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iGAAP in Focus

Sustainability reporting

California Climate Legislation

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This *iGAAP in Focus* outlines the California state senate bills SB-253—*Climate Corporate Data Accountability Act* and SB-261—*Greenhouse Gases: Climate-related Financial Risk,* as well as the California assembly bill AB-1305—*Voluntary Carbon Market Disclosures* signed into law on 7 October 2023.

This *iGAAP in Focus* has been updated to reflect AB-1305, which is effective from 1 January 2024.

- California Governor Gavin Newsom signed into law two state senate bills and one assembly bill that together require certain public and private US entities that perform certain business activities in California to provide disclosures about their greenhouse gas (GHG) emissions, climate-related financial risks, voluntary carbon offsets (VCOs) and certain climate-related emission claims
- There is no specific exception for groups with a non-US parent, and therefore foreign entities with US-based subsidiaries that perform certain business activities in California would fall within the scope of the requirements
- The two senate bills, SB-253—*Climate Corporate Data Accountability Act* and SB-261—*Greenhouse Gases: Climate-Related Financial Risk*, establish the first industry-agnostic US regulations that mandate the corporate reporting of greenhouse gas (GHG) emissions and climate risks in the United States:
  - SB-253 will require entities within its scope to provide annual quantitative disclosures of Scope 1, Scope 2 and Scope 3 GHG emissions
  - SB-261 will require entities to prepare and make publicly available on their website biennial qualitative reporting on climate-related financial risk and measures taken to reduce and adapt to that risk applying the frameworks and disclosure guidance established by the Task Force on Climate-related Financial Disclosures (TCFD)
  - IFRS Sustainability Disclosure Standards issued by the International Sustainability Standards Board (ISSB), along with other TCFD successor or equivalent reporting standards, are also an acceptable framework for reporting under SB-261
  - The first biennial report is required by 1 January 2026, with staggered effective dates for further requirements
- The assembly bill, AB-1305—*Voluntary Carbon Market Disclosures*, is intended to combat entities' "greenwashing" of climate-related emission claims and establishes requirements for both US and international entities that market or sell VCOs[1] within California as well as entities that operate in California and make certain climate-related emission claims[2] (whether or not they purchase or use VCOs)

1 The assembly bill defines a VCO as "any product sold or marketed in the state that claims to be a 'greenhouse gas emissions offset,' a 'voluntary emissions reduction,' a 'retail offset,' or any like term, that connotes that the product represents or corresponds to a reduction in the amount of greenhouse gases present in the atmosphere or that prevents the emission of greenhouse gases into the atmosphere that would have otherwise been emitted".

2 The bill describes these as "claims regarding the achievement of net zero emissions, claims that the entity, related entity, or a product is 'carbon neutral,' or … other claims implying the entity, related entity, or a product does not add net carbon dioxide or greenhouse gases to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions".

For more information please see the following websites:

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Overview

On 7 October 2023, California Governor Gavin Newsom signed into law two state senate bills and one state assembly bill that together require certain public and private US entities that perform certain business activities in California to provide disclosures about their GHG emissions, climate-related financial risks, VCOs and certain climate-related emission claims.

The two senate bills, SB-253—*Climate Corporate Data Accountability Act* and SB-261—*Greenhouse Gases: Climate-Related Financial Risk*, establish the first industry-agnostic US regulations that mandate the corporate reporting of GHG emissions and climate risks in the United States.

The bills apply to public and private US-based entities[3], depending on their total annual revenue.

The assembly bill, AB-1305—*Voluntary Carbon Market Disclosures*, is intended to combat entities' "greenwashing" of climate-related emission claims and establishes requirements for both US and international entities that market or sell VCOs within California as well as entities that operate in California and make certain climate-related emission claims (whether or not they purchase or use VCOs).

Scope

SB-253 and SB-261 apply to US-based entities doing business in California. Whether an entity is within scope of these bills depends on the entity's total annual revenue, regardless of whether the entity is publicly or privately held. Therefore, private entities could be required to provide disclosures under the California regulations if they meet the revenue thresholds (outlined below) and do business in California. The bills, as written, do not clearly define what "doing business in California" means. However, on the basis of the "doing business in California" concept under California tax law, early indications are that the threshold for doing business in the state might be quite low.

Observation

There is no specific exception for groups with a non-US parent, and therefore foreign entities with US-based subsidiaries that meet the scope requirements would have to apply the bills.

