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Kirkland Alert

California Legislature Passes Landmark Climate Disclosure Bills

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***November 7, 2024 Update**: During its 2024 session, the California Legislature passed a budget bill with funding for the California Air Resources Board (CARB) to implement SB 253 (CCDAA) and SB 261 (CFRA). A trailer bill proposed by Governor Newsom that would have extended the compliance timetable for companies subject to these laws by two years did not pass. A separate bill making minor administrative amendments to these laws (SB 219) did pass. Key changes in SB 219 include giving CARB an extra six months, until July 1, 2025, to write regulations implementing SB 253; allowing companies subject to SB 253 to consolidate reporting at the parent level (SB 261 already allowed consolidated reporting); and removing the requirement in SB 253 that Scope 3 emissions be disclosed 180 days after Scope 1 and 2 emissions, giving CARB full discretion to determine when in 2026 companies must disclose Scope 1 and 2 emissions, and when in 2027 they must disclose Scope 3 emissions.*

Litigation challenging the constitutionality of SB 253 and SB 261, filed by the US Chamber of Commerce, American Farm Bureau Federation, and other industry groups, remains pending in California federal court. The judge denied the plaintiffs' motion for summary judgment on their First Amendment claim on November 5, saying "further development of the facts are needed" for the court to evaluate this motion. A motion by the state to dismiss the plaintiffs' other two claims (based on the Supremacy Clause and constitutional limitations on extraterritorial regulation) remains pending as of November 7.

Shortly before the conclusion of its session on September 14, the California Legislature passed far-reaching legislation that will impose broad climate-related disclosure

obligations on companies with certain ties to California. In this *Alert*, we summarize key requirements, changes since introduction[1] and implications to subject companies of the Climate Corporate Data Accountability Act (CCDAA) and the Climate-Related Financial Risk Act (CFRA).

In brief, the CCDAA and the CFRA will impose the following requirements:

Bill	*Summary of Requirements*	*Scope*[2]	*First Report*
Climate Corporate Data Accountability Act (SB-253)	Publicly disclose and verify Scope 1, 2 and 3 greenhouse gas (GHG) emissions annually	Public and private U.S. companies that "do business in California" and have **>$1bn** total annual revenue	**2026** (for information from FY 2025)
Climate-Related Financial Risk Act (SB-261)	Prepare and publicly disclose every other year a climate-related risk report in line with the recommendations of the Task Force on Climate-Related Financial Disclosures ("TCFD," the "TCFD Recommendations") or the equivalent disclosure requirements of the International Sustainability Standards Board's ("ISSB") Climate-Related Disclosures Standard	Public and private U.S. companies that "do business in California" and have **>$500mn** annual revenue (other than insurers)	On or before **January 1, 2026**

California Governor Gavin Newsom has announced that he intends to sign both the CCDAA and the CFRA into law.[3]

CCDAA: Emissions Reporting

At its core, the CCDAA resembles the earlier version of the bill introduced in the California Senate in January. However, the law has been modified in notable respects since that time, incorporating several important clarifications.

The CCDAA will require U.S.-organized entities[4] that "do business in California"[5] and have total annual revenues in excess of $1 billion[6] to annually calculate, independently verify[7] and publicly disclose their Scope 1, 2 and 3 emissions to a state-administered nonprofit reporting organization.

The CCDAA specifies that Scope 1 and 2 emissions reporting will begin "starting in 2026 on or by a date to be determined by" the California Air Resources Board (CARB) for the prior *fiscal year*.[8] The finalized bill clarifies that subject companies will need to report Scope 3 emissions no sooner than 2027, but within 180 days of their Scope 1 and 2 disclosures.

Other key clarifications and modifications to the bill include:

- **Assurance Requirements**. The finalized bill clarifies that companies' Scope 1 and 2 emissions must by audited by independent verifiers at a limited assurance level beginning in 2026 and at a reasonable assurance level beginning in 2030. The SEC's proposed rules to enhance and standardize climate-related disclosure for investors (the "Proposed SEC Rule") would similarly require independent attestation starting at the limited assurance level and progressing to reasonable assurance in subsequent years.[9] The CCDAA stipulates that Scope 3 emissions must also be audited at a limited assurance level beginning in 2030, but that CARB is empowered to establish an assurance requirement for third-party audits of Scope 3 emissions at an earlier date. This requirement exceeds the Proposed SEC Rule, which does not include an assurance requirement for Scope 3 emissions due to the inherent challenges in calculating them.
- **Administrative Penalties**. Whereas prior versions of the CCDAA stipulated that the Attorney General may bring a civil action against subject companies for violations of the Act, the finalized bill provides that CARB shall adopt regulations authorizing it to seek administrative penalties for such violations. Penalties are not to exceed $500,000 in a reporting year for any given subject company.

