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California's Climate Disclosure Laws: Navigating the Latest Updates

*By Paul C. de Bernier, Stephanie M. Hurst and Anthony Felix**

In this article, the authors provide a high-level refresher of the requirements of (and recent updates to) California's "first-of-its-kind" climate-related disclosure laws, and identify key steps that businesses can take to prepare for compliance.

In late 2023, California enacted "first-of-its-kind" climate-related disclosure laws comprising the following:

- Climate Corporate Data Accountability Act (California Senate Bill 253 (SB253)) – relating to greenhouse gas (GHG) emissions disclosures;
- Climate-Related Financial Risk Act (California Senate Bill 261 (SB261)) – relating to climate-related financial risk disclosures; and
- Voluntary Carbon Market Disclosure Act (California Assembly Bill (AB1305)) – relating to anti-greenwashing disclosures.

This ground-breaking legislation is set to reshape corporate reporting standards, with ripple effects outside California, including even outside the United States. With reporting deadlines on the horizon (or already upon us), businesses within the scope of these laws must act now to understand their obligations and mitigate compliance risks.

This article provides a high-level refresher of the requirements of (and recent updates to) these laws, and identifies key steps that businesses can take to prepare for compliance.

SB253 (GHG EMISSIONS DISCLOSURES) AND SB261 (CLIMATE-RELATED FINANCIAL RISK DISCLOSURES)

Overview

SB253 and SB261 – which were signed into law on October 7, 2023, and which form part of California's "Climate Accountability Package" – impose certain climate-related corporate disclosure requirements, on U.S. companies, public or private, that meet certain revenue thresholds:

- SB253 requires businesses with annual revenues of more than \$1 billion that do business in California to disclose:
 - Scope 1 and Scope 2 GHG emissions, starting in 2026; and

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- Scope 3 GHG emissions, starting in 2027.
- SB261 applies to businesses with annual revenues of more than \$500 million that do business in California, and mandates disclosure of climate-related financial risks and mitigation measures taken to address such risks, starting January 1, 2026.

Legislative Updates

Following passage of SB253 and SB261 at the end of 2023 – and the subsequent lawsuit challenging the two laws, discussed below – commentators expected that at least some amendments would be passed in 2024, including to clarify and potentially provide relief around effective dates for compliance.

Initially, Governor Gavin Newsom proposed amendments that sought, among other things, to delay the initial reporting deadlines, but these were not adopted.

However, in September 2024, the California Senate proposed different amendments, which were ultimately enacted as California Senate Bill 219 (SB219),¹ which introduced limited amendments to SB253 and SB261.

Some key amendments from SB219 include:

- *Parent-Level Reporting Consolidation:* While SB261 originally contemplated consolidation (and hence, reporting) at the parent-level if both a parent and one or more of its subsidiaries fell within the scope of SB261, SB253 was silent about consolidation. SB219 clarified that companies subject to SB253 could also consolidate at the parent-level.
- *Extended Rulemaking Deadline:* SB253 originally required the California Air Resources Board (CARB) to develop and adopt implementing regulations by January 1, 2025. Under SB219, this deadline was extended to July 1, 2025.
- *Scope 3 Reporting Flexibility:* While SB253 originally required reporting entities to disclose Scope 3 GHG emissions within 180 days of Scope 1 and 2 GHG emissions disclosures, SB219 now allows CARB to set this deadline at its discretion. However, the initial Scope 3 GHG emissions disclosures are still required to be made during 2027.
- *Timing of Filing Fee Payment:* SB219 removed the requirement for reporting entities to pay filing fees at the time disclosure filings are submitted. Notably, SB219 did not eliminate the obligation to pay these fees altogether, the amounts of which are to be set by CARB.

¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB219.

- *CARB's Use of Third-Party Organizations*: Originally, CARB was required to engage a third-party organization (i.e., an emissions reporting organization or a climate reporting organization) to undertake certain duties, including, for example, engaging an emissions reporting organization to develop a reporting program to receive disclosures under SB253. Under SB219, CARB has flexibility and may – but is not required to – engage a third-party organization to undertake certain duties.

Legal Challenge Updates

Several business and industry trade organizations, including the U.S. Chamber of Commerce and the California Chamber of Commerce, filed a lawsuit in January 2024² in federal court against CARB (and its representatives) seeking to overturn SB253 and SB261. The plaintiffs in that legal challenge contend that SB253 and SB251:

- Violate the First Amendment by compelling speech (Count I);
- Are preempted by the U.S. Constitution and federal law, including the Clean Air Act, and violate the Supremacy Clause (Count II); and
- Violate the U.S. Constitution's limitations on extraterritorial regulation, including the Dormant Commerce Clause (Count III).

In its November 5, 2024 order, the court denied summary judgment, which had addressed Count I (the First Amendment claims).

Subsequently, in its February 3, 2025 order,³ the court dismissed Count II (the Supremacy Clause claims) and Count III (as to the extraterritorial claims). This dismissal applies to SB253 and SB261 in different ways: (a) Counts II and III as to SB253 are dismissed without prejudice on jurisdictional grounds; (b) Count II as to SB261 dismissed with prejudice “for failure to state a claim”; and (c) Count III as to SB261 dismissed without prejudice “for failure to state a claim”. As to the claims dismissed without prejudice, the plaintiffs had 21 days after the date of the order (i.e., February 24, 2025) to file a second amended complaint.

The February 2025 order's dismissal bodes well for the general survival of SB253 and SB261.

² The plaintiffs' subsequently amended their complaint at the end of February 2024.

³ <https://www.courthousenews.com/wp-content/uploads/2025/02/chambers-vs-carb-order-1.pdf>.

