

AMENDED IN SENATE APRIL 12, 2010

SENATE BILL

No. 1198

Introduced by Senator Huff

**(Coauthors: Senators Cogdill, Denham, Dutton, Harman,
Hollingsworth, and Runner)**

(Coauthors: Assembly Members Gilmore, Jeffries, Knight, Silva, and
Smyth)

February 18, 2010

An act to amend ~~Section 25213~~ *Sections 25213 and 25402* of the
Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1198, as amended, Huff. Energy: State Energy Resources
Conservation and Development Commission: regulations.

The Warren-Alquist State Energy Resources Conservation and
Development Act requires the State Energy Resources Conservation
and Development Commission to adopt those regulations that are
necessary to carry out the act.

*The act also requires the commission, after one or more public
hearings, to prescribe, by regulation, standards for minimum levels of
operating efficiency and prescribe other measures, such as energy and
water consumption labeling not preempted by federal labeling law to
promote the use of energy and water efficient appliances that do not
result in any added total costs for consumers over the designed life of
the appliances concerned.*

*This bill would prohibit the implementation of the television product
labeling requirement adopted by the commission unless the United
States Federal Trade Commission fails to issue a final labeling rule for
that product as of July 1, 2011.*

This bill would, for all appliance standards that are effective as of January 1, 2011, require that discount rates, payback calculations, and life cycle cost estimates use interest rates applicable to consumer financing and the average life of the product before replacement.

~~This bill would require the commission to submit a regulation that is adopted by the commission and which is not implemented on or before January 1, 2011, to the Legislature before the regulation may be implemented. The bill would authorize the commission to implement the regulation only if both houses of the Legislature approve the regulation by a majority vote.~~

~~The bill would prohibit a regulation that is adopted, but not implemented, on or before January 1, 2011, from being implemented until the state’s unemployment rate remains below 5.1% for 3 consecutive months. A subsequent rise in the unemployment rate after that consecutive 3-month period would not prevent the commission from implementing new regulations.~~

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 25213 of the Public Resources Code is
- 2 amended to read:
- 3 25213. (a) The commission shall adopt rules and regulations,
- 4 as necessary, to carry out the provisions of this division in
- 5 conformity with the provisions of Chapter 3.5 (commencing with
- 6 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
- 7 Code. The commission shall make available to a person upon
- 8 request copies of proposed regulations, together with summaries
- 9 of reasons supporting their adoption.
- 10 ~~(b) Notwithstanding subdivision (a), a regulation that is adopted~~
- 11 ~~by the commission and which is not implemented on or before~~
- 12 ~~January 1, 2011, shall not be implemented until the commission~~
- 13 ~~submits the regulation to the Legislature and both houses of the~~
- 14 ~~Legislature approve the regulation by a majority vote.~~
- 15 ~~(c) Notwithstanding subdivisions (a) and (b), a regulation of~~
- 16 ~~the commission that is adopted, but not implemented, on or before~~
- 17 ~~January 1, 2011, shall not be implemented until the state’s~~
- 18 ~~unemployment rate remains below 5.1 percent for three consecutive~~
- 19 ~~months. A subsequent rise in the unemployment rate after that~~

1 ~~consecutive three-month period shall not prevent the commission~~
2 ~~from implementing new regulations.~~

3 *(b) Notwithstanding subdivision (a), the television product*
4 *labeling requirement adopted by the commission shall not be*
5 *implemented unless the United States Federal Trade Commission*
6 *fails to issue a final labeling rule for that product as of July 1,*
7 *2011.*

8 *SEC. 2. Section 25402 of the Public Resources Code is*
9 *amended to read:*

10 25402. The commission shall, after one or more public
11 hearings, do all of the following, in order to reduce the wasteful,
12 uneconomic, inefficient, or unnecessary consumption of energy,
13 including the energy associated with the use of water:

