

October 2021

Policy Note: California State Procurement and Climate Risk

This policy note outlines potential opportunities and barriers to develop climate risk-related policy in California state procurement, with a focus on the Department of General Services (DGS, the state's lead procurement agency) and the climate risk disclosure framework supported by the Task Force on Climate-Related Financial Disclosures (TCFD). The note reviews DGS' legal mandate and programs, identifies policy precedent, and describes options for potential procurement climate risk policies.

Based on analysis of relevant law and policy and expert outreach, we identify the following legislative options for procurement climate risk policy:

- Requirement for TCFD-aligned climate-related financial risk disclosure for all entities contracting with the state over a specified minimum contract value and/or corporate revenue threshold (potentially limited to entities contracting with the state for goods or services that are particularly vulnerable to climate-related physical or transition risks).
- Requirement for project-level climate risk disclosure as part of any contract for goods or services that are particularly vulnerable to climate-related physical or transition risks, over a specified minimum contract value and/or corporate revenue threshold.
- Requirement for DGS to regularly assess and prepare a report on climate-related risks throughout state procurement.

I. Background and the Need for Procurement Climate Risk Policy

California is home to the world's fifth largest economy and an annual state budget of approximately \$200 billion. This economic activity includes significant direct state expenditures that are exposed to climate-related risks—both physical risks facing physical infrastructure like roads and state facilities, and economic transition risks facing contracting entities such as automobile manufacturers. The emergence of climate risk disclosure regimes including TCFD has demonstrated that risk assessment and disclosure is both vital and achievable for a range of financial institutions and real economy actors, and that such disclosures are relevant to a range of public and private entities. California, as a state government and a contracting counterparty, ranks high among them.

In its September 2021 report *Developing Climate Risk Disclosure Practices for the State of California*, the California Climate-Related Risk Disclosure Advisory Group identified state direct expenditure as an area of core concern for climate risk disclosure policy. The report noted that California “has an interest in understanding the financial risks of both its expenditures and the counterparties with which it transacts” in part because “many of the industries with the

greatest potential exposure overlap closely with the direct expenditures for which the state is responsible” Including critical transportation, water, and utility infrastructure.¹ In particular, state procurement of electricity via power purchase agreements, investment in public works and the state highway system, and purchase of energy-consuming technologies such as lighting may all raise significant climate risk implications.

As a result, the report concluded that “By setting specific requirements for counterparties to assess and disclose climate risk, both in the projects they are pursuing as well as their own corporate management, California can improve its management of long-term climate risk and thus financial risk management. At the same time, this disclosure program can allow California to advance its understanding of climate risk and inform its efforts to further advance its climate goals.”² Specifically, the report made two core procurement-related recommendations (for corporate- and project-level disclosure) that align with the goals and initial assessment of this analysis:

- “Counterparties should disclose relevant project-level physical and transition climate risks as part of their bids.”
- “All relevant counterparties transacting with the state should provide a corporate disclosure in line with TCFD spanning the four pillars of governance, strategy, risk management, and metrics and targets, as well as the industry guidance for non-financial sectors.”³

The report emphasized key distinctions between corporate-level and project-level disclosure: the former addresses the state’s interest in the climate approach and long-term viability of its counterparties, and can rely on the existing TCFD framework; while the latter addresses the state’s interest in the performance of individual projects, and does not yet have a generally agreed analytic framework. The report also noted that flexibility for smaller entities, technical assistance, and consideration of a just transition and equitable economy will be vital.⁴ While the report did not identify a state-level lead actor to carry out these recommendations—it framed them not as legal requirements but as actions to be carried out through “procurement policies, RFPs, and bid documents”—DGS’ responsibility for procurement decisions and procedures renders it central to potential policies.

II. Department of General Services and Procurement Overview

¹ Alicia Seiger, Kate Gordon et al., Stanford Law School, *Developing Climate Risk Disclosure Practices for the State of California* (September 2021), pp. 26-27, available at <https://www-cdn.law.stanford.edu/wp-content/uploads/2021/09/Developing-Climate-Risk-Disclosure-Practices-for-the-State-of-California.pdf>.

² Id. at p. 27.

³ Id. at pp. 32-33, Recommendations 3.6, 3.8.

⁴ Id. at pp. 30-31, Recommendations 3.2-3.4

DGS describes itself as the “business manager for the state of California,” working with state agencies on procurement and acquisitions, real estate management, transportation fleets, facility construction funding, and other government operations.⁵ The agency’s statutory mandate is “to provide centralized services including, but not limited to, planning, acquisition, construction, and maintenance of state buildings and property; purchasing; printing; architectural services; administrative hearings; government claims; and accounting services.”⁶

The DGS Procurement Division sets state procurement policies and provides purchasing services for state agencies and local governments. These policies do not appear to include any direct climate or climate risk policies. In DGS’ 2021 Strategic Plan, the Procurement Division highlighted its development of a sustainability reporting functionality to provide state agencies with information and assistance regarding environmentally preferable purchasing (EPP), including strategies and training to implement EPP and track information on environmental and social impacts related to goods and services procured.⁷ Despite the current lack of climate-related policies, DGS’ broad authority over state contracting—including the central legal requirement that state agency contracts for goods or services be submitted to and approved by DGS—offers the most likely avenue for building climate risk policy into state procurement policy.⁸

Two additional DGS capacities may bear on potential climate risk efforts within the department. The DGS Real Estate Services Division provides asset management, construction and engineering, environmental assessment, and acquisition services for state agency real estate needs, but does not appear to have an explicit climate risk focus.⁹ In addition, the Office of Sustainability supports state agencies in developing sustainability policies, strategies, and projects for state buildings, including renewable energy, energy retrofits, electric vehicle infrastructure, and recycling within state facilities.¹⁰

⁵ See DGS, *2021 Strategic Plan*, p. 5, available at <https://www.dgs.ca.gov/About/Strategic-Plan>.

