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HOT TOPIC

Climate in the US

Proposed amendments to California climate laws

July 2024

The California climate disclosures remain in place, but longer lead times until adoption and certain reliefs have been proposed.

Source and applicability

- US business entities (including US subsidiaries of non-US companies): Climate Corporate Data Accountability Act (SB-253), Greenhouse gases: climate-related financial risk Act (SB-261), and proposed amendments
- All companies with specified activities in California: Voluntary Carbon Market Disclosures Act (AB-1305) and proposed amendments (AB-2331)

Fast facts, impacts

In October 2023, the California Governor signed three climate disclosure laws.

SB-253 and SB-261 apply to US businesses that meet specified revenue thresholds and do business in California, and are pending further operational regulation from the California Air Resources Board. AB-1305 applies to US and international companies that undertake specified activities in California or make certain claims. Amendments to all three laws are currently under discussion.

	SB-253 (GHG emissions)	SB-261 (climate risks)	AB-1305 (carbon offsets)
Revenue:	> $1 billion annually	> $500 million annually	No threshold
Disclosures:	Scopes 1, 2, 3 GHG emissions	Climate-related financial risks, response	Information about carbon offsets, GHG emissions associated with claims
Effective:	Scopes 1, 2: 2026 (FY25 data); Scope 3: 2027 (FY26 data)	On or before Jan 1, 2026	Jan 1, 2024
Assurance:	Scopes 1, 2: limited assurance from 2026; reasonable assurance from 2030	No requirement	No requirement
Proposed:	2-year delay on reporting / assurance dates		1-year delay

This Hot Topic was updated in July 2024 to incorporate proposed amendments to SB-253 and SB-261.

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Background

There has been mounting pressure from governments and shareholders for companies to disclose their greenhouse gas (GHG) emissions, describe their use of carbon offsets and report on climate-related risks. This has led to several reporting requirements on the national level (the SEC's climate rule, now stayed) and internationally (standards from the International Sustainability Standards Board (ISSB) and European Sustainability Reporting Standards). The California laws add a new dimension, with state-level requirements that have national and international implications.

In the movement to improve transparency and standardize climate-related disclosures, California passed the following laws, signed by the Governor in October 2023.

- **GHG emissions law.** SB-253, the *Climate Corporate Data Accountability Act*, mandates the disclosure of GHG emissions.
- **Climate risks law.** SB-261, the *Greenhouse gases: climate-related financial risk Act*, mandates the disclosure of climate-related financial risks and measures adopted to reduce and adapt to such risks.
- **Carbon offset law**. AB-1305, the *Voluntary carbon market disclosures Act*, mandates disclosures about voluntary carbon offsets and emissions reduction claims.

The next step is for the California Air Resources Board (CARB) to develop and adopt regulations that implement SB-253 and SB-261.

Future developments: Proposed AB-2331, *Voluntary carbon market disclosures*, introduced in February 2024, would make limited amendments to AB-1305. Amendments to SB-253 and SB-261 were proposed by the Governor's administration in June 2024. Key aspects of the proposed amendments are highlighted in this Hot Topic.

A broad scope

GHG emissions and climate risks

SB-253 and SB-261 apply to both public and private US companies (and other business entities) that do business in California – whether or not they are physically present in the state. There are four elements to the respective scopes, which are partially aligned.

	SB-253 (GHG emissions)	SB-261 (climate risks)
Types of entities:	Corporation, partnership, limited liability company or other business entity formed under the laws of California, any other US state or the District of Columbia, or under an act of Congress	
Exclusions:	None	Insurance companies
Revenue:	> $1 billion annually	> $500 million annually
Nexus to California:	Doing business in California	

Revenue is calculated as 'total revenue' and not simply the revenue attributable to California. And while it is not specified whether revenue is the amount recorded for financial reporting, many are currently using total revenue as reported in a company's financial statements to evaluate the law's applicability. The phrase 'doing business in California' is similarly not explained, but there may be precedent set by the California Franchise Tax Board, which defines 'doing business' in California as actively engaging in any transaction in the state for the purpose of financial or pecuniary gain or profit.

We expect CARB to resolve these questions and others as it develops regulations to support implementation.

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Carbon offsets

AB-1305 applies to both public and private companies – both US and non-US, and regardless of size – that undertake specified activities in California:

- business entities marketing or selling voluntary carbon offsets in California;
- entities operating in California that purchase or use voluntary carbon offsets sold within the state and make certain claims (e.g. achievement of net-zero emissions); and
- entities operating in California that make certain claims within the state (e.g. achievement of net-zero emissions, significant reductions in GHG emissions).

