

## DOCKETED

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**GlobeSt.com, Interview, San Diego Energy Desk, Is AB 802 More Harmful than Helpful**

*Additional submitted attachment is included below.*



*Walsh: "I don't believe the language inserted into AB 802 is of value to the industry. So far, I can't identify any significant benefit that we received by giving up our rights to privacy and data."*

## Is AB 802 More Harmful Than Helpful?

March 22, 2016 | By Carrie Rossenfeld

[GlobeSt.com](http://GlobeSt.com)

SAN DIEGO—San Diego Energy Desk's Randy Walsh believes it is. Here, he details for [GlobeSt.com](http://GlobeSt.com) **EXCLUSIVELY** why he maintains the bill is flawed and what he proposes could help commercial real estate.

SAN DIEGO—**San Diego Energy Desk's [Randy Walsh](#)**, CCIM and LEED AP, believes that **California Assembly Bill 802** is more harmful than helpful to California **commercial real estate** as compared to its predecessor, **AB 1103**.

As Walsh explains, AB 802 was signed into law by **Governor Brown** in October 2015, and language added to the bill at the very last minute repealed the landmark piece of legislation known as **AB 1103: California's Nonresidential Building Energy Use Disclosure Program**. The replacement language, rather

than requiring a private and transaction-based **disclosure** of **energy** use, mandates public disclosure of energy use on a yet-to-be-determined cycle.

“Commercial real estate investors and occupiers lost rights to privacy and rights to data afforded to them by AB 1103,” says Walsh. “So far, no documented or corroborated facts or analysis to support the repeal of AB 1103 or to gauge market receptiveness to the new and more stringent requirements has surfaced.”

While [other industry experts disagree](#), Walsh maintains the bill is flawed and sat down for an exclusive interview with GlobeSt.com to discuss his line of reasoning and what he believes should be done next.

***GlobeSt.com: You’ve said that California AB 802 doesn’t count. Care to explain?***

***Walsh:*** In revising AB 802, the **California Energy Commission** participated in, and may have initiated, the development and subsequent passage of what is becoming a much less credible piece of legislation, and rather than acknowledging the flawed process—or its participation in it—the CEC continues to try to marshal support by encouraging full engagement by the commercial real estate industry. The CEC seems to be holding out the passage of AB 802 as justification for its passage, but can’t justify its actions with conclusive data or analysis. In my opinion, the CEC knows that AB 802 lacks validity, but hopes to restore its reputation through our expected cooperation.

***GlobeSt.com: Many special-interest environmental groups and some industry associations have voiced support for the AB 802. You seem to feel differently.***

***Walsh:*** Horse-trading is an acceptable part of the political process—until your own horse gets traded or until you get nothing in return for the traded horse. I don’t believe the language inserted into AB 802 is of value to the industry. So far, I can’t identify any significant benefit that we received by giving up our rights to privacy and data. AB 802 does not resolve the data-confidentiality issues raised by the investor-owned utilities. The rush to introduce and pass the revised Assembly Bill—in just under 48 hours and outside the normal legislative calendar—left a number of technical, programmatic and legal questions

posed by our elected officials unanswered. The law offers no protections from liability for the property owner required to disclose tenant-level operating data. The new language legislates penalties on non-compliant owners—but not on uncooperative utility companies. And it delegates additional and broader discretionary power to the CEC—which, over the past eight years, has developed a poor track record in its ability to bring to market a successful energy-use disclosure program.

Additionally, the concept of disclosure programming is based on critical best practices of stakeholder engagement, ongoing performance improvement and transparency. The CEC has demonstrated none of these best-practices in revising AB 802. It's really hard to hold a state agency accountable for their performance when its leaders are able to negotiate in secret, when key stakeholders are intentionally excluded from the process, when there is no opportunity for public input or oversight, when pending bills are revised at the last minute and legislative rules suspended to avoid scrutiny and especially when there is no data or analysis to justify their actions. If the CEC can subjectively and arbitrarily set such high expectations for engagement, performance and transparency by the industry in disclosing private operating data to the CEC, shouldn't the CEC be held to similar standards?

***GlobeSt.com: We understand the repeal of AB 1103 has had a negative financial impact on a number of small, specialized businesses throughout the State of California, including your firm. Is your position on AB 802 just sour grapes?***

***Walsh:*** Yes, my business has felt the negative financial impacts as a result of the repeal of AB 1103. My greater disappointment, however, is the subversion of an active public-comment and engagement process that had taken place throughout 2015 to improve and refine AB 1103, by instead orchestrating an intentional campaign of ally building that excluded key stakeholders—including the small businesses that provided timely, accurate and cost-effective AB 1103 compliance documents for clients around the state. We have expertise and field experience in benchmarking energy use, and some of us have backgrounds in commercial real estate. Important and informed voices, yes? Apparently not to the California Energy Commission.

***GlobeSt.com: What's next?***

***Walsh:*** Unfortunately, we are stuck with a bad law and a legacy of bad rule-making. I recommend a five-year moratorium on any statewide energy-use disclosure programming and ask the governor to convene a blue-ribbon committee of real estate investors, technology experts, data-privacy advocates, lawyers, energy efficiency and benchmarking professionals and the major utilities to determine the feasibility or necessity of a statewide energy-use disclosure program and work to resolve any roadblocks or impediments before reintroduction to the market. Hopefully, the third time's the charm.