

DOCKETED

Docket Number:	15-OIR-05
Project Title:	Building Energy Use Disclosure and Public Benchmarking Program Mandated under Assembly Bill 802
TN #:	206682
Document Title:	Randy J. Walsh Comments: How AB 802 Will Affect Owners and Tenants, Globe Street, October 21, 2015
Description:	N/A
Filer:	System
Organization:	Randy J. Walsh
Submitter Role:	Public
Submission Date:	11/19/2015 7:54:31 AM
Docketed Date:	11/19/2015

Comment Received From: Randy J. Walsh

Submitted On: 11/19/2015

Docket Number: 15-OIR-05

How AB 802 Will Affect Owners and Tenants, Globe Street, October 21, 2015

Additional submitted attachment is included below.



You are here: [Home](#) > [Daily News](#) > How AB 802 Will Affect Owners, Tenants

Last Updated: October 21, 2015

EXCLUSIVE

How AB 802 Will Affect Owners, Tenants

By [Carrie Rossenfeld](#) | San Diego

How does SoCal compare? Find out in Atlanta at [RealShare INDUSTRIAL!](#) Join peers from across the country for networking at the College Football Hall of Fame and get the latest market intelligence. Nov 3-4.



Walsh: "Owners and operators will continue to feel the pressure to provide information about operations over which they have no legal or contractual control."

SAN DIEGO—On October 8, **Governor Brown** signed into law **Assembly Bill 802**, creating a new **energy-use disclosure program** for the state of California. Details still need to be worked out by the **California Energy Commission**, but some preliminary information can be abstracted from the text, [San Diego Energy Desk's Randy Walsh, CCIM](#), tells GlobeSt.com:

AB 802 repeals **AB 1103, California's Nonresidential Building Energy Use Disclosure Program**, as of January 1, 2016; eliminates the rights of buyers, lessees and lenders from receiving energy-use disclosure reports; and, no longer makes energy-use disclosure a material fact in **commercial real estate** transactions; AB 802 requires regular and mandatory public disclosure of energy use for specified building types over 50,000 square feet as of January 1, 2017; AB 802 expands energy-use disclosure requirements to include **multifamily** buildings and provides for penalties and potential fines for non-disclosure.

Walsh says the state of California's newly signed energy-use disclosure law will trump current lease language that clearly divides the responsibility for energy use and costs between owners and tenants. Here's what else he told us about the legislation.

GlobeSt.com: What impact will this law have on commercial building owners and operators?

Walsh: Precipitated by energy-use disclosure requirements implemented in the European Union and other countries in the late '90s and early '2000s, California was one of the earliest adopters of commercial-building energy-use disclosure in the US, passing **AB 1103** in 2007. As originally envisioned, AB 1103 disclosure took place at the beginning of the **sales/leasing/refinancing** cycle so that energy-efficiency performance of an asset could be factored into a purchase, **lease** or refinancing decision in an attempt to recognize more energy-efficient buildings in higher sales price, higher rental rates or more advantageous financing. Unique among current energy-use disclosure programs, California only required the disclosure of energy use between parties; by keeping the disclosure private, the California Energy Commission was able to side-step any end-use data confidentiality concerns while still bringing important information to the marketplace.

Unfortunately, AB 1103 never gained traction. I believe the biggest impediment to full implementation was the lack of commercial real estate **investment** expertise within the California Energy Commission and among the many iterations of staff members responsible for bringing AB 1103 to market. In my experience, the commercial real estate industry and its various representatives and lobbyists were not speaking with a single voice either in support of or against AB 1103 or energy-use disclosure in general. While AB 1103 was struggling to stay alive, other states, cities and municipalities implemented their own energy-use disclosure programs. As more programmatic research has become available through required public disclosures, California seems to have lost its commitment to honoring the privacy of commercial real estate owners and occupiers and through AB 802 has jumped onto the "shame and blame" bandwagon, as some in the industry have referred to public-disclosure programs.

What owners and operators need to understand now, is that AB 802 regulations—and other regulations like it—will trump current lease language that clearly divides the responsibility for energy use and energy costs between owner and tenant(s). As demonstrated by AB 1103 and now AB 802, owners and operators will continue to feel the pressure to provide information about operations over which they have no legal or contractual control under a regulatory assumption that once the information is available, owners will take action to improve the performance of the building.