⁶ Cal. Govt. Code § 14600.

⁷ DGS, *2021 Strategic Plan*, p. 10.

⁸ Cal. Pub. Contract Code § 10295. Exceptions are made for certain UC contracts; Caltrans contracts for Amtrak-related service, under the Streets and Highways Code, or for projects funded with local or federal taxes; state human resources contracts for employee benefits/occupational safety; contracts made directly by the legislature; and workers compensation insurance contracts. See also Cal. Pub. Contract Code § 10298 (allowing local government entities to purchase directly from state suppliers without competitive bidding through the leveraged procurement program).

⁹ DGS, *2021 Strategic Plan*, p. 12.

¹⁰ DGS, *2021 Strategic Plan*, p. 16.

State law requires all state vendors of tangible personal property to obtain a general California seller's permit or register with the Franchise Tax Board.¹¹ A state agency may be exempted from the permit requirement based on a written finding that the contract is necessary to meet a compelling state interest (such as ensuring public health, safety, and welfare; ensuring provision of essential services; and responding to an emergency). Thus, permitting or registration requirements could serve as a legal basis or entry point for application of climate risk standards.

While DGS is responsible for directing billions of dollars of procurement each year, and thus exerts significant market influence through its purchasing power, expert interviewees cautioned that the state's purchasing power may not be significant in all sectors to drive market-wide action.

III. California Procurement Policy Precedent

DGS does not currently follow any climate or climate risk-related policies in its procurement process; its environmentally preferable purchasing program is limited to assistance and guidance for state agencies, with no binding requirements on DGS procurement.¹² However, two existing state procurement policies—vendor nondiscrimination and greenhouse gas standards for certain materials—offer potential precedent for future climate risk policies.

1. Vendor nondiscrimination policy (see [Appendix D](#) for text)

California's vendor nondiscrimination policies bar state agencies from entering into contracts for goods or services with contractors that discriminate on the basis of sexual or gender identity in provision of employee benefits.¹³ Agencies may obtain a waiver from the requirements where there is only one prospective contractor available, the contract is necessary to respond to an emergency or provide essential services, or the requirements would violate a grant or other agreement.

Importantly, the policies apply only to a) contracting arrangements with a cumulative value of \$100,000 per vendor per year and b) the portions of a contractor's operations that occur within California, on state owned or occupied property, or on work related to California. The limited application to contractor operations that take place in or relate to California work aligns with

¹¹ Cal. Pub. Contract Code § 10295.1. See Cal. Rev. and Taxation Code § 6066 (seller's permit) or § 6226 (FTB registration).

¹² Cal. Pub. Contract Code § 12400 et seq.

¹³ AB 17 (Kehoe, Chapter 752, Statutes of 2003), SB 117 (Kehoe, Chapter 231, Statutes of 2011), Cal. Pub. Contract Code § 10295.3 (sexual identity); SB 703 (Leno, Chapter 578, Statutes of 2015), Cal. Pub. Contract Code § 10295.35 (gender identity).

limitations that federal courts imposed on San Francisco Equal Benefits Ordinance, which instituted a similar policy for city contracts in the 1990s. Following a legal challenge from the airline industry, a federal district court ruled that the Dormant Commerce Clause of the US Constitution barred the city from applying vendor nondiscrimination policies to all of a contracting entity's operations. Instead, the city was permitted only to apply the policy to contractor operations within or related to the city.¹⁴ (The district court found that application to operations outside the city and not related to city business were extraterritorial and not protected by the "market participant" exception because it would regulate fully out-of-city activity, applying the same analysis to a city government that it would to a state.)

While the nondiscrimination policy is substantively different from climate risk-related requirements, the mode and limitations of coverage are informative for potential new standards.

2. Materials GHG emission limits (see [Appendix E](#) for text)

In addition, state law requires DGS to institute GHG emission limits for certain materials. The Buy Clean California Act required DGS to set (by January 2021) maximum GHG potential levels for state-purchased rebar, glass, steel, and wood board insulation.¹⁵ It also requires DGS to report to the legislature on its standards and to periodically update them.¹⁶ However, the DGS State Contracting Manual currently available on the DGS website does not reflect these requirements. SB 778 (Becker, 2021) would update the Buy Clean California Act to include concrete as an eligible material under the law, with a maximum GHG potential level set by CARB and DGS and a requirement for contracting entities to procure concrete from suppliers that comply with that level. While these legal requirements are not yet reflected in the DGS manual, they can serve as useful precedent for the institution of similar substantive climate-related requirements for specified contract types.

