

**ASSEMBLY BILL**

**No. 212**

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**Introduced by Assembly Members Saldana and Lieu**

February 2, 2009

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An act to amend Section 25402 of the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 212, as introduced, Saldana. Energy: building standards: zero net energy buildings.

The Warren-Alquist State Energy Resources Conservation and Development Act requires the State Energy Resources Conservation and Development Commission to adopt building design and construction standards and energy and water conservation standards to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy, including energy associated with the use of water.

This bill would require the commission to adopt, in collaboration with specified parties, building design and construction standards and energy and water conservation standards to require new residential constructions commenced on or after January 1, 2020, or on a date by which the commission determines that the use of photovoltaic technology is cost effective, whichever is later, to be zero net energy buildings, as defined.

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 including the energy associated with the use of water:

7 (a) (1) Prescribe, by regulation, lighting, insulation climate  
8 control system, and other building design and construction  
9 standards that increase the efficiency in the use of energy and water  
10 for new residential and new nonresidential buildings. The  
11 commission shall periodically update the standards and adopt any  
12 revision that, in its judgment, it deems necessary. Six months after  
13 the commission certifies an energy conservation manual pursuant  
14 to subdivision (c) of Section 25402.1, ~~no~~ a city, county, city and  
15 county, or state agency shall *not* issue a permit for any building  
16 unless the building satisfies the standards prescribed by the  
17 commission pursuant to this subdivision or subdivision (b) that  
18 are in effect on the date an application for a building permit is  
19 filed. Water efficiency standards adopted pursuant to this  
20 subdivision shall be demonstrated by the commission to be  
21 necessary to save energy.

22 (2) Prior to adopting a water efficiency standard for residential  
23 buildings, the Department of Housing and Community  
24 Development and the commission shall issue a joint finding  
25 whether the standard (A) is equivalent or superior in performance,  
26 safety, and for the protection of life, health, and general welfare  
27 to standards in Title 24 of the California Code of Regulations and  
28 (B) does not unreasonably or unnecessarily impact the ability of  
29 Californians to purchase or rent affordable housing, as determined  
30 by taking *into* account ~~of~~ the overall benefit derived from water  
31 efficiency standards. Nothing in this subdivision in any way  
32 reduces the authority of the Department of Housing and  
33 Community Development to adopt standards and regulations  
34 pursuant to Part 1.5 (commencing with Section 17910) of Division  
35 13 of the Health and Safety Code.

36 (3) Water efficiency standards and water conservation design  
37 standards adopted pursuant to this subdivision and subdivision (b)  
38 shall be consistent with the legislative findings of this division to

1 ensure and maintain a reliable supply of electrical energy and be  
2 equivalent to or superior to the performance, safety, and protection  
3 of life, health, and general welfare standards contained in Title 24  
4 of the California Code of Regulations. The commission shall  
5 consult with the members of the coordinating council as established  
6 in Section 18926 of the Health and Safety Code in the development  
7 of these standards.

8 (b) (1) Prescribe, by regulation, energy and water conservation  
9 design standards for new residential and new nonresidential  
10 buildings. The standards shall be performance standards and shall  
11 be promulgated in terms of energy consumption per gross square  
12 foot of floorspace, but may also include devices, systems, and  
13 techniques required to conserve energy and water. The commission  
14 shall periodically review the standards and adopt any revision that,  
15 in its judgment, it deems necessary. A building that satisfies the  
16 standards prescribed pursuant to this subdivision need not comply  
17 with the standards prescribed pursuant to subdivision (a). Water  
18 conservation design standards adopted pursuant to this subdivision  
19 shall be demonstrated by the commission to be necessary to save  
20 energy. Prior to adopting a water conservation design standard for  
21 residential buildings, the Department of Housing and Community  
22 Development and the commission shall issue a joint finding  
23 whether the standard (A) is equivalent or superior in performance,  
24 safety, and for the protection of life, health, and general welfare  
25 to standards in the California Building Standards Code and (B)  
26 does not unreasonably or unnecessarily impact the ability of  
27 Californians to purchase or rent affordable housing, as determined  
28 by taking *into* account of the overall benefit derived from the water  
29 conservation design standards. Nothing in this subdivision in any  
30 way reduces the authority of the Department of Housing and  
31 Community Development to adopt standards and regulations  
32 pursuant to Part 1.5 (commencing with Section 17910) of Division  
33 13 of the Health and Safety Code.

