CALIFORNIA CLIMATE DISCLOSURE RULES:

Briefing Toolkit

watchwire
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CALIFORNIA TAKES THE LEAD IN CLIMATE REPORTING

California recently passed two landmark climate disclosure rules, SB 253 and SB 261, this past September, with Governor Newsom officially signing them into law on October 7, 2023. These two bills are part of the state's Climate Accountability Package. With the enactment of these new laws and the SEC climate-related reporting rules still pending finalization, California has demonstrated its preemptive first-mover effect by boldly taking the lead in pushing for corporate climate responsibility in the U.S. The bills ultimately require large companies that do business in California to report on scope 1,2, and 3 emissions and to disclose climate-related financial risk, making them the most extensive laws of their kind to date in America with potential impacts for thousands of companies.

COMPARISON TO THE SEC RULES

Although there have been two major federal proposals for climate disclosure—the Securities and Exchange Commission's (SEC) proposed climate disclosure rule and a federal proposal to require major government suppliers and contractors to disclose emissions—both have yet to achieve finalization. The California framework would join the European Union Corporate Sustainability Reporting Directive (CSRD), which requires companies to report on material sustainability impacts.

It is important for covered entities, as well as those that may see extraterritorial effects of the ruling, to know that **SB 253 sweeps more broadly in scope than the SEC proposal in some significant respects:**

- ***Public and Private Companies:*** SB 261 and SB 253 apply to partnerships, private corporations, and limited liability companies. In contrast, the proposed SEC rule only applies to publicly listed or traded companies.
- ***Scope 3 Emissions:*** SB 253 requires disclosure of all Scope 3 emissions. The proposed SEC rule would require disclosure of Scope 3 emissions only if material, or if the registrant had set a target or goal including Scope 3 emissions.

SEC chair Gensler acknowledged California's new greenhouse gas emissions reporting laws would change the starting point for companies eventually reporting to the SEC - lawyers are now saying it may even mean they make more, higher-stakes disclosures to the federal regulator than they would have otherwise. The CA rules may also serve as a shield against likely legal challenges to the federal rules. Even if the federal rules are successfully challenged in litigation, entities that participate in the California market will face major reporting obligations anyway.

CLIMATE CORPORATE DATA ACCOUNTABILITY ACT: SB 253 BILL

ABOUT THIS LEGISLATION

SB 253 requires certain companies to report **direct emissions from operations (scope 1), indirect emissions from energy use (scope 2), and indirect upstream and downstream supply-chain emissions (scope 3 emissions).**

PROCEDURES:

- Reporting should adhere to the Greenhouse Gas Protocol standards, and all data should be assured or verified by an independent and experienced third-party provider.
- These reports must be submitted to the California State Air Resources Board (CARB) and reporting entities will need to pay a fee for CARB's implementation efforts.

COVERED ENTITIES:

Under Bill 253, any company with greater than $1 billion in annual revenue and does business in the state is obligated to comply and publicly file reports on a yearly basis. This accounts for approximately 5500 companies.

TIMELINE FOR COMPLIANCE:

Starting in 2026, subject companies will have to report scope 1 and scope 2 emissions from the prior fiscal year (data should be collected throughout the year in 2025). Starting in 2027, subject companies will have to report scope 3 emissions from the prior fiscal year.

PENALTIES:

Subject companies that fail to file, file late, or otherwise violate these provisions may face up to $500,000 per year in penalties and only through a formal administrative hearing process. Companies will only face immediate financial penalties if they fail to file the report but will not face financial penalties for non-compliance with emissions standards until 2030. Factors impacting the ultimate penalty include whether the company undertook good faith measures to comply, and the company's past and present compliance.

