

AMENDED IN ASSEMBLY APRIL 16, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1065

Introduced by Assembly Member Lieber

February 23, 2007

An act to amend Sections 25402 and 25402.1 of the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1065, as amended, Lieber. Public resources: building standards: greenhouse gas.

Existing law requires the State Energy Resources Conservation and Development Commission to prescribe, by regulation, various building design and construction standards and energy conservation standards for new residential and nonresidential buildings to reduce wasteful, uneconomic, inefficient, or unnecessary consumption of energy. The standards adopted must be cost effective, when taken in their entirety, and when amortized over the economic life of the structure when compared with historic practice. The commission may periodically update and revise the standards. The commission is required to adopt a public domain computer program that will enable various specified entities to estimate the energy consumption by residential and nonresidential buildings.

This bill would require the commission to adopt standards that would reduce the energy consumption per gross square foot of floorspace of a new residential and new nonresidential buildings, from offsite sources, on a specified schedule using the standards adopted in 2003 as the baseline for comparison purposes. The commission would be required to review and or approve one or more computer programs for use in

demonstrating compliance with the commission prescribed energy standards. The commission would also be required to prescribe other specified requirements for compliance software and to review and approve software for use in demonstrating compliance with the adopted building design and construction standards.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25402 of the Public Resources Code is
2 amended to read:

3 25402. The commission shall, after one or more public
4 hearings, do all of the following, in order to reduce the wasteful,
5 uneconomic, inefficient, or unnecessary consumption of energy:

6 (a) Prescribe, by regulation, lighting, insulation climate control
7 system, and other building design and construction standards that
8 increase the efficiency in the use of energy for new residential and
9 new nonresidential buildings. The standards shall be cost effective,
10 when taken in their entirety, and when amortized over the economic
11 life of the structure when compared with historic practice. The
12 commission shall periodically update the standards and adopt any
13 revision that, in its judgment, it deems necessary. Six months after
14 the commission certifies an energy conservation manual pursuant
15 to subdivision (c) of Section 25402.1, a city, county, city and
16 county, or state agency shall not issue a permit for a building unless
17 the building satisfies the standards prescribed by the commission
18 pursuant to this subdivision or subdivision (b) of this section that
19 are in effect on the date an application for a building permit is
20 filed.

21 (b) (1) Prescribe, by regulation, energy conservation design
22 standards for new residential and new nonresidential buildings.
23 The standards shall be performance standards and shall be
24 promulgated in terms of energy consumption per gross square foot
25 of floorspace, but may also include devices, systems, and
26 techniques required to conserve energy. The standards shall be
27 cost effective when taken in their entirety, and when amortized
28 over the economic life of the structure when compared with historic
29 practices. The commission shall periodically review the standards
30 and adopt any revision that, in its judgment, it deems necessary.

1 A building that satisfies the standards prescribed pursuant to this
2 subdivision need not comply with the standards prescribed pursuant
3 to subdivision (a). The commission shall comply with this
4 subdivision before January 1, 1981.

5 (2) When compared to the standards adopted on November 5,
6 2003, the regulations adopted by the commission pursuant to
7 subdivision (a) and this subdivision shall decrease the energy
8 consumption of new residential and new nonresidential buildings,
9 from offsite sources, on a per gross square foot of floorspace basis,
10 by the following schedule:

11 (A) Not less than 20 percent ~~by~~ *no later than 2015*.

12 (B) Not less than 50 percent ~~by 2025~~ *no later than 2020*.

13 (C) Not less than 80 percent ~~by 2035~~ *no later than 2030*.

14 ~~(D) Not less than 100 percent by 2045.~~

15 (c) (1) Prescribe, by regulation, standards for minimum levels
16 of operating efficiency, based on a reasonable use pattern, and
17 may prescribe other cost effective measures, including incentive
18 programs, fleet averaging, energy consumption labeling not
19 preempted by federal labeling, and consumer education programs,
20 to promote the use of energy efficient appliances whose use, as
21 determined by the commission, requires a significant amount of
22 energy on a statewide basis. The minimum levels of operating
23 efficiency shall be based on feasible and attainable efficiencies or
24 feasible improved efficiencies that will reduce the electrical energy
25 consumption growth rate. The standards shall become effective
26 no sooner than one year after the date of adoption or revision. A
27 new appliance manufactured on or after the effective date of the
28 standards shall not be sold or offered for sale in the state, unless
29 it is certified by the manufacturer thereof to be in compliance with
30 the standards. The standards shall be drawn so that they do not
31 result in any added total costs to the consumer over the designed
32 life of the appliances concerned.

33 (2) A new appliance, except for a plumbing fitting, regulated
34 under paragraph (1), which is manufactured on or after July 1,
35 1984, shall not be sold, or offered for sale, in the state, unless the
36 date of the manufacture is permanently displayed in an accessible
37 place on that appliance.

