

September 18, 2024

California Legislature Passes Limited Amendments to Climate Disclosures Laws

Governor Proposed Two-Year Delays for Implementing Regulations and Initial Reporting of GHG Emissions and Climate Risks

Legislature Ultimately Postponed Implementing Regulations by Six Months Without Delaying Initial Reporting

Proposed Amendments to the Voluntary Carbon Market Disclosures Act Failed to Pass

SUMMARY

Last year California enacted a trio of expansive climate-related disclosure laws that impose climate-related reporting obligations on thousands of public and private companies, whether or not they are incorporated in California: the Climate Corporate Data Accountability Act (SB 253), the Climate-Related Financial Risk Act (SB 261) and the Voluntary Carbon Market Disclosures Act (AB 1305).¹

On August 31, 2024, the last day of California's 2023-2024 legislative session, the California Legislature passed Senate Bill No. 219 (SB 219) to amend the first two of these laws. Unless the California Governor vetoes SB 219, SB 219 amends SB 253 to provide the California Air Resources Board (CARB) until July 1, 2025 to issue implementing regulations, postponing the original deadline by six months, among other amendments to both SB 253 and SB 261. (Earlier during this legislative session, the Governor had asked the Legislature to consider delaying both the regulation and initial reporting timelines under SB 253 and SB 261 by two years.) The California Legislature also introduced Assembly Bill No. 2331 (AB 2331) to clarify aspects of the third law, including the initial reporting date, but the bill did not pass the Legislature before the close of the legislative session.

SULLIVAN & CROMWELL LLP

Companies in scope of the California climate disclosure laws should monitor (1) the California Governor's actions on SB 219 (the Governor has until September 30, 2024 to veto), (2) CARB's process in proposing and implementing regulations under SB 253, (3) any future legislative activities relating to the California climate disclosure laws (the next legislative session begins on December 2, 2024), and (4) the pending litigation challenging SB 253 and SB 261.

IMPLICATIONS OF SB 219

SB 219 includes amendments to both (1) SB 253, which requires U.S. companies with total annual revenues in excess of \$1 billion that do business in California to, on an annual basis, publicly disclose Scope 1 and 2 greenhouse gas ("GHG") emissions beginning in 2026 and Scope 3 GHG emissions beginning in 2027, and (2) SB 261, which requires U.S. companies (other than insurance companies) with total annual revenues in excess of \$500 million that do business in California to, beginning in 2026 on a biennial basis, publicly disclose climate-related financial risk in accordance with the Task Force on Climate-Related Financial Disclosures (TCFD) framework. SB 253 and SB 261 are currently the subject of litigation challenging their validity.²

SB 219 includes the following key changes to SB 253:

- **Delays CARB Rulemaking Deadline.** Whereas SB 253 imposes a January 1, 2025 deadline for CARB to adopt regulations to implement the new GHG emissions reporting requirements, SB 219 would postpone the deadline to July 1, 2025.
- **Initial Reporting Years Unchanged, but Provides Greater Flexibility to CARB to Set Reporting Date.** SB 219 did not amend the statutory language regarding the timing of the Scope 1 and Scope 2 reporting requirement, which will begin in 2026 on or by a date to be determined by CARB, or the initial reporting year of Scope 3 emissions, which will begin in 2027. However, whereas SB 253 provides for a lag of up to 180 days for Scope 3 reporting following Scope 1 and 2 reporting, SB 219 would provide CARB the discretion to determine the reporting date for Scope 3.
- **Allowing Consolidated Reporting.** SB 219 would allow reports to be consolidated at the parent company level under SB 253—if a subsidiary of a parent company qualifies as a reporting company under SB 253, the subsidiary is not required to prepare a separate report.

SB 219 contains certain other amendments to SB 253 and SB 261, including amendments allowing CARB the flexibility to determine whether or not to engage a third party "emissions reporting organization" to discharge certain responsibilities under these laws.

Attached are redlines showing the amendments to SB 253 and SB 261.

