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Developments in California and Other State Climate Legislation

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On August 31, 2024, the California Legislature passed Senate Bill 219, approving certain technical amendments to the climate disclosure requirements under Senate Bill 253 (greenhouse gas, or GHG, emissions) and Senate Bill 261 (climate risk), the most notable of which gave the California Air and Resources Board (CARB) an additional six months (until July 1, 2025) to issue implementing regulations for SB 253, but left the reporting deadlines in both laws unchanged. Covered entities now have greater certainty around timing and when to expect implementation guidance, but will have to wait longer for the substantive regulations themselves.

Since California's adoption of SBs 253 and 261 – and a third law (Assembly Bill 1305) in October 2023 – several other state legislatures have considered similar requirements. With the Securities and Exchange Commission (SEC) climate disclosure rule subject to an ongoing administrative stay pending resolution of litigation, these proposed and adopted state-level regimes represent the primary source of climate-reporting obligations for many US public and private companies, unless such companies are subject to international regulations, such as the European Union's Corporate Sustainability Reporting Directive (CSRD). Below is a summary of the current status of several such proposed and recently adopted bills.

California

SB 253, SB 261 and SB 219

On August 31, 2024, the California Legislature passed SB 219, which amends certain provisions of SBs 253 and 261, but leaves the initial 2026 reporting deadlines for covered entities unchanged.

As discussed in this September 2023 Cooley alert, the GHG emissions and climate risk disclosure requirements of SBs 253 and 261 cover much of what would be required under the SEC climate rule, and go further in certain respects – such as the inclusion of Scope 3 emissions and application to qualifying private companies. Specifically, SB 253 requires public and private US companies doing business in California with total annual revenues exceeding $1 billion to publicly disclose their Scopes 1, 2 and 3 emissions for the prior fiscal year, with initial disclosures for Scopes 1 and 2 emissions and third-party limited assurance requirements due in 2026 (with disclosure of Scope 3 emissions due in 2027 and higher assurance requirements phased-in over several years). SB 261 also applies to both public and private US companies doing business in California, but has a lower annual revenue threshold – $500 million – and requires such companies to publish biennial climate-related financial risk reports starting January 1, 2026. CARB is charged with implementing and overseeing regulations for both laws.

Since the adoption of SBs 253 and 261, state politicians and industry groups have raised numerous concerns regarding the timing and budget for both laws, as well as CARB's role in implementation. Although Gov. Gavin Newsom signed both laws in October 2023, his adopting statement voiced doubts regarding the proposed implementation timeline, and his original budget proposal in January 2024 did not include any financing for CARB's implementation of the new climate laws. Ultimately, the California Legislature budgeted for both laws, driven in part by the appointment of state Sen. Scott Weiner (SB 253's author) to chair of the budget committee. Over the summer, Newsom proposed a draft budget trailer bill that would have delayed implementation of both laws by two years, with initial disclosures required in 2028 rather than 2026, giving voice to concerns that both CARB and reporting companies needed more time for preparation. As an alternative to this proposed delay, Weiner and Sen. Henry Stern (sponsor of SB 261) proposed SB 219, which outlined amendments to SBs 253 and 261, but did not include any changes to the reporting deadlines. An amended version of SB 219 passed in the Assembly and Senate on August 31, 2024.

Although SB 219 does not change the initial entity reporting deadlines under SBs 253 and 261, it does introduce technical changes, including:

1. CARB would have an additional six months – until July 1, 2025, instead of January 1, 2025 – to adopt implementing regulations under SB 253.
2. Scope 3 emissions disclosure under SB 253 would continue to be first required in 2027; however, CARB would be given discretion to specify the 2027 deadline, rather than the original deadline of 180 days after Scopes 1 and 2 emissions disclosure.
3. Consolidation of SB 253 emissions disclosure at the parent company level would be permitted, and subsidiaries of such parent companies that individually fall within scope of SB 253 would not be required to submit separate reports.
4. CARB would no longer be required to contract with an external climate reporting organization to prepare a report on climate-related financial risks disclosures under SB 261 – though CARB would still have permission to do so.
5. Reporting companies would no longer be required to pay annual fees at the time of filing SB 253 or SB 261 reports.

Newsom has until September 30, 2024 to decide whether to sign or veto SB 219. While it remains to be seen whether the outlined amendments will become law, the adoption of SB 219 by both legislative houses, and the willingness of Weiner and Stern to push back against Newsom's proposal, highlight the California Legislature's ongoing commitment to climate disclosure regulations – and to climate change matters more broadly.

While SB 219 may remove some uncertainty regarding disclosure deadlines, SBs 253 and 261 remain subject to ongoing litigation. In January 2024, the US Chamber of Commerce filed a lawsuit against CARB challenging the constitutionality of SBs 253 and 261, with oral arguments on motions for summary judgment scheduled for this month.

Assembly Bill 1305 and Assembly Bill 2331

In addition to amendments to SBs 253 and 261, the California Legislature also considered, but did not adopt, amendments to AB 1305 during its 2024 session.

As described in this October 2023 Cooley alert, AB 1305 – the Voluntary Carbon Market Disclosures Act (VCMDA) – requires public and private companies operating in the state to provide annual website disclosures regarding the substantiation of certain climate-related claims or targets. AB 1305 also imposes disclosure obligations for companies that purchase or sell carbon offsets within California, including details regarding projects and emissions reduction claims. Although AB 1305 took effect on January 1, 2024, the bill's sponsor, Assemblymember Jesse Gabriel, indicated in a November 2023 letter to the chief clerk of the Assembly that he had intended initial AB 1305 disclosures to be made by January 1, 2025, in order to give reporting entities more time to comply with the new regulation.

