

December 11, 2023

Potential Timing Clarification for California's Voluntary Carbon Market Disclosures Act

Author of the Legislation Clarifies His Intent to Require Initial Disclosures by January 1, 2025

SUMMARY

On October 7, 2023, California Governor Gavin Newsom signed the Voluntary Carbon Market Disclosures Act (AB 1305).¹ AB 1305 will impose website disclosure requirements on both (1) business entities that market or sell voluntary carbon offsets within California and (2) entities operating in California that make, among other claims, claims regarding the achievement of net zero emissions or “carbon neutrality,” including entities that purchase or use voluntary carbon offsets. The statute provides that the required disclosures must be “updated no less than annually.” Neither AB 1305 nor the legislative record addresses when the initial disclosures are required, leading to concerns that companies subject to the statute will need to make their initial website disclosures by January 1, 2024, the effective date of the statute.²

On December 6, 2023, a letter from Assemblymember Jesse Gabriel, the author of AB 1305, to the Chief Clerk of the California Assembly was made public. The letter states that, while AB 1305 does not specify the date on which the first set of disclosures must be posted to a company's website, it was Assemblymember Gabriel's intent that the first annual disclosure should be posted by January 1, 2025.³ The letter further explains that this January 1, 2025 deadline “provides reporting entities with sufficient time to align their business practices with the stated objectives of AB 1305 prior to being subject to potential civil fines.” Assemblymember Gabriel also stated in this letter that he intends to “submit a formal letter to the Assembly Daily Journal when the State Assembly reconvenes on January 3, 2024.”

Assemblymember Gabriel's recent letter does not have the force of law, but may provide some comfort that the Assembly, whether through a subsequent formal letter approved and published in the Assembly Daily Journal or other formal action may clarify the timing required for initial disclosures under AB 1305.⁴

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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 Under California law, a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute, unless otherwise specified. See California Constitution, Article 4, Section 8(c); and California Government Code, Section 9600(a).
- ³ Letter from Jesse Gabriel, Member of the California State Assembly, 46th District, to Sue Parker, Chief Clerk of the Assembly, dated November 30, 2023, *available at* <https://www.politico.com/f/?id=0000018c-3b62-d0ce-a98c-7f6a88a50000>.
- ⁴ Assembly Daily Journal letters may, in some cases, be used as statements of legislative intent and to explain ambiguities. The California Supreme Court has held that an Assembly Journal letter is admissible on the issue of legislative intent “when it is a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than merely an expression of personal opinion.” Additionally, “the statement of an individual legislator has also been accepted as a statement of legislative intent when it gave some indication of arguments made to the Legislature and was printed upon motion of the Legislature as a ‘letter of legislative intent.’” (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699–701, 170 Cal.Rptr. 817, 621 P.2d 856; accord, *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 377, 20 Cal.Rptr.2d 330, 853 P.2d 496; *Delaney v. Superior Court*, supra, 50 Cal.3d at pp. 800–801, fn. 11, 268 Cal.Rptr. 753, 789 P.2d 934; and *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590, n.9.). Gabriel’s recent letter, which has not been published in the Assembly Daily Journal, would not meet the standards of admissibility established by these cases, since the letter does not contain a “reiteration of legislative discussion and events leading to adoption” of AB 1305. It is unclear whether the formal letter Assemblymember Gabriel intends to submit to the Assembly Daily Journal would meet the standards of admissibility established by these cases.

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