

DOCKETED

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Comment Received From: Randy J. Walsh, CCIM, LEED AP

Submitted On: 10/2/2015

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Recommend Governor Veto AB 802, Leaving AB 1103 in Place.

Additional submitted attachment is included below.

29 September 2015

The Honorable Mr. Jerry Brown
Governor
State of California
c/o State Capital, Suite 1173
Sacramento, California 95814

Via Facsimile: 916.558.3160

Re: Recommend Veto - California Assembly Bill 802 (Energy Efficiency).

Dear Governor Brown:

Unfortunately, the rush to amend AB 802 at the last minute beyond the original scope and intention of the bill in a misguided attempt to rectify real or perceived barriers to full AB 1103 implementation has not provided sufficient opportunity for full and timely engagement by small businesses like mine with fewer resources and without dedicated lobbyists or public affairs coordinators to track legislative efforts. Still, at this time – so close to your review – and after many hours of research which has taken me away from several client energy efficiency improvement projects, I have completed my review and feel very confident in strongly recommending that you veto, in full or in part, California Assembly Bill 802 (Energy Efficiency).

I strongly recommend that AB 1103 remain in place and not be replaced by the disclosure language included in AB 802, which appears very similar to the language included in the IEPR via AB 758. These 2 programs are substantially different, can peacefully coexist and will further reinforce California's stated "No Regrets" approach to environmental sustainability.

California Assembly Bill 1103, Nonresidential Building Energy Use Disclosure Program is a real estate disclosure law and not public policy. It is unique in scope in that it requires a private disclosure between an owner and prospective parties to a real estate transaction rather than a public disclosure. I believe that the private disclosure, properly prepared and strategically incorporated into the marketing and positioning of a commercial asset, offers greater opportunity to reduce energy use and greenhouse gas emissions by the commercial building stock in California than the public disclosure proposed in AB 802.

AB 1103 was designed to bring energy use transparency to the market by facilitating a "One-to-Many" disclosure based on an industry-accepted definition of the word "prospective" to mean *"(of a person) expected or expected to be something particular in the future"*¹. This could mean 2 people or 200 people with a sincere and vested interest in better understanding the energy performance of a property and for whom an AB 1103 disclosure document may have significant meaning. It was in the preparation, marketing and decision-making stages of a real estate transaction that the AB 1103 disclosure – made early in the process - was expected to influence price, rent or lending term and rate discussions between the many possible parties to a transaction during the prospective stage. By virtue of this influence, at the most

¹ http://www.oxforddictionaries.com/us/definition/american_english/prospective

opportune time, the many and various prospective parties to a transaction have greater leverage in recognizing the value of more energy efficient properties – or the waste and costs inherent in owning, occupying or lending on a less energy efficient building.

Unfortunately, the latest iteration of CEC staff devoted to AB 1103 implementation and completely unfamiliar with established commercial real estate investment practices have consistently, mistakenly and detrimentally redefined the word “prospective” to mean only those two parties who have completed negotiations and who have completed a transaction, resulting in a “One-to-One” disclosure. This is not the intention of AB 1103 and due to the misplaced timing of the disclosure according to current staff interpretations, the disclosure documents are of little to no value to either party and can have no positive impact on energy efficiency improvements.

In my opinion, public disclosure of building energy use is potentially of even less value in impacting commercial real estate negotiations in that the range of influence can range from “One-to-None” to “One-to-Many.” Those accessing the publically disclosed information can include owners and tenants but also range from policy makers to legislators, regulators, program administrators, etc. - none of which have any vested interest in the ownership, occupancy or value of commercial real estate assets. I am not expressing opposition to a public disclosure program, only opposition to public disclosure instead of the private disclosure program.

For the past few years, I have been actively participating in conversations with CEC Staff and other key stakeholders with interest in energy use disclosure programs in order to clarify the intentions of AB 1103 and identify opportunities for greater and deeper implementation of the regulation. I am the “boots-on-the-ground” that will work directly with any piece of energy use disclosure legislation put forth. I have created my own “green-job” and come from a background of commercial property management on which I have developed expertise in green lease language and energy efficiency performance benchmarking using ENERGY STAR Portfolio Manager®. As a sole-proprietor, I have a vested interest in collaborating with all parties involved in these efforts, and don’t have any single point of view or perspective – other than optimizing asset value for my clients through energy efficiency – and feel that I can be more objective and pragmatic than just about any other entity listed as supporting AB 802. Additionally, I don’t believe any of those entities will find any of my comments and recommendations included in this letter to be contrary to their positions or in conflict with their stated corporate goals or objectives.

I hope my comments and recommendations provide some additional insight into both AB 802 and AB 1103 from the practitioner’s point of view. Thank you for taking the time to read this letter personally or by your staff. I am happy to answer any questions and hope to hear back from you with any response you may have to my proposition.

Sincerely,



Randy J. Walsh, CCIM, LEED AP
Chief Efficiency Optimizor, San Diego Energy Desk