IV. California Climate Risk Policy Precedent

California has engaged in preliminary policymaking with respect to climate-related risk over the past decade, including steps at the executive, legislative, and agency levels. To date, none has dealt with the state's procurement capacity.

¹⁴ *Air Transport Ass'n. of America v. City and County of San Francisco*, 992 F.Supp. 1149, 1159 (1998), *aff'd* 266 F.3d 1064 (2001).

¹⁵ AB 262 (Bonta, Chapter 816, Statutes of 2018), Cal. Pub. Contract Code § 3502. Executive Order B-18-12 (Gov. Jerry Brown, April 2012) also directed state agencies to purchase environmentally preferable products whenever applicable and cost-effective.

¹⁶ Cal. Pub. Contract Code § 3505.

The legislature has taken limited action, in 2015 directing the state public employee pension funds, CalPERS and CalSTRS, to begin divesting from thermal coal holdings and in 2018 directing them to prepare triennial reports disclosing the climate-related financial risks facing their investment portfolios and actions taken to address the risks.¹⁷ CalPERS and CalSTRS have also taken on a number of voluntary climate risk- and sustainable investment-related initiatives in the past decade.¹⁸

In the 2021-22 legislative session, the state legislature considered three distinct but related climate risk disclosure bills:

- Senate Bill 260 (Wiener), which would require emissions all large corporations doing business in California to disclose their Scope 1, 2, and 3 emissions and prepare a plan to achieve a 1.5-degree emission scenario;
- Senate Bill 449 (Stern), which would require climate-related financial risk disclosure by all large corporations and financial institutions licensed or incorporated in California, using the standard developed by the Task Force on Climate-Related Financial Disclosures (TCFD); and
- Assembly Bill 766 (Gabriel), which would require large corporations based in California to disclose emissions and climate-related financial risks and conduct climate change scenario analyses.

As of October 2021, none of these bills had progressed through the Legislature to the Governor's desk.

In addition, the California Department of Insurance (CDI) has taken a number of regulatory steps related to climate risk disclosure and reduction. Beginning in 2010, CDI began administering the National Association of Insurance Commissioners (NAIC) annual Climate Risk Disclosure Survey and requiring all California-licensed insurers with annual premiums over \$100 million to respond. CDI also called for insurers to divest from thermal coal holdings, required insurers to disclose all fossil fuel investments, and conducted climate risk scenario analyses to assess transition risks facing insurers.¹⁹

¹⁷ SB 185 (De Leon, Chapter 605, Statutes of 2015), Cal. Govt. Code § 7513.75; SB 964 (Allen, Chapter 731, Statutes of 2018), Cal. Govt. Code § 7510.5.

¹⁸ See Dave Jones et al., Center for Law, Energy & the Environment and Principles for Responsible Investment, *The California Roadmap* (September 2020), pp. 18-20, available at <https://www.law.berkeley.edu/research/clee/research/climate/climate-risk-initiative/the-california-responsible-investment-roadmap/>.

¹⁹ See Jones et al., *supra*, p. 23.

In September 2019, Governor Newsom signed Executive Order N-19-19 which directed the Department of Finance to develop a Climate Investment Framework focused on reducing climate-related financial risks within the state’s pension funds, aligning state transportation investment with climate goals, and aligning DGS purchasing and real estate policies with emission reduction and climate risk mitigation goals.²⁰ In September 2020, the Department of Finance released the California Climate Investment Framework, which identified strategies and priorities for state pension funds and institutional investors and recommended the creation of a governor’s working group to explore development of a standard climate risk disclosure standard (but only made passing reference to DGS and procurement).²¹ The Office of Planning and Research launched the Climate-Related Risk Disclosure Advisory Group in April 2021 with a mandate to develop a risk disclosure standard for state investment and asset stewardship; as discussed above, the group’s September 2021 report highlighted state procurement as a potential avenue for disclosure requirements.²²

These early-stage policy efforts indicate that state leaders in a range of capacities have identified climate risk assessment and disclosure as a high priority for state policy, including in the area of procurement. The lack of existing strategies or mechanisms to advance this priority suggests the need for legislative action.

V. Procurement Climate Risk Policy Options

Based on policy analysis and expert outreach, the project team identified three main policy avenues for procurement climate risk policy: TCFD disclosure requirements for contracting entities; project-level disclosure requirements for high-climate risk contracts; and a state assessment of climate risk throughout the procurement system.

1. Corporate-level disclosure for contracting entities

The state legislature could require all entities that do business with the state to prepare and submit to the state a TCFD-compliant climate risk disclosure report. To avoid over-burdening smaller entities, ensure quality disclosure, and minimize negative impacts on the state’s ability to procure in a cost-effective manner, the following limitations should be considered:

²⁰ Executive Order N-19-19 (Gov. Gavin Newsom, September 20, 2019), available at <https://www.gov.ca.gov/wp-content/uploads/2019/09/9.20.19-Climate-EO-N-19-19.pdf>.

²¹ California Department of Finance, *California Climate Investment Framework* (September 2020), available at <https://www.gov.ca.gov/wp-content/uploads/2019/09/9.20.19-Climate-EO-N-19-19.pdf>.

²² Governor’s Office of Planning and Research, “State of California Launches Advisory Group on Climate Risk Disclosure” (press release) (April 5, 2021), available at <http://www.opr.ca.gov/news/2021/04-05.html>.

