

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 6, 2011

To: The Commission
(Meeting of June 9, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 454 (Pavley) - Energy efficiency standards.**
As amended: May 31, 2011

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL: This bill has three main provisions. It would (1) authorize the California Energy Commission (CEC) to impose civil penalties to enforce its appliance standards pursuant to Title 20 of the California Code of Regulations; (2) requires the CEC and Contractor's State Licensing Board (CSLB) to identify and investigate the failure of contractors to comply with the Title 24 building standards and obtain necessary building permits, and to conduct an education and awareness campaign for contractors and consumers; and (3) require that an investor-owned utility (IOU) provide rebates or incentives only if the recipient certifies that a licensed contractor was used, as appropriate, and any applicable permitting requirements were followed.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This bill will raise consumer awareness of the importance of complying with appropriate building and construction permitting requirements. Studies have shown that 90% of heating, ventilation and air conditioning (HVAC) systems installed in California do not have proper permits and/or were not installed by licensed contractors. More importantly, there is evidence that demonstrates that the acquisition of HVAC permits leads to energy savings.¹ This bill appropriately places the responsibility of adhering to these requirements on consumers and takes the IOUs out of the business of enforcing code compliance. While the CPUC supports the requirements in the bill, we are concerned that it may result in potential unintended consequences of lower participation and fewer energy savings from utility programs, in part, because an incentive amount will only offset a small percentage of the costs of obtaining a permit.

¹ Swan, Eric, Jarred Metoyer, and Wim Bos, "Too Much Stick? Not Enough Carrot? Testing the Presumption of Non-Compliance," *2008 ACEEE Summer Study on Energy Efficiency in Buildings*.

DIVISION ANALYSIS (Energy Division):

This bill would primarily impact IOU energy efficiency programs covering new residential, commercial, and industrial construction projects, and residential and commercial HVAC systems. However, the bill would have limited overall impact on these programs since the statewide component of these programs already require permits prior to receipt of incentives. Moreover, the bill would only affect “downstream” incentive programs (i.e. where rebates or incentives are paid to a customer or that customer’s contractor) and not “upstream” programs, where the incentive is paid to manufacturers who agree to stock designated high efficiency products in the California marketplace.

Most of the IOU incentives paid for efficient HVAC systems are administered through upstream programs, which will not be affected by this bill. Downstream programs currently account for less than a quarter of the savings expected from HVAC programs in the current 2010-2012 program cycle, with upstream programs accounting for the majority.

While laudable, the bill may have unintended consequences

CPUC staff supports the bill’s goals of encouraging consumers to comply with all applicable permitting requirements, especially if those requirements lead to incremental energy savings. However, we are concerned that the high costs of obtaining a permit, including administrative hurdles, may negatively impact HVAC program participation.

CPUC staff estimate that a utility incentive represents approximately only 20% of the total cost of obtaining HVAC permits (including mechanical, electrical, structural, incremental labor costs, HERS rating, etc.) so consumers may view obtaining a permit as more trouble and cost than it is worth. This may result in lower participation and fewer energy savings from utility programs. As long as an imbalance exists between the cost of permit compliance and the value of utility incentives, homeowners and building owners will find ways to circumvent the law.

Other major problems not addressed by the bill are: (1) the lack of resources and staff at local building departments to enforce the law and (2) non-standardized or administratively burdensome permitting requirements across 500+ jurisdictions, which discourage customers and contractors from following the law.

