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**A New Benchmark for Corporate Transparency on Climate – California Governor Newsom Signs Bills Establishing Corporate Climate Disclosure Standards, While Questioning the Feasibility of the Current Implementation Deadlines and Highlighting Concerns over Costs to Affected Businesses**

By Annemargaret Connolly, Lyuba Goltser, P.J. Himelfarb, Matthew Morton, and Rebecca Grapsas

Heralding a new paradigm for climate-related disclosure in the U.S., California Governor Gavin Newsom has signed into law two bills that will require large corporations, both public and private, to track and disclose their greenhouse gas (GHG) emissions as well as the financial risks their businesses face as a result of climate change. The new laws, collectively referred to as the “Climate Accountability Package,” are estimated to affect up to 10,000 companies doing business in California and will raise the bar significantly on corporate climate disclosure in the U.S. irrespective of the U.S. Securities and Exchange Commission’s (SEC’s) finalization of its proposed climate disclosure rules.

**Overview of the Two Bills that Comprise the Climate Accountability Package**

The Climate Corporate Data Accountability Act ([SB 253](#)) requires businesses with total annual revenue of more than \$1 billion that do business in California to disclose their greenhouse gas emissions in accordance with the Greenhouse Gas Protocol, a comprehensive, global standardized framework to measure and manage GHG emissions from private and public sector operations, value chains and mitigation actions.<sup>1</sup> The bill broadly applies to U.S.-based corporations, partnerships, limited liability companies, and “other business entities,” whether public or private. Reporting entities will be required to report their full carbon inventories, including Scope 3 emissions, which are emissions an entity is indirectly responsible for up and down its value chain.<sup>2</sup> SB 253 requires that reporting entities submit emissions data annually, in a manner that is “easily understandable and accessible” to residents, investors and other stakeholders. The California Air Resources Board (CARB) will oversee reporting and ensure verification of data by an experienced third party auditor or carbon registry. Reporting entities will be required to report on their 2025 Scope 1 and 2 emissions starting in 2026 and their 2026 Scope 3 emissions beginning in 2027. Failure to comply with the reporting regulations under SB 253 could result in civil penalties of up to \$500,000.

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<sup>1</sup> <https://ghgprotocol.org/>.

<sup>2</sup> The GHG Protocol Corporate Standard classifies a company’s GHG emissions into three “Scopes.” Scope 1 emissions are direct emissions from owned or controlled sources. Scope 2 emissions are indirect emissions from the generation of purchased energy. Scope 3 emissions are all indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions.

The Climate-Related Financial Risk Act ([SB 261](#)) requires companies operating in California with total annual revenue of more than \$500 million annually to prepare and publish a report detailing (a) their climate-related financial risks, based on the recommendations set forth by the Task Force on Climate-Related Financial Disclosures, a global organization formed to develop a set of recommended climate-related disclosures that companies and financial institutions can use to better inform investors, shareholders and the public of their climate-related financial risks, and (b) the measures they are undertaking to mitigate those risks.<sup>3</sup> Similar to SB 253, the bill broadly construes “covered entities” to include corporations, partnerships, limited liability companies or other business entities, whether public or private. SB 261 requires covered entities to submit their initial climate-related financial risk report by January 1, 2026, and biennially thereafter. Failure to comply with the reporting regulations under SB 261 could result in civil penalties of up to \$50,000 in any one reporting year.

### **Additional Legislation and CARB Rulemaking Will be Key to Determining the Final Scope and Timing of Disclosure Requirements**

Now that the bills have been signed, CARB will begin the process of developing associated implementing regulations, which will include a notice and comment period expected to draw significant engagement by stakeholders across the climate spectrum, including industry and environmental organizations. Key details that remain to be addressed during the rulemaking process include: treatment of affiliated corporate entities when assessing revenue thresholds mandating compliance, clarification on what it means for an entity to “do business in California,” additional details regarding what constitutes reportable Scope 3 emissions and the preferred methodology for reporting Scope 3 emissions, a notoriously difficult undertaking.<sup>4</sup> As of now, CARB must promulgate regulations by January 1, 2025, such that affected companies can start filing disclosures in 2026.