SB 219 will become law unless the Governor vetoes it on or before September 30, 2024.³ The Governor had expressed concerns regarding the timeline for SB 253 and SB 261 in his signing statement last year, opining that the implementation deadlines are likely infeasible and expressing concerns about potential financial impact on businesses.⁴ Rather than the six-month delay in implementing regulations contemplated by SB 219, the Governor had asked the Legislature to consider postponing both the regulation and reporting timelines by two years. Specifically, in June 2024, shortly after revising the state budget proposal for the

2024-2025 fiscal year to provide funding for SB 253 and SB 261, the Governor proposed a budget trailer bill that would postpone (1) the deadline for CARB regulations under SB 253 to January 1, 2027 from January 1, 2025, (2) initial TCFD-aligned reporting under SB 261 to 2028 instead of 2026, (3) initial Scope 1 and 2 emissions reporting to 2028 instead of 2026, and (4) initial Scope 3 emissions reporting to 2029 instead of 2027.⁵

STATUS OF AB 1305 AND IMPLICATIONS

During the 2023-2024 legislative session, the California Legislature also considered AB 2331, which was introduced to clarify AB 1305. Among other requirements, AB 1305 requires public disclosures from (1) companies operating in California that make net zero, carbon neutral or GHG-reduction claims and (2) companies that purchase, use, sell or market voluntary carbon offsets. However, neither AB 1305 nor its legislative record addressed when initial disclosures are required, leading to concerns that companies subject to the statute should be in compliance by January 1, 2024, when the statute became effective. As discussed in our prior publication,⁶ shortly after AB 1305 was enacted, Assemblymember Jesse Gabriel, the author of AB 1305, wrote a letter to the Chief Clerk of the Assembly expressing his intent that the first annual disclosure should be posted by January 1, 2025. A version of this letter was subsequently printed in the January 3, 2024 edition of California's Assembly Daily Journal.⁷ Although Assembly Daily Journal letters may, in some cases, be used as statements of legislative intent and to explain ambiguities, such letters do not have the force of law.

If it had been enacted, AB 2331 would have specified an initial reporting date—January 1, 2025 in the version that passed the Assembly in May 2024 and July 1, 2025 in the version that passed the Senate in August 2024—and amended other key provisions of AB 1305, such as the definition of voluntary carbon offsets. However, because AB 2331 failed to pass before the close of the 2023-2024 legislative session,⁸ none of the proposed amendments will be legally binding unless they are reintroduced and enacted during a future legislative session.

* * *

ENDNOTES

- 1 For additional information, see S&C's memo entitled California Enacts Expansive Climate-Related Disclosure Laws, https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/California-Enacts-Expansive-Climate-Related-Disclosure-Laws.pdf.
- 2 See *U.S. Chamber of Com. v. Cal. Air Res. Bd.*, No. 2:24-cv-801 (C.D. Cal. Jan. 30, 2024).
- 3 See Article IV, Section 10 of the California Constitution.
- 4 See Letter of Governor Gavin Newsom dated October 7, 2023, available at <https://www.gov.ca.gov/wp-content/uploads/2023/10/SB-253-Signing.pdf>.
- 5 See Cal. Dep't of Fin., Budget Trailer Bill (RN 24 188560), available at <https://trailerbill.dof.ca.gov/public/trailerBill/pdf/1148>.
- 6 See S&C's memo entitled Potential Timing Clarification for California's Voluntary Carbon Market Disclosures Act, https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/Potential-Clarification-Timing-California-AB-1305.pdf.
- 7 Letter from Jesse Gabriel, Member of the California State Assembly, 46th District, to Sue Parker, Chief Clerk of the Assembly, dated January 3, 2024, available at <https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/adj010324.pdf>.
- 8 On February 12, 2024, Assemblymember Jesse Gabriel, who authored AB 1305, introduced AB 2331 in the California State Assembly. Following multiple rounds of amendments, the bill passed in the Assembly on May 13, 2024. The California Senate made additional amendments to the bill, and passed a revised version on August 28, 2024. The final step for AB 2331 to pass the Legislature would have been a vote from the Assembly indicating concurrence in the Senate's amendments. However, the vote on concurrences did not take place before the close of the 2023-2024 legislative session.

SULLIVAN & CROMWELL LLP

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 900 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.

Appendix A
Comparison of Substantive Provisions of SB 253 against SB 219

Section 38532 of the Health and Safety Code is amended as follows:

38532.

(a) This section shall be known, and may be cited, as the Climate Corporate Data Accountability Act.

(b) For purposes of this section, the following terms have the following definitions:

(1) “Emissions reporting organization” means a nonprofit emissions reporting organization contracted by the state board pursuant to paragraph (23) of subdivision (c) that both:

(A) Currently operates a greenhouse gas emission reporting organization for organizations operating in the United States.

(B) Has experience with greenhouse gas emissions disclosure by entities operating in California.

