March 20, 2025

Chair Liane M. Randolph
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation: Senate Bills 253 and 261, as amended by SB 219

Dear Chair Randolph,

Public Citizen is pleased to respond to the California Air Resources Board's Information Solicitation to Inform Implementation of California Climate-Disclosure Legislation. We thank you and your staff for your careful attention to detail and clear interest in striking a balance to deliver comprehensive disclosure to protect the public while minimizing compliance burden on reporting companies. Such a balance will enhance the likelihood of interoperability with other jurisdictions that may follow California, and set a valuable bar for protecting investors and the public interest.

Public Citizen has been a leading advocate for corporate climate risk disclosure and reporting on behalf of its 500,000 members nationwide, close to 100,000 of whom reside in California. We championed efforts at the Securities and Exchange Commission to secure a national standard, engaging early and often in its multi-year rulemaking process on the Enhancement and Standardization of Climate-Related Disclosures for Investors. The final rule, promulgated in March 2024, has been stayed due to litigation, and its future is highly uncertain..

California, therefore, has a unique and historic role as the first U.S. jurisdiction to require comprehensive climate-related risk and greenhouse gas disclosures, joining Europe via its Corporate Sustainability Reporting Directive (CSRD), as well as the International Sustainability Standards Board (ISSB) via its inaugural sustainability disclosure standards, IFRS S1 and IFRS S2, in June 2023. We note with interest legislation introduced in several other states[1] seeking to follow California's lead on these disclosures.

[1] See, for instance, Colorado's HB25-1119 ; Illinois' HB3763 ; New York's A04282/S03456 and New Jersey's S4117.

These steps to afford stakeholders a clear view into the material financial risks posed by climate change to a given company – as well as the company's own progress in responding to these risks and opportunities – are long past due in light of the economic upheavals climate change already causes on an annual basis to companies, governments, and communities. We applaud CARB for its leadership role at this time.

Public Citizen's Response to CARB Solicitation on Implementation of SB 219

Public Citizen would like to begin by underscoring several first principles guiding our recommendations below, which align with the expert perspective of Carbon Accountable, a climate data firm that provided deep legal and technical support to Senator Wiener and his staff in crafting SB 253. We believe these principles likewise should guide interpretation of statutory provisions specific to SB 261 (which, together with SB 253, has been consolidated in law under SB 219). Fundamentally, both laws were crafted with the intent to minimize the burden on both CARB and reporting entities, and to create a straightforward framework that follows internationally-recognized best practices. These time-saving measures not only benefit CARB and disclosing companies, but also further the primary purpose of the law, which is to provide the public with clear and transparent Greenhouse Gas (GHG) emissions data and climate financial risk reporting.

- *Streamlined process for CARB*: Both SB 253 and SB 261 were clear in their statutory intent to track existing best-in-class industry standards on disclosure reporting – the GHG Protocol in the case of SB 253, and the framework of the Task Force on Climate-Related Financial Disclosures (TCFD) in the case of SB 261. Both frameworks are the result of years-long stakeholder consultations and deliberations. Thus, CARB can and should avoid duplicating processes that are already robust and validated, freeing up time and resources.

- *Reduced compliance burden for companies*: Many of the reporting entities under SB 219 have experience with the GHG Protocol and/or the TCFD framework through their disclosure obligations in other jurisdictions (e.g., CSRD) or because they are among the vanguard that decided to make voluntary disclosure part of their sustainable business practice and commitments. This would not be the case if lawmakers had asked CARB to create a bespoke disclosure regime unfamiliar to reporting entities.

- *Flexibility in reporting:* The intent of the law is plain that companies need not recreate the wheel in terms of submitting distinct disclosure reports across different jurisdictions. Rather, if a company already files a report with the TCFD, for example, that company can file the same report with CARB, so long as it includes all pertinent information under the law.

General: Applicability

Question 1(a): *Should CARB adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101?*

Answer: CARB should adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101, which defines that term as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." This definition aligns with the intent of SB 219 and is consistent with a clear reading of the definition of "reporting entity" found in SB 219 §1.38532(b)(2).

Question 1(b): *Should federal and state government entities that generate revenue be included in the definition of a "business entity" that "does business in California?"*

Answer: CARB should opt to exclude government entities as a class for the time being, leaving it to legislators to clarify their intent on this question through a future amendment, if desired.

Question 1(c). *Should SB 253 and 261 cover entities that are owned in part or wholly owned by a foreign government?*

Answer: If the entity otherwise meets the law's definitions for a "reporting entity" that is "doing business in California," then it should be covered, irrespective of its ultimate ownership.