Under AB-1305, the following types of entities (or combinations thereof) are required to provide specific disclosures:

- Entities that market or sell VCOs within the state of California
- Entities that purchase or use VCOs, make climate-related emission claims, and both (1) operate in California and (2) purchase or use VCOs sold within California
- Entities that make climate-related emission claims and both (1) operate in California and (2) make such claims in California

Certain terms used in the assembly bill are not defined, such as "operate in California," "make claims within the state," "significant reductions" or "marketing or selling VCOs within California". Therefore, such terms may be interpreted broadly by the California government. In addition, an entity that makes climate-related emission claims on the internet (i.e. on its website) and "operates within California" may qualify as an entity that "makes claims within the state."

AB-1305 applies to both public and private entities and, unlike SB-253 and SB-261, there are no revenue thresholds associated with its applicability. Furthermore, only voluntary offsets are subject to its requirements; compliance-related offsets (e.g. cap-and-trade programmes) are excluded from its scope.

3 Both bills apply to US-based entities but use slightly different terminology. SB-253 defines a "reporting entity" as "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." SB-261 defines a "covered entity" similarly; however, it excludes entities in the insurance business.

The following table summarises the requirements and applicability of the two bills:

	SB-253 Climate Corporate Data Accountability Act	SB-261 Greenhouse Gases: Climate-Related Financial Risk	AB-1305 Voluntary Carbon Market Disclosures
Overview of reporting requirements	Scope 1, Scope 2 and Scope 3 GHG emissions	• Climate-related financial risks • Measures athe companentity has adopted to reduce and adapt to such risks	Information about: • VCO projects, including emission reductions • The business entity selling VCOs, including type of project • How the accuracy of climate-related emission claims was determined
Entities affected	Public and private US businesses with total annual revenues exceeding USD1 billion and that do business in California	Public and private U.S. businesses, excluding those in the insurance industry, with total annual revenues exceeding USD500 million and that do business in California	Public and private businesses that: • Sell and market VCOs in California; • Purchase or use VCOs sold in California, make climate-related emission claims, and operate in California; or • Make climate-related emission claims in California and operate in California
Compliance timeline and attestation	• Starting in 2026—disclose and provide limited assurance for Scope 1 and Scope 2 GHG emissions for the prior fiscal year • Starting in 2027—disclose Scope 3 emissions for the prior fiscal year within 180 days of disclosing Scope 1 and Scope 2 GHG emissions (no assurance required for Scope 3) • Starting in 2030— disclose and provide reasonable assurance for Scope 1 and Scope 2 GHG emissions for the prior fiscal year; possible limited assurance for Scope 3 emissions[4]	• On or before 1 January 2026 —public report disclosure in accordance with the climate risk disclosure requirement • No attestation requirement	• Effective beginning 1 January 2024 • No explicit attestation requirements under the bill • Disclosures are required about whether there is independent third-party verification of the VCO project attributes or the entities' climate-related emission data or claims
Reporting frequency	Annual	Biennial	At least annually
Reporting location	Publicly disclose on a digital platform (to be created by the regulator)	Entity website	Entity website
Existing standards and frameworks leveraged	GHG Protocol	Task Force on Climate-Related Financial Disclosures (TCFD)[5]	Not applicable
Penalty for non-compliance	Failure to comply will result in a fine of up to USD500,000 in a reporting year	Failure to comply will result in a fine of up to USD50,000 in a reporting year	Failure to comply will result in a fine of USD2,500 per day for each violation, not to exceed USD500,000

4 Starting in 2030, entities may need to disclose Scope 3 GHG emissions "as close as practicable" to their disclosure timing for Scope 1 and Scope 2 GHG emissions; however, the California Air Resources Board will evaluate this in 2029 on the basis of current trends in Scope 3 GHG emission reporting. Scope 3 assurance requirements will be determined by 2027.

5 Entities may also report in accordance with an "equivalent reporting requirement" (e.g. IFRS Sustainability Disclosure Standards, issued by the ISSB).