34 (2) In order to increase public participation and improve the  
35 efficacy of the standards adopted pursuant to ~~subdivisions~~ *this*  
36 *subdivision and subdivision (a) and (b)*, the commission shall, prior  
37 to publication of the notice of proposed action required by Section  
38 18935 of the Health and Safety Code, involve parties who would  
39 be subject to the proposed regulations in public meetings regarding  
40 the proposed regulations. All potential affected parties shall be

1 provided advance notice of these meetings and given an  
2 opportunity to provide written or oral comments. During these  
3 public meetings, the commission shall receive and take into  
4 consideration input from all parties concerning the parties' design  
5 recommendations, cost considerations, and other factors that would  
6 affect consumers and California businesses of the proposed  
7 standard. The commission shall take into consideration prior to  
8 the start of the notice of proposed action any input provided during  
9 these public meetings.

10 (3) The standards adopted or revised pursuant to ~~subdivisions~~  
11 *this subdivision and subdivision (a) and (b)* shall be cost-effective  
12 when taken in their entirety and when amortized over the economic  
13 life of the structure compared with historic practice. When  
14 determining cost-effectiveness, the commission shall consider the  
15 value of the water or energy saved, impact on product efficacy for  
16 the consumer, and the ~~life-eye~~ *life-cycle* cost of complying with  
17 the standard. The commission shall consider other relevant factors,  
18 as required by Sections 18930 and 18935 of the Health and Safety  
19 Code, including, but not limited to, the impact on housing costs,  
20 the total statewide costs and benefits of the standard over its  
21 lifetime, economic impact on California businesses, and alternative  
22 approaches and their associated costs.

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

1 In order to increase public participation and improve the efficacy  
2 of the standards adopted pursuant to this subdivision, the  
3 commission shall, prior to publication of the notice of proposed  
4 action required by Section 18935 of the Health and Safety Code,  
5 involve parties who would be subject to the proposed regulations  
6 in public meetings regarding the proposed regulations. All potential  
7 affected parties shall be provided advance notice of these meetings  
8 and given an opportunity to provide written or oral comments.  
9 During these public meetings, the commission shall receive and  
10 take into consideration input from all parties concerning the parties'  
11 design recommendations, cost considerations, and other factors  
12 that would affect consumers and California businesses of the  
13 proposed standard. The commission shall take into consideration  
14 prior to the start of the notice of proposed action any input provided  
15 during these public meetings.

16 The standards adopted or revised pursuant to this subdivision  
17 shall not result in any added total costs for consumers over the  
18 designed life of the appliances concerned. When determining  
19 cost-effectiveness, the commission shall consider the value of the  
20 water or energy saved, impact on product efficacy for the  
21 consumer, and the ~~life-eyele~~ *life-cycle* cost to the consumer of  
22 complying with the standard. The commission shall consider other  
23 relevant factors, as required by Sections 11346.5 and 11357 of the  
24 Government Code, including, but not limited to, the impact on  
25 housing costs, the total statewide costs and benefits of the standard  
26 over its lifetime, economic impact on California businesses, and  
27 alternative approaches and their associated costs.

28 (2) ~~No~~ A new appliance, except for ~~any~~ a plumbing fitting,  
29 regulated under paragraph (1), that is manufactured on or after  
30 July 1, 1984, ~~may~~ *shall not* be sold, or offered for sale, in the state,  
31 unless the date of the manufacture is permanently displayed in an  
32 accessible place on that appliance.

33 (3) During the period of five years after the commission has  
34 adopted a standard for a particular appliance under paragraph (1),  
35 no increase or decrease in the minimum level of operating  
36 efficiency required by the standard for that appliance shall become  
37 effective, unless the commission adopts other cost-effective  
38 measures for that appliance.

