The Climate Corporate Data Accountability Act (SB-253)

Center *for* Regulatory Strategy US

Introduction

Early in September 2023, the California Legislature passed two far-reaching climate disclosure bills, one of which is **Senate Bill 253 (SB-253), Climate Corporate Data Accountability Act (CCDAA)**, which was signed into law on October 7, 2023, by Gov. Gavin Newsom.

The California law is the nation's first requiring disclosure of carbon footprint and represents a significant step toward corporate transparency regarding **greenhouse gases (GHG)**, both from a company's own operations and throughout its supply chain, including emissions linked to vendors and customers. Such disclosure reporting is intended to play a crucial role in addressing climate change and in holding companies accountable for their environmental impacts, a long-standing goal of Newsom's.[1]

California has often been at the forefront of environmental and climate policies in the United States, and its actions often set precedents for other states and even at the federal level. This legislation's potential impact on corporate reporting and climate-related financial risks is likely to be closely monitored and studied by experts, policymakers, and regulators across the country.

Impact on industry

Valued at more than $123 billion,[2] the California insurance market is one of the largest in the world. The new climate regulation through the CCDAA will affect every major insurance company doing business in California by increasing their compliance responsibilities and cost. The state ranks first in total premiums, according to the **National Association of Insurance Commissioners (NAIC)**, based on the collected annual statement filings.[3]

The CCDAA adds to a growing field of climate-related disclosures being grappled with by the US insurance industry. In addition to annual **environmental, social, and governance (ESG)** reports being issued by many insurers, other notable activities include the NAIC's **Climate Risk Disclosure Survey**[4] (adopted by 15 US jurisdictions, representing about 80% of the insurance industry by premiums), the **International Task Force on Climate-related Financial Disclosures**[5] **(TCFD)** framework disclosure, and potential required adherence to developing global regulations in Europe and elsewhere.[6]

Requirements under the CCDAA

The CCDAA now applies to all public and private companies doing business in California that have global annual revenue of more than $1 billion.[7]

Such covered businesses will be required to disclose all their Scope 1 and Scope 2 **GHG** emissions starting in 2026 and indirect Scope 3 emissions starting in 2027. The bill would require a firm to obtain an assurance engagement, which would be performed by an independent third-party assurance provider.

The state will set an annual filing fee that will fund the oversight of the program, and companies that fail to timely file will incur administrative penalties of up to $500,000.

The public annual disclosures would pertain to the prior fiscal year, first for the company's Scope 1 and Scope 2 GHG in 2026 and then its Scope 3 emissions in 2027.[8]

The CCDAA is designed to help California communities make informed decisions about the companies they choose to do business with and will provide the state with the data it needs to target and reduce what is seen as the worst sources of greenhouse gases from these companies.

California is now part of an expanding group of regions worldwide that require corporations to provide precise reporting of both their direct and indirect greenhouse gas emissions. This regulatory push aims to enable stakeholders to gain insights and make informed decisions regarding a company's climate-related risks and environmental impacts.

Expectations going forward

On or before January 1, 2025, the California Air Resources Board[9] (state board) shall develop and adopt regulations to require a reporting entity to annually disclose to the emissions reporting organization and obtain an assurance engagement performed by an independent third-party assurance provider on all the reporting entity's Scope 1, 2, and 3 emissions. The state board shall ensure that the regulations adopted pursuant to this subdivision require that the reporting entities as well as the board itself conduct the following activities by a predetermined timeline.

Requirements for reporting entities

Timeline	Requirements
2026	Publicly disclose to the emissions reporting organization all its Scope 1 and Scope 2 emissions for the reporting entity's prior fiscal year, as well as measure and report its emissions of greenhouse gases in conformance with the Greenhouse Gas Protocol standards and guidance
2027	Publicly disclose its Scope 3 emissions no later than 180 days after its Scope 1 emissions and Scope 2 emissions are publicly disclosed to the emissions reporting organization for the prior fiscal year

Requirements of the state board

Timeline	Requirements
2025	Adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with the act
2027	Contract with University of California, California State University, a national laboratory, or another equivalent academic institution to prepare a report on the public disclosures made by reporting entities to the emissions reporting organization
2029	Review and update, as necessary, the public disclosure deadlines to evaluate trends in Scope 3 emissions reporting and consider changes to the disclosure deadlines
2033	Starting in 2033 and every five years thereafter, the state board may survey and assess currently available greenhouse gas accounting and reporting standards

The reporting timelines shall consider industry stakeholder input and the timelines by which reporting entities typically receive Scope 1, Scope 2, and Scope 3 emissions data, as well as the capacity for an independent assurance engagement to be performed by a third-party assurance provider.