- A minimum contract size and/or revenue threshold for covered entities to limit application to large, sophisticated contracting counterparties with the capacity to prepare TCFD reports.
- A provision limiting application to contracts for goods/services that are particularly vulnerable to climate risks (i.e., physical infrastructure and facilities, fleet vehicles) and/or counterparties that are particularly vulnerable (i.e., raw materials, vehicles).
- A waiver provision to apply when only one provider of goods/services exists or when the state agency can only cost-effectively obtain the good or service in question from a non-disclosing entity.
- Delayed implementation to afford counterparties time to prepare reports.

Following the precedent of the vendor nondiscrimination laws, the legislature could achieve this goal by amending the Public Contract Code to bar state agencies from doing business with entities that fail to provide TCFD reports. The requirement could apply at any of multiple stages in the contracting process: initial vendor registration in the state's eProcure system; bid submission; or contract development and execution. To minimize impacts on the competitiveness of bids received by the state and limit the risk of bid protests, the contract stage may be preferable.

To allow for more flexibility in implementation, the legislature could instead require agencies to give preference to, or confer additional points in scoring bids from, entities that do provide TCFD reports along with their bids; however, this option could prove more challenging to administer than a broad requirement.

A condition limiting application to high-climate risk contracts or suppliers would help ensure the requirement is narrowly tailored to avoid sectors that are unlikely to prepare TCFD reports and limit impacts on the cost-effectiveness of state procurement. Any such condition should be explicit about the products or sellers that qualify.

See [Appendix A](#) for proposed draft legislative language.

2. Project-level climate risk disclosure

As an alternative to the corporate-level approach, the state legislature could take a project-level approach by requiring all contracting counterparties to share a climate risk assessment of the specific good, service, or project delivered under a contract. The legislature could require this either at the pre-contract phase, requiring a climate risk assessment as part of each qualifying bid; or in the contract phase, requiring all selected counterparties to submit such an

assessment as part of the contract package prior to project initiation. The latter approach is likely preferable, based on expert outreach, and is reflected in the draft text below.

This approach would have the benefit of ensuring that risk assessments relate directly to the state's procurement (rather than the broader risks facing a contracting counterparty), with the potential to better inform procurement decision-making and risk mitigation. It may also entail a greater compliance rate. However, it would require DGS and potential partner agencies to develop a new disclosure framework for projects, since it would not use the existing TCFD framework; and it would have limited potential to drive climate risk disclosure in general, which is proceeding more at the corporate, TCFD level. This framework need not be highly prescriptive or detailed.

The project-level approach could incorporate the same limited application and waiver provisions described above to limit burdens on smaller vendors and on the procurement process.

See [Appendix B](#) for proposed draft legislative language.

3. State assessment of climate risk in procurement

If neither form of disclosure requirement is feasible, the legislature could require DGS to undertake a comprehensive assessment of climate-related risks throughout state procurement and produce a report that identifies:

- Climate risks facing state-procured goods and projects at the project level;
- Climate risks facing contract counterparties at the corporate level that could affect the viability of state contracts or projects;
- Measures being taken to evaluate and mitigate these risks; and
- Legislation or policy reforms needed to better mitigate these risks.

See [Appendix C](#) for proposed draft legislative language.

Appendix A: Draft Legislative Text – Corporate-Level Disclosure of Procurement Climate Risk

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

- (a) Climate change is affecting California’s environment, communities, infrastructure, and economy with physical impacts including wildfires, sea level rise, extreme weather events, and extreme droughts, and transition impacts associated with the decarbonization of the global economy.
- (b) Global economic and climate policy leaders have conclusively established that the long-term strength of global and local communities and economies will depend on their ability to withstand the climate change-related risks including physical impacts, economic transitions, and policy and legal responses.
- (c) California annually procures billions of dollars’ worth of goods and services to serve the needs of its residents, including state infrastructure and building projects that are vulnerable to the physical impacts of climate change, and goods and materials with long-term supply chains and suppliers that are vulnerable to the economic transition impacts of climate change.
- (d) California is a global leader in addressing climate change causes and impacts, including the landmark emission reduction target of Senate Bill 32 (2016), the statewide carbon neutrality goal of Senate Bill 100 (2018), the requirement for state public pension funds to analyze and report material climate-related financial risks of Senate Bill 964 (2019), and the state climate investment framework directed by, and Climate-Related Risk Disclosure Advisory Group established pursuant to, Executive Order No. N-19-19.
- (e) Leading voluntary initiatives have begun to develop frameworks for assessment and disclosure of climate change- and sustainability-related information, including the Financial Stability Board’s Task Force on Climate-Related Financial Disclosures (TCFD).
- (f) California has a direct interest in promoting infrastructural and economic climate resilience by ensuring that its procurement processes and supply chains, and the contractors that serve them, are informed by robust assessment and disclosure of climate change-related risks.

SEC. 2.

[#####]

As used in this division:

- (a) “Climate-related financial risk” means material risk of harm to immediate and long-term financial outcomes due to climate change, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and

borrowers, shareholder value, consumer demand, and financial markets and economic health. [Note: Govt. Code § 7510.5 currently includes a Climate-related financial risk” definition that is limited to pension funds.]

