

DOCKETED

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Comment Received From: Jennifer Svec

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California Association of REALTORS(R) Comment Letter on the Proposed Regulations for the Building Energy Use Disclosure and Public Benchmarking Program

Additional submitted attachment is included below.



CALIFORNIA ASSOCIATION OF REALTORS®

July 28, 2016

California Energy Commission
Dockets Office MS-4
RE: Docket No. 15-OIR-05
1516 Ninth Street
Sacramento, CA 95814-5512

RE: Building Energy Use Disclosure and Public Benchmarking Program – July 22, 2016 AB 802 Benchmarking Staff Workshop

Dear Chair Weisenmiller and Commissioner McAllister:

Thank you for the opportunity to provide comments on the July 22, 2016 AB 802 Benchmarking Staff Workshop. The CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.) seeks to continue to be a valuable contributor in the development of these regulations and policies. C.A.R. is concerned that the proposed regulations conflict with several existing state statutes and recommends that the California Energy Commission (CEC) staff revise the proposed regulations to more closely adhere to the statutory provisions contained in AB 802 (Williams, 2015).

Condominiums ARE NOT Multi-Family Structures

C.A.R. recommends the removal of the reference to condominiums in Section 1680(e) as it will only create confusion for those seeking to comply with state statute. Condominiums are single-family, one-to-four, units, which are not subject to these regulations and do not fall under the statutory definition of a “covered building”, per Public Resources Code 25402.10(a)(2).

Proposed Definition for Covered Buildings Exceeds Statutory Authority

Public Resources Code Section 25402.10(d) clearly states “The commission shall adopt regulations providing for the delivery to the commission and public disclosure of benchmarking of energy use for covered buildings”. “Covered Building” is defined in statute as “any building with no residential utility accounts or any building with five or more active utility accounts, residential or nonresidential”. For purposes of these regulations Public Resources Code Section 25402.10(d)(1) states that “This subdivision shall not require the owner of a building with 16 or fewer residential utility accounts to collect or deliver energy use data to the commission.” Furthermore, the finding and declarations in Section 1 of AB 802 clearly state that the Commission is to create a benchmarking and disclosure program for all buildings (non-residential and residential) exceeding 50,000 sq. feet in gross floor area.

C.A.R. believes that the CEC and its staff are exceeding statutory authority and the legislative intent of AB 802 by altering the definition of covered buildings to include “one or more residential accounts.” This definitional change has caused significant confusion among stakeholders and CEC staff, most notably during the July 22 workshop. C.A.R. recommends the CEC replace the proposed definition with the definition cited above in conjunction with the clear intent of the AB 802, which seeks to only impose these reporting requirements only on nonresidential, mixed used and multifamily (17 or more units) buildings exceeding 50,000 sq. feet.



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Data Access for Covered Buildings Conflicts with Existing Statutes

Section 1681(b)(4), which would require utilities to obtain customer permission for covered buildings with three or more utility accounts directly conflicts with the existing state statute. Public Resources Code Section 25402.10(c)(2)(A) clearly states that covered buildings with three or more utility accounts, "shall not be deemed customer utility usage information or confidential information by the utility for purposes of delivery to the owner, owner's agent, or operator of the building."

Additionally, Section 1681(4)(B) of the proposed regulation impermissibly delays a building owner's ability to obtain energy data up to 60 days. Public Resources Codes Section 25402.10(c)(2)(C) requires utilities to "deliver, upload, or otherwise provide aggregated energy usage data within four weeks of receiving a request from an owner, owner's agent, or operator of a covered building."

Benchmarking and Disclosure Obligation Belongs with the Utility Serving the Property

Existing law already requires the utilities to submit data to the CEC, fulfilling the statutory requirements prescribed by AB 802. Subsection 1682(c) of the proposed regulation violates Public Resources Code Section 25320(a)(2). C.A.R. opposes any language requiring building owners to upload the energy data into the ENERGY STAR Portfolio Manager and respectfully requests that all data be uploaded by the utilities, into an account opened by building owners or their agents as prescribed by AB 802.

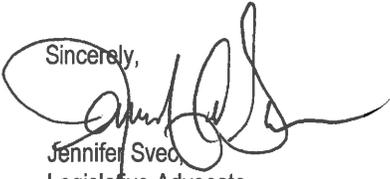
Section 1682(c)(1)(B) of the proposed regulation requires building owners or their agents to request data on an annual basis and is in conflict with Public Resources Code Section 25402.10(c)(2)(D) which clearly states that the burden to upload information is on utilities who must make available the energy use data on a monthly basis. C.A.R. recommends the proposed regulations be clarified so that any annual reporting requirements are given to the utilities with a notification to property owners that the data has been uploaded.

Building Owners SHOULD NOT Be Subject To Fines by the CEC per State Statute

C.A.R. opposes ANY requirement seeking to hold building owners or their agents responsible for incorrect or incomplete data submitted to the CEC. C.A.R. disagrees with the CEC's premise that building owners should be required to report energy use data, as the utility serving the property maintains the data, not the building owner. Public Resources Code Section 25402.10(e) states that "The commission may ensure timely and accurate compliance with the data submission requirements of this section by using the enforcement measures identified in Section 25321. An owner of a covered building, or its agents or operators, shall not be liable for any noncompliance due to the failure of a utility to provide the information required for compliance." The intent of this provision and fining authority was to assure that utilities provided data in a timely manner to the building owner and CEC.

The CALIFORNIA ASSOCIATION OF REALTORS® looks forward to an ongoing collaboration with the California Energy Commission, its staff and all interested parties as they seek to develop regulations for AB 802 and would like to be a resource to the Commission throughout this proceeding.

Sincerely,



Jennifer Svec
Legislative Advocate
California Association of REALTORS®