Securities Regulation Daily Wrap Up, ESG NEWS—Could implementation of California's twin climate laws be in jeopardy?, (Jan 12, 2024)

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The sponsor of one of the climate bills that became law last year says budget cuts may force the CARB to get a loan to begin implementation, which CARB estimated would only require $9 million, a tiny fraction of the full California budget.

When California enacted twin climate disclosure bills last year that seemed to jump far ahead of what could become a scaled-back SEC climate risk disclosure regime that has faced numerous delays since it was proposed in March of 2022, some analysts began to question whether the SEC's proposal may become obsolete before it was finalized. Even SEC Chair Gary Gensler had suggested that the enactment of the California laws could require the SEC to recalibrate its economic baselines for its own climate regulation. This week, however, California Governor Gavin Newsom put forth a 2024-25 budget plan that the sponsor of one of California's climate bills said could jeopardize implementation. That may rob California of the chance to quickly implement nation-leading climate change disclosure laws and could prompt renewed SEC efforts to further refine the economic impact of its proposed regulation before a final version is issued.

According to a press release issued by California State Senator Scott Wiener (D-San Francisco), the funding delay may only be temporary pending reconsideration of the state's finances in May of this year. The two climate laws impacted by the governor's decision to pause funding of all newly enacted legislation would require large public and private companies to make disclosures about their climate risks. The California laws are far wider in scope than the SEC's climate risk disclosure proposal, which is currently believed to be undergoing a review that could pare some provisions in light of thousands of public comments and anticipated legal challenges to a final version.

"It's critical that the May budget include funding to implement these laws so that businesses have the certainty they need to prepare to make these new disclosures. CARB [the California Air Resources Board] can begin the implementation process with no impact on the General Fund by taking out an inter-governmental loan to cover the initial startup costs," said Wiener. "I have every confidence in this Governor's commitment to climate action, and our coalition will continue to work with him to keep implementation of these laws on the timeline laid out in the law."

The other climate bill sponsor, California State Senator Henry Stern (D-Los Angeles) added: "I'm confident that while we get through this difficult budget uncertainty, the experts at CARB won't just be sitting around. I look forward to broadening our coalition with more corporate climate leaders who want to step up and make clear to the Governor that California has an urgent duty to catch up to the other major jurisdictions around the world, to ensure that corporations not face political or legal persecution simply for accounting for their climate risks and emissions."

The governor's budget proposal provided an overview of the reduced spending on climate matters. A summary document on climate change, without offering specific line item cuts regarding corporate disclosures, noted that the state's 2021 and 2022 Budget Acts anticipated $54 billion in spending on climate matters. The governor's 2024-25 budget proposal suggests spending only $48.3 billion over seven years, while also seeking funding from federal programs enacted under the Inflation Reduction Act and the Infrastructure Investment and jobs Act.

More specifically, the state budget proposal seeks $6.7 billion in cuts related to climate. Of this amount, $2.9 billion would be cuts in spending, while $1.9 billion in expenditures would be delayed, and $1.8 billion would be shifted to other funds.

In a press release from Newsom, climate funding was mentioned last but with a note that California expects to receive $10 billion in federal funding for various climate matters. Newsom said that a combination of budget tools and budget

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reserves built up over several years would help close an expected $37.86 billion shortfall.

"Thanks to the record reserves we have built up and a commitment to fiscal discipline over the years, our state is in a strong position to close this shortfall while protecting key priorities and programs that millions of Californians rely on," said Newsom. "This balanced budget plan keeps California on firm economic footing while continuing our work to tackle homelessness, keep communities safe, expand access to high-quality education, overhaul behavioral health care and fight climate change."

The SEC's proposed climate risk disclosure regulation, according to the agency's latest regulatory agenda, is due to be finalized by April 2024, as would many other expected SEC final regulations on other topics. The SEC's proposal is significantly narrower than California's climate laws in that it would only apply to public companies, while California's laws would apply to public and private firms. California's laws also would go further than even the SEC's proposal regarding GHG emissions disclosures. The timing of the SEC's final regulation remains uncertain and at least one SEC commissioner has suggested that numerous expected changes may require that the regulation be re-proposed.

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