

DOCKETED

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

Submitted On: 11/17/2015

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An Open Letter to the Leadership of the California Business Properties Association (CBPA) regarding the repeal of California Assembly Bill 1103

Additional submitted attachment is included below.

Monday, November 16, 2015

Mr. Rex S. Hime
President and Chief Executive Officer
1121 L Street, Suite 809
Sacramento, California 95814

Mr. Matthew Hargrove
Senior Vice President of Governmental Affairs

Via email: rexhime@cbpa.com

Via email: mhargrove@cbpa.com

Regarding: An Open Letter to the Leadership of the California Business Properties Association (CBPA) regarding the repeal of California Assembly Bill 1103 (California's Nonresidential Building Energy Use Disclosure Program), September 2015

Dear Mr. Hime, Mr. Hargrove, Board of Directors and Advisory Board of California Business Properties Association:

I wish to draw with great urgency your immediate attention to the recent, last-minute and successful efforts of the California Energy Commission to eliminate rights to private energy use information afforded to commercial real estate buyers and occupiers in the State of California by AB 1103 and to further intrude into the private business operations of commercial real estate owners by the repeal of AB 1103 incorporated into the passage of AB 802 - based simply on speculation, conjecture and opinion.

Even more confounding is the degree to which CBPA was complicit in what can only be described as a strategically opportunistic legal maneuver on the part of Assemblymember Das Williams (D-57) - most likely initiated by the California Energy Commission - and the logic behind the CBPA's very compliant support. Your organization's support of the repeal of AB 1103 repeals rights afforded to commercial real estate owners to receive energy use information and eliminates the confidential disclosure between parties in favor of a public disclosure - both very important protections for commercial real estate owners - and the exact type of protections for which commercial real estate owners support organizations like CBPA.

The spirit and intent of the State of California's first attempt at a commercial building energy use disclosure program codified in the 2007 legislative language of Assembly Bill 1103 (California's Nonresidential Building Energy Use Disclosure Program) did not fail us. The California Energy Commission with their uninformed and restrictive regulatory language failed AB 1103.

After more than 8 years with no oversight and no accountability, the California Energy Commission, and specifically Commissioner Andrew W. McAllister and staff devoted to AB 1103 implementation and enforcement, have shown an unexceptional level of leadership, proven again and again a level of unacceptable inexperience and demonstrated themselves to be, collectively, an unreliable business partner.

Through passage of AB 802 in September 2015, the Energy Commission receives another blank check from the State of California Legislature to scrap AB 1103 and design a completely different energy use disclosure program. By repealing AB 1103 - with its very specific language, new rights to energy use information afforded to buyers and lessees and the requirement of private disclosure only between parties to the transaction - the language of AB 802 remains the only approved energy use disclosure program in the State, but won't go into effect until 2017. AB 802 eliminates any rights to receive energy use data, eliminates private disclosure in favor of public disclosure and gives the California Energy Commission much greater and unspecified latitude in defining what energy use information

Monday, November 16, 2015
Mr. Rex Hime, Mr. Mathew Hargrove
Page 2 of 3, Continued

will be collected and from who, how the information will be collected, who will collect the information, what information will be released to the public and finally, ultimately allows the CEC to handle private operating data in any manner they choose.

At this time, I believe, that immediate and industry-wide intercession is required and that new leadership engaged at a much higher level is necessary so that the entire conversation about energy use disclosure can be put back on track in order to reach its final destination - wherever that may be. Therefore, I recommend the following course of action:

