

California's not waiting for the SEC's climate disclosure rules

November 2023
(updated)

This publication has also been distributed under the title "*California climate disclosure laws will have global impact.*"



California is primed to lead the way in requiring companies to disclose their climate risk by setting the bar on TCFD-aligned disclosure, filling in the gaps from proposed SEC rules, and providing a blueprint for other US states to drive disclosure from non-SEC regulated entities.

California Senate Bill No. 261,
Fact Sheet

May 2023

This *In the loop* was updated in October and November 2023 to reflect that the California Governor signed SB 253 and SB 261 into law and to add details about SB 54 and AB 1305 which were also signed into law in October.

On October 7, 2023, California Governor Gavin Newsom signed three landmark climate disclosure bills that are poised to change the landscape of climate reporting in the United States. Over 10,000 US companies — including both public and private companies as well as subsidiaries of non-US headquartered companies — will be subject to the climate disclosure requirements in the near term.

The bills require (1) greenhouse gas (GHG) emissions reporting in compliance with the Greenhouse Gas Protocol (GHG Protocol), (2) climate-related financial risk reporting in line with the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD), and (3) disclosure of information about certain emissions claims and the sale and use of carbon offsets.¹ Both the GHG Protocol and TCFD requirements should be familiar to companies given their reference in the Securities and Exchange Commission's (SEC) climate disclosure proposal, the European Sustainability Reporting Standards (ESRS), and IFRS[®] Sustainability Disclosure Standards. The number of entities in scope of the California bills, however, goes well beyond that of the SEC's climate disclosure proposal because the requirements apply to both public and private companies with business activities in California.

The bills are brief — only a few pages each — and lack answers to some questions regarding how and when to apply the requirements. The California Air Resources Board (CARB) is expected to provide more detailed guidance on SB 253 and SB 261 in regulations required to be issued prior to January 1, 2025. But there are no definitive plans to develop additional guidance for AB 1305 and the initial disclosure requirements are imminent. We recommend that companies evaluate applicability and reporting requirements related to all of the bills based on what is known now, to prepare for what may be a company's first foray into mandatory climate-related disclosure.

2024

- Emissions claims and voluntary carbon offset disclosures as of January 1 (AB 1305)

2026

- First TCFD report by January 1 (SB 261)
- Scope 1 and scope 2 GHG report on 2025 information with third-party limited assurance (SB 253)

2030

- Reasonable assurance on scope 1 and scope 2 GHG report (SB 253)

2027

- Scope 3 GHG report on 2026 information (SB 253)

¹ Senate Bill (SB) 253, [Climate Corporate Data Accountability Act](#), SB 261, [Greenhouse gases: climate-related financial risk](#), and Assembly Bill (AB) 1305, [Voluntary carbon market disclosures](#).

	AB 1305 — Voluntary carbon market disclosures	SB 253 — Climate Corporate Data Accountability Act	SB 261 — Greenhouse gases: climate-related financial risk
Primary disclosure topic	(1) Emissions claims, (2) use of carbon offsets, and (3) sale of carbon offsets	Scope 1, scope 2, and scope 3 GHG emissions	(1) Climate-related financial risks and (2) the measures a company has adopted to reduce and adapt to such risks
Framework	Not applicable	GHG Protocol	TCFD
Scope	Entities that (1) operate and make emissions claims within California, or (2) buy or sell carbon offsets within California	Business entities with annual revenue over \$1 billion that do business in California	Business entities with annual revenue over \$500 million that do business in California
Exemptions	None	University of California	Insurance companies
Where filed	Publicly available on the company's website	Publicly available digital platform	Publicly available on the company's website
Assurance	No, although disclosure is required about any independent third-party verification obtained	Yes, phased assurance requirements beginning with limited assurance	No
Compliance date	January 1, 2024, with information updated at least annually	Annual reporting of scope 1 and scope 2 in 2026 (on prior fiscal year); scope 3 starting in 2027	On or before January 1, 2026 and biennially thereafter

Who would be subject to the new laws?

The applicability of AB 1305 depends on a company's activities and is not limited based on any financial thresholds. The scoping requirements for SB 253 and SB 261 are similar and apply to companies that are "doing business" in California and that exceed specified revenue thresholds.

Applicability of AB 1305

The bill includes three different sets of disclosures, each with different scoping requirements, applicable to a company that engages in the following activities.

