

GUEST COLUMN

SB 253 puts companies on the climate clock

By David R. Singh,
Morgan D. MacBride
and Nicole Zelada

In October 2023, California enacted Senate Bill 253 (SB 253) to increase regulatory pressure on companies to reduce their environmental impact. Also referred to as the Corporate Climate Data Accountability Act and amended in September 2024 by Senate Bill 219, SB 253 represents a seismic shift in corporate climate accountability as it implements new annual reporting requirements for Scope 3 greenhouse gas emissions starting in 2027. Scope 3 emissions, which often represent more than 90% of a company's total emissions, are generated by the company's third-party suppliers, distributors, or end-users. The indirect nature of Scope 3 emissions gives rise to challenges in tracking emissions, and accurate reporting will require careful coordination across a company's own operations and with suppliers.

SB 253 applies to companies, partnerships, limited liability companies, and other business entities formed in the United States that: (a) do business in California; and (b) have more than \$1 billion in annual revenue. SB 253 defines Scope 3 emissions as a company's "indirect upstream and downstream greenhouse gas emissions, other than Scope 2 emissions, from sources that the reporting entity does not own or directly control and may include...purchased goods and services, business travel, employee commutes, and processing and use of sold products." Covered companies



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will be required to measure their Scope 3 emissions for 2026, with reporting obligations on their emissions beginning in 2027. To ensure accurate reporting, covered companies must obtain a verification of the company's public disclosure from an independent third-party provider who has significant experience in measuring, analyzing, reporting, or attesting to greenhouse gas emissions.

Accurately reporting Scope 3 emissions will be difficult due to dependence on data from third parties. Accordingly, companies would be well-advised to identify third parties in their supply chains and circulate monitoring and reporting protocols.

SB 253 acknowledges this difficulty with reporting Scope 3 emissions. As such, it provides mechanisms to assist with compliance.

First, unlike Scope 1 and 2 emissions, SB 253 allows covered companies to report Scope 3 emissions without assurance, or an independent verification of reported emissions, until 2030, when limited assurance is required. *Second*, SB 253 provides that companies will not be subject to administrative penalties for misstatements made with a reasonable basis and disclosed in good faith, and administrative penalties

for Scope 3 reporting between 2027 and 2030 shall only occur for non-filing. However, these safe harbors will not protect companies from reputational risk around violations or litigation by the plaintiff bar, including for violations of consumer protection statutes or securities laws, or breach of fiduciary duties.

While SB 253 requires an increased investment in Scope 3 emissions data gathering and reporting, it also allows companies to further reduce their impact on the environment and increase profitability by reducing supply chain inefficiencies and increasing sales to environmentally-conscious consumers. Many companies already disclose at least some Scope 3 emissions, as recommended by several institutional investors and voluntary frameworks such as the Task Force on Climate-related Financial Disclosures.

Other states are considering adopting similar reporting requirements to SB 253, including New York (Senate Bill 7705) and Illinois (House Bill 4268). Further, companies with subsidiaries and/or operations in the European Union that meet applica-

ble size thresholds will be required to disclose Scope 3 emissions with limited assurance where climate change is assessed as material to that company, pursuant to European Sustainability Reporting Standards (ESRS) under the EU's Corporate Sustainability Reporting Directive

(CSRD). CSRD disclosures are required beginning in 2025 at the earliest for certain companies. In many countries, the International Sustainability Standards Board standards implementation will also require Scope 3 emissions disclosures for certain companies.

Changes to Scope 3 emissions reporting are here, with likely more to follow. With the right investment and strategy, companies can comply with SB 253, avoid litigation and reputational damage, and continue the corporate movement toward a more sustainable future.

David R. Singh, Morgan D. MacBride and Nicole Zelada are attorneys in the Complex Commercial Litigation Department at Weil, Gotshal & Manges LLP.

