California doubles down on climate disclosure mandates
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Even California's "climate governor" had concerns about rushing too hastily into implementing California's unprecedented climate disclosure laws. So much so, that he proposed legislatively delaying their compliance deadlines by two years. The legislature responded with an emphatic, "No!" Instead, the legislature passed, and the governor signed SB 219 that granted the California Air Resources Board (CARB) an additional six months to draft implementing regulations but left all compliance deadlines intact. Accordingly, entities subject to the laws will have to begin measuring and assessing climate emissions and climate "risks" throughout 2025 for disclosure beginning in 2026.

At the federal level, although the proposed rule by the Securities and Exchange Commission (SEC) has been voluntarily stayed by the agency pending resolution of litigation challenges, Democratic lawmakers and interest groups are calling for ongoing vigilant enforcement of climate-related disclosures based upon preexisting guidance.

Legislating via the California state budget

When the governor signed the two California climate disclosure mandate laws last session, he included in a signing statement vague reference to concerns over cost of compliance and implementation timing, leading many to adopt a wait-and-see posture, hoping the law would be softened via the budget process in 2024. Indeed, in the waning hours of legislative budget adoption, the governor submitted (without notifying his counterparts in the legislature) a proposed bill that would have delayed implementation of the laws by two years.

By this time, however, the bill's author, Senator Scott Weiner, had been elevated to chair of the Senate Budget Committee. Once notified of the governor's proposal, Senator Weiner made clear that he would not support any softening of the climate laws' requirements or extension of the timing of implementation.

Disclosure of greenhouse gas emissions

California's SB 253 mandates the disclosure of greenhouse gas emissions (GHG) by entities doing any level of business in California and that have at least $1 billion in annual revenue

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enterprise-wide (i.e., not limited to California operations). The law mandates disclosure of Scope 1 emissions, direct emissions by the entity; Scope 2 emission, indirect emissions caused by the entity’s energy consumption; and Scope 3 emissions, emissions attributable to everything else in the entity's operations, both upstream and downstream, including corporate travel, employee commute patterns, and supply chain and product distribution. The reported emissions are subject to verification assurance by qualified third-party experts.

The first disclosures, Scopes 1 and 2 with "limited" assurance, are due in 2026. Scope 3 disclosures with no assurance are due in 2027. In 2030, the assurance levels increase to "reasonable" for Scopes 1 and 2 and "limited" for Scope 3. The forthcoming CARB regulations are to specify the specific deadlines for reporting and procedures for compliance.

Federally, while the proposed SEC rule also included disclosure of all emissions similar to SB 253, after an unprecedented amount of public comment on the rule as proposed, Scope 3 emissions were dropped from the final rule. Business interests have sued to invalidate the SEC rule as unconstitutional and unduly burdensome, and environmental interests initially sued over the removal of Scope 3 disclosures but have since withdrawn their challenge.

Disclosure of climate-related material financial risks

California's SB 261, a companion to SB 253, requires the disclosure of climate-related material financial risks. The law applies to entities doing any business in California with annual revenues of at least $500 million enterprise-wide. The initial reports are due in 2026 and biennially thereafter.

SB 261 requires disclosures to track with the Task Force on Climate-Related Financial Disclosures' (TCFD) June 2017 Recommendations Report. However, in 2023, the founding board of TCFD, the Financial Stability Board, determined that TCFD had concluded its work and disbanded it. The TCFD recommendations were then incorporated into two new global reporting regimes under the International Sustainability Standards Board. At this point, SB 261 disclosures are limited to the TCFD recommendations. Those disclosures are grounded on four "pillars": governance, strategy, risk management, and metrics and targets. SB 261 disclosures must not only identify qualifying risks, both physical and transitional, but must also articulate the reporting entity's intended strategy to mitigate and/or adapt to that risk.

The federal SEC rule also includes mandatory disclosure of climate-related material financial risk, but those disclosures are not directly tied to TCFD or any other recognized disclosure standard. Rather, the rule specifies its own qualifiers and parameters with which disclosing entities much comply.

To date, less attention has been paid to disclosure of financial risks relative to emissions disclosure. This is, at least in part, due to the fact that financial risk disclosures are much more

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subjective, being narrative and qualitative, making them much less likely to be strictly enforced. Conversely, GHG emission disclosures are numeric and quantitative, rendering them much more susceptible to challenge and verification, which is, in part, why many climate advocates and legislators voiced outrage over the SEC dropping Scope 3. However, the environmental litigants' decision to drop their legal challenge to the SEC rule was accompanied by a statement that they intended to focus their attention and resources on ensuring the enforceability of financial risk disclosures. This new focus and scrutiny could have dramatic regulatory implications for disclosures under the SEC rule and disclosures under California's SB 261.

Many entities potentially subject to one or more of the disclosure mandates have taken a wait-and-see posture with regard to beginning the necessary enterprise-wide assessment and analysis required to make both GHG emissions and financial risk disclosures under whichever law may apply. This is unfortunate. For entities beginning to make the assessments and efforts to prepare for internal review legally compliant reports, marshalling all relevant data and processes to generate the report can take over a year. Additionally, the required third-party attestation can be even more time consuming that the initial assessment and quantification of emissions. Litigation challenges and partisan blustering from both sides of the aisle notwithstanding, California's double-down on forging ahead with SB 253 and SB 261 unabated should be a wake-up call to one and all that compliance mandates are not just inevitable, they are here.

Learn more at the upcoming SEER CLE Webinar: *Corporate Climate Reporting Requirements: A Fast-Changing Landscape*. Tuesday, December 10, 1:00- 2:30 p.m. ET. You can register here: Corporate Climate Reporting Requirements: A Fast-Changing Landscape

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