March 21, 2024

Draft Responses to CARB Information Solicitation Re: CA Climate-Disclosure Legislation

Formatting Note: Text from the Solicitation itself is presented in **BOLD**. Draft responses are introduced directly below the question.

The undersigned organizations representing Associated General Contractors of California, California Construction and Industrial Materials Association, Construction Industry Air Quality Coalition, Southern California Contractors Association, and United Contractors stand in solidarity on our comments to the regulatory process for Senate Bills 253 and 261, as amended by SB 219. We aim to ensure these regulations are implemented effectively, balancing environmental goals with economic realities for construction companies of all sizes. Our comments suggest clarifications on the definitions of entities required to report, advocate for the inclusion of governmental entities in reporting requirements and propose cost-effective methods for identifying businesses that must comply. We also emphasize aligning California's standards with global protocols to streamline reporting and reduce redundancy.

CARB Public Comment – SB 253 & 26 Below are answers to questions to the following document: ClimateDisclosureQs_Dec2024.pdf.

1. **SB 253 and 261 both require an entity that "does business in California" to provide specified information to CARB. This terminology is not defined in the statutes.**
    a. **Should CARB adopt the interpretation of "doing business in California" found in the Revenue and Tax Code section 23101?**

        We urge CARB to not adopt the definition of "doing business in California" found in the Revenue and Tax Code section 23101, because it is too broad and does not correlate well with "Reporting entity" or "Covered entity" as defined in SB 253 and SB 261, respectively.

        Should CARB add the interpretation of "doing business in California," we would encourage further clarity and consistency by including the definition of a transaction as well as the definition of annual revenue to only include the net revenue attained within the state of California.

        Additionally, we encourage CARB to only adopt the elements of the definition in Revenue and Tax Code section 23101 that are aligned with the definition of "reporting entities" defined under SB 219. Doing such would add clarity and consistency; specifically, that the requirements of SB 253 and 261 apply to corporations, partnerships, limited liability companies, and other entities conducting business (sales or revenue) in California.

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

We urge that federal and state government entities that generate revenue in California be included in the reporting requirements, because the Department of Defense and Cal Trans emit greenhouse gas (GHG) emissions. If these emissions are not accounted for, California's GHG emission calculations will not be fully representative of the emissions that are being generated within the state and missing large contributors.

Furthermore, by doing so would be in alignment with the intent of the legislation, which recognizes that "[c]limate change is affecting California's communities and economy," and that "[f]ailure of economic actors to adequately plan for and adapt to climate-related risks to their businesses and to the economy will result in significant harm to California." Since emissions from government entities have the same impacts as those from other regulated entities, they should not be excluded. The legislation also states that "California is a global leader in addressing climate risk" and "has an opportunity to set mandatory and comprehensive risk disclosure requirements for public and private entities to ensure a sustainable, resilient, and prosperous future for our state." If California intends to lead this effort, and to set "comprehensive risk disclosure requirements," it would be most reasonable to submit its own governmental entities and activities to the same standards it is setting for other entities. (Refer to CA SB 261, Section 1)

If climate-disclosure legislation is supported by reasonable regulations, then federal and state government entities should be held accountable to the same requirements imposed on other entities. This would encourage fairness in the intent behind the language written in the bill, creation of the related rules and regulations, and implementation of such.

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

SB 256 and 261 should not cover entities that are wholly owned by a foreign company which is already covered by the EUC's Corporate Sustainability Reporting Directive.

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?**

Yes, but we recommend only concerning those sales or revenue that is a result of their participation in the separate market and its operation within California to be covered.

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)?**

We propose a couple of cost-effective solutions:

One solution would be to utilize existing databases within the State of California Franchise Tax Board, California Public Utilities Commission, California EPA, California Department of Food and Agriculture, or other State Agency Databases that may have jurisdiction over out-of-state entities doing business in the state.

