

Vagueness In Calif. Climate Law Makes Compliance Tricky

By **John Rousakis and Chris Bowman** (February 6, 2024)

In October 2023, California Gov. Gavin Newsom signed three bills requiring climate-related reporting by certain public and private companies. One of those laws, the Climate Corporate Data Accountability Act, or S.B. 253, requires reporting of greenhouse gas emissions.

Another, the Climate-Related Financial Risk Act, or S.B. 261, requires reporting on climate-related financial risks. The third law, the Voluntary Carbon Market Disclosures Act, or A.B. 1305, requires reporting on the sale and use of voluntary carbon offsets, or VCOs.

Significantly, however — and although its legislative history is almost entirely focused on the sale and use of VCOs — A.B. 1305 also requires that companies that make claims of carbon neutrality, or of significant reductions in greenhouse gas emissions, disclose information supporting those claims, regardless of whether the company purchases VCOs.

This requirement, found in Section 44475.2, has raised a number of concerns, in part due to vague and conflicting language in the statute. This article discusses several issues raised by this part of the law that could benefit from clarification by the Legislature.

Section 44475.2 is relatively short, and packed with ambiguities, so it is worth printing here in its entirety:

An entity that makes claims regarding the achievement of net zero emissions, claims that the entity, a related or affiliated entity, or a product is "carbon neutral," or makes other claims implying the entity, related or affiliated entity, or a product does not add net carbon dioxide or greenhouse gases, as defined in Section 38505, to the climate or has made significant reductions to its carbon dioxide or greenhouse gas emissions, as described in Section 38505, shall disclose on the entity's internet website all of the following information pertaining to all greenhouse gas emissions associated with its claims:

- (a) All information documenting how, if at all, a "carbon neutral," "net zero emission," or other similar claim was determined to be accurate or actually accomplished, and how interim progress toward that goal is being measured. This information may include, but not be limited to, disclosure of independent third-party verification of all of the entity's greenhouse gas emissions, identification of the entity's science-based targets for its emissions reduction pathway, and disclosure of the relevant sector methodology and third-party verification used for the entity's science-based targets and emissions reduction pathway.
- (b) Whether there is independent third-party verification of the company data and claims listed.



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(c) This section does not apply to entities that either do not operate within the state, or that do not make claims within the state.

"Operating" in California

Section 44475.2 applies to public and private companies that "operate within the state." But the law does not define what it means to operate in the state, and that term does not appear to be defined elsewhere in California law.

S.B. 253 and S.B. 261 apply to companies that "do business" in the state, which is not defined in those laws but is broadly defined in other statutes. For example, California Revenue and Taxation Code, Section 23101, defines doing business as "engaging in any transaction for the purpose of financial or pecuniary gain or profit."

Companies should assume that operating within the state will be broadly defined. But it would be helpful if the Legislature clarified the term.

"Making Claims"

The law does not define what it means to "make a claim" regarding greenhouse gas emissions. Presumably, statements on websites, in environmental, social, and governance reports, in annual reports, in other official publications, and in advertisements would qualify as claims.

What is less clear is whether statements made by company officers or others in management less formally — in an interview, for example — qualify as claims by the company that would trigger reporting.

"Significant Reductions"

Section 44475.2 applies to entities that claim to have made "significant reductions" to their carbon dioxide or greenhouse gas emissions. The term is not defined, so unless an entity uses that exact term or a similar one, it is not clear what qualifies as significant.

Would a claim of 10% reductions qualify? What about 20%? Over what period of time? A 10% reduction in one year could be significant, but would seem less impressive if it took five years to achieve. The statute provides no guidance.

Stated Net-Zero Goals and Reporting Obligations

Many companies have established net-zero goals, and have publicly stated them. The section does not expressly state that publishing a net-zero goal triggers reporting — rather, according to its first paragraph, reporting is triggered by "claims regarding the achievement of net zero emissions."

However, the second paragraph, which discusses the information that must be disclosed if reporting is triggered, requires disclosure of "all information documenting how ... interim progress toward [a carbon neutral or net zero] goal is being measured." This reference to goals suggests that any public goal-setting will trigger reporting, regardless of how near-term or long-term the goal is.

For example, a conservative reading of the statute would require a company that states a 2050 net-zero goal to provide, in 2026, "all information" on how it is measuring progress

toward that goal, regardless of how far along in its decarbonization journey the company is.

If the Legislature intended this result, it should make clear in the first paragraph above that an entity that "publishes a net zero goal" is subject to reporting.

"All Information"

This term is ripe for challenge, given the unreasonably high bar it sets for disclosure. It is easy to envision that a carbon footprinting exercise would require the collection of thousands of pages of documents, including things like energy bills from multiple facilities going back several years.

Does the law require that they all be posted to a company's website? Putting aside the administrative burden of posting "all information" to an entity's website, the requirement would seem to run counter to the goal of informing the public, as the more copious the data is that is posted, the less likely someone will want to wade through it.

It seems that a reasonableness standard should apply, perhaps something more along the lines of "sufficiently detailed information" to support a net-zero claim or other claims. It will be interesting to see how the attorney general or others charged with enforcing the law will interpret this language.

Revenue Threshold

While S.B. 253 and S.B. 261 set revenue thresholds of \$1 million and \$500,000, respectively, to trigger reporting, A.B. 1305 sets no revenue threshold at all. So, in theory, a corner coffee bar with a net-zero or "significant reduction" statement on its website will be faced with a reporting burden under A.B. 1305.

It remains to be seen how A.B. 1305 will be interpreted and enforced. While the default deadline for reporting was Jan. 1, Assemblymember Jesse Gabriel, the law's sponsor, has written two letters, the most recent of which was a statement of legislative intent published in the Assembly Daily Journal on Jan. 3, indicating that it was his intent that the first compliance date be Jan. 1, 2025.

While those letters do not have the force of law, they are clear evidence of legislative intent, should the attorney general or others seek to enforce the law in 2024. If the Legislature amends the law to clarify anything, the compliance date should be at the top of its list.

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