39 (4) Neither the commission nor any other state agency shall  
40 take any action to decrease any standard adopted under this

1 subdivision on or before June 30, 1985, prescribing minimum  
2 levels of operating efficiency or other energy conservation  
3 measures for any appliance, unless the commission finds by a  
4 four-fifths vote that a decrease is of benefit to ratepayers, and that  
5 there is significant evidence of changed circumstances. Before  
6 January 1, 1986, the commission shall not take any action to  
7 increase a standard prescribing minimum levels of operating  
8 efficiency for any appliance or adopt a new standard under  
9 paragraph (1). Before January 1, 1986, any appliance manufacturer  
10 doing business in this state shall provide directly, or through an  
11 appropriate trade or industry association, information, as specified  
12 by the commission after consultation with manufacturers doing  
13 business in the state and appropriate trade or industry associations  
14 on sales of appliances so that the commission may study the effects  
15 of regulations on those sales. These informational requirements  
16 shall remain in effect until the information is received. The trade  
17 or industry association may submit sales information in an  
18 aggregated form in a manner that allows the commission to carry  
19 out the purposes of the study. The commission shall treat any sales  
20 information of an individual manufacturer as confidential and that  
21 information shall not be a public record. The commission shall not  
22 request any information that cannot be reasonably produced in the  
23 exercise of due diligence by the manufacturer. At least one year  
24 prior to the adoption or amendment of a standard for an appliance,  
25 the commission shall notify the Legislature of its intent, and the  
26 justification to adopt or amend a standard for the appliance.  
27 Notwithstanding paragraph (3) and this paragraph, the commission  
28 may do any of the following:

29 (A) Increase the minimum level of operating efficiency in an  
30 existing standard up to the level of the National Voluntary  
31 Consensus Standards 90, adopted by the American Society of  
32 Heating, Refrigeration, and Air Conditioning Engineers or, for  
33 appliances not covered by that standard, up to the level established  
34 in a similar nationwide consensus standard.

35 (B) Change the measure or rating of efficiency of any standard,  
36 if the minimum level of operating efficiency remains substantially  
37 the same.

38 (C) Adjust the minimum level of operating efficiency in an  
39 existing standard in order to reflect changes in test procedures that  
40 the standards require manufacturers to use in certifying compliance,

1 if the minimum level of operating efficiency remains substantially  
2 the same.

3 (D) Readopt a standard preempted, enjoined, or otherwise found  
4 legally defective by an administrative agency or a lower court, if  
5 final legal action determines that the standard is valid and if the  
6 standard that is readopted is not more stringent than the standard  
7 that was found to be defective or preempted.

8 (E) Adopt or amend any existing or new standard at any level  
9 of operating efficiency, if the Governor has declared an energy  
10 emergency as described in Section 8558 of the Government Code.

11 (5) Notwithstanding paragraph (4), the commission may adopt  
12 standards pursuant to Commission Order No. 84-0111-1, on or  
13 before June 30, 1985.

14 (d) Recommend minimum standards of efficiency for the  
15 operation of any new facility at a particular site that are technically  
16 and economically feasible. No site and related facility shall be  
17 certified pursuant to Chapter 6 (commencing with Section 25500),  
18 unless the applicant certifies that standards recommended by the  
19 commission have been considered, which certification shall include  
20 a statement specifying the extent to which conformance with the  
21 recommended standards will be achieved.

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

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

27 (1) Not later than January 1, 2004, amend any regulations in  
28 effect on January 1, 2003, pertaining to the energy efficiency  
29 standards for residential clothes washers to require that residential  
30 clothes washers manufactured on or after January 1, 2007, be at  
31 least as water efficient as commercial clothes washers.

32 (2) Not later than April 1, 2004, petition the federal Department  
33 of Energy for an exemption from any relevant federal regulations  
34 governing energy efficiency standards that are applicable to  
35 residential clothes washers.

36 (3) Not later than January 1, 2005, report to the Legislature on  
37 its progress with respect to the requirements of paragraphs (1) and  
38 (2).

39 (f) (1) *The standards adopted by the commission pursuant to*  
40 *subdivision (a) or (b) shall require a new residential construction*

1 *commenced on or after January 1, 2020, or on a date on which*  
2 *the commission determines that the use of photovoltaic technology*  
3 *is cost effective, whichever is later, to be a zero net energy building.*

4 *(2) For the purposes of this subdivision, the term “zero net*  
5 *energy building” means a building that implements a combination*  
6 *of building energy efficiency design features and clean onsite or*  
7 *near-site distributed generation that result in no net purchases*  
8 *from the electricity grid on an annual basis and produces enough*  
9 *electricity to offset the energy use attributable to an onsite use of*  
10 *purchased natural gas.*

11 *(3) In developing the standards pursuant to this subdivision,*  
12 *the commission shall consult with the Public Utilities Commission,*  
13 *the electric and gas utilities, and other interested parties.*