Makes emissions claims



Makes emissions claims

Companies "operating" in California that make claims in the state (1) about the achievement of net zero emissions or (2) that the company, its affiliated entities, or products are (a) carbon neutral or otherwise imply they do not add to greenhouse gas emissions or (b) have significantly reduced emissions

Uses or purchases voluntary carbon offsets



Uses or purchases voluntary carbon offsets

Companies "operating" in California that (1) make emissions claims and (2) buy or use voluntary carbon offsets sold in California; voluntary carbon offsets exclude those that relate to a legal or regulatory mandate to reduce or prevent emissions (e.g., California's Cap-and-Trade Program)

Markets or sells voluntary carbon offsets



Markets or sells voluntary carbon offsets

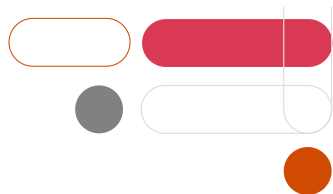
Companies that market or sell voluntary carbon offsets in California



We know that consistent, comparable, and reliable emissions data at scale is necessary to fully assess the global economy's risk exposure and to navigate the path to a net-zero future.²

Letter from 15 large corporations to the California State Assembly Appropriations Committee in support of SB 253

August 14, 2023



“Operating” in California

AB 1305 does not provide any explanation about what it means to operate in California. We believe this would encompass companies that are “doing business” in California (as discussed in the “Applicability of SB 253 and SB 261” section) but may also apply to any company that makes emissions-related claims in California. This could include, for example, disclosing claims on a website that is accessible in California. Because no additional guidance is given in the bill, companies should consult with their legal counsel to determine whether they are in scope.

Applicability of SB 253 and SB 261

These bills apply to what SB 253 refers to as a “reporting entity” and SB 261 refers to as a “covered entity,” although other than a difference in the applicable revenue threshold, the definitions are the same.

- **SB 253** — “Reporting entity” means a partnership, corporation, limited liability company, or other business entity formed under the laws of this state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States with total annual revenues in excess of one billion dollars (\$1,000,000,000) and that does business in California.³
- **SB 261** — “Covered entity” means a corporation, partnership, limited liability company, or other business entity formed under the laws of the state, the laws of any other state of the United States or the District of Columbia, or under an act of the Congress of the United States with total annual revenues in excess of five hundred million United States dollars (\$500,000,000) and that does business in California.⁴

These definitions do not make an exception based on the ultimate parent of the business entity — meaning that US subsidiaries of non-US companies that meet the criteria would be in scope.

Under both definitions, applicability will be measured based on the entity’s revenue for the prior fiscal year. And, the revenue thresholds are not based just on revenue generated in California. Instead, an entity would need to consider its total annual revenue, regardless of where the revenue was generated (including revenue generated outside the United States). Further, absent additional clarification, we believe that revenue should be calculated in accordance with US GAAP (or the IFRS Accounting Standards, as applicable) as reported in the annual financial statements.

“Doing business” in California

A company that exceeds the SB 253 and SB 261 revenue threshold(s) would next need to assess whether it is “doing business” in California. Although this term is not defined in the bills, it is defined in California’s existing tax code, which was referenced in legislative meeting materials.⁵ The California Franchise Tax Board considers a company to be “doing business” if it meets any of the following:

- Engages in any transaction for the purpose of financial gain within California,
- Organized or commercially domiciled in California, or
- California sales, property, or payroll that exceed specified amounts, which are adjusted annually.⁶

² [Letter to California State Assembly Appropriations Committee](#).

³ Section 38532(b)(2) of the California Health and Safety Code added by [SB 253](#).

⁴ Section 38533(a)(4) of the California Health and Safety Code added by [SB 261](#).

⁵ Most recently included in the [September 2023 SB 253 senate floor analysis](#).

⁶ [California Revenue and Taxation Code](#) (CRTC), Section 23101.

A company may need to closely assess whether it “engages in transactions for purposes of financial gain within California,” as we believe this may be interpreted broadly. In addition, the specified sales, property, and payroll metrics are relatively low; in 2022, they were just over \$690,000 for sales, and just under \$70,000 for property and payroll.⁷

Further, the definition of sales within the California Revenue and Taxation Code is expansive. It states, in part, that sales represent:

The gross amounts realized ... on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest, and dividends) in a transaction that produces business income, in which the income, gain, or loss, is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code.⁸

These definitions have some additional complexity and we recommend companies consult with their tax and legal advisors in assessing whether they meet these criteria.

Exemptions

Insurance companies (i.e., business entities subject to regulation by the Department of Insurance) are fully exempt from the requirements of SB 261 because they are already required to report under the TCFD. In 2022, the National Association of Insurance Commissioners, which includes California’s Insurance Commissioner, adopted a new standard for insurance companies to report their climate-related risks in alignment with the TCFD framework. Importantly, however, insurance companies are not exempt from the emissions disclosure requirements in SB 253.

