

CEC AB 1103 Workshop – February 20th, 2015**INTRODUCTION**

First, I want to thank the staff and the commissioners for their time, effort and patience as so many people in the real estate industry voiced their suggestions and counters. It reminds me of the parable of the six blind men and the elephant.

“The blind man who feels a leg says the elephant is like a pillar; the one who feels the tail says the elephant is like a rope; the one who feels the trunk says the elephant is like a tree branch... They were all correct based upon their experience.

Representatives from building owners and managers, realtors/real estate agents, title companies, utilities, municipalities and consultants had different opinions as to how to make the ordinance better. And, they all were right, from their perspectives.

My perspective is from that of an energy consultant who represents mostly individuals, family trusts and LLCs with properties smaller than 50,000 square feet. They are not likely BOMA members and don't use professional property managers (if any property managers) who are experienced with the ordinance.

I don't know what percent of the real estate transaction market they represent. It may involve more transactions than that generated by large real estate companies, building owners and property managers.

Regardless, this “retail” group of property owners accounts for a large volume of transactions. It is also a rather unsophisticated market with little or no awareness of the ordinance or “energy efficiency”, and lacking in the training and skills necessary to use Portfolio Manager.

Regarding the proposed changes, I want to laud the staff and the Commissioners for the following recommended changes:

- The adoption of a “Custom Report Template”
- Removal of the requirement for buildings under 10,000 square feet
- Changing the “shelf life” of the report to 12 months
- The allowance for an exception for buildings to be demolished, -although the mechanics of documenting this intent needs to be modified to be more practical.
- The implementation of a “virtual” meter

RECOMMENDATIONS

Before providing comments regarding the proposed changes, I think it is valuable to revisit the intent of the ordinance. According to Martha Brook, Senior Mechanical Engineer with the California Energy Commission, “The intent of the law is “commercial valuation of energy usage” during a financial transaction, just as square footage is valued.” I am assuming that this is a correct statement or at least a reasonable approximation.

- **Section 1683**
 - **(a)** - If the AB 1103 report is to be useful for the “valuation of energy use” during the purchase of a building, it would be far better to require the report before the contract is signed. I suggest that the report be provided with the “listing” information (for those properties that are listed for sale), just as the Cap Rate, rent rolls, revenue and expenses and other data is provided. This need not be “public” if that is an issue, but it should be available to a serious perspective buyer. Delivery after a purchase contract is signed is too late to be useful for decision-making.
 - Based upon my experience in the “retail” market (individual, trust and LLC owners of buildings under 50,000 square feet), the information contained therein is not likely to be reviewed by the buyer after the contract is signed, and the report just becomes another box to be checked as a disclosure document required by law. (And an unnecessary expense.)

- **Section 1684**
 - **(a)** Use of the term “building operator”. In the industry, a building operator is defined as follows: “Building operators are responsible for the day-to-day maintenance and operation of buildings that have heating, mechanical and electrical systems.” I suggest you use “Agent of the Owner” for purposes of AB 1103, or some other terminology.
 - **(a)** I would suggest avoiding telling people “how” to do the report (a 1-5), but just that the report must be prepared using Portfolio Manager and when the report is due. The wording here does not apply to owners or property managers who have been benchmarking their buildings or otherwise already have PM accounts, nor does it apply to the sellers who use consultants, which account for a large number of transactions. These professionals likely prepare far more reports than the uninitiated.
 - **(b)** I expect that the Investor-owned utilities in California can comply with the Portfolio Manager Data Exchange requirement, but what about all of

the Publicly Owned Utilities (Cities and Counties). Will they have that ability any time soon?

- **Section 1685**

- Exemption for buildings to be demolished. Per the comments made at the workshop, the wording needs some work, as the documents required for the exemption may not be available in the necessary timeframe.
- A similar exemption should apply to buildings that have been vacant for 12 or more months. Yes, a report on a vacant building can be prepared in Portfolio Manager (I have done several), but they are not “useful” in the “valuation of energy usage in the purchase” – the objective of AB 1103. A report on a vacant building adds to the transaction cost, provides no useful information to the buyer, and generally results in disrespect for the ordinance itself. Here the exemption for a vacant building would be for something known and provable versus a future anticipated event such as a demolition.

SUMMARY

Thank you for reading this far. I appreciate the opportunity to participate in the workshop and make my comments.

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