



# Governor Brown Signs Legislation Changing Commercial Building Owner Obligations on Energy Usage Disclosure

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On October 8, 2015, California Governor Jerry Brown signed into law AB 802, which among other actions repeals the existing nonresidential building energy usage disclosure requirements. The prior law, AB 1103, codified in the California Public Resources Code Section 25402.10 and the California Energy Commission (CEC) regulations, required nonresidential building owners to disclose Energy Star data to potential purchasers, lenders and tenants of the entire building. AB 802 eliminates that disclosure obligation, replacing it with a far more general public disclosure requirement that will be further defined in CEC regulations.

Originally adopted in 2011 and scheduled to go into effect starting in 2014, AB 1103 granted open-ended authority to the CEC to adopt regulations governing the required property owner disclosure. These regulations required building owners to register with Energy Star not less than 30 days prior to a regulated transaction and then provide required data within varying timeframes, depending on the transaction involved. For example, owners had to provide energy data to a prospective purchaser no later than 24 hours prior to execution of a purchase and sale agreement. As we have discussed previously here, the CEC encountered significant issues with program compliance, including software glitches, the need for user consents and overall impracticability for many commercial transactions.

Under AB 802, the requirement for building owners to disclose energy usage data to prospective purchasers, lenders and tenants is eliminated. However, the CEC is required to adopt regulations for public disclosure of energy usage data, with the legislation allowing for either utilities or building owners to provide the relevant data, although buildings with 16 or fewer residential units are exempted. Because other portions of AB 802 require utilities to collect and provide data, it seems likely that the CEC will obligate utilities to

provide public disclosure, with owner-provided data as a back-up.

The CEC regulations on public disclosure may also include definitions of additional exempted buildings, a schedule for implementation, and exemptions for buildings required to comply with local benchmarking programs. The legislation recognizes that some information received by the CEC will be exempt from disclosure pursuant to the California Public Records Act and the Information Practices Act of 1977 and authorizes the CEC to adopt regulations accordingly.

Separately, AB 802 requires utilities to provide aggregated energy usage data to owners and operators of non-residential buildings and certain multi-family residential buildings starting January 1, 2017. Aggregated data means that utilities are to provide data for the entire building so long as there are three or more separate commercial utility accounts or five or more residential utility accounts, but data may also be provided with the consent of the utility customer. Building owners and operators are exempted from liability for any disclosure of the aggregated energy usage information received from a utility.

So what does AB 802 mean for owners of commercial buildings in California? First, note that the existing law and regulations under AB 1103 remain the law at least until AB 802 becomes effective on January 1, 2016. For now, building owners should comply with Energy Star registration and disclosure of the Data Verification Checklist under CEC regulations. See our prior e-alert [here](#) for more information on the existing compliance requirements. Second, building owners should be alert to the proposed new rules to be adopted by the CEC and consider commenting as appropriate, particularly if owners are obligated to obtain tenant consent to release energy usage data on a non-aggregated basis. The legislation seems to indicate that consent can be obtained in a lease agreement but is not clear whether this is an absolute obligation, leaving it up to the CEC to make clear. Additionally, building owners may be obligated to provide data to the CEC for public disclosure, depending on what the CEC regulations require. Finally, local benchmarking programs are explicitly authorized to continue, so building owners should be aware of what local regulations require, particularly if the CEC adopts rules that allows for local compliance to meet CEC obligations.

While details are yet to be worked out in the CEC regulations, building owners will soon be relieved of the cumbersome Energy Star registration and data collection process, potentially simplifying building sales, financings and single-tenant leases. We will monitor the CEC rulemaking process and provide updates when available.