- **Scope 3 Safe Harbor**. Subject companies will not be subject to an administrative penalty for any misstatements with regard to Scope 3 emissions disclosures made with a reasonable basis and disclosed in good faith — an approach that aligns with the Proposed SEC Rule's establishment of a safe harbor for Scope 3 emissions disclosure. Further, between 2027 and 2030, penalties assessed on Scope 3 reporting can only be assessed for failures to disclose.
- **Disclosure Format Flexibility**. Subject companies will be permitted to submit their disclosure through a report "prepared to meet other national and international reporting requirements, including any reports required by the federal government" so long as those reports satisfy all requirements of the CCDAA (e.g., in relation to assurance). More broadly, the CCDAA provides that CARB's implementing regulations shall ensure emissions reporting is structured in a way that minimizes duplication of effort; CARB's regulations may therefore provide additional guidance around permissible disclosure formats.

CFRA: TCFD- or ISSB-Aligned Reporting

Like the CCDAA, the CFRA is similar to the initial version introduced earlier this year, with several notable modifications explored below.

The finalized CFRA will require U.S.-organized entities[10] that "do business in California" and have total annual revenues in excess of $500 million[11] to prepare, on or before *January 1, 2026*, and *biennially* thereafter, a report disclosing (1) the entity's climate-related financial risk in accordance with the TCFD Recommendations or in a manner consistent with the ISSB's "equivalent" disclosure requirements (i.e., the ISSB's Climate-Related Disclosures Standard) and (2) its measures adopted to reduce and adapt to the climate-related financial risk disclosed. Prior versions of the bill contemplated annual reporting on or before the end of 2024 and did not incorporate the ISSB's Climate-Related Disclosures Standard, which was released in June 2023 and draws heavily upon the TCFD Recommendations.[12]

Other key clarifications and modifications to the bill include:

- **Comply-or-Explain**. To the extent a subject company's climate-related financial risk disclosure does not fully meet the TCFD Recommendations or ISSB's Climate-Related Disclosures Standard, such companies must provide a detailed explanation for any reporting gaps and describe steps that will be taken to close these gaps. The final text also suggests that a company will not be subject to penalties for such gaps so long as it has provided the required disclosures "to the best of its ability."

- **Reduced Penalties**. The finalized bill provides that CARB shall adopt regulations authorizing it to punish CFRA violations with administrative penalties not to exceed $50,000 per year for a given company; the penalty cap in prior versions of the bill was $500,000.
- **Parent-Level Disclosure**. The finalized bill clarifies that the required disclosure may be consolidated at the parent company level. If a subsidiary of a parent company qualifies as a covered entity, the subsidiary is not required to prepare a separate climate-related financial risk report if its parent prepares a consolidated report.
- **No Disclosure Submission to CARB**. Subject companies are only required to make their disclosure available to the public via their own websites. [13]

Key Implications

Once Governor Newsom signs the bills, the CCDAA and CFRA will become the first broadly applicable climate disclosure requirements in the U.S., exceeding the Proposed SEC Rule in both the type of entities in-scope (public *and* private) and certain reporting requirements.

In perhaps the most significant of the bills' requirements, the CCDAA will require all subject companies to disclose Scope 3 GHG emissions — whereas the Proposed SEC Rule, as currently drafted, would only require such disclosure in limited circumstances,[14] an obligation that could be watered down further or removed once the rule is finalized.[15] While major companies[16] and investor group Ceres have expressed support for both the CCDAA and CFRA, opposition to date has focused on the CCDAA, with the Chamber of Commerce and a number of prominent businesses pushing back against the bill and expressing concerns with the Scope 3 disclosure requirement in particular.

Given such concerns, we anticipate that the CCDAA (and possibly also the CFRA) could be subject to litigation or other challenges — potentially through the pursuit of a ballot referendum allowing Californians to vote on the issue. Challenges could focus on what it means to "do business in California," the complexities and burdens associated with compliance, and/or California's authority to regulate emissions outside of California.[17]

Additionally, the CCDAA and CFRA's required disclosures will interface with certain requirements of the European Union's Corporate Sustainability Reporting Directive (CSRD) and the United Kingdom's proposed Sustainability Disclosure Standards (SDS). While each of the regimes allow for a degree of interoperability among required disclosures, any information reported under the CCDAA and/or CFRA may be

referenced by EU or UK regulators in relation to certain disclosures under the CSRD and/or SDS (such as commentary on the materiality, or lack thereof, of certain information). Thus, companies should carefully review all sustainability-related disclosures to ensure consistency of approach to overlapping quantitative and narrative reporting elements.

Companies that fall (or likely fall) within the scope of either the CCDAA or CFRA can start preparing for compliance by:

- Conducting an enterprise-wide[18] GHG inventory across their Scope 1, 2 and 3 emissions;
- Engaging with a CARB-approved verifier[19] to understand their typical scopes of work, timing and costs; and
- Conducting a gap analysis against the TCFD Recommendations or the ISSB's Climate-Related Disclosures Standard.