(2) “Reporting entity” means 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 with total annual revenues in excess of one billion dollars (\$1,000,000,000) and that does business in California. Applicability shall be determined based on the reporting entity’s revenue for the prior fiscal year.

(3) “Scope 1 emissions” means all direct greenhouse gas emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities.

(4) “Scope 2 emissions” means indirect greenhouse gas emissions from consumed electricity, steam, heating, or cooling purchased or acquired by a reporting entity, regardless of location.

(5) “Scope 3 emissions” means indirect upstream and downstream greenhouse gas emissions, other than scope 2 emissions, from sources that the reporting entity does not own or directly control and may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products.

(c) (1) On or before ~~January~~July 1, 2025, the 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 of the reporting entity’s scope 1 emissions, scope 2 emissions, and scope 3 emissions. ~~The state board, and obtain an assurance engagement performed by an independent third-party assurance provider. Those regulations shall require the reporting entity to make the annual disclosure to either of the following:~~

(A) The emissions reporting organization, if contracted for services.

(B) The state board.

(2) The state board shall ensure that the regulations adopted pursuant to this subdivision require all of the following:

(A) (i) (I) That a reporting entity, starting in 2026 on or by a date to be determined by the state board, and annually thereafter on or by that date, publicly disclose to the emissions reporting

SULLIVAN & CROMWELL LLP

organization, if contracted for services, or the state board, all of the reporting entity's scope 1 emissions and scope 2 emissions for the reporting entity's prior fiscal year.

(II) That a reporting entity, starting in 2027 and annually thereafter, 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~~ on a schedule specified by the state board as part of the regulations developed pursuant to this subdivision for the prior fiscal year.

(ii) A reporting entity shall, beginning in 2026, measure and report its emissions of greenhouse gases in conformance with the Greenhouse Gas Protocol standards and guidance, including the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard and the Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard developed by the World Resources Institute and the World Business Council for Sustainable Development, including guidance for scope 3 emissions calculations that detail acceptable use of both primary and secondary data sources, including the use of industry average data, proxy data, and other generic data in its scope 3 emissions calculations.

(iii) Reports may be consolidated at the parent company level. If a subsidiary of a parent company qualifies as a reporting entity pursuant to paragraph (2) of subdivision (b), the subsidiary is not required to prepare a separate report.

~~(iiiiv)~~ (I) Starting in 2033 ~~and every five years thereafter~~, the state board may survey and assess currently available greenhouse gas accounting and reporting standards. At the conclusion of this assessment the state board may adopt a globally recognized alternative accounting and reporting standard if it determines its use would more effectively further the goals of this section. This review process shall include consultation with the stakeholders identified in paragraph (45).

(II) If the state board adopts an alternative accounting and reporting standard, the state board shall develop and adopt new regulations, pursuant to paragraph (1), to ensure full conformance with the new standard and reporting of ~~scopes~~ scope 1 emissions, scope 2 emissions, and scope 3 emissions and other requirements of this section.

~~(ivv)~~ During 2029 the state board shall review, and on or before January 1, 2030, the state board shall update as necessary, the public disclosure deadlines established pursuant to clause (i) to evaluate trends in scope 3 emissions reporting and consider changes to the disclosure deadlines to ensure that scope 3 emissions data is disclosed to the emissions reporting organization, if contracted for services, or the state board, as close in time as practicable to the deadline for reporting entities to disclose scope 1 emissions and scope 2 emissions data.

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

(B) That a reporting entity's public disclosure maximizes access for consumers, investors, and other stakeholders to comprehensive and detailed greenhouse gas emissions data across ~~scopes~~ scope 1 emissions, scope 2 emissions, and scope 3 emissions, as defined by this section, and is made in a manner that is easily understandable and accessible.

(C) That a reporting entity's public disclosure includes the name of the reporting entity and any fictitious names, trade names, assumed names, and logos used by the reporting entity.

(D) (i) That the emissions reporting is structured in a way that minimizes duplication of effort and allows a reporting entity to submit to the emissions reporting organization, if contracted for

SULLIVAN & CROMWELL LLP

[services, or the state board](#), reports prepared to meet other national and international reporting requirements, including any reports required by the federal government, as long as those reports satisfy all of the requirements of this section.

(ii) Reporting entities that are required to report mandatory industrial emissions pursuant to regulations adopted pursuant to Section 38530 may provide that data with the disclosure required pursuant to this section.