Global impact and affected companies

California is leading the way in requiring companies to disclose their GHG emissions in compliance, potentially filling in the gaps from proposed SEC rules. The CCDAA paves the way for other US states to follow suit by acting as a blueprint for their own GHG emissions disclosure regulation.

The CCDAA, along with the Climate-Related Financial Risk Act (CRFRA), is a part of a larger global trend pushing for transparency and public disclosure on climate related financial data (or corporate climate action) and is heralded as a new era for sustainability disclosures. Although many companies have already started to report their GHG emissions either because they are subject to such reporting requirements issued by the European Union (EU) or have voluntarily done so in response to investor demands and/or in anticipation of the upcoming (yet to be finalized) Securities & Exchange Commission (SEC) rules, this act will still trigger the first sustainability reporting requirements for many corporates.

According to the Senate Floor Analysis [10] of California's Senate Bill 253, it is estimated that around 5,344 companies would be covered by this legislation.

Regulation	Impacted companies
SEC Climate Proposal[11]	7,000+ companies
SB-253[12]	5,300+ companies
SB-261[13]	10,000+ companies

Comparison between the SEC's proposed emissions disclosure rule and the CCDAA

The requirements under CCDAA are more expansive in some ways than those announced in the SEC proposed Climate-Related Disclosure Rule[14] in March 2022, and more so than the anticipated final SEC rule is expected to be.[15] This variance from the proposed SEC rule does not come as a surprise, since California has mostly led the nation in enacting the most stringent emissions and air quality regulations.[16]

While this act is like the climate rule proposed by the SEC in March 2022, the act reaches further on multiple fronts, such as:

- Broadening the number of companies required to publish climate disclosures by including private companies in the bill's purview.
- Disclosure of Scope 3 GHG emissions, regardless of whether the company's Scope 3 emissions are material or the company has set Scope 3 emissions reduction targets.
- Authorizing the **California Air Resource Board (CARB)** to put in place a third-party assurance requirement for Scope 3 emissions (in addition to Scope 1 and 2 required under SEC proposed rule).

This California act reflects a global-level appeal for greater emissions disclosures that comes after an extended period between the promulgation of proposed climate rules from the SEC and the anticipated publication of the final rules on climate disclosures and transparency.

What lies ahead

After the passage of SB-253 in the California assembly and the signing of the landmark emissions law on October 7, 2023, Governor Newsom, while underscoring California's leadership in crafting bold responses to the accelerating global climate crisis, also highlighted some challenges and concerns with the current bill, including:[17]

1. The act's implementation deadlines seem likely infeasible because companies might not have sufficient time to meet the disclosure requirements of the bill.
2. The potential for inconsistent reporting due to the specified reporting protocol in the law as written.
3. The heightened financial impact of the bill as written on the businesses covered by it.[18]

To remedy these challenges, the governor's administration has been directed to collaborate with the bill's author and the California state legislature to minimize the impact. Additionally, the governor instructed CARB to closely monitor the cost impact as it implements the bill and make recommendations to streamline the program. "I look forward to working with the Legislature on these modifications to … achieve this bill's goals of 'full transparency and consistency'," Newsom said in a memo accompanying the bill's signature.[19]

Unaddressed elements of CCDAA

There are several areas that will need to be addressed with the enactment of SB-253:

- CARB might find it challenging to meet the deadlines set by the act.
- Though "reporting entity" is defined in SB-253, it does not specify what business practices of the reporting entity qualify as "doing business in California" and if there are any exceptions.
- A clarification is needed on what would constitute "annual revenue" requirements for reporting entities or covered entities. Would it include global revenue or only revenue generated within California?
- All focus on disclosure of climate-related data neglects the evaluation of a company's efforts in reducing climate risk.

