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California Adopts Landmark GHG Emissions and Climate Risk Reporting Laws, Eclipsing Anticipated Federal Requirements

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California Governor Gavin Newsom signed two landmark bills into law on October 7, imposing stringent new requirements on large companies doing business in California to publicly report their annual greenhouse gas (GHG) emissions (Senate Bill (SB) 253) and climate-related financial risks (SB-261). The new laws apply to publicly traded *and* privately held companies — going well beyond the March 21, 2022, climate disclosure rule proposed by the U.S. Securities and Exchange Commission (SEC) that would apply only to publicly traded companies.

One California state legislative analysis anticipates more than 10,000 companies will be subject to SB-261's climate-related financial risk disclosures, and another estimates 5,300 of those companies must also report GHG emissions under SB-253. The new laws are already raising many questions, especially for companies who will have to assess and report their GHG emissions for the first time. Some of these questions will likely be addressed over the next year as the California Air Resources Board (CARB) develops regulations to implement the new laws.

SB-253, the Climate Corporate Data Accountability Act

SB-253 requires entities with total annual revenues of $1 billion dollars or more that "do business in California" to report their GHG emissions annually. Importantly, SB-253 does not define what it means to "do business in California." However, the Senate floor analysis explained that the state tax code defines this term as "engaging in any transaction for purposes of financial gain within California, being organized or commercially domiciled in California, or having California sales, property or payroll [that] exceed specified amounts."

Companies will report direct "Scope 1 emissions" and indirect "Scope 2 emissions" to CARB starting in 2026. Starting in 2027, companies will report their indirect upstream and downstream "Scope 3 emissions." Companies must also engage an independent third-party assurance provider to substantiate their emissions reports. Scope 1 and Scope 2 emissions reports will require engagement at a "limited assurance" level from 2026 to 2029, moving to a "reasonable assurance" level in 2030. CARB is authorized, but not required, to mandate a "limited assurance level" requirement for Scope 3 emissions reports no sooner than 2030.

These emissions reports will be filed with and posted to a publicly accessible online platform by a still-to-be-

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determined reporting organization. That platform will display companies' individual reports as well as aggregated data, which will likely increase scrutiny of high-emitting companies and industries.

Penalties for violating SB-253 are potentially hefty: up to $500,000 per year for companies that do not file an annual report or file inadequate reports. Due to the complexity associated with calculating Scope 3 emissions, fines will not be issued for "misstatements" about Scope 3 emissions, provided the data is reasonable and "disclosed in good faith." Reporting entities must also pay an annually adjusted fee to fund SB-253's implementation, which will be set by CARB during rulemaking.

Companies do have the benefit of some existing guidance on how to approach their GHG reporting. SB-253 incorporates the Greenhouse Gas Protocol and allows companies with existing GHG emission reporting requirements under national or international regimes to use the same reports for California, although those reports must still satisfy SB-253's requirements.

There are active discussions regarding a technical corrections bill for SB-253 that might soften some of the requirements. However, no bill has been introduced yet.

SB-261, the Climate-Related Financial Risks Act

SB-261 is the first state-level law requiring companies to publicly report their "climate-related financial risks" and the measures they will take to reduce such risks. Except for insurance companies and companies who are already publicly disclosing climate-related financial risks consistent with the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017), any company with total annual revenues exceeding $500 million "doing business in California" will have to disclose its climate-related financial risks. The climate disclosure law covers more companies than its sister GHG reporting law because it has a lower annual revenue threshold, which, like the revenue threshold for SB-253, is determined annually based on revenue from the prior fiscal year. Subsidiaries will not need to report individually if they are covered by a parent-level company's report. Like SB-253, SB-261 also does not specify what it means to "do business in California," leaving questions about how wide a net the new law will cast.

Climate-related financial risk reports must be posted on companies' websites beginning January 1, 2026, and every two years thereafter. Reports must address "material risk[s] of harm to immediate and long-term financial outcomes due to physical and transition risks," as well as measures the company will take to address those risks. SB-261's definition of "climate-related financial risk" is similar, but not identical, to the definition of "climate-related risk" in the SEC's March 2022 proposed rule, which may complicate reporting for companies that become subject to both the California law and the SEC rule.

Potential penalties under SB-261 are significantly lower than those under SB-253 and max out at $50,000 per entity per year for failing to make reports publicly available or publishing an "inadequate or insufficient report." Like SB-253, SB-261 requires reporting entities to pay an annual fee to fund the law's implementation.

What Happens Next?

Even though the ink has dried on SB-253 and SB-261, stakeholders will have valuable opportunities to engage

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with CARB in the coming months and throughout 2024 as CARB undertakes rulemaking to implement the new laws. CARB will likely hold multiple informal workshops to solicit stakeholder input, in addition to formal notice and comment hearings. Entities that already have experience preparing GHG emissions and climate-related financial risk reports will be best suited to inform the agency of the true costs such reporting entails. They can also help CARB understand how nuances and small changes in reporting requirements and deadlines can increase or decrease the costs of compliance. Other interested stakeholders who may become subject to the new rules should also consider participating in the rulemaking process, formally and informally.

While CARB's implementing regulations will provide better insight into California's new reporting requirements, the ultimate fate of the new laws will likely lie with the courts, as the new laws undoubtedly will be subject to litigation.

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