(E) That a reporting entity's disclosure takes into account acquisitions, divestments, mergers, and other structural changes that can affect the greenhouse gas emissions reporting, and is disclosed in a manner consistent with the Greenhouse Gas Protocol standards and guidance or an alternative standard, if one is adopted after 2033.

(F) (i) That a reporting entity obtains an assurance engagement, performed by an independent third-party assurance provider, of their public disclosure. The reporting entity shall ensure that a copy of the complete assurance provider's report on the greenhouse gas emissions inventory, including the name of the third-party assurance provider, is provided to the emissions reporting organization, [if contracted for services, or the state board](#), as part of or in connection with the reporting entity's public disclosure.

(ii) The assurance engagement for scope 1 emissions and scope 2 emissions shall be performed at a limited assurance level beginning in 2026 and at a reasonable assurance level beginning in 2030.

(iii) During 2026, the state board shall review and evaluate trends in third-party assurance requirements for scope 3 emissions. On or before January 1, 2027, the state board may establish an assurance requirement for third-party assurance engagements of scope 3 emissions. The assurance engagement for scope 3 emissions shall be performed at a limited assurance level beginning in 2030.

(iv) A third-party assurance provider shall have significant experience in measuring, analyzing, reporting, or attesting to the emission of greenhouse gasses and sufficient competence and capabilities necessary to perform engagements in accordance with professional standards and applicable legal and regulatory requirements. The assurance provider shall be able to issue reports that are appropriate under the circumstances and independent with respect to the reporting entity, and any of the reporting entity's affiliates for which it is providing the assurance report. During 2029 the state board shall review and, on or before January 1, 2030, shall update as necessary, the qualifications for third-party assurance providers based on an evaluation of trends in education relating to the emission of greenhouse gases and the qualifications of third-party assurance providers.

(v) The state board shall ensure that the assurance process minimizes the need for reporting entities to engage multiple assurance providers and ensures sufficient assurance provider capacity, as well as timely reporting implementation as required under clause (i) of subparagraph (A).

(G) (i) That a reporting entity, ~~upon filing its disclosure,~~ shall pay an annual fee to the state board for the administration and implementation of this section.

(ii) The state board shall set the fee established pursuant to clause (i) in an amount sufficient to cover the state board's full costs of administering and implementing this section. The total amount of fees collected shall not exceed the state board's actual and reasonable costs to administer and implement this section.

(iii) The proceeds of the fees imposed pursuant to clause (i) shall be deposited in the Climate Accountability and Emissions Disclosure Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the fund is

SULLIVAN & CROMWELL LLP

continuously appropriated to the state board and shall be expended by the state board for the state board's activities pursuant to this section and to reimburse any outstanding loans made from other funds used to finance the initial costs of the state board's activities pursuant to this section. Moneys in the fund shall not be expended for any purpose not enumerated in this section.

(iv) The state board may adjust the fee in any year to reflect changes in the California Consumer Price Index during the prior year.

(23) The state board ~~shall~~may contract with an emissions reporting organization to develop a reporting program to receive and make publicly available disclosures required by this section pursuant to paragraph (1).

(34) The state board may adopt or update any other regulations that it deems necessary and appropriate to implement this section.

(45) In developing the regulations required pursuant to this subdivision, the state board shall consult with all of the following:

(A) The Attorney General.

(B) Other government stakeholders, including, but not limited to, experts in climate science and corporate carbon emissions accounting and reporting.

(C) Investors.

(D) Stakeholders representing consumer and environmental justice interests.

(E) Reporting entities that have demonstrated leadership in full-scope greenhouse gas emissions accounting and public disclosure and greenhouse gas emissions reductions.

(56) This section does not require additional reporting of emissions of greenhouse gases beyond the reporting of scope 1 emissions, scope 2 emissions, and scope 3 emissions required pursuant to the Greenhouse Gas Protocol standards and guidance or an alternative standard, if one is adopted after 2033.

(d) (1) On or before July 1, 2027, the state board shall 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 emissions reporting organization, if contracted for services, or the state board, pursuant to subdivision (c) and the regulations adopted by the state board pursuant to that subdivision. In preparing the report, consideration shall be given to, at a minimum, greenhouse gas emissions from reporting entities in the context of state greenhouse gas emissions reduction and climate goals. The entity preparing the report shall not require reporting entities to report any information beyond what is required pursuant to subdivision (c) or the regulations adopted by the state board pursuant to that subdivision.