PURPOSE AND CONTEXT:

The law declares that current voluntary corporate disclosures "lack the full transparency and consistency needed by residents and financial markets to fully understand these climate risks," and explains that Californians "have a right to know about the sources of carbon pollution. . . in order to make informed decisions." 2023 has seen a worldwide consensus take place when it comes to embracing climate disclosure requirements as an important legal tool in driving stronger emission reductions. With the the European Union finalizing the European Sustainability Reporting Standards (ESRS) under the CSRD, and the ISSB releasing their SFRS standards, the effort to consolidate, standardize, and regulate the frameworks for reporting is solidly underway. SB 253 is the first corporate GHG emissions disclosure law to go into effect in the United States.

SUMMARY OF KEY PROVISIONS

- **Public *and* private companies are covered**: SB 253 applies to partnerships, private corporations, and limited liability companies.
- **It will impact thousands of companies:** The Assembly and Senate Floor Analyses estimate that SB 253 will cover 5,344 entities.
- **Interoperability between standards:** Like the federal proposals, SB 253 builds upon established standards, including the GHG Protocol and TCFD.
- **Flexibility with Scope 3 emissions:** In addition to a later compliance date, misstatements of Scope 3 emissions cannot give rise to a penalty through 2030, and even afterward, a reporting entity cannot be subject to penalties for good-faith disclosures. The law also provides CARB with significant discretion and flexibility to adjust implementation details as Scope 3 best practices evolve in the coming years.

CLIMATE-RELATED FINANCIAL RISK ACT: SB 261

ABOUT THIS LEGISLATION

SB 261 requires certain companies to prepare and submit climate-related financial risk reports that describe **(1) their climate-related financial risks in line with the Task Force on Climate-Related Financial Disclosure (TCFD) framework and (2) measures they have adopted to mitigate and adapt to that risk.**

PROCEDURES:

These reports must be submitted to the California State Air Resources Board and published on the company website. Covered entities must make their biennial reports publicly available on their websites. The bill also requires that the California Air Resources Board (CARB) contract with a non-profit climate reporting organization to prepare a biennial public report on the climate-related financial risk disclosures made during that period and identify any inadequate or insufficient reports.

COVERED ENTITIES:

Under bill 261, any company making at least $500 million a year and that does business in the state is obligated to comply and prepare biennial reports.

TIMELINE FOR COMPLIANCE:

Subject companies need to file every 2 years, with the first report being due in January 2026.

PENALTIES:

Subject companies that fail to report may face administrative penalties of up to $50,000 per year. Factors impacting the ultimate penalty include whether the company undertook good faith measures to comply, and the company's past and present compliance.

PURPOSE AND CONTEXT:

The law states that the impacts of climate change, such as wildfires, sea level rise, extreme weather events, and extreme droughts, are affecting California's communities and economy, and that the "failure of economic actors to adequately plan for and adapt to climate-related risks to their businesses and to the economy will result in significant harm" to the state, particularly to financially vulnerable residents and communities. These public reporting requirements are designed to ensure accountability and standardize data availability or climate risk information that has historically been incomplete or misleading.

SUMMARY OF KEY PROVISIONS

- **Public and private companies are covered:** Like SB 253, SB 261 applies to corporations, partnerships, and limited liability companies. Insurance companies are exempt from the law.
- **It will impact thousands of companies:** The Assembly and Senate Floor Analyses estimate that more than 10,000 companies exceed this threshold.
- **The definition of climate-related financial risk:** The bill defines climate-related financial risk to mean "material risk of harm to immediate and long-term financial outcomes due to physical and transition risks..." The bill provides that such risks include, but are not limited to, "risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, the financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health." This definition is similar to the SEC definition of risk.
- **Anticipation of future regulatory action:** Covered entities are deemed to satisfy the bill's disclosure requirements if they prepare a report that includes risk disclosure information in compliance with "a law, regulation, or listing requirement issued by a regulated exchange, national government, or other governmental entity" whose disclosure requirements are consistent with those in SB 261, including IFRS Sustainability Disclosure Standards issued by the ISSB.