Bill preceded by negotiations with CEC and Attorney General’s Office

From June 2010 through March 2011, CPUC staff, the Attorney General’s Office, CEC, and the CSLB participated in negotiations with the IOUs regarding the same issues addressed in this bill. As a result of these negotiations, the IOUs agreed to take four specific actions to further support compliance with Title 20 appliance standards and Title

24 building codes (beyond activities already in place through many IOU programs and activities, specified in the next section):

1. Provide a statement on their websites encouraging consumers to confirm that an appliance has been certified for sale by the CEC.
2. Inform rebate-partner retailers of the California requirement that only CEC-certified products be sold; and in instances where the IOUs provide information about specific appliance models to retailers, the IOUs agreed to include only models that the IOUs have verified are in the appliance database as of the date specified in that communication.
3. Add a check box to all HVAC rebate applications confirming that the applicant has used a licensed contractor and followed all applicable permitting requirements. (Note: This measure is now being codified in this bill.)
4. Post a consumer education piece on their websites which includes a discussion of why quality installation matters, the benefits of hiring a licensed contractor, and the quality assurance that comes through obtaining a permit.

Other provisions of the bill

The provision authorizing CEC to enforce its appliance standards would: (1) have consistent statewide impacts on manufacturers; and (2) would not disproportionately harm IOU rebate programs relative to transactions in the broader marketplace. Finally, the provision requiring an investigation of contractor noncompliance would also have consistent statewide impacts and may actually produce some small benefits by encouraging participation in the IOUs' HVAC Quality Installation program.

PROGRAM BACKGROUND:

Several IOU activities and programs in the 2010-2012 energy efficiency program portfolios (authorized pursuant to D.09-09-047) are designed to improve compliance with permitting and code requirements, as specified further below.

Statewide HVAC Residential and Commercial Quality (QI) Installation subprograms

Pursuant to D.09-09-047 and the approved statewide HVAC Program Implementation Plan,² the Residential and Commercial Quality Installation (QI) programs (\$17 million and \$10 million, respectively) require building permits for central AC and heat pump systems prior to receiving incentive payments. These technologies represent the large majority of HVAC systems for which installations trigger Title 24 requirements.

Most of the IOU incentives paid for HVAC systems are administered through the Upstream Equipment Incentives subprogram of the statewide HVAC program. The

² Current versions of PIPs are available at <http://eega.cpuc.ca.gov/Main2010PIPs.aspx>.

upstream program offers incentives to distributors who sell qualifying high efficiency HVAC equipment. This bill would not apply to this subprogram since it assumes a “downstream” incentive design where incentives are paid to the customer (or contractor) after the system is installed.

Statewide Codes and Standards Compliance Enhancement subprogram

As part of the IOUs 2010-2012 energy efficiency portfolio, the Codes and Standard program was expanded to include new Compliance Enhancement subprogram, funded at \$3.8 million. The goal of this program is to increase Title 24 code compliance by helping to improve building department code enforcement processes from beginning to end. Activities include: training and supporting building officials; simplifying and expediting permitting and compliance processes; and a pilot program with 12 local building departments to investigate knowledge and skill gaps and code enforcement processes in detail, in order to identify opportunities to streamline enforcement practices and improve consistency between jurisdictions.

Western HVAC Performance Alliance (WHPA) Compliance Committee

Several of the activities described above in the CE subprogram are being implemented in partnership with HVAC industry stakeholders through the WHPA. The WHPA³ is an HVAC industry forum established to advise the IOUs on implementation of the *California Long-Term Energy Efficiency Strategic Plan* (Strategic Plan)⁴ and funded through the statewide HVAC program in the 2010-2012 EE program portfolio. The Compliance Committee is tasked with implementing HVAC Goal #1 of the Strategic Plan: “Consistent and effective compliance, enforcement, and verification of applicable building and appliance standards.” Through this forum the IOUs are actively working with the California Energy Commission, California State Licensing Board and other industry stakeholders to improve code compliance.

Statewide Workforce Education and Training (WE&T) program

Under the statewide WE&T program, the IOUs are involved with several activities to support a trained and educated workforce, that is designed, in turn, to support improved code compliance

HVAC WE&T subprogram – Under the statewide HVAC program, this \$10 million subprogram offers industry specific education and training opportunities targeted at all levels of the HVAC value chain. Building on the findings and recommendations of the WE&T Needs Assessment, this subprogram will seek to influence quality-inclined contractors, installers, and technicians to deliver premium services to their customers, including ensuring compliance with Title 24 building codes.

