S. 2075

To amend the Securities Exchange Act of 1934 to require issuers to disclose certain activities relating to climate change, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 10, 2019

Ms. Warren (for herself, Mr. Schatz, Mr. Whitehouse, Mr. Van Hollen, Ms. Klobuchar, Mrs. Gillibrand, Mr. Bennet, Mr. Blumenthal, Mr. Booker, Mr. Markey, Mr. Merkley, Ms. Harris, Ms. Smith, Mrs. Feinstein, Mr. Schumer, and Mr. Carper) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to require issuers to disclose certain activities relating to climate change, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Climate Risk Disclosure Act of 2019”.

SEC. 2. DEFINITIONS.

In this Act—
(1) the terms “appropriate climate principals”, “climate change”, “covered issuer”, “physical risks”, and “transition risks” have the meanings given those terms in subsection (s) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as added by section 5;

(2) the term “appropriate congressional committees” means—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives;

(3) the term “baseline scenario” means a widely recognized analysis scenario in which levels of greenhouse gas emissions, as of the date on which the analysis is performed, continue to grow, resulting in—

(A) an increase in the global average temperature of 1.5 degrees Celsius or more above pre-industrial levels; and

(B) the realization of physical risks relating to global climate change;

(4) the term “carbon dioxide equivalent” means the number of metric tons of carbon dioxide emissions with the same global warming potential as 1
metric ton of another greenhouse gas, as determined
under table A–1 of subpart A of part 98 of title 40,
Code of Federal Regulations, as in effect on the date
of enactment of this Act;

(5) the term “commercial development of fossil
fuels” includes—

(A) exploration, extraction, processing, ex-
porting, transporting, and any other significant
action with respect to oil, natural gas, coal, or
any byproduct thereof; and

(B) acquiring a license for any activity de-
scribed in subparagraph (A);

(6) the term “Commission” means the Securi-
ties and Exchange Commission;

(7) the term “direct and indirect greenhouse
gas emissions” includes, with respect to a covered
issuer—

(A) all direct greenhouse gas emissions re-
leased by the covered issuer;

(B) all indirect greenhouse gas emissions
with respect to electricity, heat, or steam pur-
chased by the covered issuer;

(C) significant indirect emissions, other
than the emissions described in subparagraph
(B), that occur in the value chain of the covered issuer; and

(D) all indirect greenhouse gas emissions that are attributable to assets owned or managed, including assets that are partially owned or managed, by the covered issuer;

(8) the term “fossil fuel reserves” means all producing assets, proved reserves, unproved resources, and any other ownership stake in sources of fossil fuels;

(9) the term “greenhouse gas”—

(A) means carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, sulfur hexafluoride, nitrogen trifluoride, and chlorofluorocarbons; and

(B) includes any other anthropogenically emitted gas or particulate that the Administrator of the Environmental Protection Agency determines, after notice and comment, to contribute to climate change;

(10) the term “greenhouse gas emissions” means the emissions of greenhouse gas, expressed in terms of metric tons of carbon dioxide equivalent;

(11) the term “social cost of carbon” means the monetized present value, discounted at a 3 percent
or lower discount rate, in dollars, per metric ton of carbon dioxide (or carbon dioxide equivalent), of the net global costs over 300 years caused by the emission of carbon dioxide (or carbon dioxide equivalent, as applicable) that result from—

(A) changes in net agricultural productivity;

(B) decreases in capital and labor productivity;

(C) effects on human health;

(D) property damage from increased sea-level rise, flooding, wildfires, and frequency and severity of extreme weather events;

(E) the value of ecosystem services; and

(F) any other type of economic, social, political, or natural disruption;

(12) the term “value chain”—

(A) means the total lifecycle of a product or service, both before and after production of the product or service, as applicable; and

(B) may include the sourcing of materials, production, and disposal with respect to the product or service described in subparagraph (A);
(13) the term “well below 1.5 degrees scenario” means a widely recognized, publicly available analysis scenario in which human interventions to combat global climate change are likely to prevent the global average temperature from reaching 1.5 degrees Celsius above pre-industrial levels; and

(14) the term “1.5 degree scenario” means a widely recognized, publicly available analysis scenario in which human interventions to combat global climate change are likely to prevent the global average temperature from reaching 1.5 degrees Celsius above pre-industrial levels.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) climate change poses a significant and increasing threat to the growth and stability of the economy of the United States;

(2) many sectors of the economy of the United States and many businesses in the United States are exposed to multiple channels of climate-related risk, which may include exposure to—

(A) the physical impacts of climate change, including the rise of the average global temperature, accelerating sea-level rise, desertification, ocean acidification, intensification of
storms, increase in heavy precipitation, more
frequent and intense temperature extremes,
more severe droughts, and longer wildfire sea-
sons;