RELEVANCE, SIGNIFICANCE, & IMPACT

01 Reflecting Voluntary Disclosure Trends

Many large public companies in the U.S. now issue some form of sustainability report, adhering to voluntary standards and frameworks such as SASB, GRI, CDP, TCFD, UN SDGs, etc. It is likely that even without the threat of regulation, voluntary disclosure would continue scaling in its usage by companies due to quasi-mandated investor pressure. However, regulation is intended to serve as a standardization mechanism of information that is already being seen as financially relevant by market forces.

02 Value Chain Impact

The inclusion of scope 3 reporting for SB 253 subject companies will lead to increased pressure throughout value chains for scope 1 and 2 emissions disclosures, as these help larger companies create more accurate scope 3 emission footprints. This could result in an outsized impact on smaller companies that otherwise would not be required to report on their emissions.

03 Protection from Risk

In 2023, we have observed the scaling frequency and impacts of climate change-related disaster events, from deadly wildfires, severe hurricanes, and flooding events, to extreme heat waves. Increasing billion-dollar disaster events and rising insurance premiums to match are the catalysts for rule SB 261 and the increasing recognition of the importance of understanding climate-related risk and accelerating effective mitigation. This bill is the first mandatory climate-related risk disclosure law to go into effect in the United States. It aims to safeguard consumers and investors from losses resulting from climate-related disruptions to supply chains, workforces, and infrastructure, which are increasing due to the effects of climate change.

04 The California Effect

Because of California's outsized influence on the global economy as they are poised to be "the fourth largest economy" in the world, they promise to shape business practices well beyond the borders of the state. California has long been at the forefront of environmental initiatives. From pioneering fuel efficiency standards for cars to passing these laws, the state sets the bar high for corporate and environmental responsibility. Every corporation must comply, whether headquartered in California or simply operating there, and now with the ruling extending requirements to private companies, the range of disclosure impacts will scale tremendously. In the U.S. Companies as varied as Apple and United Grocers, obviously have to comply. So do the Netherlands-based Ikea and New York-based Eileen Fisher, which sell products as varied as furniture and clothing to California companies and consumers.

05 Encouraging Emissions Reductions

Supporters of the package contend that enhanced accountability will contribute to reducing the carbon footprint of large corporations, which are the major emitters of greenhouse gasses as consumers and regulators will be able to readily identify companies that are falling behind and encourage them to take climate action. If a business is already measuring and disclosing its GHG emissions, the proposed reporting framework will highlight those initiatives.

TIPS TO SUCCEED

Key Activities to Prepare for SB 253

ACCURATELY CALCULATE AND TRACK EMISSIONS

REGULARLY REPORT EMISSIONS TO INVESTORS AND REGULATORY BODIES

DEVELOP AND MANAGE A STRATEGY TO REDUCE THOSE EMISSIONS

Stay Apprised of Changes:

The Governor has indicated that the bills may undergo further cleanup of language and some technical corrections to enhance the discretion and flexibility for CARB to implement the new law. One clarification to be on the lookout for is the definition of “doing business” in California, one of the criteria that must be met for companies that need to comply. As the legislative text is currently written, the meaning of this is not yet clear (The State of California Franchise Tax Board has a definition that could be used). As with other details, the CARB implementing regulations will provide further details on this going forward. It seems likely, however, based on the existing standards as set forth above, that the bar for “doing business in California” could be quite low.

Know your Timelines:

If you’re a large company operating in California, you will need to begin gathering emissions data at the start of 2025 in order to meet reporting requirements in 2026.

Conduct a Gap Analysis:

Many companies already prepare voluntary sustainability reports. Utilizing these reports as a baseline, companies should evaluate the gaps where their current content and reporting processes do not meet new requirements. identify how you will address the gaps to comply and prioritize the areas that will need the most attention to collect more data or conduct further analysis.