(2) The state board shall ensure the report required by this subdivision is posted publicly by either of the following:

~~(2A) The state board shall submit the report required by this subdivision to the~~ emissions reporting organization, if contracted for services, to be made publicly available on the digital platform required to be created by the emissions reporting organization pursuant to subdivision (e).

(B) The state board on its public internet website.

(e) (1) (A) The state board, or the emissions reporting organization, if contracted for services, on or before the date determined by the state board pursuant to clause (i) of subparagraph (A) of paragraph (42) of subdivision (c), shall create a digital platform, which shall be accessible to the public, that will feature the emissions data of reporting

SULLIVAN & CROMWELL LLP

entities in conformance with the regulations adopted by the state board pursuant to subdivision (c) and the report prepared for the state board pursuant to subdivision (d). The state board, or the emissions reporting organization, if contracted for services, shall make the reporting entities' disclosures and the state board's report available on the digital platform ~~within 30~~no later than 90 days ~~of~~after receipt.

(B) The digital platform shall be capable of featuring individual reporting entity disclosures, and shall allow consumers, investors, and other stakeholders to view reported data elements aggregated in a variety of ways, including multiyear data, in a manner that is easily understandable and accessible to residents of the state. All data sets and customized views shall be available in electronic format for access and use by the public.

(C) Any contract for services with a reporting organization shall be considered a noninformation technology services contract for procurement purposes.

(2) The emissions reporting organization, if contracted for services, or the state board, shall submit, within 30 days of receipt, the report prepared for the state board pursuant to subdivision (d) to the relevant policy committees of the Legislature.

(f) (1) Section 38580 does not apply to a violation of this section.

(2) (A) The state board shall adopt regulations that authorize it to seek administrative penalties for nonfiling, late filing, or other failure to meet the requirements of this section. The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings conducted pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations. The administrative penalties imposed on a reporting entity shall not exceed five hundred thousand dollars (\$500,000) in a reporting year. In imposing penalties for a violation of this section, the state board shall consider all relevant circumstances, including both of the following:

(i) The violator's past and present compliance with this section.

(ii) Whether the violator took good faith measures to comply with this section and when those measures were taken.

(B) A reporting entity shall not be subject to an administrative penalty under this section for any misstatements with regard to scope 3 emissions disclosures made with a reasonable basis and disclosed in good faith.

(C) Penalties assessed on scope 3 reporting, between 2027 and 2030, shall only occur for nonfiling.

(g) This section applies to the University of California only to the extent that the Regents of the University of California, by resolution, make any of these provisions applicable to the university.

(h) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Appendix B
Comparison of Substantive Provisions of SB 261 against SB 219

Section 38533 of the Health and Safety Code is amended as follows:

38533.

(a) For purposes of this section, the following definitions apply:

(1) “Climate reporting organization” means a nonprofit climate reporting organization contracted by the state board pursuant to ~~paragraph (2) of~~ subdivision (b) that both:

(A) Currently operates a climate reporting organization for organizations operating in the United States.

(B) Has experience with climate-related financial risk disclosure by entities operating in California.

(2) “Climate-related financial risk” means 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.

(3) “Climate-related financial risk report” means a report required by subdivision (b).

(4) “Covered entity” means a corporation, partnership, limited liability company, or other business entity formed under the laws of the 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 with total annual revenues in excess of five hundred million United States dollars (\$500,000,000) and that does business in California. Applicability shall be determined based on the business entity’s revenue for the prior fiscal year. “Covered entity” does not include a business entity that is subject to regulation by the Department of Insurance in this state, or that is in the business of insurance in any other state.

(b) (1) (A) On or before January 1, 2026, and biennially thereafter, a covered entity shall prepare a climate-related financial risk report disclosing both of the following:

(i) Its climate-related financial risk, in accordance with the recommended framework and disclosures contained in the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017) published by the Task Force on Climate-related Financial Disclosures, or any successor thereto, or pursuant to an equivalent reporting requirement as described in paragraph (43).

(ii) Its measures adopted to reduce and adapt to climate-related financial risk disclosed pursuant to clause (i).

(B) If a covered entity does not complete a report consistent with all required disclosures pursuant to clause (i) of subparagraph (A), the covered entity shall provide the recommended disclosures to the best of its ability, provide a detailed explanation for any reporting gaps, and describe steps the covered entity will take to prepare complete disclosures.

