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Leading National Trend, California Enacts Sweeping Climate-Disclosure Laws

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On Oct. 7, California Gov. Gavin Newsom **signed into law** two bills—Senate Bill 253 and Senate Bill 261—that will require thousands of public and private companies doing business in California to make broad disclosures of greenhouse gas (GHG) emissions and climate-related financial risks starting in 2026. These laws resemble proposed rules by the Securities and Exchange Commission (SEC) and legislation pending in New York, but the California laws go further than the SEC’s proposed rules in several ways.

Summary of SB 253: Disclosure of GHG Emissions

Senate Bill 253, the “Climate Corporate Data Accountability Act” (SB 253), requires any U.S. company¹ “doing business in California”² with over \$1 billion in annual revenue to submit a report of its GHG emissions to be publicly available³ as follows:

- **What to Disclose:** Three types of GHG emissions for the prior year:⁴
 - Scope 1 (direct emissions from all owned/controlled assets, regardless of location)
 - Scope 2 (indirect emissions from purchased power or heating)
 - Scope 3 (indirect upstream and downstream emissions from the entity’s value chain, such as purchased goods and services, travel, and product processing and use)
- **By When:** Scopes 1 and 2 emissions “starting in 2026” and Scope 3 emissions starting in 2027; then annually⁵
- **Disclosure Standards:** Follow the **Greenhouse Gas Protocol** standards or certain other

reporting requirements if they meet this bill’s requirements⁶

- **Assurance:** Include proof of “assurance” by a qualified third-party provider:⁷
 - For Scopes 1 and 2 emissions: “limited” assurance by 2026 and “reasonable” assurance by 2030
 - For Scope 3 emissions: “limited” assurance by 2030
- **Penalties:** The California Air Resources Board (CARB) can issue annual penalties up to \$500,000 for violations⁸
 - For Scope 3 disclosures: (1) no penalties for misstatements with a “reasonable basis” and in “good faith”; and (2) between 2027 and 2030, penalties can be for non-filing only⁹
- **Regulations:** CARB must, on or before Jan. 1, 2025, adopt regulations to implement the requirements of SB 253¹⁰

Summary of SB 261: Disclosure of Climate-Related Financial Risk

Senate Bill 261, the “Climate-Related Financial Risk Act” (SB 261), requires the same broad range of company types subject to SB 253, but with over \$500 million in annual revenue (rather than \$1 billion) and excepting insurance companies,¹¹ to post a report online detailing climate-related financial risk as follows:

- **What to Disclose:** Explanation of the following:¹²
 - “Climate-related financial risk,” or “material” risk of harm to financial outcomes from climate change and combating it

¹ This includes partnerships, corporations, limited liability companies, and any other business entities formed under the laws of California or any other U.S. state or D.C., or under any act of Congress. SB 253 § 2(b)(2).

² The **Senate floor analysis** explained that, under California law, “doing business” in California means “engaging in any transaction for the purpose of financial gain within California, being organized or commercially domiciled in California, or having California sales, property or payroll exceed specified amounts: as of 2020 being \$610,395, \$61,040, and \$61,040, respectively” (citing Cal. Rev. & Tax Code § 23101).

³ The reports will be posted on a state-run website. SB 253 §§ 2(c)(2), 2(e)(1).

⁴ SB 253 §§ 2(b)(3)–(5).

⁵ SB 253 § 2(c)(1)(A)(i).

⁶ SB 253 §§ 2(c)(1)(A), (D).

⁷ SB 253 § 2(c)(1)(F).

⁸ SB 253 § 2(f)(2).

⁹ *Id.*

¹⁰ SB 253 § 2(c)(1).

¹¹ SB 261 § 2(a)(4).

¹² SB 261 §§ 2(a)(2), 2(b)(1)(A), (c)(1).

- Measures to lower and adapt to that risk
- **By When:** On or before Jan. 1, 2026; then every two years¹³
- **Disclosure Standards:** Follow the **Task Force on Climate-related Financial Disclosures** framework or explain gaps and steps to be taken to fully comply¹⁴
 - Or can use reports under other law or frameworks that align with this bill (e.g., the **International Financial Reporting Standards Sustainability Disclosure Standards** issued by the International Sustainability Standards Board)¹⁵
- **Penalties:** CARB can issue annual penalties up to \$50,000 for not publishing the report or for publishing an “inadequate or insufficient” report¹⁶

noted concern about both laws’ compliance deadlines and possible cost impacts and pledged to work with the Legislature to address these issues.

In the meantime, companies should assess if the California laws apply to them and how they may face different climate-disclosure rules in other U.S. jurisdictions. They should also start to strategize about gauging GHG emissions and climate risk and efficiently and accurately disclosing that information to regulators and the public.

For more information about the California laws and climate-disclosure requirements in general, please contact the authors of this article.

Analysis: Similar Efforts Outside California and Next Steps

The California laws add to a growing list of nationwide efforts to require disclosure of GHG emissions and climate-related risks. These efforts may result in requirements covering different groups of companies or subjecting the same companies to several sets of differing rules. Indeed, the California laws go further in several respects.

For example, the SEC is mulling **national climate-disclosure rules** that would differ from California’s. The California laws cover public and private companies, while the SEC rules would cover only public companies—though either would likely cover thousands of companies. Further, the California laws require covered entities to disclose Scope 3 emissions without exception or qualification; the SEC rules, meanwhile, would require such disclosure only if the emissions are “material” or if the entity’s targets include Scope 3 emissions. Yet, unlike California’s laws, the SEC rules would require significant additional disclosures about governance, management, and goals regarding GHG emissions and climate risk.

Similarly, bills pending in the New York State Legislature, **S897A** and **S5437**, closely resemble California’s SB 253 and SB 261, respectively—and more than they resemble the SEC rules. However, New York’s S5437 would go further than California’s SB 251 by not exempting insurance companies and by requiring integration of climate-related financial risks into governance and strategy.¹⁷

Companies should closely track California’s laws and similar efforts elsewhere in the U.S. California’s laws are the first of their kind in the nation and require a wide range of companies to make sweeping disclosures. The laws could then be the first of such requirements challenged in U.S. courts. The California laws may be more likely than the SEC rules to survive given states’ broad constitutional powers and California’s more liberal courts compared to the U.S. Supreme Court. But such requirements remain untested in the U.S., and the legal theories likely to be pitted against them are largely unsettled. Thus, the legal fate of the California laws is far from certain and may shape similar requirements across the nation in the future. Further, most details of California’s requirements remain to be seen. CARB must issue regulations to implement SB 253, which will surely face a robust public-comment process. Also, in accompanying signing statements,¹⁸ Gov. Newsom

¹³ SB 261 § 2(b)(1)(A).

¹⁴ SB 261 §§ 2(b)(1)(A)–(B).

¹⁵ SB 261 § 2(b)(4).

¹⁶ SB 261 § 2(e)(2).

¹⁷ S5437, proposed §§ 312.1(c), 312.2.

¹⁸ The signing statements for SB 253 and SB 261 are [here](#) and [here](#), respectively.

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