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Client Insight: California Governor Signs Into Law Amendments to First-in-the-Nation Mandatory GHG Emissions and Climate Risk Disclosure Requirements with Initial 2026 Compliance Dates Unchanged

Insights
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Amended legislation grants state board a six-month extension—until July 1, 2025—to finalize implementing regulations, without delaying original reporting deadlines

On September 27, 2024, California Governor Gavin Newsom signed into law Senate Bill No. 219 (SB-219), an amended, consolidated version of the state's landmark greenhouse gas (GHG) emissions and climate risk disclosure laws (SB-253 and SB-261, respectively) enacted in October 2023. SB-219 provides the California Air Resources Board (CARB), the state's lead agency for climate change programs, an additional six months—until July 1, 2025 (extended from January 1, 2025)—to develop and adopt regulations to implement and enforce the laws, and makes a number of technical refinements, but does not include the two-year reporting delay sought by Governor Newsom and favored by industry groups, instead preserving the laws' original 2026 compliance deadlines.

As a result, unless ongoing legal challenges delay or block implementation of the laws, public and private U.S. entities that "do business" in California and exceed specified revenue thresholds will be required to:

- annually report Scope 1 and Scope 2 emissions metrics **beginning in 2026** and Scope 3 emissions metrics **beginning in 2027** (in each case for the prior fiscal year and regardless of materiality) and obtain independent third-party assurance over those metrics; and

- biennially report climate-related financial risks and risk mitigation measures beginning on **January 1, 2026**.

SB-219 lacks essential details and raises a host of substantive interpretive issues, including what it means to "do business" in California, which CARB's detailed implementation guidance is expected to clarify. A high-level tabular summary of the key provisions of SB-219 is available here.

GHG Emissions Disclosure

SB-253, as amended by SB-219, requires public and private U.S. entities that "do business" in California with total annual revenue in the previous fiscal year **exceeding $1 billion** (SB-253 Covered Entities) to publicly disclose, on an annual basis, all Scope 1 (from direct operations), Scope 2 (from energy purchases) and Scope 3 (from supply chains, sold products and other indirect sources) GHG emissions metrics, *regardless of materiality*, in accordance with the Greenhouse Gas Protocol, and obtain independent third-party assurance over those metrics.

Scope 1 and Scope 2 emissions metrics must be reported **beginning in 2026** (covering fiscal 2025 data), and Scope 3 emissions metrics must be reported **beginning in 2027** (covering fiscal 2026 data). CARB will determine the exact disclosure dates, and may initially allow Scope 3 reporting at a later date than Scope 1 and Scope 2 reporting, after taking into consideration stakeholder input, the typical time periods for SB-253 Covered Entities to receive emissions data and the capacity for independent assurance engagements.

SB-253 Covered Entities must submit their emissions disclosures to either CARB or a non-profit emissions reporting organization designated by CARB, which will post the submissions on a publicly accessible digital platform no later than 90 days after receipt.

Limited assurance (a review) over Scope 1 and Scope 2 emissions metrics will be required beginning with the first year of reporting (i.e., in 2026 covering fiscal 2025 data), followed by reasonable assurance (an audit) beginning in 2030 (covering fiscal 2029 data). On or before January 1, 2027, CARB has discretion to establish an assurance requirement for Scope 3 emissions which, if required, must be performed at a limited assurance level beginning in 2030 (covering

fiscal 2029 data). Reasonable assurance over Scope 3 disclosures will not be required. The law does not mandate the use of specific assurance standards.

SB-253 Covered Entities will need to submit a copy of the complete assurance report (including the name of the assurance provider) to CARB or the designated emissions reporting organization, as applicable.

Emissions reporting may be consolidated at the parent entity level. Thus, in-scope subsidiaries will not be required to prepare separate reports.

SB-253 Covered Entities will be required to pay an annual fee to CARB in an amount to be determined to defray the costs of implementation and administration. CARB is responsible for monitoring and enforcing compliance with the new requirements and may impose administrative penalties for late filings, non-filings and other compliance failures, up to $500,000 per reporting year. In addition, the law includes a safe harbor from penalties for misstatements with respect to Scope 3 emissions disclosures if they were made with a reasonable basis and provided in good faith. Until 2030, penalties related to Scope 3 reporting can be assessed only for non-filing.

