Comments to California Air Resources Board on Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Sente Bills 253 and 261, as amended by SB 219

1. Question 1. C: Should SB 253 and 261 cover entities that are owned in part or wholly owned by a foreign government?
   1. Yes, we believe that any business, regardless of ownership, should report on its climate related financial risks. Particularly in the event of a climate-related event, like the recent wildfires in Los Angeles, such businesses could be eligible for disaster relief funds or for California’s FAIR plan. Since the State provides resources that help to reduce the impact of climate change, it is logical that any business that could be eligible should also provide pubic reporting on the climate-related risks it faces.
2. Question 2. B: In what way(s) should CARB track parent/subsidiary relationships to assure companies doing business in California that report under a parent are clearly identified and included in any reporting requirements?
   1. At a minimum, it makes sense that any subsidiary in which the parent’s ownership is 20% or higher should be included in any reporting requirement. This comports with SEC’s requirements for S-X 3-05 and S-X 8-04, as laid out in the SEC’s Financial Reporting Manual. [SEC.gov | Financial Reporting Manual](https://www.sec.gov/corpfin/cf-manual/topic-2)
3. Question 3: CARB is tasked with implementing both SB 253 and 261 in ways that would rely on protocols or standards published by external and potentially non-governmental entities.
   1. How do we ensure that CARB’s regulations address California-specific needs and are also kept current and stay in alignment with standards incorporated into the statute as these external standards and protocols evolve?
      1. While there is no geography on earth that does not face heightened physical climate risks, California is in a particularly vulnerable position. The combination of vulnerability to severe droughts, exposure to atmospheric rivers, sea level rise and record heat all make California vulnerable to both climate-amplified flooding and wildfire, as well as the impact of drought on the state’s agricultural economy. This has already put many businesses in California at greater risk of rising insurance costs, and placed a great deal of new pressure on the State’s FAIR plan. We know from watching what has happened in Florida, another state with outside physical climate risk and a FAIR plan, that the contingent liabilities of the FAIR plan can rise to levels that may exceed the State’s entire budget, even with increases in permitted premiums. It is essential, therefore, that climate reporting adopted by CARB include reporting not only on value at risk from exposure to physical risks, but also on what businesses are doing to build resiliency to these physical risks. In 2024, Impax engaged with many US-owned electric utilities on resilience to climate risks, and we found that those that appear to have the best reporting on physical risks (both acute and chronic) and plans for resiliency-building are those that have already been through one climate-related disaster: PG&E, Hawaiian Electric, and Xcel. But the events that spurred these utilities to do better on reporting and preparedness also exacted a fair measure of pain on customers and shareholders, and we should not have to rely on the experience of a disaster to have better reporting on physical risk vulnerability and preparedness. While several global climate reporting standards do require some reporting on physical risk, none really specifies much in terms of physical risk reporting, beyond noting that physical risk is covered by requirements on reporting climate risks and opportunities. In particular, we would be supportive of requirements for reporting on what capital expenditures are intended to increase resiliency, and the specific risks targeted by such capex.
      2. Impax also supports a requirement for fossil fuel companies to fully report on critical accounting assumptions used to determine disclose long-term assets and liabilities. We refer you to Ceres’ letter to the SEC on inadequate critical accounting assumption disclosures at [Letter-to-SEC-on-critical-assumptions-14-Oct-2024-Final.pdf](https://sarasinandpartners.com/wp-content/uploads/2024/10/Letter-to-SEC-on-critical-assumptions-14-Oct-2024-Final.pdf). While European energy companies typically do report on those critical assumptions (e.g., on long term fossil fuel prices and demand assumptions, refining margins, calculation of asset retirement obligations (AROs), and discount rates used in impairment and ARO calculations), American companies typically do not. This would affect many fossil fuel companies with significant operations in California.
   2. How could CARB ensure reporting under the laws minimizes a duplication of effort for entities that are required to report GHG emissions or financial risk under other mandatory programs and under SB 253 or 261 reporting requirements?
      1. Two of the best standards on reporting of climate risks and opportunities are the EU’s ESRS E1 (Climate Change), and IFRS 2. While IFRS 2 is still voluntary in many places, the IFRS reports that they are mandatory (at least in part) in over 140 jurisdictions ([IFRS - Who uses IFRS Accounting Standards?](https://www.ifrs.org/use-around-the-world/use-of-ifrs-standards-by-jurisdiction/)) ESRS E1 is already mandatory for many companies in the EU. It would be useful to achieve the greatest reasonable compatibility between any California requirement and these two standards.
