

# California Climate Disclosure Laws: Recent Developments

**November 15, 2024**

On September 27, 2024, California Governor Gavin Newsom signed into law Senate Bill (“SB”) 219, which makes certain changes to last year’s Climate Corporate Data Accountability Act (SB 253) and Climate-Related Financial Risk Act (SB 261). SB 219 clarifies questions regarding SB 253 and SB 261, including by granting the California Air Resources Board (“CARB”) an additional six months, or until July 1, 2025, to adopt implementing regulations relating to the disclosure of greenhouse gas (“GHG”) emissions.

SB 253 requires companies with more than \$1 billion in revenue that do business in California to report Scopes 1 and 2 GHG emissions annually beginning in 2026 for the 2025 fiscal year and Scope 3 GHG emissions beginning in 2027 for the 2026 fiscal year. SB 261 requires companies with more than \$500 million in revenue that do business in California to report on climate-related financial risks and measures to address those risks starting in 2026.

Notably, insurance companies are exempted from SB 261 and are instead subject to the disclosure standard adopted by the National Association of Insurance Commissioners (“NAIC”) in April 2022, based on the Task Force on Climate Related Financial Disclosures. In its bill analysis, the Senate Committee on Environmental Quality noted that insurance companies had been exempted from the legislation because of the NAIC reporting standard, suggesting that the purpose was to avoid “double-reporting.”

For additional background on SB 253 and SB 261, see our [Debevoise Debrief](#), California Climate Disclosure Bills Signed into Law (Oct. 10, 2023) and [Debevoise Update](#), California Climate Disclosure Bills Expected to Become Law (Oct. 5, 2023).

SB 253 and SB 261 continue to face legal challenge in the U.S. District Court for the Central District of California following an action brought by the U.S. Chamber of Commerce, American Farm Bureau Federation, California Chamber of Commerce and other plaintiffs, who argue that the laws violate the First Amendment’s prohibition against compelled speech, are a violation of the Commerce Clause by attempting to regulate GHG emissions across states’ borders and are preempted by the federal Clean

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Air Act. On November 5, 2024, the Court denied the plaintiffs' motion for summary judgment, which sought to invalidate the laws on First Amendment grounds, and granted CARB's motion to defer or deny the plaintiffs' motion. The Court decided that while the First Amendment is applicable to the laws, discovery is required to assess the nature of the content-based regulation that these laws impose and to determine the appropriate level of scrutiny. The future and scope of the rules remain uncertain; however, their implementation is not stayed pending the outcome of the litigation.

**SB 219: Amendments to Climate Disclosure Framework.** While SB 219 did not make fundamental changes to the climate reporting framework set out by SB 253 and SB 261, amendments to the laws include:

- Granting CARB an additional six months to adopt implementing regulations setting out detailed reporting requirements relating to the disclosure of GHG emissions;
- Altering the timing sequence for reporting Scope 3 GHG emissions, to begin on a schedule to be determined by CARB rather than 180 days after the disclosure of Scopes 1 and 2 GHG emissions, as previously required;
- Authorizing, rather than requiring, CARB to (i) contract with an emissions reporting organization to develop the GHG emissions reporting program under SB 253 and (ii) contract with a climate reporting organization to prepare biennial public reports on climate-related financial risk disclosures under SB 261;
- Removing the requirement in SB 253 that subsidiary companies provide separate climate-related financial risk reports, allowing for consolidation at the parent company level; and
- Relieving companies of the requirement to pay fees upon filing of disclosures (the fee will still be required, but the date for payment is no longer specified).

**Next Steps for Covered Companies.** Ahead of the compliance deadlines for SB 253 and SB 261, companies should consider taking a number of actions to prepare for the new disclosure regime and to mitigate potential enforcement risks. This includes:

- Determining whether their activities constitute “doing business in” California once the definition of “doing business in” California is established and, as such, subject them to the reporting requirements discussed herein. Neither SB 253 and SB 261 defined, nor did SB 219 clarify the meaning of, “doing business in” California, though it is expected that California will interpret the phrase broadly as it has in the context of other state regulations.

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- Comparing requirements under other applicable emissions reporting regimes (such as the European Union's Corporate Sustainability Reporting Directive) or disclosures made on a voluntary basis and developing a comprehensive compliance plan.
  - Reviewing (or, if necessary, adopting) internal processes for climate-related disclosure and reporting to ensure they have robust internal controls for climate reporting and related governance. In particular, companies doing business in California should evaluate the capability of affiliated entities to provide climate-related disclosure, as it is presently unclear whether CARB will implement SB 253 and SB 261 in a manner that treats such affiliated entities on a consolidated basis.
  - Identifying suitable independent advisers, including an assurance firm appropriate for the covered company and its industry to review emissions data and disclosures. This may be particularly prudent with respect to reporting of Scopes 1 and 2 GHG emissions, as companies will need to provide disclosure for calendar year 2025 notwithstanding that CARB is not required to publish implementing regulations until July 1, 2025.
  - Continuing to monitor developments in litigation involving climate disclosure regulations, as well as further updates from regulatory bodies such as CARB.

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Please do not hesitate to contact us with any questions.



**Eric T. Juergens**  
Partner, New York  
+1 212 909 6301  
etjuergens@debevoise.com



**Benjamin R. Pedersen**  
Partner, New York  
+1 212 909 6121  
brpedersen@debevoise.com



**Paul M. Rodel**  
Partner, New York  
+1 212 909 6478  
pmrodel@debevoise.com



**Marshal L. Bozzo**  
Counsel, New York  
+1 212 909 6797  
mlbozzo@debevoise.com



**Ulysses Smith**  
ESG Senior Advisor, New York  
+1 212 909 6038  
usmith@debevoise.com



**Michael Pan**  
Associate, New York  
+1 212 909 6107  
mlpan@debevoise.com



**Amy Pereira**  
Associate, New York  
+1 212 909 6413  
apereira@debevoise.com



**Cindy Tu**  
Law Clerk, New York  
+1 212 909 6980  
ktu@debevoise.com

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