Energy Centers subprogram- Through the “Centergies” subprogram of the 2010-2012 statewide WE&T program (\$75 million), the IOUs offers conducts seminars and workshops that address the knowledge and skill gaps of builders, developers,

³ For information about WHPA, go to www.performancealliance.org.

⁴ The Strategic Plan was adopted by the Commission in D.08-09-040. It is available on the Engage360 Web Portal at www.engage360.com/images/stories/ceesp/caenergyefficiencystrategicplan_jan2011.pdf

contractors, designers, installers, plant engineers and operators, agricultural owners and managers, and city and county building department staffs.

STATUS: SB 454 passed the Senate 24-15 and is awaiting committee assignment in the Assembly.

SUPPORT/OPPOSITION:

Sponsor: Natural Resources Defense Council
State Building and Construction Trades Council, AFL-CIO

Support: California Energy Efficiency Industry Council (if amended)
Environmental Defense Fund
Sierra Club California

Opposition: None on file

STAFF CONTACTS:

Dan Chia, Deputy Director-OGA (916) 324-5945

dc2@cpuc.ca.gov

BILL LANGUAGE:

BILL NUMBER: SB 454 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 31, 2011
AMENDED IN SENATE MAY 4, 2011
AMENDED IN SENATE APRIL 12, 2011
AMENDED IN SENATE MARCH 29, 2011

INTRODUCED BY Senator Pavley

FEBRUARY 16, 2011

~~An act to add Section 7110.05 to the Business and Professions Code,~~ An act to amend Section 25900 of, and to add Section 25402.11 to, the Public Resources Code, and to amend Section 399.4 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 454, as amended, Pavley. Energy efficiency standards.

(1) Existing law establishes the State Energy Resources Conservation and Development Commission and vests with the commission jurisdiction over specified matters related to energy. Existing law requires the Attorney General, upon the request of the commission, to petition a court of competent jurisdiction to enjoin violations of law that is within the subject matter of the commission. Existing law requires the commission to prescribe, by regulation, appliance efficiency standards.

This bill would authorize the commission to establish an administrative enforcement process to enforce the above standards. The bill would provide for the assessment of civil penalties by the courts or administrative civil penalties by the commission for a violation of the above standards. The bill would require the penalties collected to be deposited in the Appliance Efficiency Enforcement Subaccount, which this bill would establish in the Energy Resources Program Account, and would authorize the commission to expend the moneys in the subaccount, upon appropriation by the Legislature, as specified. The bill would require the court, upon granting of relief for a violation of the above standards, to award the commission the reasonable costs incurred by the commission in investigating and prosecuting the action.

~~(2) Existing law requires the commission to prescribe, by regulation, building design and construction standards, and energy and water efficiency design standards for new residential and nonresidential buildings.~~

~~This bill would require the commission and the Contractors' State License Board to collaborate to identify and investigate the failure of licensed and unlicensed contractors to comply with the above standards and to obtain the necessary building permits, and to conduct an education and awareness campaign for contractors and~~

~~consumers regarding the permitting requirements.~~

~~—(3)—~~

(2) Existing law provides that it is the policy of this state and the intent of the Legislature that the commission administer cost-effective energy efficiency programs authorized pursuant to existing statutory authority. Existing law provides for the regulation of public utilities under the Public Utilities Act. A violation of the Public Utilities Act is a crime.

This bill would prohibit a public utility from issuing rebates or incentives for energy efficiency improvements unless the recipient of the rebate or incentive certifies that ~~a licensed contractor was used, as appropriate, and the applicable permitting requirements were followed, for~~ the improvement or installation *was done in compliance with all applicable permitting requirements and by a licensed contractor, if applicable*.

Because a violation of this provision would be a crime under the Public Utilities Act, the bill would impose a state-mandated local program.