Targeted disclosures

The SB-253 and SB-261 disclosures leverage existing frameworks with additional reliefs for companies already reporting climate risk information.

	SB-253 (GHG emissions)	SB-261 (climate risks)	AB-1305 (carbon offsets)
Disclosures:	Scopes 1, 2 and 3 GHG emissions	Climate-related financial risks and measures adopted to reduce and adapt to such risks	Granular disclosures about carbon offset projects and programs, and GHG emissions related to claims made
Framework:	GHG Protocol	Task Force on Climate-related Financial Disclosures (TCFD)	None
Framework relief:	None	Application of equivalent frameworks permitted	N/A
Reporting relief:	Using other prepared reports [Proposed: permit reporting at the parent level]	Reporting at the parent level permitted	None
Penalties:	Non-filing, late filing or other failure to meet requirements – up to $500,000 per year	Failure to make report publicly available or publishing an inadequate or insufficient report – up to $50,000 per year	For each day information is not available or is inaccurate, $2,500 – up to $500,000 in total

GHG emissions

SB-253 requires companies (and other business entities) to report GHG emissions in accordance with the GHG Protocol, including the Corporate Accounting and Reporting Standard and the Corporate Value Chain (Scope 3) Accounting and Reporting Standard, developed by the World Resources Institute and the World Business Council for Sustainability Development. That Act allows companies to meet their reporting obligation using reports prepared under other national or international reporting requirements, as long as those reports satisfy all of the Act's requirements.

The following definitions are relevant to GHG emissions reporting.

- **Scope 1.** All direct GHG emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including but not limited to fuel combustion activities.
- **Scope 2.** All indirect GHG emissions from consumed electricity, steam, heating, cooling purchased or acquired by a reporting entity, regardless of location.

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- **Scope 3.** Indirect upstream and downstream GHG emissions other than scope 2 emissions, from sources that the reporting entity 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.

These concepts and the accounting under the GHG Protocol are explained in our Handbook, GHG emissions reporting.

For the first four years, penalties related to scope 3 disclosures will be for non-filing only; and on an ongoing basis there will be no penalties for any misstatements related to scope 3 disclosures made with a reasonable basis and disclosed in good faith.

Future developments: The proposed amendments would permit emissions disclosures to be consolidated at the parent level; this means that a subsidiary in the scope of SB-253 would not need to make its own separate disclosures.

Climate risks

SB-261 requires entities to report under the recommendations of the TCFD or successor body. The TCFD framework includes recommended disclosures within four core pillars: governance, strategy, risk management, and metrics and targets.

Regarding a successor body, the TCFD's monitoring activities have been taken over by the IFRS Foundation, which governs the activities of the ISSB. The Act specifically refers to compliance with the ISSB™ Standards as an acceptable alternative, but does not rule out other laws and regulations; this may include the SEC's climate rule (now stayed). Both the ISSB Standards and the SEC's climate rule – in addition to the European Sustainability Reporting Standards – leverage the TCFD framework.

If the disclosures are made at a parent level, a subsidiary in scope of SB-261 need not make its own separate disclosures.

Carbon offsets

AB-1305 applies to voluntary arrangements (e.g. carbon offset, offset credit, retail offset) related to any product sold or marketed in California that makes claims that "connote that the product represents or corresponds to a reduction in the amount of greenhouse gases present in the atmosphere or that prevents the emission of greenhouse gases into the atmosphere that would have otherwise been emitted." The law does not apply to offsets under compliance programs – e.g. California's Cap-and-Trade Program.

For companies in scope of one of the three parts of AB-1305, detailed disclosures are required.

Scoping	Summary of disclosures
Business entities **marketing or selling voluntary carbon offsets** in California	• Details of the carbon offset project – e.g. protocol used to estimate emissions reductions or removal benefits, project timeline, whether there is independent third-party verification. • Details of the accountability measures if the project is not completed or does not meet the projected emissions reductions or removal benefits – e.g. actions the entity will take if carbon storage projects are reversed. • Relevant data and calculation methods to independently reproduce and verify the emissions reduction credits.

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Scoping	Summary of disclosures
Entities operating in California that **purchase or use voluntary carbon offsets** sold within the state and make certain claims	Information about each project or program – e.g. name of business entity selling the offset, offset project type, whether there is independent third-party verification.
Entities operating in California that **make certain claims** within the state	Information about the GHG emissions associated with the claims – e.g. how the claim was determined to be accurate, how interim progress is measured, whether there is independent third-party verification.