Get Audit Ready:

California disclosures will demand added rigor and accuracy in reporting and will be subject to third-party assurance requirements (limited assurance initially, then reasonable assurance). As we move from a voluntary reporting landscape to a regulated one, emissions data will be treated in a similar manner to financial data. In order to comply with the GHG Protocol, Climate disclosures should be traceable at a granular level to each transaction, emission factor, calculation, and accounting method. Companies need to engage a qualified assurance provider and integrate the new disclosures into their internal control processes.

Use Reliable Carbon Accounting Software:

Being able to count on an automated platform with clear metrics, defensible reporting, robust modeling, and identifiable risk and reduction targets is key.

Lean on voluntary disclosures:

If you’ve reported to CDP, or created internal sustainability reports in line with TCFD, SASB, or GRI you are at least part way there. Because the SEC ruling is in part based on guidance from the TCFD, reviewing this framework and all the resources they have to offer is a great place to start.

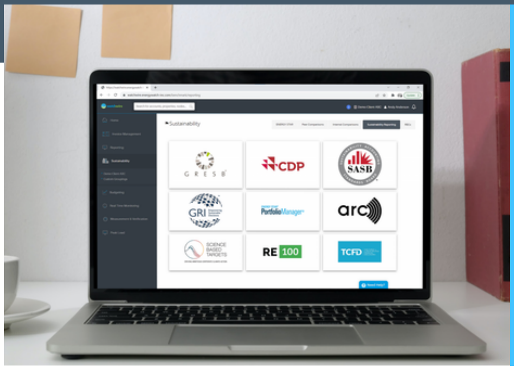
Managing Carbon Accounting Data

Carbon Accounting requires access to accurate real-time and historical energy data that can be traced back to the source, easily audited for compliance, and rooted in international standards for GHG emissions factors. Spreadsheets and Excel are most likely not enough when trying to run data-accurate calculations across multiple business operations and with differing sources of emissions. The enhanced liability risk, and productivity loss associated with older methods of calculation necessitate outsourcing the management and collection of GHG data by a cloud-based software entity.

HOW CAN WATCHWIRE HELP?

It will be nearly impossible to comply with the California Disclosure rules without using unifying technology and a platform that facilitates the collection of data, calculates the carbon metrics the law is asking for, and reports investor-grade data within multiple areas, ready for audit scrutiny. Here is where WatchWire can help.

- Energy, utilities, sustainability, and emissions data is automatically collected through real-time metering and organized all in one place
- GHG emissions tracking
- Goal tracking (e.g. Net Zero, SBTi, waste diversion)
- Carbon offset view of power purchases from the grid vs. on-site renewables generated vs. off-site RECs
- Making it easy to work with external assurance agencies and auditors with quality data collection
- Opportunities to implement projects (track EEMs) and monitor distributed energy resource production (e.g. on-site solar)



Tango Energy & Sustainability by WatchWire is a market-leading, energy and sustainability data management platform that uses cloud-based software to collect, automize, and analyze utility, energy, and sustainability data metrics. WatchWire streamlines, automates, and standardizes your sustainability reporting process by integrating directly and/or providing reporting exports to ENERGY STAR Portfolio Manager, LEED Arc, GRESB, CDP, SASB, GRI, and more. The platform provides customizable dashboards, which allow asset managers, sustainability managers, engineers, and more to monitor individual key performance indicators (KPIs) and create custom views for specific use cases. Tango Energy & Sustainability provides:

