

Business Law

California's Climate Disclosure Requirements: An Overview of Senate Bills 253 and 261

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California's new climate disclosure requirements, Senate Bill 253 ([SB 253](#)) and Senate Bill 261 ([SB 261](#)), could significantly impact California's agriculture industry. California Governor Gavin Newsom [signed](#) the bills into law on October 7, 2023, intending to increase climate transparency and accountability. The laws are the [first of their kind](#) in the United States. They will require companies doing business in California to disclose their greenhouse gas emissions and climate-related financial risks. Together, the laws will significantly affect companies across the globe who conduct business in the state, which is [poised to become](#) the world's fourth-largest economy.

SB 253

[SB 253](#), the *Climate Corporate Data Accountability Act*, will mandate disclosure of greenhouse gas emission data by all U.S. business entities whose total annual revenues exceed one billion dollars and "do business in California." SB 253 SEC. 2(b)(2). SB 253 does not define the term "do business in California," but other California statutes define the term very broadly. For example, under California's Corporations Code, a company does business in California by "entering into repeated and successive transactions of its business in [the] state, other than interstate or foreign commerce." [Cal. Corp. Code §191\(a\)](#). The Revenue and Taxation Code defines "doing business" as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." [Cal. Rev. & Tax. Code §23101\(a\)](#). While SB 253 does not define "do business in California," future implementing regulations might do so. In the meantime, absent a definition, the plain meaning applies. Thus—arguably—any company with an annual revenue of \$1 billion or more, regardless of where it locates its headquarters or conducts most of its business, is subject to SB 253 if it does *any* business in California.

Businesses will have to [report](#) Scope 1 emissions (direct greenhouse emissions) and Scope 2 emissions (indirect greenhouse emissions) starting in 2026 and Scope 3 emissions (indirect upstream and downstream greenhouse emissions) starting in 2027. SB 253 does not limit the emissions reports to California operations. Companies must report their Scope 1, 2, and 3 greenhouse gas emissions "from sources that a reporting entity owns or directly controls, *regardless of location...*" SB 253 at SEC. 2(b)(3) (emphasis added). This is a significant requirement, as covered entities must track and report on their emissions worldwide. SB 253 will apply to an [estimated](#) 5,300 companies.

SB 261

[SB 261](#), the *Greenhouse Gases: Climate-related Financial Risk Act*, will require companies with more than \$500 million in annual revenues to disclose their [climate-related financial risks](#) and measures they have adopted to reduce and adapt to those risks. Like SB 253, the act will apply to all public and private companies above the revenue threshold doing business in California. The law requires companies to prepare their reports following the Task Force on Climate-related Financial Disclosures ([TCFD](#)) [framework](#), with the first disclosures [due](#) in 2026. The [statement](#) will disclose a company's climate-related financial opportunities and risks in a standardized format. The TCFD framework is global in scope and applies to a business's total operations, regardless of location. SB 261 will affect an [estimated](#) 10,000 companies.

Constitutional Concerns

The broadness of California's legislation reaching beyond the state has raised some constitutional concerns. As Supreme Court Justice Brett Kavanaugh pointed out in a recent dissent: "California's novel and far-reaching regulation...may foreshadow a new era where States shutter their markets to goods produced in a way that offends their moral or policy preferences—and in doing so, effectively force other States to regulate in accordance with those idiosyncratic state demands." *Nat'l Pork Producers Council v. Ross*, 143 S. Ct. 1142, 1174 (2023) (Kavanaugh, B., dissenting).

However, thus far, the Supreme Court has held that extensive extraterritorial impacts of California state laws are not unconstitutional if there is no intent to discriminate against out-of-state economic interests to the advantage of in-state interests. The Court has recognized that much of California's legislation will naturally affect out-of-state businesses. As Justice Neil Gorsuch responded to the dissenting opinion, "Justice Kavanaugh...says the quiet part aloud: California's market is so lucrative that almost any in-state measure will influence how out-of-state profit-maximizing firms choose to operate." *National Pork*, at 1163-1164. As long as California businesses must comply with the same regulations as nationwide competitors, the Court does not consider the law discriminatory. If a state law is nondiscriminatory, the Supreme Court presumes it is valid "unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Future challenges to regulations like California's SB 253, SB 261, and others will likely turn on this balancing test from the *Pike* decision.

Implications

Together, California's new disclosure rules will have "[national and global repercussions](#)" on the operations and supply chains of companies doing business in California, especially in the agriculture industry, which is a significant contributor to greenhouse gas emissions. The bills aim to enable stakeholders to make [informed decisions](#) about where to invest and what products to buy. Proponents claim the bills could [reduce greenhouse gas emissions](#) and lead to more investments in clean energy. However, the increased transparency around corporate emissions comes at a cost: Initial [estimates](#) indicate affected companies will have to pay more than \$600,000 per report they file annually. The laws also contain significant penalties for non-compliance. As written, SB 253 provides for penalties not to exceed [five hundred thousand dollars](#) in a reporting year, while SB 261 includes fines of up to [fifty thousand dollars](#) in a reporting year.

Business groups have argued the bills will lead to increased litigation, regulation, and higher costs that companies will [pass on](#) to consumers. The new climate disclosure requirements could significantly impact California's agriculture industry, increasing transparency and accountability while potentially increasing costs and regulatory burdens.

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