



California Mandatory Nonresidential Building Energy Use Disclosures Revisited

By: Alfred M. Clark and Kathleen Smalley

The goal of the California Global Warming Solutions Act of 2006 is to reduce greenhouse gas emissions in California by 2020 to the emission levels of 1990. At the time of enactment California was the second largest greenhouse gas emitting state in the US, with electricity production the source of 32% of the state's carbon emissions.

In October 2009 the California Legislature adopted Assembly Bill 1103, which added Section 25402.10 to the Public Resources Code requiring owners and operators of nonresidential buildings to (a) authorize electric and gas utilities serving their buildings to upload energy consumption data for their building to an EPA ENERGY STAR Portfolio Manager, and (b) disclose such benchmarking data and ratings for the most recent twelve month period to prospective purchasers, tenants contemplating a lease of the entire building, and lenders. After several delays, implementation of the mandatory disclosures began January 1, 2014. The mandatory disclosures were controversial and sanctions for noncompliance were unclear. As a result, frequently, rather than complying with the registration and disclosure obligations, parties to agreements would allocate responsibility for the risk of noncompliance.

On October 8, 2015 Governor Brown signed into law Assembly Bill 802, creating a new scheme for energy use disclosures, replacing AB 1103, effective January 1, 2016. One significant change is the direction to the California Public Utility Commission to develop rules for measuring energy efficiency utilizing normalized metered energy consumption. Beginning January 1, 2016 utilities in California will be required to maintain records of energy use data for the most recent 12 months for all buildings to which they provide service. On and after January 1, 2017, upon the request of an owner of a "covered building", each utility is obligated to provide aggregated energy usage data for such building. The legislation expressly acknowledges that such data shall not be considered customer utility usage information or confidential information, and the building owner and utility will not have any liability for use or disclosure of such data. A covered building is either or both (a) any building with no residential utility accounts, and (b) any building with 5 or more utility accounts, residential and nonresidential.

The new legislation requires the State Energy Resources Conservation and Development Commission to "analyze, develop and evaluate energy policies and programs." The Commission is instructed to adopt regulations for the delivery of benchmarking of energy use for comparable covered buildings to the Commission, and the public disclosure of such benchmarking. In addition, the Commission is directed to authorize energy utilities to provide "financial incentives, rebates, technical assistance and support" to their customers to increase energy efficiency.

The theory behind energy disclosures is that to the extent such information is available, owners of inefficient buildings will be incentivized to improve efficiencies by investing in building retrofits and renewable energy, making those buildings more attractive to prospective buyers and tenants.



The good news is that, beginning January 1, 2016, until new legislation is enacted, building owners no longer will be required to disclose their ENERGY STAR ratings to prospective buyers, tenants and lenders. Other good news is that with accurate benchmarking information the development of meaningful energy efficiency programs may be accelerated. However, these modifications to building energy disclosures appear to be a continuing work in progress, so stay tuned.

For more information please contact the authors.

Alfred M. Clark | 213-687-6706 | aclark@lockelord.com

Kathleen Smalley | 213-687-6788 | kathleen.smalley@lockelord.com



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