38 (3) During the period of five years after the commission has
39 adopted a standard for a particular appliance under paragraph (1),
40 no increase or decrease in the minimum level of operating

1 efficiency required by the standard for that appliance shall become
2 effective, unless the commission adopts other cost-effective
3 measures for that appliance.

4 (4) Neither the commission nor any other state agency shall
5 take any action to decrease any standard adopted under this
6 subdivision on or before June 30, 1985, prescribing minimum
7 levels of operating efficiency or other energy conservation
8 measures for an appliance, unless the commission finds by a
9 four-fifths vote that a decrease is of benefit to ratepayers, and that
10 there is significant evidence of changed circumstances. Prior to
11 January 1, 1986, the commission shall not take any action to
12 increase any standard prescribing minimum levels of operating
13 efficiency for any appliance or adopt any new standard under
14 paragraph (1). Prior to January 1, 1986, an appliance manufacturer
15 doing business in this state shall provide directly, or through an
16 appropriate trade or industry association, information, as specified
17 by the commission after consultation with manufacturers doing
18 business in the state and appropriate trade or industry associations
19 on sales of appliances so that the commission may study the effects
20 of regulations on those sales. These informational requirements
21 shall remain in effect until the information is received. The trade
22 or industry association may submit sales information in an
23 aggregated form in a manner that allows the commission to carry
24 out the purposes of the study. The commission shall treat sales
25 information of an individual manufacturer as confidential and that
26 information shall not be a public record. The commission shall not
27 request information that cannot be reasonably produced in the
28 exercise of due diligence by the manufacturer. At least one year
29 prior to the adoption or amendment of a standard for an appliance,
30 the commission shall notify the Legislature of its intent to adopt
31 or amend a standard for the appliance, and the justification for the
32 ~~adoption or amendment~~ *intent to adopt or amend*. Notwithstanding
33 paragraph (3) and this paragraph, the commission may do any of
34 the following:

35 (A) Increase the minimum level of operating efficiency in an
36 existing standard up to the level of the National Voluntary
37 Consensus Standards 90, adopted by the American Society of
38 Heating, Refrigeration, and Air Conditioning Engineers or, for
39 appliances not covered by that standard, up to the level established
40 in a similar nationwide consensus standard.

1 (B) Change the measure or rating of efficiency of a standard, if
2 the minimum level of operating efficiency remains substantially
3 the same.

4 (C) Adjust the minimum level of operating efficiency in an
5 existing standard in order to reflect changes in test procedures that
6 the standards require manufacturers to use in certifying compliance,
7 if the minimum level of operating efficiency remains substantially
8 the same.

9 (D) Readopt a standard preempted, enjoined, or otherwise found
10 legally defective by an administrative agency or a lower court, if
11 final legal action determines that the standard is valid and if the
12 standard that is readopted is not more stringent than the standard
13 that was found to be defective or preempted.

14 (E) Adopt or amend an existing or a new standard at any level
15 of operating efficiency, if the Governor has declared an energy
16 emergency pursuant to Section 8558 of the Government Code.

17 (5) Notwithstanding paragraph (4), the commission may adopt
18 standards pursuant to commission order No. 84-0111-1, on or
19 before June 30, 1985.

20 (d) Recommend minimum standards of efficiency for the
21 operation of a new facility at a particular site that are technically
22 and economically feasible. A site and related facility shall not be
23 certified pursuant to Chapter 6 (commencing with Section 25500),
24 unless the applicant certifies that standards recommended by the
25 commission have been considered. The certification shall include
26 a statement specifying the extent to which conformance with the
27 recommended standards will be achieved.

28 Whenever this section and Chapter 11.5 (commencing with
29 Section 19878) of Part 3 of Division 13 of the Health and Safety
30 Code are in conflict, the commission shall be governed by that
31 chapter of the Health and Safety Code to the extent of the conflict.

32 (e) The commission shall do all of the following:

33 (1) Not later than January 1, 2004, amend regulations in effect
34 on January 1, 2003, pertaining to the energy efficiency standards
35 for residential clothes washers to require that residential clothes
36 washers manufactured on or after January 1, 2007, be at least as
37 water efficient as commercial clothes washers.

38 (2) Not later than April 1, 2004, petition the federal Department
39 of Energy for an exemption from relevant federal regulations

1 governing energy efficiency standards that are applicable to
2 residential clothes washers.

3 (3) Not later than January 1, 2005, report to the Legislature on
4 its progress with respect to the requirements of paragraphs (1) and
5 (2).

