Environment, Land Use & Natural Resources ADVISORY ■

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California Bill to Require Emissions Reporting, but What Does This Mean for Businessess?

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California's SB 253 is on its way to the governor's desk. If signed, the Climate Corporate Data Accountability Act (CCDAA) will require companies with more than $1 billion in gross annual revenue doing "business in California" to annually report its Scopes 1, 2, and 3 greenhouse gas (GHG) emissions. Companies meeting this threshold will have to publicly report all emissions directly generated by the company (Scope 1), indirectly generated through energy consumption (Scope 2), and generated because of company activity (Scope 3) to the California Air Resources Board (CARB). The CCDAA is noteworthy in GHG emissions reporting requirements because it will require companies to report Scope 3 emissions, which are notoriously difficult to calculate.

Who is subject to the CCDAA?

The CCDAA will apply to companies, partnerships, and LLCs that exceed $1 billion in gross revenue from the previous fiscal year that do business in California. The Act itself does not define what it means to "do business in California," but other areas of California law shed light on what this requirement may mean. The California Tax Board defines doing business as: (1) engaging in "any transaction for the purpose of financial gain" within the state; (2) if the entity is "organized or commercially domiciled" in the state; or (3) if "California sales, property or payroll exceed" specified amounts.

Other areas of the California Tax Code define "doing business" as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." These definitions indicate that companies may be subject to these reporting requirements even without a physical presence in California, but that not all contacts with California will rise to the level of doing business.

How does the CCDAA work?

GHG emissions will need to be calculated using the GHG Protocol Corporate Accounting and Reporting Standard and the GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard, developed by the World Resources Institute and World Business Council for Sustainable Development, which are already widely used by companies on a volunteer basis as the de facto standard. The CCDAA will require companies to obtain third-party assurances of disclosed GHG emissions. The CCDAA requires these third parties to have "significant experience in measuring, analyzing, reporting, or attesting" GHG emissions and have the capacity to meet the increased demands of companies seeking assurances of disclosures. The CARB is responsible for updating the required qualifications for third-party assurance providers beginning in 2029 based on trends in GHG emissions reporting.

While the CCDAA will eventually require the disclosure of all GHG emissions, it does provide some flexibility with a ramp-up approach. Companies will need to reach at least a "limited assurance level" in reporting Scopes 1 and 2 emissions starting in 2026 and a "reasonable assurance level" starting in 2030. Scope 3 emissions reporting will need to reach a "limited assurance level" beginning in 2030. These disclosures will be publicly available on the CARB's digital platform within 30 days of their disclosure. The CCDAA aims to make GHG emissions data more transparent and accessible for California residents by compiling it into an online forum that makes the data easily searchable.

Companies will have to pay an annual fee to the CARB with their disclosures. Failure to follow the CCDAA could result in administrative penalties of up to $500,000 for non-filing, late filing, or failure to meet disclosure requirements. The Act does, however, exempt companies from administrative penalties for erroneously reporting their Scope 3 emissions until 2030.

When will the CCDAA take effect?

The CCDAA proposes that by January 1, 2025, the CARB will have developed and implemented regulations to explain to companies how they must follow the CCDAA disclosure requirements. Companies will then have one year to prepare for the required disclosures. By 2026, companies must publicly disclose emissions data for Scopes 1 and 2 emissions annually. Then, by 2027, Scope 3 emissions must also be included in the annual report within 180 days of disclosing Scopes 1 and 2 emissions.

Recommendations and Key Takeaways

- Companies that are likely subject to these new disclosures under the CCDAA should begin preparing to disclose Scopes 1, 2, and 3 emissions following the applicable GHG Protocol standards.
- Before the official rulemaking docket, companies should begin preparing to comment on the CCDAA's "do business in California" triggering language and the qualifications for "reasonable" and "limited" assurance levels.
- The SEC may finalize a rule requiring the disclosure of Scopes 1, 2, and 3 emissions by the end of this year that may overlap with the CCDAA, so companies should be aware that similar GHG emissions disclosures may become more widely required.

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