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ESG ADVISORY

SB 219 Makes Important Updates to California Climate Disclosure Regime

October 7, 2024

On September 27, 2024, California Governor Gavin Newsom signed Senate Bill 219 (SB 219) into law, making important changes to California's historic Climate Corporate Data Accountability Act (SB 253) and the Climate-Related Financial Risk Act (SB 261) enacted last year as part of California's Climate Accountability Package. SB 253 and SB 261 impose unprecedented climate-related disclosure requirements on US public and private companies that do business in California and meet certain annual revenue thresholds, as detailed in Katten's previous insight. However, the climate bills leave open key implementation questions, including, for example, what it means to "do business" in California and how to calculate annual revenues. SB 219 amends the climate bills by granting the implementing authority – the California Air Resources Board (CARB) – time and discretion to adopt implementing regulations and clarify answers to key implementation questions.

Under SB 253, US-based entities with $1 billion or more in annual revenue that do business in California must file annual reports covering their prior fiscal year disclosing Scope 1 and Scope 2 greenhouse gas (GHG) emissions starting in 2026 and Scope 3 GHG emissions starting in 2027. Under SB 261, US-based entities with $500 million or more in annual revenue that do business in California must prepare biennial reports disclosing climate-related financial risks and the measures that they have adopted to address such risks, with the first SB 261 report due by January 1, 2026 covering the 2025 reporting period.

As originally enacted, SB 253 mandated that CARB adopt implementing regulations on or before January 1, 2025 – a deadline designed to align with the first reporting periods under SB 253. SB 219 amends the climate bills to extend the deadline for CARB to adopt implementing regulations to July 1, 2025, but notably does not extend the first reporting deadline. This means that for the first half of 2025, reporting companies may have to collect Scope 1 and Scope 2 data without any guideposts from CARB as to critical applicability, accounting and reporting details under SB 253.

In addition to granting CARB a six-month extension to adopt implementing regulations, SB 219 further amends SB 253 and SB 261 in the following key ways:

- Grants CARB discretion to set Scope 3 emissions disclosure deadlines. Reports were previously required within 180 days of Scope 1 and Scope 2 emissions disclosure.
- Allows CARB to elect to receive GHG emissions reports directly and assume certain other responsibilities that were previously delegated to emissions reporting organizations. Alternatively, CARB may elect to delegate such responsibilities to an emission reporting organization.
- Allows subsidiaries to consolidate their SB 253 reports with their parent companies, which was previously only permitted for SB 261 reports.

- Eliminates the requirement to pay fees upon filing SB 253 and SB 261 reports but does not eliminate the fees themselves, which are still due on or before January 1, 2026 and biennially thereafter for SB 261 fees and at an unspecified deadline for SB 253 fees.

While SB 219 grants CARB flexibility to implement SB 253 and SB 261, SB 219 ultimately creates uncertainty for reporting companies preparing to comply with California's climate disclosure regime in the near term. It is also worth noting that SB 253 and SB 261 are currently facing litigation which could result in delaying, modifying or even eliminating the climate-related reporting requirements under the bills. Reporting companies should nevertheless prepare for the rapidly approaching 2025 compliance period by ensuring they have robust GHG emissions monitoring, accounting and auditing programs in place, in addition to consulting legal counsel and industry advisors to prepare their first climate-related data reports.

CONTACT

For more information, please contact your Katten attorney or any of the following Capital Markets attorneys:

Farzad F. Damania
+1.212.940.3838
farzad.damania@katten.com

Ryan A. Lilley
+1.202.625.3619
ryan.lilley@katten.com