~~—(4)—~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to enact legislation that maximizes the energy saved by the state's various energy efficiency statutes, regulations, and programs.

SEC. 2. The Legislature finds and declares all of the following:

(a) California's ~~building and~~ appliance energy efficiency standards, specified in ~~Part 6 of Title 24 of, and Article 4—~~ Article 4 (commencing with Section 1601)

of Chapter 4 of Division 2 of Title 20 of —, the California Code of Regulations, ~~respectively,~~ represent a state resource for accomplishing increased energy efficiency in ~~newly constructed buildings, additions, and alterations to existing buildings, and in~~ appliances. These standards are recognized as leading the nation in energy savings and serving as one of the primary energy policy tools that has resulted in California's per capita energy use staying essentially constant over the past 30 years while that of the rest of the United States increased steadily by nearly 50 percent.

~~—(b) The effectiveness of the building energy efficiency standards is dependent on the conscientious efforts of licensed contractors in California to build buildings and install components and equipment in compliance with the standards.~~

~~—(c) The Governor and the Legislature recognize that many buildings are being retrofitted by unlicensed contractors and without required permits. Contractors operating in the underground economy are in flagrant violation of California contracting law. Unlicensed and licensed contractors who market their services with these underground~~

~~practices engage in unfair competition, undercutting legitimate contractors who endeavor to conscientiously comply with contracting, building, and business laws. This underground activity denies state and local governments license and building permit revenue, diminishing the ability of state and local agencies to provide enforcement services intended to protect consumers by ensuring compliance with these laws. These practices particularly damage and diminish the potential for conscientious compliance with the building energy efficiency standards.~~

~~—(d) The mission of the Contractors' State License Board is to protect consumers by regulating contractors to promote the health, safety, and general welfare of the public in matters related to construction. As a part of fulfilling this mission, it is important for the board's licensing program to include efforts to eradicate the underground practice of performing construction work without building permits and failing to comply with the building energy efficiency standards.~~

~~—(e) The State Energy Resources Conservation and Development Commission is responsible for establishing energy efficiency building codes and appliance standards in California. As such, that commission has expertise in how to raise awareness and enforce these standards. It has become critically important for that commission and the Contractors' State License Board to ensure that all buildings and appliances meet California's efficiency standards and send a strong, definitive message to those whose objective is illegal financial gain at the expense of safe building practices and energy efficiency.~~

~~—(f)~~

(b) The appliance efficiency standards deliver cost-effective energy savings to consumers. They are an important component of the state's programs to manage its energy consumption, conserve natural resources, and improve the quality of life for all its citizens. The Governor and Legislature recognize that significant quantities of appliances are sold and offered for sale in California that do not meet the state's energy efficiency standards. The products needlessly consume resources and saddle consumers with hidden long-term costs after the initial purchase. Furthermore, inadequate certification of appliances sold in California undermines the state's ability to ensure that products sold in California meet the state's efficiency standards.

~~—(g)~~

(c) These violations result in a substantial financial loss to consumers who purchase energy efficiency goods and services, and represent unfair competition that dramatically impacts the economic viability of legitimate businesses. It is critical for California to maintain a business climate favorable to legitimate competition, so that conscientious contractors, manufacturers, distributors, retailers, Home Energy Rating System raters, and other businesses are able to sustain their businesses against unfair competition.