SB 253 includes a specific exemption for the University of California unless the Regents of the University of California choose to require it. Otherwise, the bill applies to all reporting entities, as defined, that meet the stated thresholds. SB 253 also specifies that its disclosures will satisfy current reporting requirements that apply to a number of California electricity generators, industrial facilities, fuel suppliers, and electricity importers under Assembly Bill 32, the [Global Warming Solutions Act of 2006](#).

Do the California bills apply to nonprofit entities?

There is no specific exemption for nonprofit entities. It is the legal structure of the entity that determines whether it is subject to the bills and not its tax-exempt status. We believe the bills are intended to be broadly applicable to for-profit and nonprofit organizations.

⁷ State of California Franchise Tax Board, [Doing business in California](#), accessed on September 13, 2023.

⁸ [CRTC](#), Section 25120(f).

What are the disclosure requirements?

The following is an overview of the disclosure requirements of the three bills, which create new sections within California’s Health and Safety Code.

Emissions claims and carbon offset reporting

A company in scope of one or more of the following categories will need to have the required disclosures posted to its website upon the bill’s effective date of January 1, 2024. The disclosures must be updated at least annually.

Emissions claims disclosures

- “All information” about how, if at all, the company has determined that its claims are accurate or achieved, and how interim progress toward its goals is measured, which “may include, but not be limited to” the following:⁹
 - Identification of the entity’s science-based targets for its emissions reduction pathway
 - The relevant sector methodology and third-party verification used for the entity’s science-based targets and emissions reduction pathway
- Whether there is independent third-party verification of its greenhouse gas emissions, or other data or claims

Disclosures for voluntary carbon offsets purchased or used

- The name of the seller of the offset and the offset registry or program
- The project identification number and name as listed in the registry or program, if applicable
- The offset project type, including whether the offsets purchased were derived from a carbon removal, an avoided emission, or a combination of both, and site location
- The specific protocol used to estimate emissions reductions or removal benefits
- Whether there is independent third-party verification of the data and claims listed

Disclosures for voluntary carbon offsets marketed or sold

- Details about the carbon offset project, including the protocol used, the location of the offset project site, whether the project meets any established standards, whether there is independent validation or verification of the project attributes, and the emissions reduced or carbon removed on an annual basis
- Details of accountability measures taken if a project is not completed or does not meet projected emissions reduction or removal benefits
- The data and calculation methods needed to reproduce and verify the number of emissions reduction or removal credits issued

⁹ Section 44475.2(a) of the California Health and Safety Code added by [AB 1305](#).



United States companies that have access to California’s tremendously valuable consumer market by virtue of exercising their corporate franchise in the state also share responsibility for disclosing their contributions to global GHG emissions.

SB 253 Section 1(f)

GHG emissions reporting

SB 253 targets GHG emissions reporting and requires the disclosure of scope 1, scope 2, and scope 3 emissions in compliance with the GHG Protocol. Scope 1 and scope 2 emissions are required to be disclosed in the first year of reporting and scope 3 emissions have a one year deferral.

	Scope 1 and scope 2	Scope 3
Initial year of reporting	2026	2027
Due date	To be determined by CARB	180 days after scope 1 and scope 2
Period covered	Prior fiscal year (2025)	Prior fiscal year (2026)
Limited assurance	2025 information (filed in 2026)	Date to be determined by CARB in 2026
Reasonable assurance	2029 information (filed in 2030)	Not addressed

As summarized in the table, initial reporting will begin in 2026, covering prior year scope 1 and scope 2 emissions (with scope 3 emissions added a year later), although the logistics of how and when the information is to be published — as well as the exact due date in 2026 — will be determined by CARB and included in regulations adopted on or prior to January 1, 2025. The bill also specifies that scope 3 reporting will not be due until 180 days after scope 1 and scope 2 information is publicly disclosed.

The bill also requires independent third-party assurance over a company’s GHG emissions reporting, starting with limited assurance (a review) and moving to reasonable assurance (an audit) in subsequent periods. The bill specifies the qualifications for the third-party assurance provider; these qualifications mirror those included in the proposed SEC rule.

The regulations to be adopted by CARB may provide additional clarity on some of the provisions in the bill.