The requirements

Quantitative emission disclosures (SB-253)

Under SB-253, a US-based entity that is doing business in California and has over $1 billion in total annual revenue (a "reporting entity") for the prior fiscal year will be required to disclose its annual GHG emissions in line with guidance provided by the GHG Protocol. SB-253 describes three types of emissions generated by a business and its value chain as follows:

- 'Scope 1 emissions' means all direct GHG emissions that stem from sources that a reporting entity owns or directly controls, regardless of location. This includes, but is not limited to, fuel combustion activities
- 'Scope 2 emissions' means indirect GHG emissions from consumed electricity, steam, heating or cooling purchased or acquired by a reporting entity, regardless of location
- 'Scope 3 emissions' means indirect upstream and downstream GHG emissions, other than Scope 2 emissions, from sources that the reporting entity does not own or directly control. These may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products. Scope 3 emissions can be calculated by leveraging either primary emissions data from entities in the value chain or by leveraging secondary data such as industry averages or proxy data

GHG emissions reporting is subject to independent third-party assurance. Scope 1 and Scope 2 GHG emissions are subject to limited assurance from the first year of disclosure in 2026 (on the basis of 2025 fiscal-year activity) and reasonable assurance starting in 2030 (on the basis of 2029 fiscal-year activity). Scope 3 GHG emission disclosure is required beginning in 2027 (on the basis of 2026 fiscal-year activity) no later than 180 days after the reporting entity's Scope 1 and Scope 2 GHG emission disclosure. Scope 3 GHG emissions may be subject to limited assurance starting in 2030. The California Air Resources Board (CARB) is required to review and evaluate trends in third-party assurance of Scope 3 information during 2026 and determine by 1 January 2027 whether to establish an assurance requirement for Scope 3 GHG emission disclosures.

CARB is tasked with developing and adopting regulations to codify the requirements in the bill by 1 January 2025, including the first annual reporting deadline sometime in 2026.[6]

Qualitative climate-risk disclosure (SB-261)

Under SB-261, US-based entities that are doing business in California and have over USD500 million in total annual revenue ("covered entities") for the prior fiscal year will be required to publish a biennial climate risk report and make it available on their corporate websites. In addition, this report may be consolidated at the parent level. A subsidiary that qualifies as a covered entity is not required to file a separate report if the parent entity includes the subsidiary in its consolidated report. SB-261 excludes insurance entities already subject to similar climate-risk reporting requirements.[7]

The bill defines a climate-related financial risk as one in which there is "a material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health."

Covered entities must also disclose the measures they are undertaking to reduce and adapt to the climate risks identified. The bill requires covered entities to frame their risk assessment in accordance with guidance from the *Final Report—Recommendations of the Task Force on Climate-related Financial Disclosures* (June 2017) published by the TCFD, or any successor or equivalent reporting requirements. The IFRS Sustainability Disclosure Standards issued by the International Sustainability Standards Board (ISSB) are considered equivalent standards.

Observation

The senate bills leverage the GHG Protocol and the TCFD recommendations and they are therefore well aligned with IFRS S2 *Climate-related Disclosures*, which incorporates and builds on the TCFD recommendations and requires application of the GHG Protocol. This should help entities minimise the effort required to prepare disclosures to meet the requirements of different standards and regulations.

6 CARB currently oversees California's mandatory reporting of GHG emissions (e.g. Scope 1 stationary combustion and process emissions) from major sources such as electricity generators, industrial facilities, fuel suppliers and electricity importers under the California Global Warming Solutions Act of 2006 (AB-32).

7 In April 2022, the National Association of Insurance Commissioners, in conjunction with the TCFD, adopted a new standard for insurance entities' reporting of their climate-related risks.

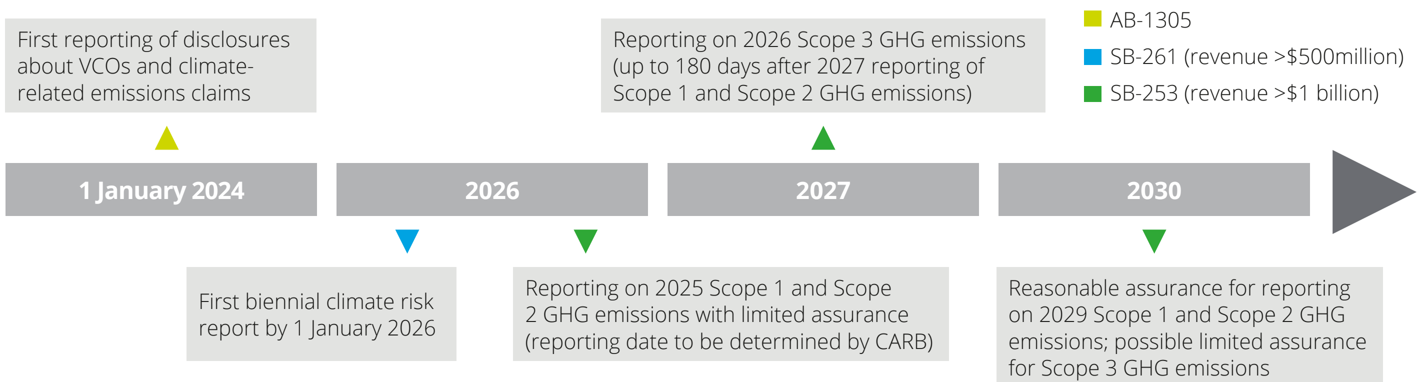
Qualitative Voluntary Carbon Market Disclosure (AB-1305)

Under AB-1305, an entity must post its disclosures on its website and update them at least annually. Summarised below are some (but not all) of the disclosures an entity is required to provide under the bill.