1. In whatever manner suits your organization or fits within your established communication protocols, both individually and collectively, express a vote of "No-Confidence" in the ability of the California Energy Commission to effectively manage any longer our collective resources in bringing to market a viable commercial building energy use disclosure program that balances the public good while adequately protecting the rights and interests of the commercial real estate industry.
2. Request the immediate defunding and dismantling of any internal organizational structures within the California Energy Commission devoted to the energy use disclosure programming and the immediate resignation of Commissioner McAllister.
3. Request the Governor place an official 5 year moratorium on the implementation of any State-wide energy use disclosure programs and begin a comprehensive performance assessment of the efforts and progress to date of the California Energy Commission and their attempts to develop the AB 1103 program.
4. Request the Governor assemble a "Blue-Ribbon" advisory panel made up of commercial and corporate real estate attorneys, legal counsel representing both the data privacy and the data access constituencies and experts in the existing legislative and regulatory requirements of data management and confidentiality placed on energy service providers and utility companies. To this panel, invite a select group of real estate owners and operators, real estate brokers, financial specialists (i.e., accountants, asset managers, etc.), representatives from the Environmental Protection Agency Energy Star for Commercial Buildings division, energy performance benchmarking professionals, information technology experts and representatives from the operational and informational technology side of the utility companies. There may be some sustainability advocacy groups which can add some additional perspective to the conversation and which should be considered for inclusion.
5. Charge the "Blue-Ribbon" panel with at least: determining the need for and feasibility of a State-wide energy use disclosure program: determining the cost-effectiveness of such a program and presenting reasonable alternatives; identifying the contractual and regulatory barriers to and liabilities resulting from an energy use disclosure program and presenting workable solutions; surveying the energy data infrastructure within the State and among energy service providers and utility companies to determine overall level of readiness and to prepare a cost estimate for undertaking any technology upgrades including custom interfaces required for full implementation of prescribed energy use disclosure program.

Generally, I recommend that the power and influence of the California Energy Commission in this matter be immediately checked and that those with the greatest interest in a State-wide energy use disclosure program, those who will most benefit from a State-wide energy use disclosure program and those who may be most harmed by a State-wide energy use disclosure program now take a seat at the table. In this matter, your company or organization may fall into all 3 categories.

Monday, November 16, 2015
Mr. Rex Hime, Mr. Matthew Hargrove
Page 3 of 3, Concluded

Overall, I believe Matthew Hargrove, Senior Vice President of Governmental Affairs for the California Business Properties Association does an excellent job of representing CBPA. However, in this matter, in my opinion, CBPA has not protected the best interests of the commercial real estate owners in the State of California and anywhere else where the repeal of AB 1103 or the new language in AB 802 may be used as a precedent to justify further intrusion into the private operations of commercial real estate owners and occupiers.

While Mr. Hargrove has demonstrated a working knowledge of the ownership and operation of commercial real estate assets, his background is one of policy and advocacy. Knowing less than Mr. Hargrove of how our business works, I am often struck how often the staff or Commissioner do not know what questions to ask of him, nor do they understand the context in which Mr. Hargrove offers his guidance. In the two most recent Weekly CBPA Updates, the CBPA has informed their members and readers of the progress of AB 1103 / AB 802 with the capitalized admonishment, "WE MUST ENGAGE IN THIS PROCESS." In this, he is not wrong. I can attest that the level of engagement from all parties in the disclosure program development process has reduced significantly over the past 6 - 12 months - most likely and simply from fatigue. Conserving any more energy in undertaking this process will only prove more costly in the future; please take action now.

I am happy to talk through any of the points raised in this correspondence or any questions you may have. I trust that you can each work individually or collectively through your own communication processes and channels to take any actions you deem desirable, but I would ask 2 things: 1) respond back to me confirming receipt of this letter and share any thoughts or planned responses; and, 2) copy both the CBPA and San Diego Energy Desk on any official correspondence you generate in response to these new developments, especially if formed as a result of the information I have conveyed to you today. Unless you ask for some or all of your correspondence to be held in confidence, I will selectively share what I receive with a small group of my colleagues across the State who provide AB 1103 compliance documentation services and who are already feeling the negative economic impacts of these recent decisions.

Thank you for your time and consideration of these matters I put forth.

Sincerely,



Randy J. Walsh, CCIM, LEED AP
Chief Efficiency Optimizor

Copy: Governor Edmund G. Brown, State of California
Chairman Robert B. Weisenmiller, Ph.D., California Energy Commission
Commissioner Andrew McAllister, Ph.D., California Energy Commission
Assemblymember Das Williams (D-57), State of California, Assembly
Individual Leadership and Advisory Board Members of California Business Properties Association