(2) Climate-related financial risk reports may be consolidated at the parent company level. If a subsidiary of a parent company qualifies as a covered entity pursuant to paragraph (4) of subdivision (a), the subsidiary is not required to prepare a separate climate-related financial risk report.

SULLIVAN & CROMWELL LLP

~~(3) The state board shall contract with a climate reporting organization to prepare a biennial public report on the climate-related financial risk disclosures required by this section.~~

(4) Notwithstanding paragraph (1), a covered entity satisfies the requirements of paragraph (1) if it prepares a publicly accessible biennial report that includes climate-related financial risk disclosure information by any of the following methods:

(A) Pursuant to a law, regulation, or listing requirement issued by any regulated exchange, national government, or other governmental entity, including a law or regulation issued by the United States government, incorporating disclosure requirements consistent with clause (i) of subparagraph (A) of paragraph (1), including the International Financial Reporting Standards Sustainability Disclosure Standards, as issued by the International Sustainability Standards Board.

(B) Voluntarily using a framework that meets the requirements of clause (i) of subparagraph (A) of paragraph (1) or the International Financial Reporting Standards Sustainability Disclosure Standards, as issued by the International Sustainability Standards Board.

(5) To the extent a climate-related financial risk report contains a description of a covered entity's greenhouse ~~gases~~ gas emissions or voluntary mitigation of greenhouse ~~gases~~ gas emissions, the state board may consider the covered entity's claims if those claims are verified by a third-party independent verifier.

(c) (1) On or before January 1, 2026, and biennially thereafter, a covered entity shall make available to the public, on its own internet website, a copy of the report required by this section.

(2) (A) On or before January 1, 2026, and annually thereafter, a covered entity shall pay a fee, ~~upon filing its disclosure,~~ to the state board for the administration and implementation of this section.

(B) (i) The state board shall set the fee described in subparagraph (A) at an amount adequate to cover the state board's full costs of administering and implementing this section. The total amount of fees collected shall not exceed the state board's actual and reasonable costs to administer and implement this section.

(ii) The state board may adjust the fee in any year to reflect changes in the California Consumer Price Index during the prior year.

(C) The proceeds of the fees imposed pursuant to this paragraph shall be deposited in the Climate-Related Financial Risk Disclosure Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the fund is continuously appropriated to the state board and shall be expended by the state board for the state board's activities pursuant to this section and to reimburse any outstanding loans made from other funds used to finance the initial costs of the state board's activities pursuant to this section. Money in the fund shall not be expended for any other purpose not described in this subparagraph.

(d) The state board may contract with a climate reporting organization ~~shall be contracted~~ to do all ~~any~~ of the following it deems appropriate:

(1) Biennially prepare a public report that contains all of the following elements:

(A) A review of the disclosure of climate-related financial risk contained in a subset of publicly available climate-related financial risk reports by industry.

(B) Analysis of the systemic and sectorwide climate-related financial risks facing the state based on the contents of climate-related financial risk reports, including, but not limited to, potential impacts on economically vulnerable communities.

SULLIVAN & CROMWELL LLP

(C) Identification of inadequate or insufficient reports.

(2) Regularly convene representatives of sectors responsible for reporting climate-related financial risks, state agencies responsible for oversight of reporting sectors, investment managers, academic experts, standard-setting organizations, climate and corporate sustainability organizations, labor union representatives whose members work in impacted sectors, and other stakeholders to offer input on current best practices regarding the disclosure of financial risks resulting from climate change, including, but not limited to, proposals to update the definition of “climate-related financial risk,” and the framework or disclosure standard of “climate-related financial risk reports” that meets the requirements of clause (i) of subparagraph (A) of paragraph (1) of subdivision (b).

(3) Monitor federal regulatory actions among agency members of the federal Financial Stability Oversight Council, as well as nonindependent regulators overseen by the White House.

(e) Any contract for services with a reporting organization shall be considered a noninformation technology services contract for procurement purposes.

(ef) (1) Section 38580 does not apply to a violation of this section.

(2) The state board shall adopt regulations that authorize it to seek administrative penalties from a covered entity that fails to make the report required by this section publicly available on its internet website or publishes an inadequate or insufficient report. The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings conducted pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations. The administrative penalties imposed on a reporting entity shall not exceed fifty thousand dollars (\$50,000) in a reporting year. In imposing penalties for a violation of this section, the state board shall consider all relevant circumstances, including both of the following:

(A) The violator’s past and present compliance with this section.

(B) Whether the violator took good faith measures to comply with this section and when those measures were taken.