[Alternative: (a) “Climate-related financial risk” means financial risk to long-lived fixed assets, locations, operations, or value chains that result from exposure to physical climate-related effects; and/or financial risk that is attributable to climate change mitigation and adaptation, including efforts to reduce greenhouse gas emissions and strengthen resilience to the impacts of climate change.] [Note: adapted from definitions of “physical risk” and “transition risk” in the proposed federal [Climate Risk Disclosure Act of 2021](#). Bill could adopt the full definitions from that legislation, if enacted.]

(b) “Climate-related financial risk report” means a report prepared in accordance with the recommended framework and disclosures contained in the Final Report of Recommendations of the Task Force on Climate-Related Financial Disclosures (June 2017) or any successor thereto.

[Optional:(c) “Climate-vulnerable good” or “climate-vulnerable service” means:

(1) Any “eligible material” as defined in Article 5 of Chapter 3 of Part 1 of Division 2.

(2) Any street, road, highway, bridge, railroad, or other load-bearing transportation infrastructure or structural component thereof.

(3) Any structure, building, or structural component thereof.

(4) Any motor vehicle, locomotive, watercraft, aircraft, or any fuels therefor.

(5) Any good or service which in its production, delivery, installation, and/or end use in California is vulnerable to the physical or transition risks posed by climate change.]

[Note: include if limiting application to specific higher-risk contract types]

(d) “Covered contract” means any contract that:

(1) has a cumulative amount of [one million dollars (\$1,000,000)] or more per contractor in each fiscal year; and

[Optional: (2) relates to the procurement of a climate-vulnerable good or climate-vulnerable service.] [Note: include if limiting application to specific higher-risk contract types]

(e) “Contractor” means any corporation, partnership, limited liability company, or other business entity that had annual gross revenues of at least [five hundred million dollars (\$500,000,000)] in the prior calendar year.

[#####]

(a) Notwithstanding any other provision of law, after [January 1, 2023] no state agency may enter into any covered contract for the acquisition of goods or services in the amount of [one million dollars (\$1,000,000)] or more with a contractor who has failed to deliver to the

department, prior to or concurrent with execution of the covered contract, a climate-related financial risk report for the calendar or fiscal year preceding the year in which the contract will commence.

(b) After taking all reasonable measures to comply with this section, as determined by the state agency, the requirements of this section may be waived under any of the following circumstances:

(1) Whenever the state agency makes a written determination that (A) there is only one prospective contractor willing to enter into a specific contract with the state agency or (B) the state agency can only obtain specific goods or services in a cost-effective manner from a contractor that is unable to deliver the report specified in subdivision (a).

[Alternative: and (B) it is cost-prohibitive for such contractor to deliver the report specified in subdivision (a).]

(2) If the contract is necessary to respond to an emergency, as determined by the state agency, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this section capable of responding to the emergency is immediately available.

(3) Where the requirements of this section violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the agency to change the terms or conditions of any grant, subvention, or agreement to authorize application of this section.

(c)(1) Every covered contract subject to this chapter shall contain a statement by which the contractor certifies that the contractor has delivered the report specified in subdivision (a).

(2) The department or other contracting agency shall enforce this section pursuant to its existing enforcement powers.

(d) Nothing in this section is intended to regulate the contracting practices of any local jurisdiction.

(e) This section shall be construed so as not to conflict with applicable federal laws, rules, or regulations. In the event that a court or agency of competent jurisdiction holds that federal law, rule, or regulation invalidates any clause, sentence, paragraph, or section of this code or the application thereof to any person or circumstances, it is the intent of the state that the court or agency sever that clause, sentence, paragraph, or section so that the remainder of this section shall remain in effect.

[#####]

(a) The department shall make available to the public, on its internet website, all climate-related financial risk reports obtained pursuant to this division.

[Optional: (b) The department shall submit to the legislature, pursuant to Section 9795 of the Government Code, by [January 1, 2023] and annually thereafter, a report that includes all of the following:

- (1) An assessment of climate-related financial risks facing State procurement of goods and services and suppliers of goods and services procured by the State.*
- (2) An assessment of the state of disclosure of climate-related financial risks by suppliers of goods and services procured by the State, including but not limited to a review of any climate-related financial risk reports prepared by such suppliers.*
- (3) A review of actions taken by the department to mitigate climate-related financial risks in State procurement of goods and services.*
- (4) Proposals for regulatory actions, policies, or reforms needed to mitigate climate-related physical risks and climate-related financial risks in State procurement of goods and services.]*

Appendix B: Draft Legislative Text – Project-Level Disclosure of Procurement Climate Risk

