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SEC Reporting & Compliance Alert

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California Poised To Adopt Sweeping Climate Disclosure Rules

In September 2023, the California Legislature passed Senate Bill 253, Climate Corporate Data Accountability Act (SB 253) and Senate Bill 261, Greenhouse Gases: Climate-Related Financial Risk (SB 261). California Gov. Gavin Newsom has announced he intends to sign the bills into law. The bills would require companies with significant revenues doing business in California to publicly disclose greenhouse gas (GHG) emissions data and climate-related financial risk reports.

Notably, these bills come at a time when the Securities and Exchange Commission (SEC) also has proposed rules that would mandate extensive and prescriptive climate-related disclosures in public companies' annual reports and registration statements.[1] The California bills, however, would go beyond the SEC's proposed disclosure requirements. Highlights of each bill are summarized below.

SB 253

SB 253 would require companies[2] with more than $1 billion in total annual revenues that are "doing business" in the state of California[3] to annually disclose:

- **Scopes 1 and 2 emissions.** Starting in 2026, the company's Scope 1 and Scope 2 GHG emissions for the prior fiscal year.[4]
- **Scope 3 emissions.** Starting in 2027, the company's Scope 3 GHG emissions for the prior fiscal year.[5]

[1] For more information, see our March 24, 2022, client alert, "SEC Proposes New Rules for Climate-Related Disclosures."

[2] For purposes of the bills, "companies" includes corporations, partnerships, limited liability companies and other business entities formed under the laws of any U.S. state or the District of Columbia, or under an act of Congress. SB 261 does not apply to a business that is subject to regulation by California's Department of Insurance or that is in the business of insurance in any other state.

[3] While the bill does not define "doing business in California," this phrase could be interpreted to have broad applicability.

[4] Scope 1 emissions are all direct GHG emissions that stem from sources that the company owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities. Scope 2 emissions are indirect GHG emissions from consumed electricity, steam, heating, or cooling purchased or acquired by the company, regardless of location.

[5] Scope 3 emissions are indirect upstream and downstream GHG emissions, other than Scope 2 emissions, from sources that the company does not own or directly control and may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products. Under the bill, companies would not be subject to an administrative penalty for any misstatements of Scope 3 emissions disclosures made with a reasonable basis and disclosed in good faith.

The GHG emissions data would be required to be measured and reported in conformance with the Greenhouse Gas Protocol standards and guidance developed by the World Resources Institute and the World Business Council for Sustainable Development. The disclosure must be publicly available and easily accessible. Also, companies must obtain independent third-party assurance of their GHG emissions, subject to a phase-in period.[6]

Failure to comply with the disclosure requirements of SB 253 could result in an administrative penalty of up to $500,000 per reporting year.

SB 261

SB 261 would require companies with more than $500 million in total annual revenues that do business in California to biannually prepare and disclose a climate-related financial risk report that includes:

- **Climate-related financial risk.** A description of the company's climate-related financial risk, which is defined as material risk of harm to immediate and long-term financial outcomes due to physical and transition risks.
- **Countermeasures.** Any measures the company has adopted to reduce and adapt to the disclosed, material climate-related financial risk.

The report must be prepared (i) in accordance with the disclosure framework established by the Task Force on Climate-Related Financial Disclosures (TCFD) or any successor, or (ii) pursuant to certain "equivalent" reporting requirements.[7] The report may be consolidated at the parent company level.

The first report would be due by January 1, 2026, and must be made available on the company's website. Failure to comply with the disclosure requirements of SB 261 could result in an administrative penalty of up to $50,000 per reporting year.

Both bills would require companies to pay an annual fee to the state of California to administer and implement the bills.

Next Steps

If signed into law, the bills will likely face legal challenges, which could delay implementation or strike down the laws in part or in whole. Companies should continue monitoring the numerous developments with respect to climate-related disclosure initiatives and consider developing an action plan to comply with California's requirements, if implemented and upheld.

[6] The assurance engagement for Scopes 1 and 2 emissions must be performed at a limited assurance level beginning in 2026 and at a reasonable assurance level beginning in 2030. On or before January 1, 2027, an assurance requirement for Scope 3 emissions may be established, in which case the assurance engagement for Scope 3 emissions would be performed at a limited assurance level beginning in 2030.

[7] "Equivalent" reporting requirements would include a law, regulation or listing requirement issued by a regulated exchange, national government or other governmental entity, or voluntary compliance with a framework, that incorporates disclosure requirements consistent with the TCFD framework, including the International Financial Reporting Standards Sustainability Disclosure Standards issued by the International Sustainability Standards Board.

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