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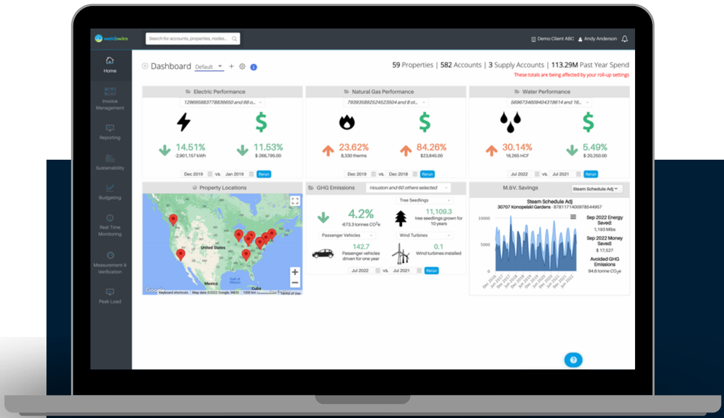
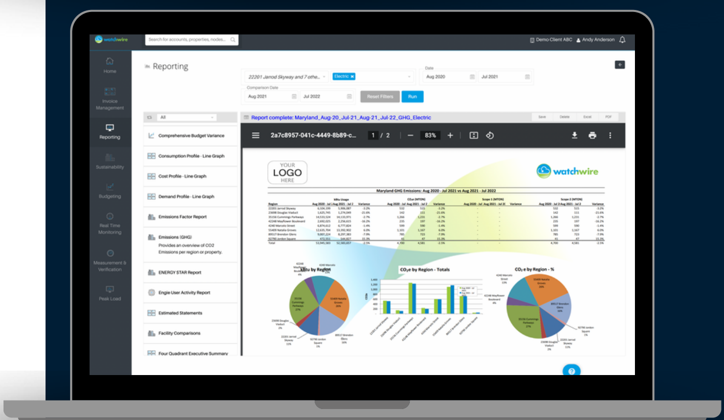
CARBON ACCOUNTING



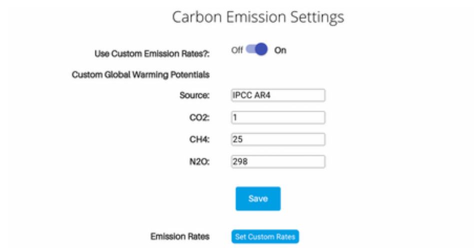


OTHER FEATURES

- Automated, cloud-based data capture & storage of utility, waste, energy, & sustainability data that eliminates spreadsheet usage
- Easy to decipher charts, graphs, and data visualization
- Collecting real-time meter, interval, and billing data that prioritizes a single source of truth
- Making it easy to work with external assurance agencies and auditors with quality data collection and our built-in auditing systems
- Global coverage with multi-currency and multi-metric reporting

EMISSIONS INVENTORY:

Automate data acquisition, track GHG emissions, maintain and update custom emissions factors, allow customization where desired such as with scope 2 market-based (or location-based) factors, on demand carbon inventory



DECARBONIZE:

- Identify underperforming assets through building performance metrics and **benchmarking facilities and buildings against each other.**
- Help with renewable energy procurement, and track onsite DERs (e.g. solar), RECs, and offsets within our system.
- **Track GHG emissions**, maintain and update custom emissions factors, and customize where desired such as with scope 2 market-based (or location-based) factors, on-demand carbon inventory

TRACK GOALS:

- Add absolute or intensity metrics with predetermined benchmarks or KPIs, track monthly or annually, add baselines and target year, real time monitoring

REPORT TO GRESB, GRI, SBTI, CDP, & OTHER FRAMEWORKS:

- Compatible integrations with main reporting schemas, advice on reporting, and customizable financial grade report generation. As one of the most active ENERGY STAR service providers in the industry, WatchWire has a bi-directional integration with Portfolio Manager. We push and pull data to and from Portfolio Manager to automate reporting and compliance!

ACKNOWLEDGEMENTS

Sources

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- https://www.whitecase.com/insight-alert/california-bills-require-greenhouse-gas-emissions-reporting-companies-doing-business
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- https://www.insideenergyandenvironment.com/2023/09/california-legislature-passes-landmark-climate-disclosure-laws-spotlight-on-sb-253/
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About WatchWire By Tango

WatchWire is a sustainability and energy management software-as-a-service (EMSaaS) provider. Across the globe, WatchWire helps commercial and corporate real estate portfolios, Fortune 500 industrial/manufacturing and big-box retail, government, healthcare, and educational facilities reduce emissions and expenses while simplifying sustainability and carbon reporting.

Learn more at http://watchwire.ai