Another solution would be to designate a dedicated person or entity to perform the role of identifying businesses that must abide by these laws which will allow for more consistent reporting across the state. For public companies, we recommend that the system be based off records with the Securities and Exchange Commission (SEC) and Internal Revenue Service (IRS) reporting, such as Dan & Bradstreet. Once companies are identified that meet the $1 billion or $500 million thresholds for reporting, the companies can be held accountable for reporting requirements if they are not already voluntarily reporting. It is also recommended that CARB partner with government agencies, public traded companies, and projects within the state worth over revenue thresholds.
Furthermore, all Scope 2 data could be obtained by CARB by simply requiring utilities to report business customer usage info to CARB. There would be no need to identify which companies qualify for these laws thereby lightening the effort and cost of compliance.

a. **For private companies, what databases or datasets should CARB rely on to identify reporting entities? What is the frequency by which these data are updated and how is it verified?**

   It is recommended to utilize data from both government and public entities or projects (i.e. CEQA projects) within the state that meet reporting thresholds and have a section within these submittals identifying private companies/subcontractors that these entities projects work with. This may provide some information on additional private companies that meet the monetary thresholds for reporting.

   We recommend that data be updated annually (i.e. March- July) and should be third party verified.

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?**

   CARB could track parent/ subsidiary relationship that are doing business in California by utilizing the Dun & Bradstreet corporate structure and family tree hierarchy for publicly traded companies, which are regulated due to stock pricing fluctuations.

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.**

   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?**

      We recommend using the same structure as the Corporate Sustainability Reporting Directive, where the European Sustainability Reporting Standards were developed by the European Financial Reporting Advisory Group (EFRAG). A board or panel can review external standards or protocols and ensure that the implementation of SB 253/261 remains aligned. It would also be responsible for ensuring relevancy to California-specific issues and regulations. We encourage that this board or panel be comprised of environmental, legal, and operational experts that provide vital different perspectives.

In addition, we recommend that CARB form an industry alliance or organization similar to the relationship that exists between the Regional Water Quality Control Board and CASQA, whereby the industry alliance assists the state in the development, implementation, revision of legislation, and acts as an interface for industry feedback or tracking of industry trends.

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?**

CARB can ensure that reporting efforts are not duplicated from other programs by ensuring that the reporting request and guidelines match up with external entities requirements and definitions so that there is consistency. We urge that this regulation clearly define each emission Scope 1, 2, or 3, so there are not duplicated reported efforts from different companies. For example, Company A's Scope 1 emissions will be reported; Company B's Scope 3 emissions will be reported but will not include Company A's Scope 1 emissions within their Scope 3 emissions unless it is clearly noted where the Scope 3 reporting belongs within the supply chain.

Additionally, we recommend that the implementation of the regulation be aligned with Corporate Sustainability Reporting Directive (CSRD) in the European Union (EU). This may prevent duplication as many US-based companies are already complying with the CSRD if they have ties to a European parent company. The CSRD is also closely aligned with the Global Reporting Initiative (GRI) reporting standards that many companies already report to.

Lastly, many of the companies with revenues exceeding $1 billion likely do business internationally or contribute to the supply chains of those that do, making them subject to some level of CSRD. All in all, the best way to avoid duplication of effort and maximize efficiency is to align reporting requirements to the greatest extent possible with the EU CSRD and other applicable external entities.

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?**

Various reporting methodologies generate small differences in GHG emissions calculations. These small differences across the thousands of companies providing reports can lead to a big difference in accurate GHG emission data. Therefore, we recommend that CARB utilize the standards that are already in place by the CSRD in the EU and to be clear on the data that should be reported. Flexibility may be required as new technology becomes available and to accommodate differences in companies' fiscal years. Furthermore, it is important to incorporate a standardized process to ensure that all data that is received can be analyzed accurately.

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?**

CARB should be aware that costs for reporting are quite high and should not be underestimated. The SEC Rule on Climate-Related Financial Disclosures includes a comprehensive estimate of various costs related to reporting requirements, and many of these would be applicable for implementing the reporting requirements.