14 (a) (1) Prescribe, by regulation, lighting, insulation climate
15 control system, and other building design and construction
16 standards that increase the efficiency in the use of energy and water
17 for new residential and new nonresidential buildings. The
18 commission shall periodically update the standards and adopt any
19 revision that, in its judgment, it deems necessary. Six months after
20 the commission certifies an energy conservation manual pursuant
21 to subdivision (c) of Section 25402.1, no city, county, city and
22 county, or state agency shall issue a permit for any building unless
23 the building satisfies the standards prescribed by the commission
24 pursuant to this subdivision or subdivision (b) that are in effect on
25 the date an application for a building permit is filed. Water
26 efficiency standards adopted pursuant to this subdivision shall be
27 demonstrated by the commission to be necessary to save energy.

28 (2) Prior to adopting a water efficiency standard for residential
29 buildings, the Department of Housing and Community
30 Development and the commission shall issue a joint finding
31 whether the standard (A) is equivalent or superior in performance,
32 safety, and for the protection of life, health, and general welfare
33 to standards in Title 24 of the California Code of Regulations and
34 (B) does not unreasonably or unnecessarily impact the ability of
35 Californians to purchase or rent affordable housing, as determined
36 by taking account of the overall benefit derived from water
37 efficiency standards. Nothing in this subdivision in any way
38 reduces the authority of the Department of Housing and
39 Community Development to adopt standards and regulations

1 pursuant to Part 1.5 (commencing with Section 17910) of Division
2 13 of the Health and Safety Code.

3 (3) Water efficiency standards and water conservation design
4 standards adopted pursuant to this subdivision and subdivision (b)
5 shall be consistent with the legislative findings of this division to
6 ensure and maintain a reliable supply of electrical energy and be
7 equivalent to or superior to the performance, safety, and protection
8 of life, health, and general welfare standards contained in Title 24
9 of the California Code of Regulations. The commission shall
10 consult with the members of the coordinating council as established
11 in Section 18926 of the Health and Safety Code in the development
12 of these standards.

13 (b) (1) Prescribe, by regulation, energy and water conservation
14 design standards for new residential and new nonresidential
15 buildings. The standards shall be performance standards and shall
16 be promulgated in terms of energy consumption per gross square
17 foot of floorspace, but may also include devices, systems, and
18 techniques required to conserve energy and water. The commission
19 shall periodically review the standards and adopt any revision that,
20 in its judgment, it deems necessary. A building that satisfies the
21 standards prescribed pursuant to this subdivision need not comply
22 with the standards prescribed pursuant to subdivision (a). Water
23 conservation design standards adopted pursuant to this subdivision
24 shall be demonstrated by the commission to be necessary to save
25 energy. Prior to adopting a water conservation design standard for
26 residential buildings, the Department of Housing and Community
27 Development and the commission shall issue a joint finding
28 whether the standard (A) is equivalent or superior in performance,
29 safety, and for the protection of life, health, and general welfare
30 to standards in the California Building Standards Code and (B)
31 does not unreasonably or unnecessarily impact the ability of
32 Californians to purchase or rent affordable housing, as determined
33 by taking account of the overall benefit derived from the water
34 conservation design standards. Nothing in this subdivision in any
35 way reduces the authority of the Department of Housing and
36 Community Development to adopt standards and regulations
37 pursuant to Part 1.5 (commencing with Section 17910) of Division
38 13 of the Health and Safety Code.

39 (2) In order to increase public participation and improve the
40 efficacy of the standards adopted pursuant to subdivisions (a) and

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

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

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

1 to be in compliance with the standards. The standards shall be
 2 drawn so that they do not result in any added total costs for
 3 consumers over the designed life of the appliances concerned.

