

California Legislators Propose Three Climate Bills Focused on ESG Disclosure and Investment

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Three bills have recently been proposed by a trio of California state legislators concerning ESG financial disclosures and investing. The first, SB 253, would "require all large corporations that do business in California to publicly disclose their greenhouse gas (emissions) in line with the Greenhouse Gas Protocol . . . [and] [t]hese disclosures will include corporate supply chains (scope 3), which can include in excess of 90% of a corporation[']s carbon emission." The second, SB 261, "is modeled on the climate disclosure rules used by CALSTRS and hundreds of major financial institutions, as well as Federal securities risk disclosures that focus on financial risk related to the climate crisis." And the third, SB 252, "harnesses the power of California's public investment funds, the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS), to push businesses to act on climate change while protecting these vital public funds from fossil fuels' inherent volatility." While none of these three bills have yet passed the California Legislature nor been enacted into law, these proposed bills nonetheless send a clear and unmistakable message.

First, the state legislators in California (and presumably other similarly-aligned states) are prepared to take on those state governments that have displayed an intent to combat ESG-aligned investing. Indeed, the press release issued by one of the state senators proposing this legislation specifically states that "[l]eaders in Texas, Florida, West Virginia, and elsewhere have bowed to anti-science activists and fossil fuel interests and threatened corporate leaders who have attempted to disclose and cut climate pollution" and describes "[t]he chilling effects of these efforts" as extending to California--and hence the proposed response. The blue-state/red-state divide concerning ESG investing appears to be increasing, as are the accompanying difficulties imposed on corporate America in navigating these competing legal regimes.

Second, to the extent the federal government retreats from elements of the SEC's currently proposed rule on climate disclosures--such as the disclosure of Scope 3 GHG emissions--it is now clear that certain states will demand such a disclosure regardless. (And as most national or international companies have a presence in California, even a law limited in scope to those companies doing business in California will have a widespread and significant effect on corporate America.)

Absent clear action from the federal government that preempts these various efforts to impose a particular vision of ESG investing or of a financial disclosure regime concerning climate change, it is

clear that the various states will embark on diverse and mutually contradictory paths. And it is not clear that even firm federal action--to the extent such is even possible in the near future--will be able to resolve these differences.

{In recent years, many corporations that have attempted to take steps to improve transparency and lower emissions have faced serious pushback from governments in other states. Leaders in Texas, Florida, West Virginia, and elsewhere have bowed to anti-science activists and fossil fuel interests and threatened corporate leaders who have attempted to disclose and cut climate pollution. The chilling effects of these efforts extend far beyond the states in which they've been successful. If banks, pension funds, asset managers and multinational corporations fail to transparently and uniformly disclose and plan for climate impacts and related risks to their businesses, the result will be serious damage to Californians' savings, economy, and environment. The Climate Accountability package re-establishes California leadership on these issues ... to increase transparency around corporations' emissions and investments.

<https://sd11.senate.ca.gov/news/20230206-california-senators-announce-climate-accountability-package-raise-bar-corporate>

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