6 SEC. 2. Section 25402.1 of the Public Resources Code is
7 amended to read:

8 25402.1. (a) In order to implement the requirements of
9 subdivisions (a) and (b) of Section 25402, the commission shall
10 do all of the following:

11 (1) Develop, adopt, or approve one or more computer programs
12 that will enable contractors, builders, architects, engineers, and
13 government officials to estimate the energy consumed by
14 residential and nonresidential buildings, and to demonstrate that
15 their proposed designs use less energy than the commission
16 prescribed energy budget. The commission may charge a fee for
17 public use of the programs. The fee shall be based upon the actual
18 cost of the programs, including any computer costs.

19 (2) Prescribe other requirements for compliance software
20 including, but not limited to, calculation of greenhouse gas
21 emissions, generation of standards reports, automatic generation
22 of energy budgets, and minimum modeling capacities.

23 ~~(3) Review and approve software for use in demonstrating~~
24 ~~compliance with the requirements of subdivisions (a) and (b) of~~
25 ~~Section 25402.~~

26 ~~(4)~~

27 (3) Establish a formal process for certification of compliance
28 options for new products, materials, and calculation methods which
29 provides for adequate technical and public review to ensure
30 accurate, equitable, and timely evaluation of certification
31 applications. Proponents filing applications for new products,
32 materials, and calculation methods shall provide all information
33 needed to evaluate the application that is required by the
34 commission. The commission shall publish annually the results
35 of its certification decisions and instructions to users and local
36 building officials concerning requirements for showing compliance
37 with the building standards for new products, materials, or
38 calculation methods. The commission may charge and collect a
39 reasonable fee from applicants to cover the costs under this
40 subdivision. Funds received by the commission for purposes of

1 this subdivision shall be deposited in the Energy Resources
2 Programs Account and, notwithstanding Section 13340 of the
3 Government Code, are continuously appropriated to the
4 commission for the purposes of this subdivision. Any
5 unencumbered portion of funds collected as a fee for an application
6 remaining in the Energy Resources Programs Account after
7 completion of the certification process for that application shall
8 be returned to the applicant within a reasonable period of time.

9 ~~(5)~~

10 (4) Include a prescriptive method of complying with the
11 standards, including design aids such as a manual, sample
12 calculations, and model structural designs.

13 ~~(6)~~

14 (5) Conduct a pilot project of field testing of actual residential
15 buildings to calibrate and identify potential needed changes in the
16 modeling assumptions to increase the accuracy of the public
17 domain computer program specified in subdivision (a) and to
18 evaluate the impacts of the standards, including, but not limited
19 to, the energy savings, cost effectiveness, and the effects on indoor
20 air quality. The pilot project shall be conducted pursuant to a
21 contract entered into by the commission. The commission shall
22 consult with the participants designated pursuant to Section 9202
23 of the Public Utilities Code to seek funding and support for field
24 monitoring in each public utility service territory, with the
25 University of California to take advantage of its extensive building
26 monitoring expertise, and with the California Building Industry
27 Association to coordinate the involvement of builders and
28 developers throughout the state. The pilot project shall include
29 periodic public workshops to develop plans and review progress.
30 The commission shall prepare and submit a report to the Legislature
31 on progress and initial findings not later than December 31, 1988,
32 and a final report on the results of the pilot project on residential
33 buildings not later than June 30, 1990. The report shall include
34 recommendations regarding the need and feasibility of conducting
35 further monitoring of actual residential and nonresidential
36 buildings. The report shall also identify any revisions to the public
37 domain computer program and energy conservation standards if
38 the pilot project determines that revisions are appropriate.

39 ~~(7)~~

1 (6) Certify, not later than 180 days after approval of the
2 standards by the State Building Standards Commission, an energy
3 conservation manual for use by designers, builders, and contractors
4 of residential and nonresidential buildings. The manual shall be
5 furnished upon request at a price sufficient to cover the costs of
6 production and shall be distributed at no cost to all affected local
7 agencies. The manual shall contain, but not be limited to, the
8 following:

9 (A) The standards for energy conservation established by the
10 commission.

11 (B) Forms, charts, tables, and other data to assist designers and
12 builders in meeting the standards.

13 (C) Design suggestions for meeting or exceeding the standards.

14 (D) Any other information which the commission finds will
15 assist persons in conforming to the standards.

16 (E) Instructions for use of the computer program for calculating
17 energy consumption in residential and nonresidential buildings.

18 (F) The prescriptive method for use as an alternative to the
19 computer program.

20 (b) The commission shall establish a continuing program of
21 technical assistance to local building departments in the
22 enforcement of subdivisions (a) and (b) of Section 25402 and this
23 section. The program shall include the training of local officials
24 in building technology and enforcement procedures related to
25 energy conservation, and the development of complementary
26 training programs conducted by local governments, educational
27 institutions, and other public or private entities. The technical
28 assistance program shall include the preparation and publication
29 of forms and procedures for local building departments in
30 performing the review of building plans and specifications. The
31 commission shall provide, on a contract basis, a review of building
32 plans and specifications submitted by a local building department,
33 and shall adopt a schedule of fees sufficient to repay the cost of
34 those services.

