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California lawmakers fail to delay compliance deadlines in landmark climate-related disclosure laws

September 9, 2024 | Client Update | 5-minute read

Proposals to delay compliance deadlines in California's three landmark climate-related disclosure laws failed to pass during the recently concluded legislative session, while a modest set of changes to S.B. 253 and 261 were approved and will be sent to Governor Newsom for signature. As a result, in-scope companies will be required to report under S.B. 253 and 261 as early as 2026 (unless pending legal challenges succeed) and existing disclosure requirements under A.B. 1305 will remain in place.

Efforts to enact legislative amendments that would have delayed the compliance deadlines in California's three landmark climate-related disclosure laws (discussed here) failed to pass during the recently concluded legislative session. These proposals included Governor Newsom's request for a two-year delay to the compliance deadlines in S.B. 253 (requiring in-scope companies to report greenhouse gas (GHG) emissions) and S.B. 261 (requiring in-scope companies to report climate-related risks) and a delay of the effective date of A.B. 1305 (requiring in-scope companies to disclose information regarding GHG emissions reduction claims and voluntary carbon offset activities) from January 1, 2024 to January 1, 2025. Instead, the state legislature passed S.B. 219, a bill that would make modest changes to S.B. 253 and 261, which heads to the governor's desk for signature. Governor Newsom has until September 30, 2024 to sign or veto S.B. 219. Legislation amending A.B. 1305 failed to get a final vote before the legislature adjourned, effectively killing it until the 2025-2026 legislative session, which will convene December 2, 2024.

Key changes

S.B. 219 would make the following key changes to S.B. 253 and S.B. 261:

- **Six month delay in the issuance of regulations under S.B. 253.** S.B. 253 requires the California Air Resources Board (CARB) to issue regulations establishing GHG emissions reporting requirements on or before January 1, 2025. S.B. 219 would delay that deadline to July 1, 2025.
- **Consolidated reporting under S.B. 253.** S.B. 219 would permit entities subject to S.B. 253 to rely on consolidated reporting at the parent company level and not have to prepare a separate report. The language would allow parent-level reporting on aggregate emissions data across the entire corporate group rather than requiring reporting on an entity-by-entity basis. This change would bring S.B. 253 in line with S.B. 261, which currently allows entities to rely on consolidated parent-level reporting.
- **No requirement to engage a "climate reporting organization."** S.B. 253 and 261 require CARB to engage a so-called "climate reporting organization" to assume certain responsibilities under the laws, including receiving in-scope companies' GHG emissions reporting under S.B. 253. S.B. 219 would give CARB the option to assume these tasks rather than engaging a third party.
- **Timing of Scope 3 disclosures.** S.B. 253 mandates that CARB must set the deadline for annual Scope 3 emissions reporting no more than 180 days after the due date for Scope 1 and 2 emissions reporting. S.B. 219 would give

CARB the authority to establish the timing of Scope 3 emissions reporting.

Takeaways

- **Focus initial compliance efforts on Scope 1 and 2 emissions reporting.** With the SEC climate-related disclosure rules on hold, S.B. 253 and 261 remain the only currently effective, broadly applicable U.S. mandatory climate-related reporting framework. While the federal lawsuit seeking to overturn these laws raises serious legal issues and may ultimately succeed and significant uncertainties regarding the reporting requirements under the laws remain, the laws continue to be in effect with the initial compliance deadlines looming in 2026. Accordingly, in-scope companies should assess any gaps that exist between their current climate-related disclosure practices and the disclosures required under the laws and prioritize any compliance gaps with respect to the nearest-term disclosure requirements. At a minimum, this would include Scope 1 and 2 emissions reporting under S.B. 253, which will be due sometime in 2026 covering emissions during the 2025 fiscal year. As such, in-scope companies need to have the appropriate measures in place to collect the relevant data as of their 2025 fiscal year.
- **S.B. 219 may increase regulatory uncertainty.** By delaying CARB's deadline for issuing regulations under S.B. 253 while keeping the compliance deadlines as is, S.B. 219 would increase the challenges faced by in-scope companies. As noted above, S.B. 253 provides that annual GHG emissions reporting is supposed to cover a company's prior fiscal year. Accordingly, the inaugural report due in 2026 would provide for Scope 1 and 2 emissions data for the 2025 fiscal year, which for most companies begins January 1, 2025, six months before CARB is required to issue regulations. This means these companies may not know the applicable regulatory requirements during the first half of their 2025 fiscal year. However, the GHG Protocol (the reporting standard that CARB is required to incorporate in its regulations) is relatively straightforward with respect to Scope 1 and 2 emissions and should provide companies with sufficient guidance in the absence of final regulations.
- **CARB's rulemaking process will be critical.** Although S.B. 253 is fairly prescriptive, CARB will have some leeway in its rulemaking process to ameliorate the difficulties posed by the law. For example, CARB has discretion as to when in a particular year GHG emissions reporting is due (and under S.B. 219 would have even more flexibility setting a deadline for Scope 3 emissions reporting). A late-in-the-year due date would provide welcome breathing room for in-scope companies, especially for the 2026 report. In addition, while S.B. 253 directs CARB to use the GHG Protocol as the basis for reporting standards, the GHG Protocol itself provides reporting companies with some flexibility, and CARB will presumably have discretion in determining the extent to which that flexibility will be reflected in the regulations. Companies are advised to follow the rulemaking closely and participate as appropriate in the notice and comment process afforded under California law.
- **All eyes on the Northern District of California.** The biggest wild card is the ongoing legal challenge to S.B. 253 and 261 in federal court in the Northern District of California. Briefing on various dismissal and summary judgment motions is complete with a hearing set for October 15, 2024. Notably, the Ninth Circuit issued two decisions in recent weeks in favor of challenges to disclosure mandates under other California laws on First Amendment grounds,[1] which we expect to bolster the First Amendment challenges to S.B. 253 and 261.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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[1] *See NetChoice, LLC v. Bonta,* No. 23-2969 (9th Cir. August 16, 2024) (challenge to law requiring certain online business to report on risks to children); *X Corp. v. Bonta,* No. 24-271 (9th Cir. September 3, 2024) (challenge to law requiring large social media companies to post their terms of service and to submit reports about their terms of service and their content-moderation policies and practices).