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

- (a) Climate change is affecting California’s environment, communities, infrastructure, and economy with physical impacts including wildfires, sea level rise, extreme weather events, and extreme droughts, and transition impacts associated with the decarbonization of the global economy.
- (b) Global economic and climate policy leaders have conclusively established that the long-term strength of global and local communities and economies will depend on their ability to withstand the climate change-related risks including physical impacts, economic transitions, and policy and legal responses.
- (c) California annually procures billions of dollars’ worth of goods and services to serve the needs of its residents, including state infrastructure and building projects that are vulnerable to the physical impacts of climate change, and goods and materials with long-term supply chains and suppliers that are vulnerable to the economic transition impacts of climate change.
- (d) California is a global leader in addressing climate change causes and impacts, including the landmark emission reduction target of Senate Bill 32 (2016), the statewide carbon neutrality goal of Senate Bill 100 (2018), the requirement for state public pension funds to analyze and report material climate-related financial risks of Senate Bill 964 (2019), and the state climate investment framework directed by, and Climate-Related Risk Disclosure Advisory Group established pursuant to, Executive Order No. N-19-19.
- (e) Leading voluntary initiatives have begun to develop frameworks for assessment and disclosure of climate change- and sustainability-related information, including the Financial Stability Board’s Task Force on Climate-Related Financial Disclosures (TCFD).
- (f) California has a direct interest in promoting infrastructural and economic climate resilience by ensuring that its procurement processes and supply chains, and the contractors that serve them, are informed by robust assessment and disclosure of climate change-related risks.

SEC. 2.

[#####]

As used in this division:

- (a) “Climate-related financial risk” means material risk of harm to immediate and long-term financial outcomes due to climate change, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and

borrowers, shareholder value, consumer demand, and financial markets and economic health. [Note: Govt. Code § 7510.5 currently includes a Climate-related financial risk” definition that is limited to pension funds.]

[Alternative: (a) “Climate-related financial risk” means financial risk to long-lived fixed assets, locations, operations, or value chains that result from exposure to physical climate-related effects; and/or financial risk that is attributable to climate change mitigation and adaptation, including efforts to reduce greenhouse gas emissions and strengthen resilience to the impacts of climate change.] [Note: adapted from definitions of “physical risk” and “transition risk” in the proposed federal [Climate Risk Disclosure Act of 2021](#). Bill could adopt the full definitions from that legislation, if enacted.]

(b) “Climate-related physical risk” means risk of physical disruption or damage due to climate change-related impacts, including but not limited to wildfire, flooding, sea-level rise, drought, extreme heat, and extreme weather.

(c) “Climate-vulnerable good” or “climate-vulnerable service” means:

- (1) Any “eligible material” as defined in Article 5 of Chapter 3 of Part 1 of Division 2.
- (2) Any street, road, highway, bridge, railroad, or other load-bearing transportation infrastructure or structural component thereof.
- (3) Any structure, building, or structural component thereof.
- (4) Any motor vehicle, locomotive, watercraft, aircraft, or any fuels therefor.
- (5) Any good or service which in its production, delivery, installation, and/or end use in California is vulnerable to the physical or transition risks posed by climate change.

(d) “Covered contract” means any contract that:

- (1) has a cumulative amount of [one million dollars (\$1,000,000)] or more per contractor in each fiscal year; and
- (2) relates to the procurement of a climate-vulnerable good or climate-vulnerable service.

(e) “Contractor” means any corporation, partnership, limited liability company, or other business entity that had annual gross revenues of at least [five hundred million dollars (\$500,000,000)] in the prior calendar year.

[#####]

(a) Any covered contract entered into by any state agency after [January 1, 2024] shall include a requirement for a written assessment by the contractor of any climate-related physical risks anticipated to affect materially the goods or services provided under the covered contract, as applicable, and any climate-related financial risks anticipated to affect the contractor’s capacity to perform under the contract. The department shall not approve any covered contract unless

it has reviewed and approved as satisfactory the assessment prepared pursuant to this subdivision.

(b) After taking all reasonable measures to comply with this section, as determined by the state agency, the requirements of this section may be waived under any of the following circumstances:

(1) Whenever the state agency makes a written determination that (A) there is only one prospective contractor willing to enter into a specific contract with the state agency or (B) the state agency can only obtain specific goods or services in a cost-effective manner from a contractor that is unable to deliver the report specified in subdivision (a).

[Alternative: and (B) it is cost-prohibitive for such contractor to deliver the report specified in subdivision (a).]

(2) The contractor prepares, and the department approves, a written statement affirming that the contract does not relate to the procurement of a climate-vulnerable good or climate-vulnerable service.

(3) If the contract is necessary to respond to an emergency, as determined by the state agency, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this section capable of responding to the emergency is immediately available.

(4) Where the requirements of this section violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the agency to change the terms or conditions of any grant, subvention, or agreement to authorize application of this section.

(c) No later than [January 1, 2023], the department, in consultation with the Office of Planning and Research, shall develop, and publish in the State Contracting Manual or a department management memorandum, and make available on the department's internet website, guidelines for preparation of assessments required pursuant to subdivision (a).

[Optional: (d) The department shall submit to the legislature, pursuant to Section 9795 of the Government Code, by [January 1, 2023] and annually thereafter, a report that includes all of the following:

(1) An assessment of State procurement of climate-vulnerable goods and climate-vulnerable services, including analysis of (A) climate-related physical risks facing State-procured physical infrastructure and (B) climate-related financial risks facing suppliers of goods and services procured by the State.

(2) An assessment of the state of disclosure of climate-related financial risks and climate-related physical risks by suppliers of goods and services procured by the State, including

but not limited to a review of any climate-related financial risk reports prepared by such suppliers.

(3) A review of actions taken by the department to mitigate climate-related financial risks and climate-related physical risks in State procurement of goods and services.

