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To the Point

Final guidance

California nears enactment of two climate disclosure laws

The California climate disclosure bills are widely expected to apply to thousands of public and private entities.

What you need to know

- The governor of California stated his intent to sign two climate disclosure bills into law that would apply to both public and private entities that do business in the state and meet certain annual revenue thresholds. Both laws would require initial disclosures in 2026.
- Entities with more than $1 billion in annual revenue that do business in California would be required to annually disclose their Scope 1, Scope 2 and Scope 3 emissions and obtain assurance over those disclosures.
- Entities with more than $500 million in annual revenue that do business in California would be required to biennially provide disclosures (1) in accordance with the recommendations of the Task Force on Climate-related Financial Disclosures, which includes Scope 1 and Scope 2 emissions without assurance, and (2) on the measures they adopted to reduce and adapt to identified climate-related risks.

Overview

Gov. Gavin Newsom of California stated his intent to sign two climate-disclosure bills[1] into California law that would require entities that conduct business in the state and meet certain annual revenue thresholds to provide climate-related disclosures, including Scope 1, Scope 2 and Scope 3 greenhouse gas emissions[2] and disclosures in accordance with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).

These disclosures would be similar to those that the Securities and Exchange Commission (SEC) proposed requiring in March 2022, but the California requirements would apply to both public and private entities. California would be the first state to broadly require climate-related disclosures.

Building a better working world

The California Corporate Data Accountability Act (SB-253) would apply to entities with more than $1 billion in annual revenue that do business in California, while the California Greenhouse gases: climate-related financial risk bill (SB-261) would apply to entities with more than $500 million in annual revenue that do business in California. These bills are widely expected to apply to thousands of entities, including subsidiaries of non-US based entities. Gov. Newsom stated that his office wanted "some cleanup" on some of the language in the bills. This publication discusses the current text of the bills, but the legislative and implementation process in 2024 and 2025 may result in changes to how the bills are applied before the effective date.

Key considerations

SB-253 would require entities that had more than $1 billion in annual revenue in the previous fiscal year and do business in California to annually disclose their Scope 1, Scope 2 and Scope 3 emissions in accordance with the Greenhouse Gas Protocol (GHG Protocol). Entities would have to submit their emissions information to an emissions reporting organization that would be designated by the California Air Resources Board (CARB). The organization would develop a publicly accessible digital platform for the emissions data.

The CARB would be required to adopt regulations to implement the requirements of SB-253 by 1 January 2025. It could evaluate the effectiveness of the GHG Protocol in 2033 (and every five years thereafter) and adopt an alternative globally recognized standard if it would more effectively meet the goals of SB-253.

The deadline for reporting on Scope 1 and Scope 2 emissions would be determined by the CARB, but Scope 3 emissions would not be initially required to be reported until no later than 180 days after Scope 1 and Scope 2 emissions. However, the CARB could update the Scope 3 emissions deadline in 2029 so that Scope 3 emissions would be reported as close in time as practicable to the Scope 1 and Scope 2 emissions deadline.

How we see it

The staggered deadlines could reduce the burden of reporting Scope 3 emissions for certain entities because they would be able to collect Scope 1 and Scope 2 information from entities in their value chain that can be used in calculating Scope 3 emissions.

SB-253 would include a safe harbor from penalties for reporting Scope 3 emissions if the disclosures were made with a reasonable basis and disclosed in good faith.

SB-261 would require entities with more than $500 million in annual revenue that do business in California to biennially disclose on their website climate-related information in accordance with the TCFD's recommendations and measures they have adopted to reduce and adapt to the climate-related risks disclosed under the TCFD's recommendations. TCFD's recommendations include disclosures about climate-related governance, strategy, risk management, and metrics and targets, including material Scope 1 and Scope 2 emissions without assurance. Insurance companies would be exempt from SB-261 because they are already required to report under the TCFD's recommendations in accordance with the Climate Risk Disclosure Survey of the National Association of Insurance Commissioners.

If an entity is not able to provide all of the disclosures under the TCFD's recommendations, it would make the disclosures to the best of its ability and provide a detailed explanation of any reporting gaps and the steps it will take to prepare complete disclosures. This relief would not apply to the requirement to disclose adopted measures to reduce and adapt to climate-related financial risks under the TCFD's recommendations.

A subsidiary that is included in a report of a parent entity would not have to provide a separate climate-related financial risk report. However, a similar exception would not be provided in SB 253.

To avoid duplication of effort, an entity could satisfy its reporting requirements under the two bills using disclosures prepared to comply with other reporting requirements (e.g., the Corporate Sustainability Directive, the International Sustainability Standards Board standards, any SEC rule), if those disclosures satisfy all of the requirements of the bills.

