ESG Collaborative Update

September 15, 2023

Preparing for New California Climate Risk and Emissions Disclosure Laws

Recently, the California Legislature passed two bills relating to climate risk and emissions disclosures that could impact thousands of companies doing business in California. The Climate-Related Financial Risk Act would require companies to report biennially on climate-related financial risk, and the Climate Corporate Data Accountability Act would require companies to publicly disclose their scope 1, 2 and 3 greenhouse gas emissions.

Corporate Climate Data Accountability Act (SB 253) – Scope 1, 2 and 3 Greenhouse Gas Emissions

Applicability

The Corporate Climate Data Accountability Act (SB 253) would apply to U.S. companies – whether public or private – with annual total revenues in excess of $1,000,000,000 that "do business" in California. The revenue threshold is based on the company's revenue for the prior fiscal year.

Timing

SB 253 would require the state board to develop and adopt regulations, on or before January 1, 2025, to require reporting companies to annually disclose their scope 1, 2 and 3 emissions.

The regulations would require companies to comply with the following disclosure timeline:

- ***2026***: Starting in 2026, and annually thereafter, companies would be required to publicly disclose all scope 1 and scope 2 emissions for their prior fiscal year.
- ***2027***: Starting in 2027, and annually thereafter, companies would be required to publicly disclose their scope 3 emissions no later than 180 days after disclosure of their scope 1 and 2 emissions.

Disclosure Requirements

Beginning in 2026, companies would be required to:

- ***Measure and report their emissions of greenhouse gases***: Companies would be required to report their emissions in conformance with the Greenhouse Gas Protocol standards and submit a disclosure to an emissions reporting organization (to be determined by the state board).
- ***Assurance engagement***: Companies would also be required to obtain an assurance engagement, performed by an independent third-party assurance provider (first at the limited assurance level (for scope 1 and 2 emissions starting in 2026), then at the reasonable assurance level, with assurance for scope 3 emissions phased in later than for scope 1 and 2 emissions).
- ***Minimizing duplication***: To comply with this bill, companies would be permitted to submit "reports prepared to meet other national and international reporting requirements, including any reports required by the federal government, as long as those reports satisfy all of the requirements of [the California bill]."

Administrative Requirements

Under SB 253, companies would be required to comply with the following:

- ***Fees***: Companies would pay an annual filing fee to the state board. The state board would set the fee at an amount sufficient to cover the full costs of administering and implementing the bill.

Penalties

Under SB 253, the state board would be authorized to sanction any company that fails to file, files late, or fails to meet the disclosure requirements by imposing a fee, not to exceed $500,000 in a reporting year. The state board would be permitted to consider certain mitigating factors, such as the company's past and present compliance with the disclosure requirements and whether the company took good faith measures to comply with the requirements.

- ***Scope 3 exception***: Companies will not be subject to a penalty for any misstatements relating to scope 3 emissions disclosures if they are made with a reasonable basis and disclosed in good faith. Until 2030, penalties for scope 3 emissions are limited to the company's failure to file.

Climate-Related Financial Risk Act (SB 261)

Applicability

The Climate-Related Financial Risk Act (SB 261) would apply to U.S. companies – whether public or private – with annual total revenues in excess of $500,000,000 that "do business" in California. The revenue threshold is based on the company's revenue for the prior fiscal year. Companies that are subject to regulation by the California Department of Insurance or are in the insurance business in another state are not covered.

Timing

SB 261 would require companies to prepare a climate-related financial risk report biennially, beginning on or before January 1, 2026.

Disclosure Requirements

Under SB 261, companies would be required to disclose the following in a climate-related financial risk report:

- ***Climate-related financial risk***: Disclosures would be made in accordance with the recommended framework in the Final Report of Recommendations of the Task Force on Climate Change-Related Financial Disclosures, and;
- ***Measures adopted to reduce and adapt to climate-related financial risk.***

Administrative Requirements

Under SB 261, companies would be required to comply with the following:

- ***Public availability***: Companies would be required to make a copy of their climate-related financial risk report publicly available on their company websites.
- ***Consolidation***: Companies would be permitted to consolidate reports at the parent company level.
- ***Fees***: Companies would pay an annual filing fee to the State Air Resources Board (the "state board"). The state board would set the fee at an amount sufficient to cover the full costs of administering and implementing the bill.

If a company does not complete a report with the required disclosures, the company would provide the recommended disclosures to the best of its abilities, including a detailed explanation for any gaps and a description of how the company plans to prepare the disclosures going forward.

Penalties

Under SB 261, the state board would be authorized to sanction any company that fails to publish the report on the company's website by imposing a fee, not to exceed $50,000 in a reporting year. The state board would be permitted to consider certain mitigating factors, such as the company's past and present compliance with the disclosure requirements and whether the company took good faith measures to comply with the requirements.

What's Next?

Both the Climate-Related Financial Risk Act and the Climate Corporate Data Accountability Act recently passed the California State Legislature and are headed to Governor Gavin Newsom's desk. Governor Newsom has until October 14, 2023 to sign, veto, or let the bills pass into law without signing. Companies should begin preparing for these bills to become law.

FOR MORE INFORMATION

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