   3. To the extent the standards and protocols incorporated into the statute provide flexibility in reporting methods, should reporting entities be required to pick a specific reporting method and consistently use it year-to-year?
      1. Yes. However, if a particular standard becomes a global norm, and includes all the elements investors need to make well-informed decisions not only on corporate emissions and mitigation, but physical risks and resilience, it should be permitted to change a reporting standard to the best global practice.
4. Question 4: To inform CARB’s regulatory processes, are there any public datasets that identify the costs for voluntary reporting already being submitted by companies? What factors affect the cost or anticipated cost for entities to comply with either legislation? What data should CARB rely on when assessing the fiscal impacts of either regulation?
   1. ERM, at the request of Ceres and Persefoni, reported on the results of a survey of private sector organizations (both investors and companies) and what they spent on climate reporting ([Survey reveals costs and benefits of climate-related disclosure for companies and investors](https://www.erm.com/about/news/survey-reveals-costs-and-benefits-of-climate-related-disclosure-for-companies-and-investors/)). They found that corporate issuers, on average, were spending $533,000 annually on climate-related disclosure. The highest average cost was for GHG emissions reporting (44% of the total), followed by scenario analysis (29%) and the costs of integration of climate risk into business processes (28%). It should be noted that the integration costs are more likely to be higher up-front, or one-time costs, while the other categories may be more likely to occur every reporting cycle.
   2. Another interesting read on this topic is a paper by Duke University’s Climate Risk Disclosure Lab ([The Cost of Climate Disclosure.pdf](https://econ.duke.edu/sites/econ.duke.edu/files/documents/The%20Cost%20of%20Climate%20Disclosure.pdf)). This is not a survey, but a case study, and as such it covers the costs of reporting in greater depth three companies’ reporting: a large multinational, a US-based large-cap company and a US-based mid-cap company. While no single company’s costs could be considered typical or average, it is noteworthy that in all three cases, companies reported that a mandatory SEC climate disclosure rule (which was issued in 2024 but never enforced) would not have a significant impact on their costs.
   3. Both the survey and the case studies are useful. In using the results of either type of information, we would urge CARB to pay most attention to the *additional* costs of reporting on climate risks and opportunities. In the context of proposed regulatory action, companies often have an incentive to overestimate costs in the hope of avoiding more stringent regulatory requirements. Moreover, if companies are already collecting the information for the purposes of requiring with another nation’s climate reporting requirements, or EPA’s requirements for GHG emissions reporting, some costs would apply even without additional requirements for California’s reporting requirements, and should not be used as an excuse for watering down reporting requirements. Investors need both transition and physical risk reporting in order to make well-informed decisions, because climate risks and opportunities are demonstrably material in today’s environment.
5. Question 8: SB 253 requires that reporting entities obtain “assurance providers.” An assurance provider is required to be third-party, independent, and have significant experience in measuring, analyzing, reporting, or attesting in accordance with professional standards and applicable legal and regulatory requirements.
   1. For purposes of implementing SB 253, what standards should be used to define limited assurance and reasonable level of assurance? Should the existing definition for “reasonable assurance2” in MRR be utilized, and if not why?
      1. We urge CARB to make reasonable assurance the standard, even if limited assurance is an option for a phase-in period. But limited assurance is tends to be very unreliable. Limited assurance is based only on information the company shares with the assurer, and need not include all relevant information; moreover, with limited assurance, the assurer is not required to do any comparative analysis or testing. Investors have much less confidence in using limited assurance than in using reasonable assurance.
6. Question 12: SB 261 requires entities to prepare a climate-related financial risk report biennially. What, if any, disclosures should be required by an entity that qualifies as a reporting entity (because it exceeds the revenue threshold) for the first time during the two years before a reporting year?
   1. It is reasonable to have a phase-in period for first-time reporters, with standards that are easier to meet. For example, it might be possible to require limited assurance during the phase-in period, with a transition to reasonable assurance within, say, three reporting periods. It might also be possible to phase in reporting on climate physical risks over two to three reporting periods by starting with the easiest information to provide, such as location of all assets that face physical risk and which chronic or acute hazards they are exposed to, and working up to reporting on value at risk and measures taken (including capex) to build resilience within two or three reporting periods. It would be useful to consider using the phase-in criteria that were included in the SEC’s Climate Rule in 2024.