- For entities that market or sell VCOs within the state of California, required disclosures include, but are not limited to:
  - Details regarding the applicable carbon offset project, including:
    - The specific protocol used to estimate emissions reductions or removal benefits
    - The location of the offset project site
    - The project timeline
    - Whether the project meets any standards established by law or by a non-profit entity
    - The type of project, including durability
    - Whether there is an independent expert or third-party validation or verification
    - The annual emissions reduced or carbon removed
  - Details regarding accountability measures if a project is not completed or does not meet the projected emissions reductions or removal benefits, including, but not limited to, details regarding what actions the entity should take if carbon storage projects are reversed or if future emissions reductions do not materialise
  - The pertinent data and calculation methods needed to independently reproduce and verify the number of emissions reduction or removal credits issued using the protocol
- For entities that purchase or use VCOs, make climate-related emission claims, and both operate in California and purchase or use VCOs sold within California, required disclosures include, but are not limited to:
  - The name of the business entity selling the offset and the offset registry or programme
  - 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
  - Whether there is independent third-party verification of the entity's data and claims listed
- For entities that make climate-related emission claims and both operate in California and make such claims in California, required disclosures include, but are not limited to:
  - All information documenting how, if at all, a 'carbon neutral,' 'net zero emission,' or other similar claim was determined to be accurate or actually accomplished, and how interim progress toward that goal is being measured
  - Whether there is independent third-party verification of the entity's data and claims listed

Effective date

The timeline below outlines the initial requirements for disclosure under the bills. Unlike other rules, such as the Corporate Sustainability Reporting Directive (CSRD) in the European Union, the California rules do not provide a phase-in of applicability on the basis of an entity's size.



Observation

Upon signing SB-253 and SB-261, Governor Newsom noted his concerns related to the bills' implementation timelines (which he described as "likely infeasible") and their financial impact on businesses. The governor's administration will work with the California legislature in 2024 to address these issues.

Monitoring and compliance

The senate bills task CARB with developing and adopting regulations as necessary to require the disclosures outlined above and to monitor and enforce compliance. Entities within the scope of these bills will be required to pay an annual fee to CARB to cover the costs of implementation and administration. Fees will be managed through dedicated funds established by each bill.

For all three bills, monitoring or enforcement would be performed by outside entities or a judicial body as follows:

SB-253	On or before 1 July 2027, CARB is to contract with the University of California, the 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 emission reporting organisation and highlighting GHG emissions from reporting entities in the context of state GHG emission reduction and climate goals
SB-261	CARB will engage a non-profit climate reporting organisation to biennially prepare a report that (1) identifies inadequate or insufficient reports, (2) reviews climate-related financial risk by industry and (3) analyses the systemic and sector-wide climate-related financial risks facing California
AB-1305	Civil action for violations will be brought by the California attorney general or a district attorney, county counsel, or city attorney

Each bill includes a mechanism for penalising entities for non-compliance or if reporting is found to be insufficient:

- Under SB-253, penalties of up to USD500,000 in a reporting year could be levied for failures to meet the requirements. Between 2027 and 2030, penalties related to Scope 3 GHG emission disclosure would only be levied for non-filing
- Under SB-261, penalties of up to USD50,000 in a reporting year could be levied for the failure to make a report publicly available or for the publication of an inadequate or insufficient report. Under AB-1305, each violation is subject to civil penalties of no greater than USD2,500 per violation per day, not to exceed a total amount of USD500,000

For the senate bills, CARB will consider all relevant circumstances when determining penalties, including past and present compliance with the regulations and whether the entities undertook good-faith measures to comply.

Other resources

iGAAP in Focus on the first IFRS Sustainability Disclosure Standards

iGAAP in Focus on the final text of the CSRD

iGAAP in Focus on the first set of European Sustainability Reporting Standards (ESRS)

Further information

If you have any questions about the California climate bills, please speak to your usual Deloitte contact or get in touch with a contact identified in this *iGAAP in Focus.*

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