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BLOG

Newly Enacted California Climate Bills Create Sweeping Disclosure Requirements for Companies Across the Country

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On October 7, 2023, California Governor Gavin Newsom signed SB 261, the Climate-Related Financial Risk Act, and SB 253, the Climate Corporate Data Accountability Act, into law. These first-in-the-nation greenhouse gas (GHG) emissions disclosure and climate-related financial risk reporting laws apply to large companies "doing business" in California.[1] The California laws go beyond the scope of the proposed Securities and Exchange Commission (SEC) climate disclosure rules.[2] These California laws come at a time when some companies are scaling back their climate pledges due to higher costs, slow advances in technology, and resistance to ESG.

Increased Emphasis on Scope 3 Reporting Requirements—SB 253

SB 253 requires public and private entities doing business in California with more than $1 billion in revenue to report Scope 1, Scope 2, and Scope 3 GHG emissions.

Required disclosures, for the prior year, include:[3]

- Scope 1 (direct GHG emissions from all owned/controlled assets, regardless of location);
- Scope 2 (indirect GHG emissions from purchased power or heating); and
- Scope 3 (indirect upstream and downstream GHG emissions from the entity's value chain, such as purchased goods and services, travel, and product processing and use).

Reporting timeline for effect:

- Scope 1 and Scope 2 GHG emissions starting in 2026.
- Scope 3 emissions starting in 2027.

SB 253 does not impose a minimum emissions threshold to trigger reporting duties. The obligation is based on company revenue, not emissions levels. The inclusion of Scope 3 emissions likely means that small- and medium-sized businesses that supply or contract with large companies covered by the legislation may have to collect and report data to the larger company.

SB 253 authorizes the California Air Resources Board (CARB) to impose administrative penalties up to $500,000 per year for violations. That said, there are no penalties for Scope 3 misstatements made with a "reasonable basis" and in "good faith" between 2027 and 2030.

Reporting on Climate-Related Financial Risks—SB 261

SB 261 requires public and private companies doing business in California with at least $500 million in revenue to report on their climate-related financial risks. SB 261 will impact more companies than SB 253 given the lower revenue threshold.

Required disclosures include:[4]

- Submission of biennial climate-related financial risk reports to CARB, and
- Companies must consider both physical risks and transition risks as part of submittal.

Reporting timeline for effect:

- Reporting to begin on or before January 1, 2026, and every two years thereafter.

SB 261 authorizes CARB to impose penalties of up to $50,000 per year for any company that fails to make the required report publicly available on its Internet website or publishes an inadequate or insufficient report.

Further Revisions Appear Likely

Governor Newsom made several remarks in letters he drafted in connection with signing the laws. These indicate further revisions are likely. Newsom expressed concerns about the overall financial impact these bills will have on businesses. Newson instructed CARB to closely monitor the cost impact and make recommendations to streamline the program.[5] Governor Newsom is also concerned that the implementation deadlines do not provide CARB with sufficient time to adequately carry out the requirements in the legislation. Accordingly, he directed his administration to work with the legislature in the 2024 session to refine the legislation.[6]

SEC Comments

California's legislation comes at a time when certain business and political interests are pushing back on climate-related and ESG reporting. Last year, the SEC issued its own proposed climate disclosure rules. Similar to the California laws, the SEC-proposed rules would require disclosure of direct GHG emissions (Scope 1) and indirect GHG emissions from purchased electricity and other forms of energy (Scope 2). Registrants would be required to disclose Scope 3 emissions if material or if the company has set Scope 3 emissions targets or goals. Notably, the SEC rules would apply only to public companies, whereas the California laws apply to public and private companies meeting the threshold requirements.

Certain companies and industry groups have questioned the SEC's proposed climate rules for many reasons, including the cost of compliance. SEC Chair Gensler remarked on the proposed California laws last month during a House oversight hearing.[7] Gensler said the California laws may change the baseline assumptions for the SEC's consideration: "if those companies were reporting to California, then it would be in essence less costly because they'd already be producing that information."

For further information or questions about how the California climate bills may impact your business, please contact your Winston & Strawn relationship attorney.

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[1] The Senate floor analysis notes that existing California law "[d]efines 'doing business'" in California as "engaging in any transaction for the purpose of financial gain within California, being organized or commercially domiciled in California, or having California sales, property or payroll exceed specified amounts: as of 2020 being $610,395, $61,040, and $61,040, respectively." Cal. Rev. & Taxation Code § 23101.

[2] https://www.winston.com/en/blogs-and-podcasts/winston-and-the-legal-environment/sec-sets-date-for-proposed-climate-related-disclosure-rule.

[3] S. 253 §§ 2(b)(3)–(5).

[4] S. 261 § 2(a)(2), 2(b)(1)(A), (c)(1).

[5] Off. of Gov. Gavin Newsom, *Governor Newsom Issues Legislative Update 10.7.23* (SB 253 signing), https://www.gov.ca.gov/2023/10/07/governor-newsom-issues-legislative-update-10-7-23/.

[6] *Id.* (SB 261 signing).

[7] Reuters, *SEC Chief Says New California Law Could 'Change Baseline' for Coming SEC Climate Rule* (Sept. 27, 2023, 3:49 PM EDT), https://www.reuters.com/sustainability/sec-chief-says-new-california-law-could-change-baseline-coming-sec-climate-rule-2023-09-27/.

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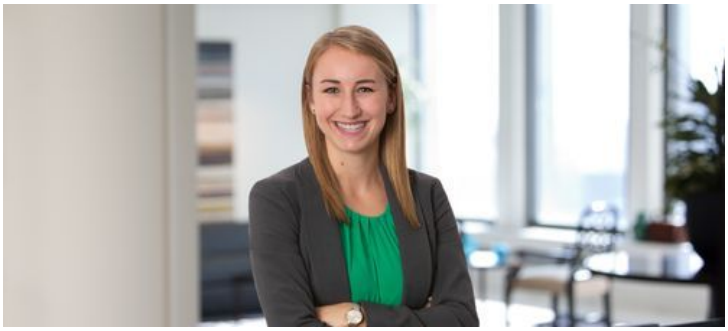

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