Question 1(d). *Should entities that sell energy, or other goods and services, into California through a separate market, like the energy imbalance market or extended day ahead market, be covered?*

Answer: Bill sponsors, Senators Stern and Weiner, have themselves clarified their position on this matter, and Public Citizen recommends CARB follow their lead: "It was not our legislative intent to include such energy transactions within the scope of this reporting obligation, and we are therefore providing clarification to the Senate Daily Journal and to the California Air Resources Board as they proceed with implementation of both laws."

Question 2. *What are your recommendations on a cost-effective manner to identify all businesses covered by the laws (i.e., that exceed the annual revenue thresholds in the statutes and do business in California)?*

Answer: The most expedient and, likely, cost-effective means to identify the relevant universe of "reporting entities" is for CARB to contract with a third-party data provider that specializes in these matters, such as S&P Global, Bloomberg, D&B Hoovers, or PitchBook. Procurement for such services should specify criteria to ensure the integrity of data to be provided.

Question 3 (a). 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?

Answer: CARB should align requirements with existing global reporting standards to avoid additional compliance burdens. SB 253 and SB 261 should remain consistent with international frameworks to enhance comparability for investors and stakeholders. To keep pace with changing disclosure requirements, companies recommended that California's regulations automatically update when third-party standards (e.g., GHG Protocol) are revised, rather than remaining fixed to the versions in place when the laws were enacted. In addition, because California is at the forefront of promoting transparency and integrity in the voluntary carbon market (VCM), CARB should offer guidance on disclosing investments in voluntary carbon offsets and credits as an optional part of GHG emissions reporting.

Question 3 (b). 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?

Answer: CARB should prioritize interoperability by accepting reports that companies already prepare to comply with other governmental climate reporting regulations, as well as voluntary reports that align with the requirements of California's disclosure laws.

Question 3 (c). 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?

Answer: Rather than imposing a rigid, California-specific framework, CARB should provide reporting entities with a "menu" of acceptable reporting standards that would satisfy compliance, reducing unnecessary duplication and streamlining the reporting process.

General: Data Reporting

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?

Answer: CARB should consider the SEC's cost-benefit analysis of its 2022 and 2024 climate disclosure rules, which show that initial compliance costs are higher but decrease as companies streamline reporting processes. The SEC's final rule estimated annual costs for registrants between $197,000 and $739,000, with lower costs for those already disclosing climate data. As companies adopt global frameworks like the EU CSRD and ISSB Standards, compliance costs in California are expected to decrease due to overlap with other requirements.

Question 5. Should the state require reporting directly to CARB or contract out to an "emissions" and/or "climate" reporting organization?

Answer: It is crucial that covered entities comply with reporting requirements, therefore CARB should require reporting directly by creating an easy-to-use portal for reporting entities to submit their data. A public user-friendly GHG emissions disclosure website, developed and maintained by CARB , should provide easy access to GHG emissions data and assurance reports from all reporting entities.

Question 6. If contracting out for reporting services, are there non-profits or private companies that already provide these services?

Answer: CARB should consider contracting with an NGO that has demonstrated success in administering an independent, publicly accessible registry, without scoring or grading submissions, such as The Climate Registry. This California-based nonprofit has strong ties to the state and extensive experience supporting organizations with emissions reporting and reductions. Alternatively, leveraging the Carbon Disclosure Project CDP's infrastructure would help CARB achieve its objectives more effectively, fostering consistency and maximizing the impact of reporting efforts.

SB 253: Climate Corporate Data Accountability Act

Question 7. Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol, which allows for flexibility in some areas (i.e. boundary setting, apportioning emissions in multiple ownerships, GHGs subject to reporting, reporting by sector vs business unit, or others). Are there specific aspects of scopes 1, 2, or 3 reporting that CARB should consider standardizing?

Answer: CARB should align its emissions reporting standards with the GHG Protocol to maintain consistency and simplicity.

Question 8 (a). For entities required to report under SB 253, what options exist for third-party verification or assurance for scope 3 emissions?

Answer: Investors rely on assurance providers to verify a wide range of climate and ESG information, particularly those associated with climate change, environmental impacts, and the clean energy transition. Due to this demand, the majority of S&P 100 companies are already using third-party assurance or verification for climate-related disclosures, including GHG emissions and ESG metrics in 10-K filings. Numerous financial auditing firms, both large and small, are capable of providing assurance for Scopes 1, 2, and 3 emissions in accordance with recognized standards.

Question 8 (b). 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 assurance" in MRR be utilized, and if not why?