Many factors impact the cost for entities to comply with anticipated reporting requirements. For instance, the current state of the entity's greenhouse gas reporting systems and inventory; companies that have not developed these systems will need to spend more than companies that have already invested in these systems. Other factors include third party verification, general staffing for data management, new technology/ software applications, the size of the organization, the complexity of its organizational structure, the structure of its supply chain and how it is managed, the size and makeup of its fleet and other emissions-producing equipment, and the diversification of its business model. The downstream cost of these Senate Bills would be items such as fleet and equipment upgrades. This is a complex area that is difficult to fully assess and comment on in the timeframe allowed for this solicitation, as it would be an area for extensive research.

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

The State Water Resources Control Board (SWRCB) has an adaptable and well-developed reporting system for all construction general permit permittees, the Storm Water Multiple Application and Report Tracking System (SMARTS) Database. We recommend that CARB develop a standard reporting system, similar to SMARTS, for all companies reporting data, information, and documentation. Any permittee shall report and upload data into the system created by CARB.

There are several ways to approach this:

- Have the entities create year-end reports that are in alignment with standards created by CARB. CARB can require this to be either publicly reported or sent to a portal for their review. External or internal reviewers can assess the data for feasibility and reliability.
- CARB can create an online portal that companies would report data into. This can include several questions, such as total Scopes 1, 2, and 3 emissions, etc., and uploading proof of documentation behind this; or, it can automatically calculate final datasets based on activity data submitted by the entity. It can be aligned with an external reporting organization or a regulation such as CSRD or the GHG Protocol.
- CARB can require entities to report to an organization such as the GRI. This solution would help ensure that entities are reporting information in a similar manner with resources that are already available.

Furthermore, we recommend that a dedicated person be assigned to properly manage the program. If the state decides to contract out to an emissions reporting organization, the data measurement may be more accurately portrayed as more resources would be available.

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

There are companies, such as Ecovadis, that are essentially data warehouses for ESG reporting.

Currently, it allows a company to report its data once and get a rating. CARB could possibly negotiate something with these types of vendors to get access to the data. This would decrease the reporting burden on companies whose customers require them to use such services. Using such a provider could increase the company's cost if it does not already engage with them. CARB may also utilize data from the Global Reporting Initiative (GRI) or Customer Data Platform (CDP).

7. **Entities must measure and report their emissions of greenhouse gases in conformance with the GHG Protocol, 1 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?**

We recommend that CARB consider a staggered rollout for reporting and standardization of the reporting. For example, in 2027, all permittees shall begin reporting Scope 1 emissions. In 2029, all permittees shall begin reporting Scope 2 emissions and in 2031 all permittees shall begin reporting Scope 3 emissions. A staggered approach will allow for "during game" modifications, adaptations, industry education and improved data from permittees.

We encourage CARB to standardize Scope 3 emissions as there is currently a lot of confusion on what constitutes Scope 3 emissions along with duplicated GHG emissions reported across different companies. We urge that this definition clearly describe where emissions are coming in and what emissions are going out regarding Scope 1, 2, and 3 reporting. Once definitions are clearly established, duplicate reporting should not occur.

Currently, there are 15 different categories of Scope 3 emissions in the GHG Protocol. These different categories represent some duplicative reporting when taking a comprehensive look at emissions within California: Scope 1 and Scope 2 emissions of one entity would be included as Scope 3 emissions for other entities that use that entity in their supply chains. The utility of comprehensive Scope 3 reporting in this context is questionable considering the high cost of compliance, the lack of control entities have over certain categories of emissions, and the urgent need to focus on Scope 1 and Scope 2 emissions reduction to address the climate crisis most efficiently.

We encourage CARB to develop sector or industry-specific exemptions from Scope 3 reporting, or limitations on Scope 3 category reporting requirements. When developing such, we urge CARB to consider what categories are most relevant or applicable to each sector and industry as well as what control entities have over the different categories. For example, many of the Scope 3 categories are not in the direct control of entities in the industrial materials, infrastructure, and construction industries because of the strict application of client specifications. To illustrate, a contractor typically cannot control which types of building materials are required in an infrastructure project—materials selection is determined by a client's design. In this context, limitations on Category 1 (Purchased goods and services) would be warranted.

