v) 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 two thousand thirty-three;

(vi) (A) 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.

(B) 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.

(C) During two thousand twenty-six, the department shall review and evaluate trends in third-party assurance requirements for scope 3 emissions. On or before January first, two thousand twenty-seven, the department 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 two thousand thirty.

(D) 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 circum-

stances 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 two thousand twenty-nine the department shall review and, on or before January first, two thousand thirty, 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.

(E) 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 item (I) of clause (A) of subparagraph (i) of this paragraph;

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

(B) The department shall set the fee established pursuant to 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.

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

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

b. The department shall contract with an emissions reporting organization to develop a reporting program to receive and make publicly available disclosures required pursuant to paragraph a of this subdivision.

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

d. In developing the regulations required pursuant to this section, 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.

3. a. On or before July first, two thousand twenty-seven, the department shall contract with the state university of New York, 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 one of this section and the regulations adopted by the department 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 such subdivision one or the regulations adopted by the department pursuant to that subdivision.

b. The department 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 three of this section.

4. a. (i) The emissions reporting organization, on or before the date determined by the department pursuant to subparagraph (i) of paragraph a of subdivision two 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 two of this section and the report prepared for the department pursuant to such subdivision. 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 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.

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

5. a. The department shall adopt regulations that authorize it to seek administrative penalties for non-filing, 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 department in administrative proceedings. 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 department 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 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 two thousand twenty-seven and two thousand thirty, shall only occur for non-filing.

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

§ 2. 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.

§ 3. This act shall take effect immediately.