(B) the economic disruptions and security
threats that result from the physical impacts
described in subparagraph (A), including con-
flicts over scarce resources, conditions condu-
cive to violent extremism, the spread of infec-
tious diseases, and forced migration; and

(C) the transition impacts that result as
the global economy transitions to a clean and
renewable energy, low-emissions economy, in-
cluding financial impacts as fossil fuel assets
risk becoming stranded and it becomes uneco-
nomic for companies to develop fossil fuel assets
as policymakers act to limit the worst impacts
of climate change by keeping the rise in average
global temperature to 1.5 degrees Celsius above
pre-industrial levels;

(3) assessing the potential impact of climate-re-
lated risks on national and international financial
systems is an urgent concern;
(4) companies have a duty to disclose financial risks that climate change presents to their investors, lenders, and insurers;

(5) the Commission has a duty to promote a risk-informed securities market that is worthy of the trust of the public as families invest for their futures;

(6) investors, lenders, and insurers are increasingly demanding climate risk information that is consistent, comparable, reliable, and clear;

(7) including standardized, material climate change risk and opportunity disclosure that is useful for decision makers in annual reports to the Commission will increase transparency with respect to risk accumulation and exposure in financial markets;

(8) requiring companies to disclose climate-related risk exposure and risk management strategies will encourage a smoother transition to a clean and renewable energy, low-emissions economy and guide capital allocation to mitigate, and adapt to, the effects of climate change and limit damages associated with climate-related events and disasters; and

(9) a critical component in fighting climate change is a transparent accounting of the risks that
climate change presents and the implications of continued inaction with respect to climate change.

SEC. 4. FINDINGS.

Congress finds that—

(1) short-, medium-, and long-term financial and economic risks and opportunities relating to climate change, and the national and global reduction of greenhouse gas emissions, constitute information that issuers—

(A) may reasonably expect to affect shareholder decision making; and

(B) should regularly identify, evaluate, and disclose; and

(2) the disclosure of information described in paragraph (1) should—

(A) identify, and evaluate—

(i) material physical and transition risks posed by climate change; and

(ii) the potential financial impact of risks described in clause (i);

(B) detail any implications that the risks described in subparagraph (A)(i) have on corporate strategy;

(C) detail any board-level oversight of material climate-related risks and opportunities;
(D) allow for intra- and cross-industry comparison, to the extent practicable, of climate-related risk exposure through the inclusion of standardized industry-specific and sector-specific disclosure metrics, as identified by the Commission, in consultation with the appropriate climate principals;

(E) allow for tracking of performance over time with respect to mitigating climate risk exposure; and

(F) incorporate a price on greenhouse gas emissions in financial analyses that reflects, at minimum, the social cost of carbon that is attributable to issuers.

SEC. 5. DISCLOSURES RELATING TO CLIMATE CHANGE.

(a) IN GENERAL.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(s) DISCLOSURES RELATING TO CLIMATE CHANGE.—

“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘appropriate climate principals’ means—

“(i) the Administrator of the Environmental Protection Agency;
“(ii) the Secretary of Energy;

“(iii) the Administrator of the National Oceanic and Atmospheric Administration;

“(iv) the Director of the Office of Management and Budget; and

“(v) the head of any other Federal agency determined appropriate by the Commission;

“(B) the term ‘climate change’ means a change of climate that is—

“(i) attributed directly or indirectly to human activity that alters the composition of the global atmosphere; and

“(ii) in addition to natural climate variability observed over comparable time periods;

“(C) the term ‘covered issuer’ means an issuer that is required to file an annual report under subsection (a) or section 15(d);

“(D) the term ‘physical risks’ means financial risks to long-lived fixed assets, locations, operations, or value chains that result from exposure to physical climate-related effects, including—
“(i) increased average global temperatures and increased frequency of temperature extremes;

“(ii) increased severity and frequency of extreme weather events;

“(iii) increased flooding;

“(iv) sea-level rise;

“(v) ocean acidification;

“(vi) increased frequency of wildfires;

“(vii) decreased arability of farmland;

“(viii) decreased availability of fresh water; and

“(ix) any other financial risks to long-lived fixed assets, locations, operations, or value chains determined appropriate by the Commission, in consultation with appropriate climate principals;

“(E) the term ‘transition risks’ means financial risks that are attributable to climate change mitigation and adaptation, including efforts to reduce greenhouse gas emissions and strengthen resilience to the impacts of climate change, including—