(4) Proposals for regulatory actions, policies, or reforms needed to mitigate climate-related physical risks and climate-related financial risks in State procurement of goods and services.]

Appendix C: Draft Legislative Text – State Assessment of Procurement Climate Risk

SECTION 1. The Legislature finds and declares all of the following:

- (a) Climate change is affecting California’s environment, communities, infrastructure, and economy with physical impacts including wildfires, sea level rise, extreme weather events, and extreme droughts, and transition impacts associated with the decarbonization of the global economy.
- (b) Global economic and climate policy leaders have conclusively established that the long-term strength of global and local communities and economies will depend on their ability to withstand the climate change-related risks including physical impacts, economic transitions, and policy and legal responses.
- (c) California annually procures billions of dollars’ worth of goods and services to serve the needs of its residents, including state infrastructure and building projects that are vulnerable to the physical impacts of climate change, and goods and materials with long-term supply chains and suppliers that are vulnerable to the economic transition impacts of climate change.
- (d) California is a global leader in addressing climate change causes and impacts, including the landmark emission reduction target of Senate Bill 32 (2016), the statewide carbon neutrality goal of Senate Bill 100 (2018), the requirement for state public pension funds to analyze and report material climate-related financial risks of Senate Bill 964 (2019), and the state climate investment framework directed by, and Climate-Related Risk Disclosure Advisory Group established pursuant to, Executive Order No. N-19-19.
- (e) Leading voluntary initiatives have begun to develop frameworks for assessment and disclosure of climate change- and sustainability-related information, including the Financial Stability Board’s Task Force on Climate-Related Financial Disclosures (TCFD).
- (f) California has a direct interest in promoting infrastructural and economic climate resilience by ensuring that its procurement processes and supply chains, and the contractors that serve them, are informed by robust assessment and disclosure of climate change-related risks.

SEC. 2

[#####]

As used in this division:

- (a) “Climate-related financial risk” means material risk of harm to immediate and long-term financial outcomes due to climate change, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health.

[Note: Govt. Code § 7510.5 currently includes a Climate-related financial risk” definition that is limited to pension funds.]

[Alternative: (a) “Climate-related financial risk” means financial risk to long-lived fixed assets, locations, operations, or value chains that result from exposure to physical climate-related effects; and/or financial risk that is attributable to climate change mitigation and adaptation, including efforts to reduce greenhouse gas emissions and strengthen resilience to the impacts of climate change.] [Note: adapted from definitions of “physical risk” and “transition risk” in the proposed federal [Climate Risk Disclosure Act of 2021](#). Bill could adopt the full definitions from that legislation, if enacted.]

(b) “Climate-related financial risk report” means a report prepared in accordance with the recommended framework and disclosures contained in the Final Report of Recommendations of the Task Force on Climate-Related Financial Disclosures (June 2017) or any successor thereto.

(c) “Climate-related physical risk” means risk of physical disruption or destruction of infrastructure due to climate change-related impacts, including but not limited to wildfire, flooding, sea-level rise, drought, extreme heat, and extreme weather.

(d) “Climate-vulnerable good” or “climate-vulnerable service” means:

- (1) Any “eligible material” as defined in Article 5 of Chapter 3 of Part 1 of Division 2.
- (2) Any street, road, highway, bridge, railroad, or other load-bearing transportation infrastructure or structural component thereof.
- (3) Any structure, building, or structural component thereof.
- (4) Any motor vehicle, locomotive, watercraft, aircraft, or any fuels therefor.
- (5) Any good or service which in its production, delivery, installation, and/or end use in California is vulnerable to the physical or transition risks posed by climate change.

[#####]

(a) The department shall submit to the legislature, pursuant to Section 9795 of the Government Code, by [January 1, 2023] and annually thereafter, a report that includes all of the following:

- (1) An assessment of State procurement of climate-vulnerable goods and climate-vulnerable services, including analysis of (A) climate-related physical risks facing State-procured physical infrastructure and (B) climate-related financial risks facing suppliers of goods and services procured by the State.
- (2) An assessment of the state of disclosure of climate-related financial risks and climate-related physical risks by suppliers of goods and services procured by the State, including but not limited to a review of any climate-related financial risk reports prepared by such suppliers.
- (3) A review of actions taken by the department to mitigate climate-related financial risks and climate-related physical risks in State procurement of goods and services.

(4) Proposals for regulatory actions, policies, or reforms needed to mitigate climate-related physical risks and climate-related financial risks in State procurement of goods and services.

Appendix D: Vendor Nondiscrimination (select provisions, substantially similar to § 10295.35)

Public Contract Code § 10295.3. Contracts for acquisition of goods or services between state agency and contractor; discrimination against employees with domestic partners

(a)(1) Notwithstanding any other provision of law, no state agency may enter into any contract for the acquisition of goods or services in the amount of one hundred thousand dollars (\$100,000) or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

(2) For purposes of this section, “contract” includes contracts with a cumulative amount of one hundred thousand dollars (\$100,000) or more per contractor in each fiscal year.

...

(5) The requirements of this section shall apply only to those portions of a contractor's operations that occur under any of the following conditions:

(A) Within the state.

(B) On real property outside the state if the property is owned by the state or if the state has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the state.