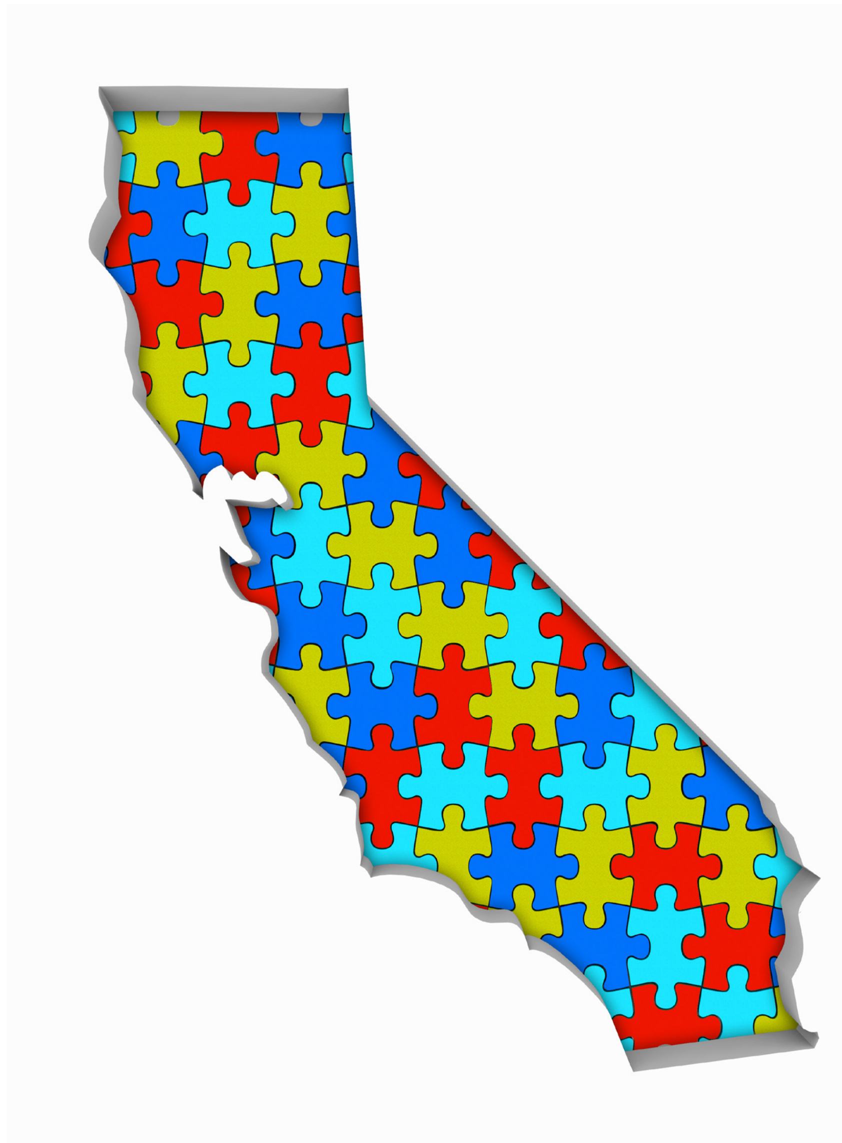
What firms can do now

As noted above, thousands of companies would now require disclosing their Scope 1, 2, and 3 GHG emissions along with other climate-related financial risk information. To be able to comply with these new requirements, even as they might loosen somewhat, companies should implement the following actions at the earliest:

1. **Familiarize themselves with the language and timeline of climate regulation** – The first step in preparing for climate reporting is to strengthen the understanding of GHG standards and guidance, which are fundamental to GHG emissions reporting under SB-253. It is also important to closely follow upcoming regulations in the climate reporting space (including the specific rules and regulations to implement SB-253, which will be developed by CARB). Paying attention to the rulemaking process and submitting necessary comments once requested could better prepare companies to copewith climate regulations wherever they occur.

2. **Undertake discussions with third-party assurance providers and carbon accountants** – Based on the disclosure and transparency requirements of SB-253, it is essential for companies to start engaging with carbon accountants for collection of emissions data and with independent third-party assurance providers to provide the necessary assurance on company disclosures.

3. **Operationalize compliance with the regulation** – Start to produce a greenhouse gas inventory, develop a baseline methodology for calculation, undertake a baseline GHG assessment, develop a regular cadence for GHG quantification to enable not only complying with the regulation but also helping with setting GHG reduction targets and associated GHG decarbonization strategies.



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Endnotes

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16 Compliance Chief 360, "California to adopt most stringent carbon disclosure law in the nation," September 18, 2023; Brad Plumer, "California approves a wave of aggressive new climate measures," New York Times, updated September 29, 2022; Andrew Oxford, "California emissions reporting bill would go further than SEC (Correct)," Bloomberg Law, updated July 19, 2023.

17 Newsom, "California releases world's first plan to achieve net zero carbon pollution,"; Officer of Governor Gavin Newsom, "Governor Newsom updates the roadmap to California's Clean Energy Future," updated May 25, 2023.

18 California Office of the Governor, Letter to members of the California State Senate, October 7, 2023.

19 Ibid.

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