Answer: The distinction between limited and reasonable assurance is crucial due to the high prevalence of limited assurance engagements for disclosures. Limited assurance is inherently a lighter touch process, which has led many companies to opt for it because it is cheaper and subjects them to less scrutiny. It also fails to provide auditors with sufficient evidence to confidently assert an affirmative opinion that claims are reasonably stated, and therefore provides a false impression of thorough examination in its presentation to investors. The primary problem is that registrants have broad discretion in deciding the evidence to be shared during the engagement. Unlike reasonable assurance audits, limited assurance does not require a practitioner to probe and design an audit process to affirmatively state an opinion that the disclosure is fairly presented.

CARB should establish minimum procedures for "limited assurance" engagements to promote standardization and ensure investors are not misled regarding the modest extent of assurance provided. These should include standards for: (1) organizational and operational boundaries for disclosures that are reasonably set, justified, and disclosed; (2) credible data sources to be utilized when primary measured data is lacking, with full disclosure of data inputs and assumptions; (3) procedures for testing of calculations to ensure accuracy, and (4) clarity around the limits of the limited assurance engagement.

Question 9(c). What frequency (annual or other) and time period (1 year or more) are currently used for reporting?

Answer: CARB should require companies to align their reporting with their fiscal year.

Question 9(d). When are data available from the prior year to support reporting?

Answer: Data is typically ready and audited for reporting six to nine months after the fiscal year ends.

Question 9(e). What software systems are commonly used for voluntary reporting?

Answer: Various software systems have been used for voluntary reporting, including carbon accounting platforms for emissions calculations such as Watershed, Persefoni, and Net Zero Cloud.

SB 261: Climate Related Financial Risk Disclosure

Question 10. *For SB 261, if the data needed to develop each biennial report are the prior year's data, what is the appropriate timeframe within a reporting year to ensure data are available, reporting is complete, and the necessary assurance review is completed?*

Answer: Public Citizen suggests that CARB follow the specific recommendations submitted by the non-profit advocacy organization Ceres on this point, as informed by their extensive interviews with companies that will be subject to the law.

Question 11. *Should CARB require a standardized reporting year (i.e., 2027, 2029, 2031, etc.), or allow for reporting any time in a two-year period (2026-2027, 2028-2029, etc.)?*

Answer: CARB should require a standardized reporting year, in order to align with the intent of the law to provide clear, comparable, and consistent disclosures.

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?*

Answer: The law as written does not contemplate additional disclosures prior to the reporting year, so it could cause undue burden to impose any. CARB should, however, ask companies, on a volunteer basis, to provide samples of any climate-related risk disclosures they may have submitted in other jurisdictions as a courtesy.

Question 13. *Many entities that are potentially subject to reporting requirements under SB 261 are already providing other types of climate financial risk disclosures.*

(a) What other types of existing climate financial risk disclosures are entities already preparing?

Answer: Some companies have published, or have pledged to publish, net-zero transition plans which chart their operational pathway to net zero emissions by 2050. Public Citizen highly recommends that CARB collect these to the extent possible, as they can often shed light on any gaps between reported climate-related risks and those that exist in actuality. The Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) does not explicitly require net-zero plans from participating companies, but it does encourage them to disclose plans for transitioning to a low-carbon economy, which often includes net-zero targets.

(b) For covered entities that already report climate related financial risk, what approaches do entities use?

Answer: Covered entities that already disclose climate-related financial risks and opportunities typically track one or more of the following frameworks: EU CSRD, TCFD, CDP, and/or ISSB IFRS 2.

(c) In what areas, if any, is current reporting typically different than the guidance provided by the Final Report of Recommendations of the Task Force on Climate Related Financial Disclosures?

Answer: Public Citizen has not analyzed the distinctions between the various disclosure frameworks available through TCFD, CDP, ISSB, etc. However, we support CARB requiring companies to disclose consistent with all four pillars of the TCFD framework, namely governance, strategy, risk management, and metrics and targets. To the extent reporting entities are using frameworks other than TCFD for disclosing their climate-related risks pursuant to SB 219, CARB should require them to supplement any missing information contemplated by TCFD's four pillars.

(d) *If not consistent with the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures, are there other laws, regulations, or listing requirements issued by any regulated exchange, national government, or other governmental entity that is guiding the development of these reports?*

Answer: The EU CSRD and the model climate disclosure standards of the ISSB, are the main legal frameworks governing climate-risk disclosures today. The ISSB reported last year that "Jurisdictions representing over half the global economy by GDP take steps" to adopt its standards.

Conclusion

Public Citizen would like to underscore our appreciation to CARB for its dedication to successful, robust, and timely implementation of SB 219. We understand the process has been difficult. Please do not hesitate to call on us if we can be of further assistance.

Sincerely,

Clara Vondrich: cvondrich@citizen.org
Mek Belayneh: mbelayneh@citizen.org