~~—SEC. 3.— Section 7110.05 is added to the Business and Professions Code, to read:~~

~~—7110.05. The State Energy Resources Conservation and Development Commission and the board shall collaborate to identify and investigate the failure of licensees and unlicensed contractors to comply with the building energy efficiency standards and to obtain building permits, and to conduct an education and awareness campaign~~

~~to increase knowledge of permitting requirements among contractors and consumers.~~

~~SEC. 4.~~ SEC. 3. Section 25402.11 is added to the Public Resources Code, to read:

25402.11. (a) (1) The commission may adopt regulations establishing an administrative enforcement process for a violation of a regulation adopted pursuant to subdivision (c) of Section 25402 and for the assessment of an administrative civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation. The process shall comply with the requirements of Chapter 4 (commencing with Section 11400) and Chapter 4.5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In assessing the amount of an administrative penalty, the commission shall consider all of the following factors:

- (A) The nature and seriousness of the violation.
- (B) The number of violations.
- (C) The persistence of the violation.
- (D) The length of time over which the violation occurred.
- (E) The willfulness of the violation.
- (F) The violator's assets, liabilities, and net worth.

(b) If the commission finds that a violation of the regulations adopted pursuant to subdivision (c) of Section 25402 has occurred or is threatening to occur, the commission may refer the matter to the Attorney General to petition a court to enjoin the violation. The court may grant prohibitory or mandatory injunctive relief as warranted by issuing a temporary restraining order, preliminary injunction, or permanent injunction, and may assess a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, considering the factors specified in paragraph (2) of subdivision (a).

(c) Penalties collected pursuant to this section shall be deposited into the Appliance Efficiency Enforcement Subaccount, which is hereby established in the Energy Resources Program Account. The moneys in the Appliance Efficiency Enforcement Subaccount may be expended by the commission, upon appropriation by the Legislature, for the education of the public regarding appliance energy efficiency and for the enforcement of the regulations adopted pursuant to subdivision (c) of Section 25402.

(d) An order imposing an administrative civil penalty shall be subject to judicial review pursuant to subdivisions (a) and (b) of Section 25534.2.

(e) A person shall not be liable for a civil penalty pursuant to subdivision (b) if that person is subject to an administrative civil penalty pursuant to subdivision (a).

(f) In a civil action brought on behalf of the commission pursuant to this section, upon granting relief, the court shall award to the commission the reasonable costs incurred by the commission in investigating and prosecuting the action.

~~SEC. 5.~~ SEC. 4. Section 25900 of the Public Resources Code is amended to read:

25900. Except as provided in Sections 25402.11 and 25531, if the commission finds that any provision of this division is violated or a violation is threatening to take place that constitutes an emergency requiring immediate action to protect the public health, welfare, or safety, the Attorney General, upon request of the commission, shall petition a court to enjoin the violation. The court may grant

prohibitory or mandatory injunctive relief as warranted by way of temporary restraining order, preliminary injunction, and permanent injunction.

~~SEC. 6.~~ SEC. 5. Section 399.4 of the Public Utilities Code is amended to read:

399.4. (a) (1) In order to ensure that prudent investments in energy efficiency continue to be made that produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid, it is the policy of this state and the intent of the Legislature that the commission shall continue to administer cost-effective energy efficiency programs authorized pursuant to existing statutory authority.

(2) As used in this section, the term "energy efficiency" includes, but is not limited to, cost-effective activities to achieve peak load reduction that improve end-use efficiency, lower customers' bills, and reduce system needs.

(b) (1) Any rebates or incentives provided by any public utility for energy efficiency improvement and installation of energy efficient components, equipment, or appliances in buildings shall be provided only if ~~the recipient of the rebate or incentive certifies that a licensed contractor was used, as appropriate, and any applicable permitting requirements were followed, for the improvement or installation.~~ *the improvement or installation was done in compliance with all applicable permitting requirements and by a licensed contractor if a license is required.*

(2) This subdivision does not imply or create new authority or responsibility, or expand existing authority or responsibility, of the public utilities for the enforcement of the building energy and water efficiency standards adopted pursuant to subdivision (a) or (b) of Section 25402 of the Public Resources Code, or appliance efficiency standards and certification requirements adopted pursuant to subdivision (c) of Section 25402 of the Public Resources Code.

(c) The commission, in evaluating energy efficiency investments under its existing statutory authority, shall also ensure that local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community-based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate.

~~SEC. 7.~~ SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.