“(i) costs relating to—
“(I) international treaties and agreements;
“(II) Federal, State, and local policy;
“(III) new technologies;
“(IV) changing markets;
“(V) reputational impacts relevant to changing consumer behavior; and
“(VI) litigation; and
“(ii) assets that may lose value or become stranded due to any of the costs described in subclauses (I) through (VI) of clause (i);
“(2) DISCLOSURE.—Each covered issuer, in any annual report filed by the covered issuer under subsection (a) or section 15(d), shall, in accordance with any rules issued by the Commission pursuant to the Climate Risk Disclosure Act of 2019, include in each such report information regarding—
“(A) the identification of, the evaluation of potential financial impacts of, and any risk management strategies relating to—
“(i) physical risks posed to the covered issuer by climate change; and
“(ii) transition risks posed to the covered issuer by climate change;

“(B) a description of any established corporate governance processes and structures to identify, assess, and manage climate-related risks;

“(C) a description of specific actions that the covered issuer is taking to mitigate identified risks;

“(D) a description of the resilience of the strategy of the covered issuer for addressing climate risks, taking into account different climate scenarios; and

“(E) a description of how climate risk is incorporated into the overall risk management strategy of the covered issuer.

“(3) RULE OF CONSTRUCTION.—Nothing in paragraph (2) may be construed as precluding a covered issuer from including, in an annual report submitted under subsection (a) or section 15(d), any information not explicitly referenced in that paragraph.”.

SEC. 6. RULEMAKING.

(a) CLIMATE RISK DISCLOSURE RULES.—Not later than 2 years after the date of enactment of this Act, the
Commission, in consultation with the appropriate climate principals, shall issue rules with respect to the information that a covered issuer is required to disclose pursuant to subsection (s) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as added by section 5, which shall—

(1) establish, in consultation with the appropriate climate principals, climate-related risk disclosure guidance, which shall—

(A) be, to the extent practicable, specialized for industries within specific sectors of the economy, which shall include—

(i) the sectors of finance, insurance, transportation, electric power, mining, and non-renewable energy; and

(ii) any other sector determined appropriate by the Commission, in consultation with the appropriate climate principals;

(B) include reporting standards for estimating and disclosing direct and indirect greenhouse gas emissions by a covered issuer, and any affiliates of the covered issuer, which shall—
(i) separate, to the extent practicable, the total emissions of each specified greenhouse gas by the covered issuer; and

(ii) include greenhouse gas emissions by the covered issuer during the period covered by the disclosure;

(C) include reporting standards for disclosing, with respect to a covered issuer—

(i) the total amount of fossil fuel-related assets owned or managed by the covered issuer; and

(ii) the percentage of fossil fuel-related assets as a percentage of total assets owned or managed by the covered issuer;

(D) establish a minimum social cost of carbon, which—

(i) shall be considered a minimum price with respect to costs associated with carbon emissions;

(ii) a covered issuer shall use in preparing climate-related disclosure statements; and

(iii) the Commission shall make publicly available, including all assumptions and methods used in the calculations;
(E) not preclude a covered issuer from using and disclosing, as compared with the price established under subparagraph (D), a higher price of greenhouse gas emissions;

(F) specify requirements for, and the disclosure of, input parameters, assumptions, and analytical choices to be used in climate scenario analyses required under paragraph (2)(A), including—

(i) present value discount rates;

(ii) time frames to consider, including 5-, 10-, and 20-year time frames; and

(iii) the minimum pricing of greenhouse gas emissions, as established under subparagraph (D) and subject to subparagraph (E); and

(G) include, after consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Transportation, the Chair of the Council on Environmental Quality, and the Director of the Office of Science and Technology Policy documentation standards and guidance
with respect to the information required under paragraph (2)(C);

(2) require that a covered issuer, with respect to a disclosure required under subsection (s) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as added by section 5—

(A) incorporate into the disclosure—

(i) quantitative analysis to support any qualitative statement made by the covered issuer;

(ii) the guidance established under paragraph (1);

(iii) industry-specific metrics that comply with the requirements under paragraph (1)(A);

(iv) specific risk management actions that the covered issuer is taking to address identified risks;

(v) a discussion of the short-, medium-, and long-term resilience of any risk management strategy, and the evolution of applicable risk metrics, of the covered issuer under each scenario described in paragraph (1)(B);
(vi) the total cost of carbon attributable to the direct and indirect greenhouse gas emissions of the covered issuer, using, at minimum, the social cost of carbon; and

(vii) any other information, or use any climate-related or greenhouse gas emissions metric, that the Commission, in consultation with the appropriate climate principals, determines is—

(viii) necessary;

(ix) appropriate to safeguard the public interest; or

(x) directed at ensuring that investors are informed in accordance with the findings described in section 4;