4 ~~In~~

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

20 ~~The~~

21 (3) *The* standards adopted or revised pursuant to this subdivision
 22 shall not result in any added total costs for consumers over the
 23 designed life of the appliances concerned. *For all standards that*
 24 *are effective as of January 1, 2011, discount rates, payback*
 25 *calculations, and life cycle cost estimates shall use interest rates*
 26 *applicable to consumer financing and the average life of the*
 27 *product before replacement.* When determining cost-effectiveness,
 28 the commission shall consider the value of the water or energy
 29 saved, impact on product efficacy for the consumer, and the life
 30 cycle cost to the consumer of complying with the standard. The
 31 commission shall consider other relevant factors, as required by
 32 Sections 11346.5 and 11357 of the Government Code, including,
 33 but not limited to, the impact on housing costs, the total statewide
 34 costs and benefits of the standard over its lifetime, economic impact
 35 on California businesses, and alternative approaches and their
 36 associated costs.

37 ~~(2)~~

38 (4) No new appliance, except for any plumbing fitting, regulated
 39 under paragraph (1), that is manufactured on or after July 1, 1984,
 40 may be sold, or offered for sale, in the state, unless the date of the

1 manufacture is permanently displayed in an accessible place on
2 that appliance.

3 ~~(3)~~

4 (5) During the period of five years after the commission has
5 adopted a standard for a particular appliance under paragraph (1),
6 no increase or decrease in the minimum level of operating
7 efficiency required by the standard for that appliance shall become
8 effective, unless the commission adopts other cost-effective
9 measures for that appliance.

10 ~~(4)~~

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

1 (A) Increase the minimum level of operating efficiency in an
 2 existing standard up to the level of the National Voluntary
 3 Consensus Standards 90, adopted by the American Society of
 4 Heating, Refrigeration, and Air Conditioning Engineers or, for
 5 appliances not covered by that standard, up to the level established
 6 in a similar nationwide consensus standard.

7 (B) Change the measure or rating of efficiency of any standard,
 8 if the minimum level of operating efficiency remains substantially
 9 the same.

10 (C) Adjust the minimum level of operating efficiency in an
 11 existing standard in order to reflect changes in test procedures that
 12 the standards require manufacturers to use in certifying compliance,
 13 if the minimum level of operating efficiency remains substantially
 14 the same.

15 (D) Readopt a standard preempted, enjoined, or otherwise found
 16 legally defective by an administrative agency or a lower court, if
 17 final legal action determines that the standard is valid and if the
 18 standard that is readopted is not more stringent than the standard
 19 that was found to be defective or preempted.

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

23 ~~(5)~~

24 (7) Notwithstanding paragraph ~~(4)~~ (6), the commission may
 25 adopt standards pursuant to Commission Order No. 84-0111-1, on
 26 or before June 30, 1985.

27 (d) (1) Recommend minimum standards of efficiency for the
 28 operation of any new facility at a particular site that are technically
 29 and economically feasible. No site and related facility shall be
 30 certified pursuant to Chapter 6 (commencing with Section 25500),
 31 unless the applicant certifies that standards recommended by the
 32 commission have been considered, which certification shall include
 33 a statement specifying the extent to which conformance with the
 34 recommended standards will be achieved.

35 ~~Whenever~~

36 (2) *Whenever* this section and Chapter 11.5 (commencing with
 37 Section 19878) of Part 3 of Division 13 of the Health and Safety
 38 Code are in conflict, the commission shall be governed by that
 39 chapter of the Health and Safety Code to the extent of the conflict.

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

- 1 (1) Not later than January 1, 2004, amend any regulations in
2 effect on January 1, 2003, pertaining to the energy efficiency
3 standards for residential clothes washers to require that residential
4 clothes washers manufactured on or after January 1, 2007, be at
5 least as water efficient as commercial clothes washers.
6 (2) Not later than April 1, 2004, petition the federal Department
7 of Energy for an exemption from any relevant federal regulations
8 governing energy efficiency standards that are applicable to
9 residential clothes washers.
10 (3) Not later than January 1, 2005, report to the Legislature on
11 its progress with respect to the requirements of paragraphs (1) and
12 ~~(2)~~ (4).

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