ESG Collaborative Update

June 2025

Update on California's Climate Disclosure Rules: Key Takeaways from CARB's May 29 Workshop

On May 29, the California Air Resources Board (CARB) hosted a virtual public workshop addressing the Climate Corporate Data Accountability Act (Senate Bill 253), the Climate-Related Financial Risk Act (Senate Bill 261), and amendments introduced by Senate Bill 219. During the four-hour session, CARB reviewed emerging themes from its public comment period, shared proposed concepts for regulatory frameworks, and previewed the upcoming rulemaking process with more than 3,000 attendees. Thompson Hine partner Tanya C. Nesbitt, a member of the firm's ESG Collaborative, and Corporate Transactions & Securities associate Matthew N. Leder attended the workshop and have provided a summary of the current landscape and insights below.

California's Climate Disclosure Laws

In October 2023, California became the first state to enact sweeping climate disclosure legislation with the passage of the Climate Corporate Data Accountability Act (SB 253) and the Climate-Related Financial Risk Act (SB 261). Together, these laws aim to improve transparency regarding corporate climate-related risks and greenhouse gas (GHG) emissions, providing investors and the public insight into how businesses are managing climate-related challenges.

SB 253: Climate Corporate Data Accountability Act

Senate Bill 253 requires entities doing business in California with total annual revenues exceeding $1 billion to disclose their Scope 1, 2, and 3 GHG emissions annually. The law defines:

- **Scope 1 emissions** as direct emissions from sources owned or directly controlled by a reporting entity.
- **Scope 2 emissions** as indirect emissions from the consumption of purchased electricity, steam, heating, or cooling.
- **Scope 3 emissions** as all other indirect emissions—upstream and downstream—and those not included in Scope 2.

Disclosures must align with the Greenhouse Gas Protocol. Entities must report Scope 1 and 2 emissions for fiscal year 2025 beginning in 2026, with Scope disclosures required starting in 2027 for fiscal year 2026.

On December 5, 2024, CARB issued an Enforcement Notice acknowledging that companies may need additional lead time to build out new data collection systems to allow for fully complete Scope 1 and Scope 2 emissions reporting. As a result, CARB stated it would exercise enforcement discretion for the first reporting cycle, provided reporting entities demonstrate a good faith effort to comply.

SB 261: Climate-Related Financial Risk Act

Senate Bill 261 requires companies with annual revenues over $500 million that do business in California to disclose their climate-related financial risks every two years. The Disclosure must follow the framework developed by the Task Force on Climate-related Financial Disclosures (TCFD), the International Sustainability Standards Board's (ISSB) Climate-Related Disclosures Standard, or a comparable voluntary reporting framework. The first reports are due by January 1, 2026, and must be publicly available on each company's website.

SB 219: Amendments to Climate Disclosure Laws

In 2024, SB 219 introduced the following key amendments to SB 253 and SB 261:

1. Extended the deadline for CARB to adopt implementing regulations from January 1, 2025, to July 1, 2025;
2. Clarified that CARB will set a schedule for Scope 3 disclosures beginning in 2027; and
3. Permitted entities to report on a parent-level consolidated basis, exempting certain subsidiaries.

Emerging Themes from CARB's Public Workshop

Timeline and Regulatory Uncertainty

California State Senator Scott Wiener, the sponsor of SB 253, reiterated that the law remains on track for initial reporting in 2026. However, despite Senator Wiener's assurance and CARB's July 1, 2025 deadline to issue regulations, CARB only tentatively committed to developing rules for SB 253 by the end of the year. The agency emphasized its continued informal rulemaking process and the need for further stakeholder engagement. Many workshop participants expressed concern about companies' ability to comply in 2026 if regulations are not finalized until the end of the year.

Defining Key Terms

Doing Business. CARB proposed borrowing the definition of "doing business" from Section 23101 of California's Revenue and Taxation Code (RTC), with slight modifications:

- The entity is "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit," and
- The entity satisfies one of the following conditions during any part of the reporting year:

  a. The entity is "organized or commercially domiciled" in California;

  b. The entity has annual sales in California that exceed the lower of $735,019 or 25% of the entity's total sales;

  c. The entity has real property or tangible personal property in California that exceeds the lower of $73,502 or 25% of the entity's real property or tangible personal property; or

  d. The entity has payroll compensation in California that exceeds the lower of $73,502 or 25% of the entity's total payroll.

Workshop participants noted that the proposed thresholds are low and could capture a wide spectrum of companies, including those with only limited operations in California. CARB acknowledged the concern, stating that the law is not intended to target companies with minimal ties to California, and indicated that this feedback would be taken under advisement.

Revenue. CARB proposed defining "revenue" as gross receipts under RTC § 25120, which includes gross proceeds from property sales, services performed, or capital use—subject to certain enumerated exceptions. Many financial institutions requested that passive income sources, such as interest, fees, and dividends be excluded, as they are not tied to GHG emission activity. Commentators also sought clarity on whether thresholds should apply at the parent or subsidiary level, or both in consolidated structures.

Corporate Relationships

CARB suggested modeling its definition of corporate relationships on California's Cap-and-Trade program, which defines a corporate relationship as existing when one entity owns or controls 50% or more of another. Still, commentators requested further clarification on reporting obligations for foreign parent companies and their subsidiaries doing business in California, as well as potential reporting requirements for parent companies whose subsidiaries are in scope.

Clarifications Sought on SB 261

Several commentators asked CARB to define "material financial risk" and requested guidance on applying the TCFD or ISSB frameworks, particularly for companies that may not currently use such models.

Looking Ahead

The May 29 workshop is expected to be one of several opportunities for stakeholders to engage with CARB as informal rulemaking progresses. CARB has signaled its intention to maintain an open dialogue as it works toward final regulations by year-end.

CARB's anticipated timeline for the completion of regulations means that many companies may face compliance decisions before regulatory clarity is achieved. Adding to this uncertainty is ongoing litigation. In the coming weeks, the U.S. District Court for the Central District of California is set to hear a motion to enjoin their implementation in a lawsuit brought by the U.S. Chamber of Commerce and California Chamber of Commerce, among others. The lawsuit alleges that California's climate disclosure laws violate the First Amendment by compelling companies to speak on a controversial issue. *(Chamber of Commerce of the United States, et al. v. California Air Resources Board, et al. C.D. Cal., Case No. 2:24-cv-00801)*.

For additional background on the pending litigation, please see our client alert *Future Uncertain for California Climate Disclosure Laws Set to Take Effect in Two Years*.

Thompson Hine's ESG Collaborative will continue to follow regulatory and legal developments in CARB's rulemaking process and provide timely updates.

FOR MORE INFORMATION

For more information, please contact:

Tanya C. Nesbitt
404.407.3605
Tanya.Nesbitt@ThompsonHine.com

Kim Sim Sandell
310.382.1309
Kim.Sandell@ThompsonHine.com

Matthew N. Leder
614.469.3220
Matthew.Leder@ThompsonHine.com