(B) consider, when preparing any qualitative or quantitative risk analysis statement contained in the disclosure—

(i) a baseline scenario that includes physical impacts of climate change;

(ii) a well below 1.5 degrees scenario;

and

(iii) any additional climate analysis scenario considered appropriate by the
Commission, in consultation with the appropriate climate principals; and

(C) if the covered issuer engages in the commercial development of fossil fuels, include in the disclosure—

(i) an estimate of the total and a disaggregated amount of direct and indirect greenhouse gas emissions of the covered issuer that are attributable to—

(I) combustion;

(II) flared hydrocarbons;

(III) process emissions;

(IV) directly vented emissions;

(V) fugitive emissions or leaks;

and

(VI) land use changes;

(ii) a description of—

(I) the sensitivity of fossil fuel reserves levels to future price projection scenarios that incorporate the social cost of carbon into hydrocarbon pricing;

(II) the percentage of the reserves of the covered issuer that will be developed under the scenarios es-
established in subparagraph (B), as well as a forecast for the development prospects of each reserve under the scenarios established in subparagraph (B);

(III) the potential amount of direct and indirect greenhouse gas emissions that are embedded in proved and probable hydrocarbon reserves, with each such calculation presented as a total and in subdivided categories by the type of reserve;

(IV) the methodology of the covered issuer for detecting and mitigating fugitive methane emissions, which shall include—

(aa) the frequency with which applicable assets of the covered issuer are observed for methane leaks;

(bb) the processes and technology that the covered issuer uses to detect methane leaks;

(cc) the percentage of assets of the covered issuer that the
covered issuer inspects under that methodology; and

(dd) quantitative and time-bound reduction goals of the covered issuer with respect to methane leaks;

(V) the amount of water that the covered issuer withdraws from freshwater sources for use and consumption in operations of the covered issuer; and

(VI) the percentage of the water described in subclause (V) that comes from regions of water stress or that face wastewater management challenges; and

(iii) any other information that the Commission, in consultation with the appropriate climate principals and the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, and the Secretary of Agriculture determines is—

(I) necessary;
(II) appropriate to safeguard the public interest; or

(III) directed at ensuring that investors are informed in accordance with the findings described in section 4; and

(3) establish how and where the required disclosures shall be addressed in the annual financial filing of a covered issuer.

(b) FORMATTING.—The Commission shall—

(1) require covered issuers to disclose information in an interactive data format; and

(2) develop standards for the format described in paragraph (1), which shall include electronic tags for information that the Commission determines is—

(A) necessary;

(B) appropriate to safeguard the public interest; or

(C) directed at ensuring that investors are informed in accordance with the findings described in section 4.

(c) PERIODIC UPDATE OF RULES.—The Commission shall periodically update the rules issued under this section to ensure that the rules further the findings described in section 4(2).
SEC. 7. COMPILATION OF INFORMATION DISCLOSED.

The Commission shall, to the maximum extent prac-
ticable—

(1) make a compilation of the information dis-
closed by issuers pursuant to subsection (s) of sec-
tion 13 of the Securities Exchange Act of 1934 (15
U.S.C. 78m), as added by section 5, publicly avail-
able on the website of the Commission; and

(2) update the compilation described in para-
graph (1) not less frequently than once each year.

SEC. 8. BACKSTOP.

If, 2 years after the date of enactment of this Act,
the Commission has not issued rules pursuant to section
6, and until those rules are issued, a covered issuer shall
be deemed in compliance with subsection (s) of section 13
as added by section 5, if disclosures set forth in the annual
report of the covered issuer satisfy the recommendations
of the Task Force on Climate-related Financial Disclo-
sures of the Financial Stability Board as reported in June
2017, or any successor report, and as supplemented or ad-
justed by such rules, guidance, or other comments from
the Commission.

SEC. 9. REPORTS.

(a) SECURITIES AND EXCHANGE COMMISSION.—The
Commission shall—
(1) conduct an annual assessment regarding the compliance of covered issuers with the requirements of subsection (s) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as added by section 5;

(2) submit to the appropriate congressional committees a report that contains the results of each assessment conducted under paragraph (1); and

(3) make each report submitted under paragraph (2) accessible to the public.

(b) GOVERNMENT ACCOUNTABILITY OFFICE.—The Comptroller General of the United States shall periodically evaluate, and report to the appropriate congressional committees on, the effectiveness of the Commission in carrying out and enforcing subsection (s) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as added by section 5.

SEC. 10. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of this Act (or an amendment made by this Act) to any person or circumstance is held to be invalid, that holding shall have no effect with respect to—

(1) the remainder of this Act; and
(2) the application of the provision or amendment, as applicable, to any other person or circumstance.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this Act.