Climate-related financial risk reporting

SB 261 encompasses broad reporting of climate-related financial risk prepared in accordance with the recommendations in the TCFD framework. It also requires additional disclosures related to the measures a company has adopted to reduce and adapt to the disclosed climate-related financial risks. A company must make its report publicly available on its website by January 1, 2026 and biennially thereafter, although the bill does not specify the “as of” date.

Under SB 261 a subsidiary that meets the criteria for reporting is not required to prepare its climate-related financial risk report separately if its parent company prepares a consolidated report. A similar provision was not included in SB 253 or AB 1305.

The TCFD framework includes eleven recommended disclosures within four core pillars: governance, strategy, risk management, and metrics and targets.¹⁰ Although referred to as “recommendations,” the California bill mandates these disclosures for companies that are in scope.

Governance	Strategy	Risk management	Metrics and targets
<ul style="list-style-type: none"> a) Describe the board’s oversight of climate-related risks and opportunities. b) Describe management’s role in assessing and managing climate-related risks and opportunities. 	<ul style="list-style-type: none"> a) Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term. b) Describe the impact of climate-related risks and opportunities on the organization’s businesses, strategy, and financial planning. c) Describe the resilience of the organization’s strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario. 	<ul style="list-style-type: none"> a) Describe the organization’s processes for identifying and assessing climate-related risks. b) Describe the organization’s processes for managing climate-related risks. c) Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization’s overall risk management. 	<ul style="list-style-type: none"> a) Disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process. b) Disclose scope 1, scope 2, and, if appropriate, scope 3 greenhouse gas (GHG) emissions, and the related risks. c) Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets.

The TCFD disclosures under SB 261 include metrics related to greenhouse gases, but the nature of the disclosures and assurance requirements differ from the GHG disclosures under SB 253. Each bill requires scope 1 and scope 2 emissions, but while the TCFD, which is the basis for the SB 261 requirements, “strongly encourages” the disclosure of scope 3 emissions, SB 253 requires it. In addition, greenhouse gas metrics reported under SB 261 will not be subject to assurance requirements.

The bill also provides that companies unable to fully comply with the TCFD requirements may complete the 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. There is no similar relief, however, for the requirement to disclose the company’s measures to reduce and adapt to climate-related financial risks.

Interoperability

With the proliferation of sustainability reporting standards, the concept of interoperability (i.e., the ability to leverage disclosures prepared under one framework to satisfy the requirements of another framework) has garnered much attention and is a common theme in public feedback regarding proposed rules.

In this spirit, California lawmakers hope to ease the administrative burden on preparers by allowing a company to satisfy its reporting requirements under SB 253 and SB 261 by leveraging disclosures prepared to meet other national and international reporting requirements as long as those reports meet the requirements of the bills. In addition, SB 261 specifies that its requirements may be satisfied through

¹⁰ [Task Force on Climate-related Financial Disclosures: Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures](#), published October 2021, page 15.

voluntary reporting in accordance with other national and international reporting requirements, including reports prepared in compliance with the IFRS Sustainability Disclosure Standards.

Further, in the discussion leading up to the final California Senate vote on SB 261, the bill's author committed to consider a "clean-up component" that will "create space for pathways of reporting that take into account other climate risk reporting work being done at the federal level ... as well as some other states and local governments." This suggests that there may follow-on legislation allowing additional interoperability.

There are no provisions within AB 1305 that would allow its disclosures to be satisfied by disclosures prepared under other frameworks.



Interaction with the "big three" frameworks

While the commitment to interoperability is intended to create efficiency, SB 253 clarifies that leveraging another report is only permitted "as long as those reports satisfy all of the requirements of this section."¹¹ It is unclear, however, if reporting in accordance with the "big three" frameworks would satisfy SB 253's requirements because none of them fully comply with the GHG Protocol. Even the IFRS Sustainability Disclosure Standards — which SB 261 touts as compliant with that bill — do not meet all of the requirements of SB 253 (because the ISSB standards do not require both location-based and market-based disclosures for scope 2 emissions, however, both are required by the GHG Protocol). There may be additional clarification when CARB creates the regulations. Otherwise, for both SB 253 and SB 261 — which includes similar language — additional analysis will be needed to determine which other frameworks meet the requirements.