(C) Elsewhere in the United States where work related to a state contract is being performed.

...

(c) After taking all reasonable measures to find a contractor that complies with this section, as determined by the state agency, the requirements of this section may be waived under any of the following circumstances:

(1) Whenever there is only one prospective contractor willing to enter into a specific contract with the state agency.

(2) If the contract is necessary to respond to an emergency, as determined by the state agency, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this section capable of responding to the emergency is immediately available.

(3) Where the requirements of this section violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the agency to change the terms or conditions of any grant, subvention, or agreement to authorize application of this section.

(4) Where the contractor is providing wholesale or bulk water, power, or natural gas, the conveyance or transmission of the same, or ancillary services, as required for assuring reliable services in accordance with good utility practice, provided that the purchase of the same may not practically be accomplished through the standard competitive bidding procedures, and further provided that this exemption does not apply to contractors providing direct retail services to end users.

(d)(1) If there is a difference in the cost to provide a certain benefit to a domestic partner or spouse, the contractor is not deemed to be in violation of this section so long as the contractor permits the employee to pay any excess costs.

(2) The contractor is not deemed to discriminate in the provision of benefits if the contractor, in providing the benefits, pays the actual costs incurred in obtaining the benefit.

(3) In the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor may not be deemed to discriminate in the provision of benefits.

...

(e) A contractor is not deemed to be in violation of this section if the contractor does any of the following:

(1) Offers the same benefits to employees with domestic partners and employees with spouses and offers the same benefits to domestic partners and spouses of employees.

(2) Elects to provide the same benefits to individuals that are provided to employees' spouses and employees' domestic partners.

(3) Elects to provide benefits on a basis unrelated to an employee's marital status or domestic partnership status, including, but not limited to, allowing each employee to designate a legally domiciled member of the employee's household as being eligible for benefits.

(4) Elects not to provide benefits to employees based on their marital status or domestic partnership status, or elects not to provide benefits to employees' spouses and to employees' domestic partners.

(f)(1) Every contract subject to this chapter shall contain a statement by which the contractor certifies that the contractor is in compliance with this section.

(2) The department or other contracting agency shall enforce this section pursuant to its existing enforcement powers.

(3)(A) If a contractor falsely certifies that it is in compliance with this section, the contract with that contractor shall be subject to Article 9 (commencing with Section 10420), unless, within a time period specified by the department or other contracting agency, the contractor provides to the department or agency proof that it has complied, or is in the process of complying, with this section.

(B) The application of the remedies or penalties contained in Article 9 (commencing with Section 10420) to a contract subject to this chapter shall not preclude the application of

any existing remedies otherwise available to the department or other contracting agency under its existing enforcement powers.

(g) Nothing in this section is intended to regulate the contracting practices of any local jurisdiction.

(h) This section shall be construed so as not to conflict with applicable federal laws, rules, or regulations. In the event that a court or agency of competent jurisdiction holds that federal law, rule, or regulation invalidates any clause, sentence, paragraph, or section of this code or the application thereof to any person or circumstances, it is the intent of the state that the court or agency sever that clause, sentence, paragraph, or section so that the remainder of this section shall remain in effect.

Appendix E: Buy Clean California Act (select provisions)

Public Contract Code § 3502. Establishment and publication of maximum acceptable global warming potential for categories of materials; report to Legislature; review and adjustment

(a) By January 1, 2021, the department shall establish, and publish in the State Contracting Manual or a department management memorandum, or make available on the department's internet website, a maximum acceptable global warming potential for each category of eligible materials in accordance with both of the following requirements:

(1) The department shall set the maximum acceptable global warming potential at the industry average of facility-specific global warming potential emissions for that material with a phase-in period of not more than two years. The department shall determine the industry average by consulting recognized databases of environmental product declarations. When determining the industry averages pursuant to this paragraph, the department should include all stages of manufacturing required by the relevant product category rule. However, when setting the initial industry average, the department may exclude emissions that occur during fabrication stages, and make reasonable judgments aligned with the product category rule.

(2) The department shall express the maximum acceptable global warming potential as a number that states the maximum acceptable facility-specific global warming potential for each category of eligible materials. The department may set different maximums for different products within each category and, when more than one set of product category rules exists for a category or set of products, may set a different maximum for each set of product category rules. The global warming potential shall be provided in a manner that is consistent with criteria in an Environmental Product Declaration.

(b) The department, by January 1, 2021, shall submit a report to the Legislature that describes the method that the department used to develop the maximum global warming potential for each category of eligible materials pursuant to subdivision (a). The report required by this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(c) By January 1, 2024, and every three years thereafter, the department shall review the maximum acceptable global warming potential for each category of eligible materials established pursuant to subdivision (a), and may adjust that number downward for any eligible material to reflect industry improvements if the department, based on the process described in paragraph (1) of subdivision (a), determines that the industry average has changed, but the department shall not adjust that number upward for any eligible material. At that time, the department shall update the State Contracting Manual, department management memorandum, or information available on the department's internet website, to reflect that adjustment.

Public Contract Code § 3501. Definitions

(c) "Eligible materials" means any of the following:

- (1) Carbon steel rebar.
- (2) Flat glass.
- (3) Mineral wool board insulation.
- (4) Structural steel.