Climate Risk Disclosure

SB-261, as amended by SB-219, requires public and private U.S. entities, other than insurance companies, that “do business” in California with total annual revenue in the previous fiscal year **exceeding $500 million** (SB-261 Covered Entities) to publicly disclose, on a biennial basis (i.e., once every two years), climate-related financial risks and the measures they have adopted to reduce and adapt to such risks in accordance with the framework recommended by the Task Force on Climate-related Financial Disclosures (TCFD), or an equivalent reporting framework. A “climate-related financial risk” is defined as the material risk of harm to immediate and long-term financial outcomes due to physical and transition risks. The first TCFD-compliant report must be posted to a SB-261 Covered Entity’s website by **January 1, 2026**, with biennial updates thereafter.

SB-261 Covered Entities that are unable to fully comply with the TCFD recommendations are permitted to make the required disclosures to the best of their ability and provide a detailed explanation of any reporting gaps and the steps they will take to prepare complete disclosures.

Climate-related financial risk reports may be consolidated at the parent entity level. Thus, in-scope subsidiaries will not be required to prepare separate reports.

SB-261 Covered Entities will be required to pay an annual fee to CARB in an amount to be determined to defray the costs of implementation and administration. CARB is responsible for monitoring and enforcing compliance with the new requirements and may impose administrative penalties for failures to publicly post the required report or for publishing inadequate or insufficient reports, up to $50,000 per reporting year.

“Doing Business” in California

A number of key questions remain to be clarified by CARB’s regulations, including critically with respect to scoping, such as the definition of “doing business” in California for purposes of determining the laws’ applicability and the calculation of total annual revenue for purposes of meeting the specified financial thresholds.

Although the laws do not define the term “does business” in California, the state Senate floor analysis of SB-253 references the definition of “doing business” in the California tax code. The California Franchise Tax Board considers an entity to be “doing business” in California if it (i) engages in any transaction for the purpose of financial gain within California, (ii) is organized or commercially domiciled in California or (iii) has California sales, property or payroll exceeding specified amounts, which are relatively low and adjusted for inflation annually (as of 2023 being $711,538, $71,154 and $71,154, respectively, as detailed here).

It is expected that CARB’s implementing regulations will provide additional clarity on these and other ambiguous provisions in the laws.

Legal Challenges

California’s GHG emissions and climate risk disclosure laws are currently the subject of federal litigation challenging their constitutionality. A coalition of business groups led by the U.S. and California Chambers of Commerce have sued the state in the U.S. District Court for the Central District of California to invalidate the laws, asserting that they violate the First Amendment, the Supremacy Clause and constitutional limitations on extraterritorial regulation, including the dormant Commerce Clause. The case has been fully briefed and will be decided without oral argument. Unlike the U.S. Securities and Exchange Commission’s climate disclosure rules, the California laws have not been stayed and thus will remain in effect pending the resolution of the litigation.

Next Steps

Significant legal challenges are pending that could delay or invalidate California’s emissions and climate risk disclosure laws, and the reporting requirements still lack

essential details and raise a host of substantive interpretive issues.

While companies ultimately will need CARB's implementation guidance (which must be issued by July 1, 2025) to be able to interpret and comply with the requirements, they should begin by evaluating whether they are in scope of the laws based on the information now available. Companies likely in scope can start assessing and preparing for their reporting responsibilities, in particular by:

- identifying and evaluating any gaps that exist between their current climate-related disclosure practices (if any) and the disclosure requirements under the laws;
- ensuring they have effective measures in place to collect and report the relevant data and information for their 2025 fiscal year, as Scope 1 and Scope 2 emissions disclosures and limited assurance over such disclosures will be due sometime in 2026 covering emissions during the 2025 fiscal year; and
- identifying and engaging an assurance provider with the requisite independence, experience and expertise to provide the required emissions assurance.

We will continue to closely monitor relevant developments and provide ongoing updates, including with respect to CARB's rulemaking process and timeline, future legislative developments relating to the laws and the status of the pending litigation challenges.

If you have questions or would like more information about the issues discussed in this client alert, please contact any member of Gunderson's public companies practice or your regular Gunderson attorney.

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