35 (c) Subdivisions (a) and (b) of Section 25402 and this section,
36 and the rules and regulations of the commission adopted pursuant
37 to those provisions, shall be enforced by the building department
38 of a city, county, or city and county.

39 (1) A building permit for a residential or nonresidential building
40 shall not be issued by a local building department, unless a review

1 by the building department of the plans for the proposed residential
2 or nonresidential building contains detailed energy system
3 specifications and confirms that the building satisfies the minimum
4 standards established pursuant to subdivision (a) or (b) of Section
5 25402 and this section applicable to the building.

6 (2) Where there is no local building department, the commission
7 shall enforce subdivisions (a) and (b) of Section 25402 and this
8 section.

9 (3) If a local building department fails to enforce subdivisions
10 (a) and (b) of Section 25402 and this section or any other provision
11 of this chapter or standard adopted pursuant to those provisions,
12 the commission may provide enforcement after furnishing 10 days'
13 written notice to the local building department.

14 (4) A city, county, or city and county may, by ordinance or
15 resolution, prescribe a schedule of fees sufficient to pay the costs
16 incurred in the enforcement of subdivisions (a) and (b) of Section
17 25402 and this section. The commission may establish a schedule
18 of fees sufficient to pay the costs incurred by that enforcement.

19 (5) The construction of a state building shall not commence
20 until the Department of General Services or the state agency that
21 otherwise has jurisdiction over the property reviews the plans for
22 the proposed building and certifies that the plans satisfy the
23 minimum standards established pursuant to subdivision (a) or (b)
24 of Chapter 2.8 (commencing with Section 15814.30) of Part 10b
25 of Division 3 of Title 2 of the Government Code, Section 25402,
26 and this section which are applicable to the building.

27 (d) Subdivisions (a) and (b) of Section 25402 and this section
28 shall apply only to new residential and nonresidential buildings
29 on which actual site preparation and construction have not
30 commenced prior to the effective date of rules and regulations
31 adopted pursuant to those sections that are applicable to those
32 buildings. Nothing in those sections shall prohibit either of the
33 following:

34 (1) The enforcement of state or local energy conservation or
35 energy insulation standards, adopted prior to the effective date of
36 rules and regulations adopted pursuant to subdivisions (a) and (b)
37 of Section 25402 and this section with regard to residential and
38 nonresidential buildings on which actual site preparation and
39 construction have commenced prior to that date.

1 (2) The enforcement of city or county energy conservation or
2 energy insulation standards, whenever adopted, with regard to
3 residential and nonresidential buildings on which actual site
4 preparation and construction have not commenced prior to the
5 effective date of rules and regulations adopted pursuant to
6 subdivisions (a) and (b) of Section 25402 and this section, if the
7 city or county files the basis of its determination that the standards
8 are cost effective with the commission and the commission finds
9 that the standards will require the diminution of energy
10 consumption levels permitted by the rules and regulations adopted
11 pursuant to those sections. If, after two or more years after the
12 filing with the commission of the determination that those standards
13 are cost effective, there has been a substantial change in the factual
14 circumstances affecting the determination, upon application by an
15 interested party, the city or county shall update and file a new basis
16 of its determination that the standards are cost effective. The
17 determination that the standards are cost effective shall be adopted
18 by the governing body of the city or county at a public meeting.
19 If, at the meeting on the matter, the governing body determines
20 that the standards are no longer cost effective, the standards shall,
21 as of that date, be unenforceable and no building permit or other
22 entitlement shall be denied based on the noncompliance with the
23 standards.

24 (e) The commission may exempt from the requirements of this
25 section and of any regulations adopted pursuant thereto any
26 proposed building for which compliance would be impossible
27 without substantial delays and increases in cost of construction, if
28 the commission finds that substantial funds have been expended
29 in good faith on planning, designing, architecture or engineering
30 prior to the date of adoption of the regulations.

31 (f) If a dispute arises between an applicant for a building permit,
32 or the state pursuant to paragraph (5) of subdivision (c), and the
33 building department regarding interpretation of Section 25402 or
34 the regulations adopted pursuant to that section, either party may
35 submit the dispute to the commission for resolution. The
36 commission's determination of the matter shall be binding on the
37 parties.

38 (g) Nothing in Section 25130, 25131, or 25402, or in this section
39 prevents enforcement of a regulation adopted pursuant to this
40 chapter, or Chapter 11.5 (commencing with Section 19878) of Part

- 1 3 of Division 13 of the Health and Safety Code as they existed
- 2 prior to September 16, 1977.

O