Certain details of the CCDAA and CFRA's specific requirements and implementation timeline are yet to be determined. Specifically, CARB will need to create regulations for the implementation of the CCDAA and the penalty provisions of both bills, which will involve a public notice-and-comment process that could influence salient aspects of the implementing regulations. Companies may therefore consider monitoring or participating in the rulemaking process as it progresses.

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1. We summarize the requirements of earlier versions of the California Bills in our April 14, 2023, *Kirkland Alert*, "California Climate Disclosure Bills Would Have Far-Reaching Implications for Companies Doing Business in the State." ↩

2. The CCDAA and CFRA do not explicitly address whether financial institutions, asset managers, and business development companies (BDCs) are in scope, but the broad text of the laws seems to encompass such U.S. entities that meet the relevant revenue thresholds and "do business in California." It remains to be seen how California may interpret the "do business in California" requirement with respect to such entities (e.g., whether it depends on the location of such entities' offices and investors, or whether and what activities of portfolio companies could bring such these entities in scope). ↩

3. During remarks signaling his intent to sign the CCDAA and CFRA, Governor Newsom said that his signature came with "a modest caveat" entailing "some cleanup on some little language" — implying that one or both bills may still be subject to modification. While the California governor has the power to modify individual provisions in bills related to appropriations, changes to either bills' scope or reporting obligations would need to be made either through the

rulemaking authority the bills grant to CARB or by amendments or additions to the text of the bills during California's 2024 legislative session. ↩

4. This requirement captures all partnerships, corporations, limited liability companies or other businesses formed under the laws of any state or the District of Colombia, or under an act of Congress. ↩

5. Neither the CCDAA nor the CFRA define what it means to "do business in California," but the California Tax Code uses similar language and defines "doing business" as actively engaging in any transaction for the purpose of financial gain within California, being organized or commercially domiciled in California, or having California sales, property or payroll exceed specified amounts. ↩

6. Based on the prior fiscal year. ↩

7. Reported emissions inventories will have to be independently verified by a third-party auditor approved by the California Air Resources Board (CARB). A list of CARB-accredited verifying bodies and individual verifiers — as well as the criteria and process for accreditation — can be found here. ↩

8. Previous versions of the bill provided that the initial disclosure would be for calendar year 2025. ↩

9. We discuss the Proposed SEC Rule in our March 24, 2022, *Kirkland Alert,* "SEC Proposes New Climate Disclosure Requirements." ↩

10. The CFRA defines "covered entities" the same as the CCDAA, except that it expressly exempts insurers, likely because on April 8, 2022, the National Association of Insurance Commissioners — which includes California's Insurance Commissioner — adopted a new standard requiring insurers to report climate-related risks in line with the TCFD Recommendations. ↩

11. Based on the prior fiscal year. ↩

12. We discuss the ISSB disclosure standards in our June 29, 2023, *Kirkland Alert*, "ISSB Releases Final Global Sustainability Disclosure Standards." ↩

13. The CFRA also includes a provision allowing CARB to "consider covered entities' claims" related to GHG inventories or reduction targets — for any purpose, including for public reporting or to inform future rulemaking — if those claims are verified by an independent third party. ↩

14. Only when Scope 3 emissions are determined to be "material" or if the company has set a GHG emissions reduction target or goal that includes Scope 3 emissions. ↩

15. In remarks during a September 12, 2023 Senate Banking Committee oversight hearing, SEC Chairman Gary Gensler suggested that certain aspects of the Proposed SEC Rule's Scope 3 emissions disclosure requirements could be modified in the final rule, though he did not provide further detail. ↩

16. Groups of companies organized to send letters to lawmakers in support of SB 253 and SB 261, and certain other companies expressed support individually. ↩

17. Arguments as to the scope of California's authority are likely weakened by the U.S. Supreme Court's decision on May 11, 2023, in *National Pork Producers Council v. Ross*, which upheld Proposition 12, a California law prohibiting the in-state sale of pork from pigs that are "confined in a cruel manner." The majority opinion affirmed the lower court's dismissal of the lawsuit because it did not allege that the law purposefully discriminates against out-of-state economic interests. While most pork sold in California is imported, and thus the cost of compliance is largely borne by out-of-state firms, Proposition 12 does not discriminate between in-state and out-of-state firms. ↩

18. Companies preparing to disclose in line with the Proposed SEC Rule should be aware that they may be required to report emissions to the California Secretary of State along different organizational boundaries than those reported to the SEC. ↩

19. A list of CARB-accredited verifying bodies and individual verifiers — as well as the criteria and process for accreditation — can be found here. ↩

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- 30 October 2026 Press Release Kirkland Advises Bison Oil & Gas on Close of $600 Million Inaugural Bond Offering
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