CARB UPDATES

Exercise of Enforcement Discretion

On December 5, 2024, CARB issued an Enforcement Notice for SB253.⁴ CARB announced that it will exercise enforcement discretion for the first reporting cycle in 2026 relating to Scope 1 and Scope 2 GHG emissions disclosures. As a result, subject companies making a good-faith effort to comply with SB253 will not face penalties for incomplete Scope 1 and Scope 2 GHG emissions disclosures, and may submit initial disclosures in 2026 based on data they possess, or are in the process of collecting.⁵

Solicitation for Public Comment

CARB also issued an Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB219 (the Information Solicitation)⁶ on December 16, 2024, soliciting public comment, on, for example:

- The definition of “doing business” in California;
- Cost-effective methods to identify businesses that meet reporting thresholds; and
- Incorporating external protocols and standard while ensuring regulations meet California-specific needs and continue to align with such protocols and standards.

The deadline to submit public comments was extended to March 21, 2025.

These developments show CARB's awareness of the need for clarity, benchmarking, and certainty that companies need, in order to comply with forthcoming requirements.

Key Compliance Considerations

While companies await CARB's implementing regulations for SB253 and SB261 – as well as outcomes of ongoing litigation – they should continue to take proactive steps to assess their climate disclosure readiness. These include:

⁴ <https://ww2.arb.ca.gov/sites/default/files/2024-12/The%20Climate%20Corporate%20Data%20Accountability%20Act%20Enforcement%20Notice%20Dec%202024.pdf>.

⁵ While a positive development for subject companies, the Enforcement Notice drew criticism from the main authors of SB253 and SB261 – California Senators Scott Wiener and Henry Stern. In a letter to CARB Chair Liane Randolph dated December 11, 2024, Wiener and Stern called the Enforcement Notice “unacceptable” and expressed frustration with CARB's inaction to date and “strongly urge[d]” CARB to take steps to fully implement SB253 and SB251. Wiener and Stern also warned that – without immediate action – legislative oversight measures may be pursued.

⁶ https://ww2.arb.ca.gov/sites/default/files/2025-01/ClimateDisclosureQs_Dec2024_v2.pdf.

- Conducting a thorough inventory of existing Scope 1 and Scope 2 GHG emissions data and begin evaluating existing Scope 3 GHG emissions data;
- Assessing climate-related financial risks by leveraging frameworks such as the Task Force on Climate-related Financial Disclosures (TCFD); and
- Engaging internal stakeholders, legal counsel, and sustainability experts.

Taking these steps now will help mitigate compliance risks and stay ahead of evolving regulatory expectations.

AB1305 (ANTI-GREENWASHING DISCLOSURES)

Overview

AB1305 was adopted at the same time as SB253 and SB261. AB1305 – an anti-greenwashing law⁷ – is aimed at increasing transparency and accountability around certain climate-related claims (e.g., achievement of “net zero” emissions), and the use of voluntary carbon offsets (VCOs). Unlike SB253 and SB261, AB1305 applies to both US and non-US entities that meet certain California nexus requirements.

Legislative Updates

AB1305 has some ambiguity to it. For example, there was ambiguity as to whether the initial disclosures were due by January 1, 2024 or January 1, 2025.⁸

In 2024, the California Assembly sought to clarify certain ambiguities through a proposed amendment to AB1305,⁹ that would have, among other things, clearly set the deadline for initial disclosures. Ultimately, these efforts were unsuccessful.

Furthermore, in an opinion dated July 23, 2024,¹⁰ the California Attorney General clarified that renewable energy credits (RECs) used outside of California's regulatory programs are not within the scope of VCOs (as defined in AB1305).

⁷ https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202320240AB1305&showamends=false.

⁸ The lead author of AB1305 – Assembly Member Jesse Gabriel – published a letter dated January 3, 2024 and addressed to Sue Parker, Chief Clerk of the California Assembly in the California Assembly Daily Journal, available at <https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/adj010324.pdf>. This letter sought to clarify the author's intent that the initial AB1305 disclosure would be due on January 1, 2025.

⁹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB2331.

¹⁰ <https://oag.ca.gov/system/files/opinions/pdfs/24-201.pdf>.

Additional clarification may come through further legislative activity in 2025, and we will continue to monitor for updates.

Legal Challenge Updates

AB1305 has not, to date, been the subject of legal challenge.

Key Compliance Considerations

Absent further clarification, companies will need to treat AB1305 as already being in effect, and should be taking proactive steps to ensure prompt and ongoing compliance. These steps include:

- Reviewing and assessing all public statements made by the company regarding claims within the scope of AB1305 (e.g., net-zero commitments and emissions reductions) and/or VCOs being used, purchased, marketed and/or sold in California.
- Reviewing evidence and other information to support any such claims and/or any such VCOs, which evidence or other information may be included in reports already prepared by the company (e.g., TCFD reports, ESG/sustainability reports, etc.).
- Beginning (or continuing, as applicable) discussions with third-party verifiers.
- Preparing and publishing initial disclosures on the company's website to the extent the company is potentially subject to AB1305.¹¹
- Establishing and maintaining robust internal controls, including to address public claims and VCOs, and to ensure annual review of AB1305 disclosures.
- Conducting ongoing review of internal policies and procedures.
- Engaging internal stakeholders, legal counsel, and sustainability experts.

¹¹ While ambiguities potentially exist with respect to certain aspects of AB1305, there is a wealth of examples publicly available through initial disclosures from companies of a range of sizes and from a range of industries. To date, disclosures appear to be generally high-level, often referring to existing company reports as data sources, and with a focus on the requirements of AB1305 which may apply to the subject company.