GlobeSt.com: Can you elaborate on the strategies to optimize asset value below to give readers a more detailed plan of action?

Walsh: From the owner's perspective, right now, wasted energy use in any building is a valuable lever to attract rebates, incentives and favorable financing through local utility programs to improve overall energy-efficiency performance, unlock potential energy savings and optimize asset value. Starting with a holistic view of operations and expenses, review lease documents and contractual obligations that enable or restrict the full flow of energy-use data and energy-efficiency capital between owner and occupier.

For example, an energy-efficiency project I am working on right now for a local owner leasing to a national tenant may be impeded by the requirements of the owner to provide an estimated operating budget by a certain date—and which also restricts the owner from deviating from that projected budget for the operating year without tenant approval. In this real-world scenario, an energy efficiency improvement project conceived outside of the deadlines and obligations outlined in the lease agreements may prevent close to \$250,000 in projected energy costs savings from being reclaimed by the owner to finance energy-conservation and greenhouse-gas-reduction projects in the building.

From the tenant's perspective, for national tenants, understand your corporate position on reducing the environmental impacts of your tenancy. Even with a 20-year lease with multiple renewal options, your corporate requirements may help you initiate the conversation with an owner who is now more

motivated to collaborate on reducing environmental impacts of the property. As a show of good faith, put forth an offer to the owner to provide the necessary tenant-occupancy characteristics and historic energy use required to benchmark energy use in **Energy Star Portfolio Manager®** - in exchange for the owner providing a set of regular performance reports and cooperating with tenant-led efficiency measures.

GlobeSt.com: What else can you recommend the industry do in response to this law?

Walsh: Understand that we are dealing with something unlike anything else with which the commercial real estate industry has had to deal. The level of international, federal, state and local involvement in preventing changes to our climate is unprecedented; expectations for higher building performance are accelerating; and industry standards are rapidly changing and rising along with sea levels. The level of collaboration necessary between investor, operator and occupier will necessarily increase as our **technologies** bring standardized performance data to us and to the general public on a more regular basis. As more and more legislators fight to “out-set” their colleagues in requiring larger greenhouse-gas reductions in shorter and shorter periods of time, the industry must find ways to resolve any conflicts or impediments in almost real-time.

GlobeSt.com: What other legislature is in the pipeline that will impact owner/operators’ energy-use procedures?

Walsh: AB 802 was originally conceived as a mechanism to open up opportunities for utility companies to offer rebates and incentives to bring a property up-to-code—especially the much higher energy-efficiency codes released as part of the recent Title 24 revisions. In contrast, existing rebate and incentive programs are prohibited from financing measures required as part of building codes. As AB 802 comes to market, owners will find an additional level of capital available to improve building performance regardless of the starting point.

AB 758, on the books for a few years now, is in its final review form as **the Integrated Energy Policy Report (IEPR)** and should start to roll out in 2016. These regulations have been rewritten to aggressively incorporate Governor Brown’s stated goals and targets for reduced climate impacts. While the state of California is ahead of other states in both legislation and regulation, California is still behind its stated targets in reducing greenhouse-gas emissions, and AB 758 includes some very expansive requirements of all sectors of the economy—especially the commercial real estate industry—in attempt to get the state back on track.

*Be ahead with GlobeSt.com’s **National AM Alert** for original coverage of the latest transactions and trends shaping the commercial real estate industry. [Sign Up Today!](#)*

About Our Columnist



Carrie Rossenfeld is a reporter for the West Coast region of GlobeSt.com and Real Estate Forum. She was a trade-magazine and newsletter editor in New York City before moving to Southern California to become a freelance writer and editor for magazines, books and websites. Rossenfeld has written extensively on topics including commercial real estate, running a medical practice, intellectual-property licensing and giftware. She has edited books about profiting from real estate and has ghostwritten a book about starting a home-based business.

[Bio](#) | [Email](#)

[About ALM](#) | [Customer Support](#)
Copyright © 2015 ALM Media Properties, LLC. All rights reserved.