The CARB would be responsible for enforcing the new requirements and could impose penalties for late filings, nonfilings and other failures to meet the requirements of SB-253, but the penalties could not exceed $500,000 for SB-253 and $50,000 for SB-261 for a given year. When imposing penalties, the CARB would need to consider the entity's past and present compliance and whether the entity made a good faith effort to comply with the requirements and when it undertook those efforts.

Scoping considerations

Entities in the scope of SB-253 and SB-261 would include partnerships, corporations, limited liability companies and other business entities formed under the laws of any state in the US (or District of Columbia) or under an act of US Congress. Subsidiaries of non-US entities located in the US that meet this definition would also be in the scope.

The revenue thresholds would be based on the entity's total revenue, not only revenue from California.

The revenue thresholds noted above would apply to the entity's total revenue, not only its revenue from California, and would be based on revenue from the previous fiscal year.

The bills do not define the term "does business" in California. However, the state senate floor analysis[3] of SB-253 uses the definition of "doing business" from the California tax code. The California Franchise Tax Board considers an entity to be "doing business" if it (1) engages in any transaction for the purpose of financial gain in California, (2) is organized or commercially domiciled in California or (3) has California sales, property or payroll exceeding specified amounts,[4] which are adjusted annually.

Assurance requirements

SB-253 would require an entity to annually obtain limited assurance on Scope 1 and Scope 2 emissions disclosures, including in the first year of reporting (i.e., in 2026 on 2025 data). Reasonable assurance on Scope 1 and Scope 2 emissions disclosures would be required starting in 2030 (on 2029 data). Limited assurance on Scope 3 emissions disclosures would also be required starting in 2030 (on 2029 data). However, the CARB could modify these dates.

Assurance providers would need to be independent and have significant experience in measuring, analyzing, reporting or attesting to greenhouse gas emissions. The CARB would be required to establish regulations regarding the assurance requirement by 1 January 2025.

The CARB would be required to review the qualifications for third-party assurance providers in 2029 based on an evaluation of trends in education related to emissions and the qualifications of third-party assurance providers.

An entity would need to submit a copy of the assurance report and the name of the assurance provider to the emissions reporting organization. SB-261 would not include any assurance requirements.

Comparison with SEC's climate-related disclosure proposal

There would be significant overlap between the SEC proposal to require climate-related disclosures and the California bills, but there would be some key differences. SB-253 would apply to both public and private entities that conduct business in the state and meet certain annual revenue thresholds, while the SEC proposal would only apply to SEC registrants. Both SB-253 and the SEC proposal would require entities to disclose and obtain assurance on Scope 1 and Scope 2 emissions disclosures. Limited assurance would be required in the first year of reporting under SB-253, and it would be delayed by a year under the SEC proposal. The qualifications of assurance providers would be similar under both SB-253 and the SEC proposal. The SEC proposal would allow an entity to apply the GHG Protocol but not require its use, like SB-253 would.

SB-253 would require an entity to disclose Scope 3 emissions, while the SEC proposal would only require disclosure if Scope 3 emissions are material or if the entity has set a greenhouse gas emissions reduction target or goal that includes Scope 3 emissions. In addition, SB-253 would require limited assurance on Scope 3 emissions disclosures, while the SEC proposal wouldn't. However, both SB-253 and the SEC proposal would provide a safe harbor for Scope 3 emissions disclosures.

SB-261 would require an entity to submit a TCFD-compliant report, and the SEC proposal is based on the disclosures recommended by the TCFD, with certain differences.

Effective date

SB-253 would require entities to report Scope 1 and Scope 2 emissions in 2026, based on fiscal year 2025 data, on a date to be determined by the CARB. Entities would have to start reporting on Scope 3 emissions in 2027, no later than 180 days after reporting Scope 1 and Scope 2 emissions.

SB-261 would require entities to post a TCFD-compliant report on its website by 1 January 2026. Entities would have to update that report biennially thereafter.

Next steps

- Entities should begin considering how they would gather the information to meet the requirements of the California disclosure bills and whether they would need to set up new processes, systems and controls.
- Entities should also consider whether the requirements would be met by reports prepared to comply with other climate reporting requirements.

Endnotes:

[1] Refer to https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB253 for SB-253 and https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB261 for SB-261.

[2] The definitions of Scope 1, Scope 2 and Scope 3 emissions are based on the GHG Protocol.

[3] https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB253#

[4] For 2022, sales: $690,144; property: $69,015; payroll: $69,015.