AMENDED IN SENATE APRIL 24, 2008

AMENDED IN SENATE APRIL 21, 2008

# SENATE BILL No. 1550

**Introduced by Senator Florez**

February 22, 2008

An act to add Section 318.2 to the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1550, as amended, Florez. Corporations: climate change disclosure.

Existing law, the General Corporation Law, governs the operation of corporations. Under existing law, the board of directors of a corporation is required to send the shareholders of the corporation, at the close of the fiscal year, an annual report containing, among other things, a balance sheet, an income statement, and a statement of cashflows for that fiscal year.

This bill would require the ~~Secretary of State~~ *Controller*, in consultation with the investment community, to develop a climate change disclosure standard for use by listed companies doing business in California. The standard would provide guidance on disclosure of climate change risks and opportunities for listed companies. The bill would require the ~~Secretary of State~~ *Controller* to publish the standard on its Internet Web site by December 1, 2009, and would authorize the ~~Secretary of State~~ *Controller* to periodically revise the standard, as specified. The bill would state findings and declarations in this regard.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares the following:

(a) Climate change presents new corporate governance, regulatory, and reputational risk to publicly held companies, which has led various important Wall Street analysts to study the effects of climate change on shareholder value.

(b) Institutional investors have begun pressing corporations for more disclosure of climate risk and opportunities, including the impact of climate change on competitiveness and investment returns.

(c) A 2005 opinion published by Freshfields, an internationally recognized corporate law firm, clearly stated that investors have a fiduciary duty to examine all reasonably foreseen risks associated with investment opportunities, including externalities, such as climate change, which could have a material impact on the performance of a publicly held company.

(d) Institutional investors representing over $7 trillion in assets have proposed global standards for disclosing carbon and other greenhouse gas emissions. Increased disclosure of the risk associated with climate change provides a more transparent and therefore more efficient marketplace for investors, especially large institutional investors.

SEC. 2. Section 318.2 is added to the Corporations Code, to read:

318.2. (a) The ~~Secretary of State~~ *Controller*, in consultation with the investment community, shall develop an investor-based climate change disclosure standard in accordance with subdivision (e) for use by listed companies doing business in California. The standard shall provide guidance on disclosure of climate change risks and opportunities for listed companies. No listed company is required to meet the standard.

(b) To the greatest extent possible, the ~~Secretary of State~~ *Controller* shall use globally accepted climate change disclosure standards.

(c) The ~~Secretary of State~~ *Controller* shall complete and publish the investor-based climate change disclosure standard on its Internet Web site by December 1, 2009. The standard may be revised *by the Controller* periodically in order to meet investor needs as well as to incorporate new understandings of the risks and opportunities of climate change.

(d) Listed companies are encouraged to use existing disclosure mechanisms to provide information that meets investors' expectations and serve their analytical needs. Existing disclosure mechanisms include, but are not limited to, financial statements, filings with the United States Securities Exchange Commission, annual reports, and sustainability reports.

(e) The climate change disclosure standard shall, at a minimum, address and include the following:

(1) Emissions: A statement of the company's total greenhouse gas emissions including actual historical direct and indirect emissions since 1990, current direct and indirect emissions, and estimated future direct and indirect emissions of greenhouse gases from its operations, purchased electricity, and products and services.

(2) Climate Change Statement: A statement of the company's current position on climate change, its responsibility to address climate change, and its engagement with governments and advocacy organizations to effect climate change policy.

(3) Emissions Management: An explanation of all significant actions the company is taking to minimize its risk and maximize its opportunities associated with climate change. Specifically, this explanation should include the actions the company is taking to reduce, offset, or limit greenhouse gas emissions. Actions could include establishment of emissions reduction targets, participation in emissions trading schemes, investment in clean energy technologies, and development and design of new products. Descriptions of greenhouse gas reduction activities and mitigation projects should include estimated emission reductions and timelines.

(4) Corporate Governance: A description of the company's corporate governance actions, including whether the board and executive staff have been engaged on climate change and addressing climate risk. In addition, a company should disclose whether executive compensation is linked to meeting corporate climate objectives, and if so, a description of how they are linked.

(5) Assessment of Physical Risks: Climate change is beginning to cause an array of physical effects, many of which can have significant implications for public companies and their investors.

To help investors analyze these risks, a company should analyze and disclose material, physical effects that climate change may have on the company's business and its operations, including its supply chain. Specifically, a company should disclose how climate and weather generally affect its business and its operations, including its supply chain. These effects may include the impact of changed weather patterns, such as increased number and intensity of storms, sea-level rise, water availability and other hydrological effects, changes in temperature, and impacts of health effects, such as heat-related illness or disease, on its workforce. After identifying these risk exposures, a company should describe how it could adapt to the physical risks of climate change and estimate the potential costs of adaptation.

(6) Analysis of Regulatory Risks: As more governments adopt regulatory standards relating to greenhouse gas emissions, companies with direct or indirect emissions may face regulatory risks that could have significant implications. Investors need to understand these risks and to assess the potential financial impacts of climate change regulations on the company. Specifically, a company should disclose any known trends, events, demands, commitments, and uncertainties stemming from climate change that are reasonably likely to have a material effect on its financial condition or operating performance. This analysis should include consideration of secondary effects of regulation such as increased energy and transportation costs. The analysis should incorporate the possibility that consumer demand may shift sharply due to changes in domestic and international energy markets. A company should disclose all greenhouse gas regulations that have been imposed in countries where the company operates and an assessment of the potential financial impact of those regulations. The company should disclose expectations concerning the future cost of carbon resulting from emissions reductions of 5, 10, and 20 percent below 2000 year levels by the year 2015. Alternatively, a company could analyze and quantify the effect on the firm and shareholder value of a limited number of plausible greenhouse gas regulatory scenarios. These scenarios should include plausible greenhouse gas regulations that are under discussion by governments in countries where the company operates. A company should use the approach that provides the most meaningful disclosure, while also applying, where possible, a common analytic

framework in order to facilitate comparative analyses across companies. A company should clearly state the methods and assumptions used in its analyses for either alternative.

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