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INSIGHT · CORPORATE GOVERNANCE

Q4 2023 Legal Review: California's Climate Disclosure Acts (SB 253 & SB 261) and Corporate Fiduciary Duties

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California SB 253 and SB 261 mandate extensive Scope 1, 2, and 3 greenhouse gas emissions reporting for large corporations doing business in California.

In the fourth quarter of 2023, Governor Gavin Newsom signed into law Senate Bills 253 and 261, enacting the Climate Corporate Data Accountability Act and the Climate-Related Financial Risk Act. By imposing mandatory Scope 1, Scope 2, and Scope 3 greenhouse gas emissions reporting on major corporations doing business in California, the legislation established the most stringent corporate environmental transparency regime in the United States.

I. The Statutory Architecture of SB 253 & SB 261

Senate Bill 253 (Health & Safety Code § 38532) applies to all public and private U.S. corporations, partnerships, and LLCs with total annual revenues exceeding $1 billion that 'do business in California.' Covered entities must annually measure and publicly disclose:

1. **Scope 1 Emissions:** Direct emissions from operations, facilities, and vehicle fleets.
2. **Scope 2 Emissions:** Indirect emissions from purchased electricity, heating, and cooling.
3. **Scope 3 Emissions:** Supply chain emissions, including vendor operations, employee travel, and end-user product lifecycle.

SB 261 (Health & Safety Code § 38533) applies to entities with revenues exceeding $500 million, requiring biennial reporting aligned with the Task Force on Climate-Related Financial Disclosures (TCFD) framework.

II. Constitutional Challenges Under the First Amendment & Dormant Commerce Clause

Immediately following enactment, the U.S. Chamber of Commerce and business organizations challenged the legislation in the Central District of California (*Chamber of Commerce v. CARB*), asserting two primary constitutional claims:

- **Compelled Speech:** Arguing that requiring companies to disclose subjective Scope 3 supply chain estimates constitutes unconstitutional compelled commercial speech under the First Amendment.
- **Dormant Commerce Clause:** Claiming that California is improperly projecting its regulatory authority extraterritorially over economic activity occurring entirely outside the state.

III. Corporate Governance & Supply Chain Diligence

For corporate directors and general counsel, the California climate mandates created immediate compliance obligations:

- **Board Oversight & Fiduciary Duties:** Corporate boards must establish formal sustainability and climate audit oversight committees to avoid derivative liability for misstated disclosures.
- **Vendor Contract Upgrades:** Companies doing business in California must amend standard procurement and vendor agreements to mandate emissions tracking and audit rights from upstream suppliers.
- **Third-Party Assurance Readiness:** SB 253 mandates independent third-party assurance for reported emissions data, requiring corporate accounting systems to integrate carbon accounting with financial ledgers.

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