Other Scope 3 categories that may not be reasonable or of material importance for reporting by the infrastructure construction industry include Category 9 (Downstream transportation and distribution); Category 10 (Processing of sold products); Category 11 (Use of sold products); Category 12 (End-of-life treatment of sold products); Category 13 (Downstream leased assets); Category 14 (Franchises); and Category 15 (Investments). In many cases, infrastructure owners are agencies of the State of California, so new reporting requirements could have detrimental impacts on the cost of public infrastructure projects and communities in the state.

To avoid unnecessary cost increases to public infrastructure, CARB should consider providing an exception for Scope 3 reporting requirements for entities in the industrial materials, infrastructure, and infrastructure construction industries. If a complete exemption is not possible, CARB should develop sector-specific Scope 3 criteria limiting the applicability of certain Scope 3 categories to these industries. Within those limitations, entities should still maintain flexibility under the GHG Protocol to assess and determine materiality of Scope 3 categories to their activities. CARB should engage with covered entities in these industries to understand the impacts of reporting requirements and craft reasonable limitations. In these industries, increased costs from reporting will be passed to customers, which in many cases for these industries is public agencies funded by taxpayer money, so ultimately the cost would impact taxpayers. Attaching additional increased capital and investment risk to public contractors can only increase public expense as their capital and bonding costs increase.

Limiting the requirements for reporting for these sectors/industries would not have detrimental impact to California's efforts to control and assess climate change risks because CARB programs and Buy Clean policies are in place that already address these issues. Under Buy Clean policies, Environmental Product Declarations have become the leading way to measure greenhouse gas emissions for industrial materials. Life cycle assessments are the most suitable method available for assessing the carbon footprint of infrastructure and construction projects. Therefore, additional reporting requirements under new rules will add unnecessary complication to little effect.

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.**

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

      Entities can engage a third-party auditor like Deloitte for scope 3 emissions verification. Additionally, CARB may provide resources, training, or certifications for assurance providers to align with specific regulatory requirements

9. **How should voluntary emissions reporting inform CARB's approach to implementing SB 253 requirements? For those parties currently reporting scopes 1 and 2 emissions on a voluntary basis:**

   b. **What frequency (annual or other) and time period (1 year or more) are currently used for reporting?**
      Frequencies for emissions reporting should not exceed annually, due to the manual intensity of the process, especially for larger companies with multiple sites. Scope 2 data availability is reliant on utility companies providing information to their users, requiring additional time for companies to compile, analyze, and summarize this data.

      To streamline reporting, CARB should standardize the reporting period, typically from January 1 to December 31 of the previous year, and establish a final report submission deadline during the following year.

d. When are data available from the prior year to support reporting?
Raw data is typically available as needed for larger companies. Formal calculations with a level of quality assurance and quality control are usually made available by March of the prior year. Larger companies often have the benefit of software and licenses that can collect raw data efficiently. However, smaller companies may not have this luxury and could face challenges in gathering and processing raw data due to limited access to such resources.

e. What software systems are commonly used for voluntary reporting?
While the US EPA provides valuable resources for GHG emissions calculations, including free software systems like MOVES, which can be particularly useful for companies new to GHG emissions reporting, it's important to note that the market for such software systems is quite competitive. As of now, no single system has established itself as the clear leader in the field. This variety means companies have the flexibility to choose from multiple tools that best meet their specific needs and preferences, but it also suggests a need for careful evaluation to select the most effective system for accurate and efficient emissions reporting.

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?

Organizations should aim to compile data from the previous calendar year by the end of January. This period accounts for potential delays such as the receipt of December utility bills, which are crucial for accurate scope 3 emissions reporting.

Following the initial compilation, February through April should be dedicated to a stringent review of the compiled data. This review period allows organizations, especially larger ones, to ensure the accuracy and completeness of the data, including any necessary adjustments based on late-arriving information.

Given the complexity of data collection and verification, a flexible submission window from May to July 31 is recommended. This timeframe accommodates the needs of all organizations, allowing sufficient time for thorough review and adjustments without compromising the timeliness of the data.

