

Insights

CALIFORNIA INDICATES LENIENT ENFORCEMENT IN FIRST YEAR OF CLIMATE REPORTING LAW

Dec 13, 2024

As we previously reported, in 2023, California enacted the climate disclosure laws SB 253 (the “Climate Corporate Data Accountability Act”) and SB 261 (the “Climate-Related Financial Risk Act”), with the first disclosures due in 2026. BCLP also reported on the September 2024 amendments to **SB 253** and **SB 261**, which provided the California Air Resources Board (“CARB”) with an additional six months to promulgate its regulations (now due July 1, 2025), shortening the time between issuance of the regulations and the deadlines for reporting.

On December 5, 2024, CARB announced via an enforcement notice that it “will not take enforcement action for incomplete reporting” under **SB 253** during its first year of implementation in 2026, as long as reporting entities make a good-faith effort to comply and retain data relevant to emissions reporting for the prior fiscal year.

In the enforcement notice, CARB stated that it “recognizes that companies may need some lead time to implement new data collection processes to allow for fully complete scope 1 and scope 2 emissions reporting, to the extent they do not currently possess or collect the relevant information.” CARB will therefore allow reporting entities to submit scope 1 and scope 2 emissions from their prior fiscal year that can be determined from information the reporting entity already possessed or was already collecting at the time the enforcement notice was issued—i.e., as of December 5, 2024.

CARB will “exercise enforcement discretion for the first reporting cycle,” the agency stated, and “will not take enforcement action for incomplete reporting” on the condition that “entities demonstrate good faith efforts to comply with the requirements of the law,” are “actively working toward full compliance,” and “retain all data relevant to emissions reporting for the entity’s prior fiscal year.” CARB will provide details on reporting for subsequent-year reporting cycles as part of its rulemaking process.

PENDING LEGAL CHALLENGE

The recent legislative activity and enforcement notice are playing out against the backdrop of a judicial challenge to **SB 253** and **SB 261**, *Chamber of Commerce of the United States, et al v. Randolph, et al.*, C.D. Cal. No. 2:24-cv-00801-FMO-PVC. The lawsuit, which was filed in early 2024,

contests the constitutionality of the measures on the basis that they compel speech on a controversial and non-commercial issue, fail to meet strict scrutiny, and exceed California's jurisdictional authority.

In November 2024, Judge Otis Wright of the Central District of California denied for now the Chamber's summary judgment motion seeking to have the laws declared unconstitutional, and instead granted California's motion to defer summary judgment until after discovery. Judge Wright held that the First Amendment applies to these laws, but that further factual development is necessary to determine the appropriate level of scrutiny to apply.

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