Conflict Minerals Bill In Suspense File (For Now)

Posted In Corporate Governance,Legislation

5-25-2011

SB 861 in Suspense

In April, I wrote in this post about SB 861 (Corbett), a California bill intended to put some teeth in the Dodd-Frank Act's mandate (Section 1502) that the Securities and Exchange Commission adopt disclosure and reporting regulations regarding "conflict minerals". The day before that posting, the SEC revised its estimate of when it would be adopting the required regulations. According to the SEC's website, the agency now anticipates adopting rules in after August and before the end of the year. Meanwhile SB 861 was amended on April 25. A week later, the bill was placed in the Senate Appropriations "suspense file". This file is essentially a holding tank for fiscal bills. Under Senate Appropriations Committee Rule #9, a majority of the members present and voting can send a bill having a fiscal impact of $50,000 or more. SB 861's time in the suspense file may be short, the Committee is scheduled to hear the bill on Thursday of this week.

A Constitutional Challenge to Section 1502?

The Dodd-Frank Act's disclosure mandate may face a legal challenge. These commentators, for example, are suggesting that because Section 1502 involves forced speech, it mayviolate the First Amendment.

U.S. Department of State Urges and No Delay and Uniform Reporting Periods

On March 24, 2011, the U.S. Department of State submitted written comments to the SEC regarding the implementation of Section 1502. Issuers are likely to be unhappy with many of the State Department's comments. For example, the State Department recommended that the SEC provide no phase-in period for smaller reporting companies:

> *"We hold that companies can begin implementation of the regulations immediately. It is clear that the standards for reasonable reporting will evolve further over time as capacity and information gathering improves. Although the Commission could and should make clear this expectation of evolution, this should not be a cause for delay."*

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The State Department also recommended that the SEC "establish a single start date for the reporting period for all companies, regardless of their particular fiscal year, to clarify the reporting obligations, level the playing field among the various companies, and provide a clearer date of implementation for due diligence and related initiatives in the region". Finally, the State Department rejected any *de minimis* threshhold.

A reminder regarding amended versions of bills.

The Legislative Counsel office offers the ability to search the full texts of bills online at this site. When a bill is amended, it is reprinted and the changes are marked by italics (new matter) and strikeout (deleted matter). These are marked to show changes from the *prior version* of the bill – they do not reflect changes from either the first version or existing law. Here's the Joint Rule of the Senate and the Assembly on the subject:

11. (a) Any bill amended by either house shall be immediately reprinted. Except as otherwise provided in subdivision (b), if new matter is added by the amendment, the new matter shall be printed in italics in the printed bill; if matter is omitted, the matter to be omitted shall be printed in strikeout type. When a bill is amended in either house, the first or previous markings shall be omitted.

(b) If amendments to a bill, including the report of a committee on conference, are adopted that omit the entire contents of the bill, the matter omitted need not be reprinted in the amended version of the bill. Instead, the Secretary of the Senate or the Chief Clerk of the Assembly, as the case may be, may select the amended bill and cause to be printed a brief statement to appear after the last line of the amended bill identifying which previously printed version of the bill contains the complete text of the omitted matter.

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