Future developments: The proposed amendments would exclude from the scope renewable energy certificates issued through an accounting system of a governmental regulatory body or a virtual power purchase agreement.

Effective dates set to be delayed

In signing the laws, the California Governor highlighted concern about the tight implementation timeline, which is borne out by the proposed amendments.

	SB-253 (GHG emissions)	SB-261 (climate risks)	AB-1305 (carbon offsets)
Effective dates, enacted:	• Scopes 1, 2: 2026 (FY25 data) • Scope 3: 2027 (FY26 data)	On or before Jan 1, 2026	Jan 1, 2024
Effective dates, proposed:	• Scopes 1, 2: 2028 (FY27 data) • Scope 3: 2029 (FY28 data)	On or before Jan 1, 2028	Jan 1, 2025
Reporting frequency:	Annual	Biennial	At least annually
Reporting location:	Digital reporting platform	Company website	Company website

The filing date in 2026 (as enacted) from which GHG emissions will need to be reported is still to be determined, but will be in relation to data for the company's (or business entity's) prior fiscal year – i.e. fiscal 2025 data for scopes 1 and 2 GHG emissions. In setting the reporting timelines, CARB is required to consider both the typical period for receiving emissions data (e.g. from suppliers) and the capacity for independent assurance engagements (see Assurance required from the outset).

Reporting of scope 3 GHG emissions will begin one year later, in 2027 (as enacted), and will be required no later than 180 days after public disclosure of scopes 1 and 2 each year. This reporting lag will be reviewed by CARB in 2029 and possibly tightened.

The first report on climate risks is due on or before January 1, 2026 (as enacted) – i.e. before the first reporting of GHG emissions.

Future developments: The proposed amendments would:

- delay the effective dates by two years for SB-253 and SB-261 and one year for AB-1305; and
- introduce the possibility of phase-in periods for reporting certain types of scope 3 emissions.

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Assurance required from the outset

Assurance over GHG emissions is graduated, starting with limited assurance and scopes 1 and 2 GHG emissions.

	SB-253 (GHG emissions)	SB-261 (climate risks)	AB-1305 (carbon offsets)
Assurance:	• Scopes 1 and 2: limited assurance from 2026; reasonable assurance from 2030 • Scope 3: TBD	No requirement	No requirement
Proposed:	• Scopes 1 and 2: limited assurance from 2028; reasonable assurance from 2032		

Although assurance over scope 3 GHG emissions is not immediately required, SB-253 instructs CARB to decide by January 1, 2027 whether to require it. If CARB decides that scope 3 GHG emissions should be assured, a requirement for limited assurance would begin in 2030.

SB-253 requires the assurance provider to be an independent third party, and to have "significant experience in measuring, analyzing, reporting, or attesting to the emission of greenhouse gasses and sufficient competence and capabilities necessary to perform engagements in accordance with professional standards and applicable legal and regulatory requirements." However, the Act does not mandate the use of specific assurance standards.

CARB is required to review the qualifications for third-party assurance providers during 2029, and to implement any updates by January 1, 2030.

Future developments: The proposed amendments would delay by two years:

- the required dates for assurance; and
- the dates by which actions are to be taken by CARB and the related implementation dates.

Comparison to the SEC's climate rule (now stayed)

The following is a high-level summary of how the requirements of the California laws compare to the SEC's climate rule, ignoring effective dates and transition provisions. To understand the SEC's climate rule, read our Top 10 Q&As.

The SEC issued an Order to stay its climate rule on April 4, 2024. The Order does not change the SEC's position regarding its authority to issue the rule, and it does not affect companies preparing for compliance with other rules such as the California climate laws. Read our article, SEC stays its climate rule pending judicial review.

	California laws	SEC climate rule
Scope 1 GHG emissions	✓	✓ if material, larger registrants[1]
Scope 2 GHG emissions	✓	✓ if material, larger registrants[1]
Scope 3 GHG emissions	✓	✘
Assurance: Scopes 1 and 2 GHG emissions	✓	✓

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	California laws	SEC climate rule
Assurance: Scope 3 GHG emissions	TBD	✘
Climate-related financial risks	✓	✓
Carbon offsets disclosures	✓	✓ subject to certain conditions related to materiality
Note 1: Large accelerated filers and accelerated filers (except smaller reporting companies and emerging growth companies).		

Other US states progressing similar laws

Some states – like New York, Illinois and Washington – are also considering climate-related disclosure laws, and other states may follow.

We recommend watching closely as this area continues to develop.

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