During this year's legislative session, Gabriel proposed AB 2331, which would amend AB 1305 to change the initial compliance date to January 1, 2025, and introduce several technical amendments – such as clarifying that renewable energy credits are not included in the definition of "carbon offsets" and allowing entities that market or resell offsets to link to the disclosures of the entity that generated the product.

Although AB 2331 was amended several times in the Senate throughout the year, it ultimately was not put forward for a final vote in the Assembly before California's legislative session adjourned on August 31, 2024.

Senate Bill 1036

In addition to AB 2331, during the 2024 session, the California Legislature also considered new carbon offset regulations under SB 1036. This proposed bill would make it unlawful for a person to verify, certify, issue, market, sell or maintain on a registry a carbon offset product if such person knows or should know that the GHG emissions reductions underlying such product are unlikely to be quantifiable, real and additional. SB 1036 also would make it unlawful to market or sell carbon offsets with a durability under 1,000 years without explicitly marketing such offsets as not physically equivalent to the climate impact of carbon dioxide. Although SB 1036 passed in the Senate on May 21, 2024, the bill's sponsor, state Sen. Monique Limón, pulled the bill before its consideration by the Assembly following objections from carbon credit market participants.

Other proposed state laws

Since the adoption of SBs 253 and 261, state legislators in several other states have introduced very similar bills.

While none of these other state bills have been adopted, it is questionable whether their adoption would have a significant impact on reporting companies for several reasons. While the California statutes represent something of a backstop to the SEC climate rules, other state laws are unlikely to play a similar role vis-à-vis the California regulations, as SB 219 suggests that the California Legislature will continue to support its disclosure regulations, and federal litigation challenges to the California rules would almost certainly apply to other similar state laws. In addition, as currently proposed state bills have similar disclosure requirements and revenue tests to SBs 253 and 261, the adoption of disclosure laws in other states would not meaningfully impact who will report and what types of information will be disclosed. Given that the "doing business in California" test under SBs 253 and 261 is expected to be applied broadly, it is unlikely that many companies meeting the proposed Illinois, New York or Washington revenue tests would not already be covered by the California statutes.

Nonetheless, the adoption of some or all of the recently proposed state climate bills could have a substantial impact on the level of rigor that companies apply to their disclosure preparation and controls. While some companies may consider investing less in these areas in the absence of an SEC rule, the adoption of overlapping climate disclosure requirements in multiple large states could impact the risk calculus for companies by increasing the risk of enforcement actions or investigations.

Illinois

House Bill 4268

HB 4268, first read in the Illinois Legislature in January 2024, closely tracks the requirements of California's SB 253. Known as the Climate Corporate Accountability Act, HB 4268 requires public and private US companies doing business in Illinois with greater than $1 billion in total annual revenue to annually disclose and verify Scopes 1 and 2 emissions for the prior calendar year starting on January 1, 2025. Under HB 4268, Scope 3 emissions reporting would be due no later than 180 days after Scopes 1 and 2 emissions are disclosed. The bill also provides that the secretary of state will contract with an emissions registry to develop and adopt rules related to the implementation, timing and oversight of the bill's reporting requirements.

HB 4268 was referred to the Illinois House Rules Committee on January 16, 2024, but so far has not received consideration by any policy committee. Illinois's General Assembly is now in recess and will reconvene in November 2024, but there is currently no indication that the bill will be taken up for consideration at that time.

New York

Senate Bill 897, Assembly Bill 4123 and Senate Bill 5437

The New York Legislature also has introduced its own version of California's SBs 253 and 261. SB 897 – and its corollary in the New York Assembly, AB 4123 – establishes the Climate Corporate Data Accountability Act, which requires public and private US companies doing business in New York with greater than $1 billion in total annual revenue to annually disclose and verify Scopes 1 and 2 emissions before July 1 of each year, and Scope 3 emissions before December 31 of each year. It also charges an emissions registry with developing guidelines around the implementation, timing and review of such disclosures. SB 5437 requires public and private US companies doing business in New York with greater than $500 million in total annual revenue to annually submit a climate-related financial risk report to the secretary of state and ensure the report is available to the public.

The New York Legislature adjourned on June 8, 2024, but can be reconvened at any point through the remainder of the year to consider legislation proposed during the 2023 – 2024 legislative session. Prior to June, SB 897, AB 4123 and SB 5437 had been considered and amended by several committees, but there is no indication whether any of the proposed bills will be brought up for a vote before December. If not, they will need to be reintroduced during the state's next legislative session.

Washington

Senate Bill 6092

SB 6092, also known as the Climate Corporate Data Accountability Act, was introduced in the Washington Legislature in January 2024, and similarly requires public and private US companies doing business in

Washington with greater than $1 billion in total annual revenue to annually disclose and verify Scopes 1 and 2 emissions by October 1, 2026, and Scope 3 emissions by October 1, 2027. The bill also would direct the state's Department of Ecology to deliver a report within 18 months of the adoption of the SEC climate rule outlining policy recommendations related to climate-related disclosure requirements in the state and how to align such requirements with the SEC rule. The measure failed upon adjournment of the legislature on March 7, 2024.

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