### **Governor Newsom’s Concerns Regarding CARB’s Ability to Meet the Current Deadlines and Cautions that Compliance Likely Will Cost More than Anticipated**

In signing SB 253 and SB 261, Governor Newsom issued signing statements setting forth concerns he has regarding CARB’s ability to implement the new disclosure regime in the timeframes provided as well as concerns with respect to the financial impact of complying with the bills’ disclosure requirements. In his [signing statement to SB 253](#), Governor Newsom cautioned that the implementation deadlines contained in the bill are “likely infeasible.” Similarly, Governor Newsom’s [signing statement for SB 261](#) states that the bill’s implementation deadlines fall short in providing the California Air Resources Board with sufficient time to adequately carry out the requirements in this bill.” Both statements also highlight the Governor’s concerns with the “overall financial impact” of the bills on businesses and instruct CARB to “closely monitor the cost impact” as it implements the new bills and “to make recommendations to streamline the program.” It is clear that Governor Newsom expects amendments to the disclosure requirements via legislation and/or additional rulemaking will be forthcoming in 2024.

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<sup>3</sup> SB 261 defines “Climate-Related Financial Risks” as a “material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health.”

<sup>4</sup> The legislation does not define what it means to be “doing business” in California; however, the legislative history of Assembly discussion on the bill indicates that term is to cover companies “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.” SB 253, Senate Rules Committee, Office of Senate Floor Analyses. CARB will need to determine whether it will incorporate this definition into the implementing regulations.

## Comparison to SEC's Proposed Rules to Enhance and Standardize Climate-Related Disclosures

California's proposed rules are broader than the SEC's Proposed Rules to Enhance and Standardize Climate-Related Disclosures, issued in March 2022, in two key respects.<sup>5</sup> First, California's rules apply to both public and private companies doing business in California as opposed to the SEC's rules which target public issuers reporting to the SEC. The second difference relates to Scope 3 reporting. As currently drafted, SB 253 requires reporting entities to account for all Scope 3 emissions, while the SEC's proposed rules generally require Scope 3 disclosure only if the issuer considers Scope 3 emissions to be material or has set Scope 3 reduction targets.

## California's Rules Are Likely to have a Far-Reaching Impact on Corporate Disclosure of Greenhouse Gas Emissions and Climate Change Risks

California's climate disclosure laws are estimated to directly impact up to 10,000 companies and likely will have an outsized impact in shaping climate disclosure practices in the U.S. We predict most businesses will plan to account for, and report to, the most stringent emissions and climate risk disclosure standards to which they are subject, regardless of whether promulgated by federal or state regulatory authorities. At a minimum, companies with revenues in excess of total annual revenue of more than \$1 billion that do business in California will need to begin collecting their 2025 Scope 1 and 2 emissions data starting in 2026 and their Scope 3 emissions beginning in 2026 in order to report the next year. By this time, many of these same companies likely have been or will be subject to analogous, but varied, climate-related disclosure requirements in multiple jurisdictions, including the European Union's Corporate Sustainability Reporting Directive. While the level of the proposed fines included in these bills might not be in the range of what the SEC and FTC have been seeking to address recent corporate greenwashing allegations, companies should consider potential reputational issues that could arise due to failing to make adequate disclosures under the law. In addition, we caution that California's climate disclosure laws are poised to impact smaller businesses regardless of whether they operate in California due to the broad inclusion of Scope 3 emissions into reporting requirements. Such businesses likely are part of reporting entities supply chains, which means their larger customers likely will request emissions data so that the customer can comply with the California's climate disclosure laws.

We will continue to monitor legislative and administrative developments impacting California's forthcoming climate disclosure program as well as similar actions taken by other governmental bodies.

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<sup>5</sup> <https://governance.weil.com/latest-thinking/sec-proposes-sweeping-climate-change-related-disclosures/>

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