To maintain a steady flow of data and reduce annual reporting burdens, quarterly updates could be encouraged, though not mandatory. This approach allows CARB and stakeholders to monitor ongoing compliance and environmental impacts more effectively throughout the year.

Lastly, we also propose that CARB allows data to be reported in arrears, aligning the reporting year from November to November instead of the calendar year. This adjustment would help align the data collection with the availability of all necessary documents and utility bills

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.)?

CARB should consider implementing a standardized reporting year to enhance consistency and clarity for entities in managing their emissions targets. A standardized approach helps entities to better prepare and align their reporting processes. Furthermore, CARB should also consider a staggered rollout for reporting different types of emissions: beginning in 2027, all permittees should start reporting Scope 1 emissions; in 2029, they should start reporting Scope 2 emissions; and by 2031, all should report Scope 3 emissions. This staggered approach allows for incremental implementation, which can facilitate industry education, enable 'during game' modifications and adaptations, and improve the quality of data received from permittees.

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?**

    For entities that qualify as reporting entities for the first time within the two years preceding a reporting year, there are several important considerations for compliance. Initially, it would be prudent for these entities to develop and report a GHG inventory. This not only aligns with regulatory expectations but also establishes a baseline for future reporting and performance measurement.

    Moreover, entities newly exceeding the revenue threshold should be required to promptly notify CARB via the web-based reporting platform. A specific timeframe for this notification should be established, ensuring that CARB is informed soon after an entity meets the reporting criteria. Subsequently, CARB should mandate that such entities commence their required reporting in the next biennial cycle. This approach ensures that all relevant financial and environmental data from the period they exceeded the threshold is accurately captured and reported.

    Additionally, to facilitate a smooth transition into compliance for these entities, it would be beneficial for CARB to allow a grace period. Specifically, once an entity meets the reporting threshold, they should begin their mandated reporting in the following fiscal year. This grace period would provide ample time for the entity to implement necessary data collection and reporting processes.

    It is also crucial to clarify the expectations regarding the revenue threshold. If an entity's annual revenue reaches or exceeds $500 million at any point during the year, they should be obligated to file the required Financial Risk Report. The determination to meet this threshold should be based on a continuous revenue cycle rather than strictly within a fiscal year framework. This clarity will help ensure that all qualifying entities are aware of their reporting responsibilities and can prepare accordingly

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

    f. What other types of existing climate financial risk disclosures are entities already preparing?

    A few entities currently subject to SB 261 reporting requirements are already engaged in comprehensive climate-related financial risk disclosures. These include Net Zero Pathways through the Science Based Targets initiative (SBTi), aligning operational strategies with the Paris Agreement to limit global warming to 1.5 degrees Celsius, and adhering to the Corporate Sustainability Reporting Directive (CSRD) in the EU, which mandates detailed sustainability reporting.

Additionally, the EU Taxonomy provides a classification system for sustainable economic activities, guiding entities in aligning their operations with environmental sustainability criteria. Financial market disclosures through standards like SASB, CDP, and GRI also play a crucial role, offering industry-specific guidelines for reporting financially material sustainability information to stakeholders. These existing practices not only prepare entities for new regulations under SB 261 but also streamline their reporting processes, ensuring they meet investor and regulatory expectations efficiently and effectively.

g. For covered entities that already report climate related financial risk, what approaches do entities use?

Companies report their climate-related financial risks in different ways, depending on their size and what rules they need to follow. Many use detailed methods like the TCFD framework or international standards, which are good for larger, more advanced companies but can be expensive. In places like Europe, companies also must start following new local rules. For those looking for a cheaper option, some companies just do a basic check to see what the biggest climate risks are to their business without going into too much detail. These various methods show that companies have different needs and follow different rules based on where they are and what resources they have.

In conclusion, the collaborative response from the California Construction and Industrial Materials Association, Construction Industry Air Quality Coalition, United Contractors, Southern California Contractors Association, and the Associated General Contractors of California underscores a unified commitment to shaping effective climate-disclosure legislation in California. Our collective recommendations aim to refine the definitions and scopes of reporting entities under Senate Bills 253 and 261, ensuring clarity and consistency across the board.

Sincerely,

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