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California Climate Disclosure Laws – New Developments, Old Timelines

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The California legislature recently rejected Governor Gavin Newsom's proposal to delay the deadlines to comply with California's climate disclosure laws by two years.

By way of background, in October 2023, California passed three laws relating to climate disclosure:

- SB 253 (reporting on greenhouse gas (GHG) emissions);
- SB 261 (reporting on climate-related risks); and
- AB 1305 (disclosure of information regarding GHG emissions reduction claims and voluntary carbon offset activities).

When the Governor signed SB 253 and SB 261 into law (known together as California's Climate Accountability Package), he noted his concerns regarding the infeasibility of the implementation timelines under both SB 253 and SB 261, and in June 2024, his administration proposed amendments that included a two-year delay on the implementation timelines under SB 253 and SB 261. However, on September 9, 2024, California's legislature rejected Governor Newsom's proposal. In August, the legislature had passed SB 219, which amends aspects of SB 253 and SB 261, but preserves the key timelines set forth in the original bills. Governor Newsom has until September 30, 2024 to sign or veto SB 219. While it is expected that he will sign SB 219, the Governor may continue to push for delays on the implementation of SB 253 and SB 261. Of note, there is also an ongoing lawsuit in the U.S. District Court for the Central District of California that may also impact the implementation of these bills.

A previous client alert discussed SB 253 and SB 261 in detail. Below is a summary of the key highlights of these bills as well as AB 1305.

SB 253 (The Climate Corporate Data Accountability Act)[1]

SB 253 requires both public, and private, U.S. entities that conduct business in California and have total annual revenue in excess of $1 billion U.S. dollars to report on their Scope 1 and 2 GHG emissions annually, beginning in 2026 (for 2025 data), and on their Scope 3 emissions, beginning in 2027, making California the first state to require disclosure on Scope 3 GHG emissions. In addition, the public disclosures will need to be verified by a third-party assurance provider, and the California Air Resources Board (CARB) will be responsible to develop and adopt regulations to implement SB 253 by January 1, 2025.

SB 261 (The Climate-Related Financial Risk Act)[2]

SB 261 requires both public, and private. U.S. entities that conduct business in California and have total annual revenues exceeding $500 million U.S. dollars to report on their climate-related financial risks (i.e., the material risk of harm to immediate and long-term financial outcomes due to physical and transitional risks) and mitigation strategies on their website on or before January 1, 2026, and biennially thereafter. The disclosures must be made in accordance with the framework published by the Task Force on Climate-Related Financial Disclosures (TCFD) or other international or national reporting standards that incorporate consistent disclosure requirements. The climate-related financial risk reports can be consolidated at the parent company level, even if a subsidiary qualifies on its own as a covered entity.

AB 1305 (The Voluntary Carbon Market Disclosures Act)[3]

AB 1305 imposes various disclosure requirements on public, and private, domestic and international entities, regardless of their size or revenue, that (i) market or sell voluntary carbon offsets within California; (ii) operate in California[4] and buy or use voluntary carbon offsets, or that do not operate in California but buy or use voluntary carbon offsets that are marketed or sold in California, and make climate-related claims (i.e., claims regarding achievement of net zero emissions, carbon neutral status, or significant carbon or GHG emissions reductions); or (iii) make climate-related claims within California or make climate-related claims and operate in California. The bill went into effect on January 1, 2024, and although no date was specified, the intent was that the first disclosures should be posted to the covered entity's website by January 1, 2025, and annually thereafter. The required disclosures vary depending on whether the covered entity is a marketer/seller of voluntary carbon offsets, a buyer/user of voluntary carbon offsets, or an entity that makes climate-related claims.

SB 219[5]

SB 219, which awaits Governor Newsom's signature or veto, amends certain limited aspects of SB 253 and SB 261.[6] Key changes to SB 253 and SB 261 include:

- A six-month extension until July 1, 2025 (from January 1, 2025) for CARB to promulgate its rulemaking for SB 253.
- CARB responsibility to set the schedule for disclosure of Scope 3 GHG emissions under SB 253 (instead of requiring disclosure within 180 days after a covered entity's Scope 1 and 2 emissions reporting) – although reporting would still be required starting in 2027.
- Ability to consolidate disclosures under SB 253 at the parent company level and exempting subsidiaries from separate reporting (to align with SB 261).
- Removing the requirement on CARB to contract with a climate reporting organization to prepare the reports on climate-related financial risk disclosures under SB 261.

Of note, , SB 219 does not significantly affect the reporting deadlines under SB 253 and SB 261. Accordingly, Scope 1 and 2 disclosures (under SB 253) will remain due in 2026, Scope 3 disclosures (under SB 253) will still be due sometime in 2027 and climate-related financial risk disclosures (under SB 261) will remain due by January 1, 2026. The effective date of AB 1305 will remain January 1, 2024.

Pending Lawsuit[7]

In addition to the potential changes that may result under SB 219, the state of play for the California climate disclosure laws remains somewhat in flux pending resolution in the lawsuit filed on January 30, 2024 in the U.S. District Court for the Central District of California challenging the legality of SB 253 and SB 261 and alleging, among other things, that these laws violate the First Amendment and improperly regulate an area that is subject exclusively to federal control under the Clean Air Act.

The motions for dismissal and summary judgment have been briefed and the next court hearing is scheduled for October 15, 2024.

Stay tuned as this saga continues.

[1] Bill Text - SB-253 Climate Corporate Data Accountability Act. (ca.gov)

[2] Bill Text - SB-261 Greenhouse gases: climate-related financial risk. (ca.gov)

[3] Bill Text - AB-1305 Voluntary carbon market disclosures.

[4] AB 1305 does not define what it means to operate in California.

[5] Bill Text - SB-219 Greenhouse gases: climate corporate accountability: climate-related financial risk. (ca.gov)

[6] Legislation to amend AB 1305 did not get a final vote and will be revisited after December 2, 2024 when the next California legislative session convenes.

[7] Chamber of Commerce of the United States of America et al v. California Air Resources Board et al 2:2024cv00801 | US District Court for the Central District of California | Justia

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