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State-Level Legislation, Nationwide Impact: Key Insights Into the Proposed Climate Reporting Rules in New York, Colorado, New Jersey, and Illinois

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As the federal government works to roll back climate regulations and climate-focused initiatives, states have developed avenues to fill in the gaps left behind. Modeled in part after California's Climate Corporate Data Accountability Act, four states are aggressively enhancing their efforts to guarantee corporate responsibility and climate-related reporting through climate disclosure bills that would impose sweeping emissions reporting requirements on businesses operating in their states.

Since the Trump administration took office, New York, Colorado, New Jersey, and Illinois introduced bills requiring companies with more than $1 billion in annual revenue that do business in their state to report on their Scope 1, 2, and 3 greenhouse gas emissions. With enforcement timelines already on the horizon and fines reaching six figures per day for noncompliance, companies doing business in these states must act quickly to assess their obligations and begin building the infrastructure to track and report their emissions. This article breaks down who the proposed legislation affects, what it requires, when it goes into effect if enacted, and how businesses can prepare for compliance in a rapidly evolving regulatory landscape.

What New York, Colorado, New Jersey, and Illinois Are Proposing

1. Who Does This Affect?

These bills affect business entities formed under the laws of any state in the United States or the District of Columbia that: (i) do business in the respective state; and (ii) have total annual revenues in excess of $1 billion in the preceding year (Reporting Entity). Revenue received from the entities' subsidiaries that do business in the state is included in the total annual revenue calculation for purposes of being defined as a Reporting Entity in New York and Colorado.

New York is currently the only state whose climate disclosure bill defines what it means to be "doing business" in their state. Under New York's SB S3456, "doing business" in New York is defined as "deriving receipts from activity" in New York, within the meaning of Section 209 of the New York Tax Law. In contrast, Colorado, New Jersey, and Illinois do not provide a specific definition of "doing business" in their state in their proposed legislation. Companies with business in California — facing similar uncertainty under that state's climate disclosure law — have looked to the California tax code for guidance until implementing regulations are issued this Summer, offering a useful reference point for how businesses might approach this ambiguity elsewhere.

2. What Are the Requirements?

The bills will require a Reporting Entity to annually disclose Scope 1, 2, and 3 emissions data. Greenhouse gas (GHG) emissions fall into one of these three categories:

- ***Scope 1 Emissions (Direct)***: Scope 1 emissions are direct GHG emissions from sources owned or directly controlled by the company, regardless of location;

- ***Scope 2 Emissions (Indirect)***: Scope 2 emissions are indirect GHG emissions, arising from the use of purchased energy; and

- ***Scope 3 Emissions (Indirect)***: Scope 3 emissions include all other indirect GHG emissions that occur outside the company's direct operations and control, both upstream and downstream in its value chain. These emissions are notoriously hard to record, as they encompass indirect emissions from purchased goods and services, business travel, employee commutes, and processing and use of sold products. However, New York, New Jersey, and Illinois expressly permit the use of industry average, proxy, and other data in a company's Scope 3 emissions calculations.

Additionally, New York and New Jersey will require that an independent third-party assurance provider conduct an assurance assessment to offer an independent opinion on the reports issued in accordance with the reporting rules.

3. Are There Penalties for Noncompliance?

All four states permit their attorney general to bring a civil action against the Reporting Entity seeking civil penalties for noncompliance. The following fines can be assessed against a business entity for violations:

- New York will assess fines of up to $500,000 per reporting year for willful failure to comply with the reporting requirements. For the years 2028 to 2031, the only penalties that will be assessed for Scope 3 reporting will be for non-filing;

- Colorado permits penalties of up to $100,000 per day for each day of noncompliance; and

- New Jersey is implementing civil administrative penalties of up to $10,000 for the first offense, $20,000 for the second, and $50,000 for the third and each subsequent offense. Each day the violations continue will constitute an additional, separate offense.

4. What Is the Timeline for Enforcement?

While none of the following emissions reporting requirements have been enacted into law, each is based on proposed legislation that, if passed, would impose the following timelines:

- New York will require reporting of Scope 1 and Scope 2 emissions starting in 2027 (using FY2026 data), with additional reporting requirements for Scope 3 emissions starting in 2028;

- Colorado will require reporting of Scope 1 and Scope 2 emissions starting in 2028 (using 2027 calendar year data). Starting in 2029, entities will have to disclose certain sources of Scope 3 emissions, with additional reporting requirements for other sources of Scope 3 emissions starting in 2030 and 2031. Notably, as of the publication of this article, Colorado's bill has been postponed indefinitely;

- New Jersey's enforcement timeline begins three years post-enactment by requiring entities to disclose their Scope 1, Scope 2, and Scope 3 emissions for the prior fiscal year to both the New Jersey Department of Environmental Protection and a non-profit emissions reporting organization. Four years post-enactment, entities must publicly disclose their Scope 1 and Scope 2 emissions for the prior fiscal year, with Scope 3 public reporting beginning the year after. New Jersey's enforcement timeline is reliant upon the bill's passage and subsequent enactment; and

- Illinois will require reporting of Scope 1 and Scope 2 emissions starting on January 1, 2027 (using 2026 calendar year data), and will require disclosure of the entity's Scope 3 emissions for the 2026 calendar year no later than 180 days after that date.

Steps Entities Can Take

Although climate deregulation at the federal level continues, these new state laws will establish mandatory climate reporting requirements that compel thousands of companies across the nation to publicly disclose their GHG emissions impacts. These mandatory public disclosures may increase regulatory and market pressure on high-emitting companies to decarbonize by enabling consumers, investors, and regulators to clearly identify companies failing to actively engage in emissions reduction. California, New York, Colorado, New Jersey, and Illinois together account for a combined GDP of $8.995 trillion – nearly 31 percent of the country's GDP. With five of the country's largest economies becoming subject to stringent GHG emissions reporting, these state-level requirements will have a far-reaching impact. Even companies with limited contacts with these states may soon find themselves needing to implement measures to track and report their Scope 1, 2, and 3 emissions as soon as next year.

Entities engaging in business activities in California, New York, Colorado, New Jersey, and Illinois are strongly encouraged to consult with an attorney to ensure compliance with the proposed legislation and California's Climate Corporate Data Accountability Act. Companies operating across these five states should take proactive steps now to prepare for these emissions-reporting requirements, such as:

- Determining if they qualify as a Reporting Entity;
- Developing internal processes to quantify direct and indirect emissions across their value chains;
- Establishing systems to collect data on Scope 1, 2, and 3 emissions;
- Engaging qualified assurance providers to verify disclosures and submit reports;
- Implementing accurate and verifiable mechanisms for the public disclosure of GHG emissions data;
- Coordinating with suppliers to gather Scope 3 GHG emissions data and ensuring contracts with suppliers allow access to this data; and
- Preparing for demands for emissions data from supply chain partners and reputational harm that could result from public disclosure of emissions data.

How Baker Donelson Can Assist

It is essential for corporate leaders to monitor evolving regulatory developments that may impact their disclosure responsibilities and compliance strategies. Our Environmental Group is available to support your organization in navigating the new compliance requirements and in identifying potential risks and liabilities associated with non-compliance or inaccurate reporting. We will work closely with your team to ensure a thorough understanding of the implications of these laws and help you stay compliant as reporting requirements evolve over time. At Baker Donelson, we are committed to monitoring developments in climate-related reporting legislation and will provide timely updates as needed. If you have any questions or need guidance, please reach out to a member of Baker Donelson's Environmental Group to discuss how we can support your organization through this dynamic and uncertain regulatory landscape.