Monitoring

The bills differ in how the requirements are monitored and enforced. AB 1305 does not identify a specific party to monitor company disclosures and to report on findings, although penalties for noncompliance are to be assessed by a "court of competent jurisdiction."¹² Those penalties are civil penalties and can be up to \$2,500 per day, not to exceed \$500,000, which will be assessed in a civil action brought in the name of the people of the State of California. SB 253 and SB 261 direct CARB to identify third parties to monitor company disclosures by:

SB 253

Engaging with "the University of California, the California State University, a national laboratory, or other equivalent academic institution" on or before July 1, 2027, to evaluate, and report publicly on, the disclosures in the context of state greenhouse gas emissions reduction and climate goals.¹³

SB 261

Contracting with a nonprofit climate reporting organization operating in the United States and experienced with climate-related financial risk disclosures by companies operating in California.¹⁴ Such entity will review a sample of the TCFD disclosures by industry and prepare a biennial public report with specified elements, including the identification of inadequate or insufficient reports.

¹¹ Section 38532(c)(1)(D)(i) of the California Health and Safety Code added by [SB 253](#).

¹² Section 44475.3(a) of the California Health and Safety Code added by [AB 1305](#).

¹³ Section 38532(d)(1) of the California Health and Safety Code added by [SB 253](#).

¹⁴ Section 38533(d) of the California Health and Safety Code added by [SB 261](#).

SB 253 and SB 261 authorize CARB to establish administrative penalties for nonfiling, late filing, or other compliance failures, although the two bills have different thresholds:

- SB 253: The penalty is not to exceed \$500,000 in any year
- SB 261: The penalty is not to exceed \$50,000 in any year

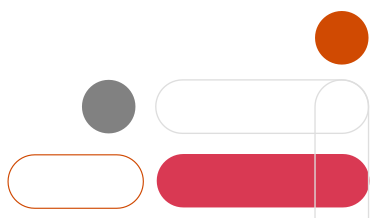
In both cases, the amount of penalty will take into account the company's history of compliance and whether it makes a "good faith" effort to comply. In addition, the final bill provides a safe harbor for scope 3 disclosures if they are "made with a reasonable basis and disclosed in good faith;" until 2030, penalties can only be assessed for nonfiling of scope 3 emissions.¹⁵

Venture capital diversity disclosures

The package of required disclosures signed into California law in October also included a fourth bill — SB 54 — which applies to venture capital companies that:

- a) invest in or finance startups, early stage, or emerging growth companies or manage assets on behalf of third-party investors, and
- b) are headquartered in, have a significant presence or operational office in, invest in businesses located or with significant operations in, or solicit or receive investments from a resident of California.¹⁶

In scope companies are required to survey their venture capital investees to obtain diversity information (e.g., gender identity, race, ethnicity) about the investees' founders. Based on the survey results, and beginning March 1, 2025 and annually thereafter, a covered entity will need to report information about its investments to the Civil Rights Department, which will make the information publicly available through its website.



What's next?

The bills were approved by the California State Assembly and Senate in rapid succession in the final days before the September 14, 2023 end of the legislative session and signed into law by Governor Gavin Newsom on October 7, 2023. The governor's approval of SB 253 and SB 261 was accompanied by signing messages indicating that he plans to work with the California Legislature next year to address certain concerns including the implementation deadlines.¹⁷ Whether the legislature will consider any delay, however, is unknown and we recommend companies start to prepare now.

With initial posting of disclosures related to AB 1305 required in less than two months, the California bills may trigger the first sustainability reporting requirements for many — if not most — of the companies in scope. Even the requirements of SB 253 and SB 261 may precede a company's first CSRD deadline.¹⁸ Companies potentially in scope of the California bills should start to prepare for their reporting obligations now. Prudent steps to take would include evaluating scope, understanding the requirements, and assessing how to comply. Given some of the unanswered

¹⁵ Section 38532(f)(2) of the California Health and Safety Code added by [SB 253](#).

¹⁶ SB 54, [Venture capital companies: reporting](#).

¹⁷ California Governor Gavin Newsom signing messages on [SB 253](#) and [SB 261](#).

¹⁸ With limited exceptions, all companies with debt or equity securities listed on EU-regulated markets will be subject to the requirements of CSRD in 2024. Exceptions to the listed company reporting requirements include "micro-undertakings." See our [In the loop, Worldwide impact of CSRD - are you ready?](#), for further information.

questions, these determinations may require judgment and a company should assess the need for early involvement of its legal counsel.

In addition, it will be important for companies to understand where these requirements align and diverge from the requirements in other frameworks to which they are subject in order to leverage systems, processes, and resources most efficiently. Our In the loop, [Navigating the ESG landscape](#), provides an overview of the key differences among the “big three” frameworks, which companies may find helpful in identifying opportunities to align all of their reporting obligations. If not started already, now is the time to begin to prepare. See our In the loop, [ESG reporting: Preparing for tomorrow's rules today](#), for some helpful steps that can be applied to preparing for any sustainability framework.

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