California Adopts Climate Disclosure Laws that Could Affect Businesses Nationwide

In early September 2023, the California Legislature passed two climate disclosure bills as part of the California Climate Accountability Package: S.B. 253 The Climate Corporate Data Accountability Act (CCDAA) and S.B. 261 Greenhouse Gases: Climate-Related Financial Risk (CRFR). On Oct. 7, 2023, California Gov. Gavin Newsome signed the landmark climate-related disclosure bills into law.

In summary, the CCDAA requires disclosure and independent audits of greenhouse gas emissions, while the CRFR requires reports of climate-related financial disclosures. Taken together, these rules will require larger public and private entities to provide disclosures that are similar to recent SEC proposed rules for climate-related disclosures for public companies. The legislation creates additional considerations for public and private companies doing business in California, as both are targets of the proposed disclosure mandates. The number of companies required to make climate disclosures is likely to significantly increase, and companies up and down the supply chain may be affected by the CCDAA's Scope 3 requirements. Currently, both provide broad and ambiguous requirements for reporting. The California Air Resources Board will be responsible for implementing regulations to enforce the acts, and companies that fail to comply could face significant monetary penalties.

What to know about the CCDAA and the CRFR?

S.B. 253 The Climate Corporate Data Accountability Act

Who is required to provide disclosures? The CCDAA applies to both private and publicly held U.S. companies who are "doing business in California" with global revenues of over $1 billion in the previous fiscal year.

What disclosures are required? The bill requires the disclosure of Scope 1, Scope 2 and Scope 3 greenhouse gas emissions for the prior fiscal year. The bill uses the following definitions:

- Scope 1: Emissions from direct company activities, including sources of emissions that the company owns or has control over.
- Scope 2: Indirect company emissions from consumed energy such as electricity purchased by the company.
- Scope 3: Indirect upstream and downstream supply chain emissions, not including Scope 2 emissions, from sources not owned or directly controlled by the company, which may include, but is not limited to, purchased goods and services. These are known as "full value chain disclosures."

When will these disclosures be required? Disclosures of Scope 1 and Scope 2 emissions must be reported annually beginning in 2026, while Scope 3 emission disclosures must be reported annually

beginning in 2027. More information on the specific requirements of these disclosures will be available in 2025, as the California Air Resources Board must issue regulations by Jan. 1, 2025.

How will the government verify the data? The bill requires "limited assurance" for Scope 1 and 2 emissions in 2026, and Scope 3 in 2030. "Reasonable assurance" will be the standard for Scope 1 and 2 emissions starting in 2030. "Limited assurance" is defined in the bill as the baseline standard, which requires an independent auditor to be provided with sufficient evidence to prove the reasonable validity of the reporting. "Reasonable assurance" is a more stringent standard, which requires evidence sufficient to prove that the reporting is free of material defects.

What are the proposed penalties? Failure to comply with these disclosure requirements could result in administrative penalties of up to $500,000 per reporting year.

S.B. 261 The Climate-Related Financial Risk Act

Who is required to provide disclosures? The CRFR applies to both private and publicly held U.S. companies, who are "doing business in California," with annual revenues exceeding $500 million globally.

What disclosures are required? Companies affected by the bill will be required to publish reports that outline both the climate-related financial risk of the company and measures to mitigate and adapt to those risks. Comparable government-required reports, including future SEC reporting requirements, may satisfy the requirements of the bill.

When will these disclosures be required? Initial reports must be published on a publicly accessible company website on or before Jan. 1, 2026, and then every two years thereafter. Companies that cannot provide certain required information at that time will be required to explain why such information could not be provided, as well as what steps will be taken to ensure the information will be provided in the future.

What are the proposed penalties? Failure to comply with these disclosure requirements could result in administrative penalties of up to $50,000 per reporting year.

What constitutes "Doing Business in California?"

While the bills are both silent on the statutory definition of the phrase "doing business," based on other California regulations, it is likely that the definition will be broad in nature. Looking at other California law, the threshold for "doing business" within the state is low. Under Section 191 of the California Corporations Code, "doing business" is defined as "entering into repeated and successive transactions of its business in [the] state, other than interstate or foreign commerce." Further, the California Revenue and Tax Code defines "doing business" as (1) actively engaging in any transaction for the purpose of financial or pecuniary gain or profit; (2) being organized or domiciled in California; or (3) the company's California sales, property value, or payroll exceed certain amounts. Though the definition is unlikely to be revealed until the regulations are implemented, if the California Air Resource Board follows these relaxed definitions, many companies may be required to follow both the CCDAA and the CRFR.

What should companies do to prepare?

With non-compliance of reporting resulting in monetary fines, companies should start strategizing to prepare for possible changes in requirements. It is first vital to identify whether one's company may be required to report under the bills. If applicable, companies should prepare internally by reviewing current reporting systems and establish internal governance for emission data collection. Further, outside advisors should be identified to help establish the procedures and protocols needed for proper reporting. If your company already has emission reporting procedures in place, it is important to confirm that the current system will satisfy the requirements of the bills. Lastly, even if your company does not meet the thresholds for mandatory reporting, be aware of contractual language and pressure from vendors and customers that may require you to provide emission reports under Scope 3 Reporting of the CCDAA.

If you have any questions about the CCDAA or CRFR, or any of the information contained in this memo, please contact Michael Donlon, Kristy Weglarz, any attorney in Bond's business and transactions practice or the Bond attorney with whom you are regularly in contact.

**Special thanks to Associate Trainee David Burgio for his assistance in the preparation of this memo. David is not yet admitted to practice law.*