

Introduced by Senator PavleyFebruary 16, 2011

An act to amend Sections 17203, 17204, and 17206 of, and to add Section 7110.05 to, the Business and Professions Code, and to amend Section 399.4 of the Public Utilities Code, relating to the Energy Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 454, as introduced, Pavley. Energy efficiency standards: Energy Commission.

Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law prohibits certain actions by licensed contractors and subjects a licensee to discipline for a violation thereof. Existing law authorizes the board to issue a citation for a violation of the Contractors' State License Law and to issue civil penalties. Existing law provides for an Energy Resources Conservation and Development Commission (Energy Commission) within state government.

This bill would subject a licensee to discipline for the failure to comply with specified energy efficiency standards under the California Code of Regulations. The bill would require the board to submit an annual report to the Legislature with regard to any civil penalties assessed against a licensee or unlicensed person for a violation of those standards. The bill would require the Energy Commission to collaborate with the board to identify and investigate the failure of licensees and unlicensed contractors to comply with those standards.

Existing law defines an act of unfair competition as including an unlawful, unfair, or fraudulent business act or practice, an unfair, deceptive, untrue, or misleading advertisement, and other specified

conduct relating to representations made to the public. Existing law authorizes the Attorney General, certain local prosecutors, a private plaintiff with an injury-in-fact, or a plaintiff representative who meets certain standing requirements to bring an action against any person who engages, has engaged, or proposes to engage in unfair competition, provides for injunctive relief, and authorizes the court to make any order or judgment that is necessary to restore to any person in interest any money or property that may have been acquired by means of the unfair competition. Civil penalties may also be collected by the Attorney General and the local prosecutors, as specified. A portion of the civil penalties collected by the Attorney General are deposited into the Unfair Competition Law Fund, and, upon appropriation by the Legislature, are used to support investigations and prosecutions of consumer protection laws.

The bill would authorize the Energy Commission to bring an action under the unfair competition laws to enforce any statute or regulation that the commission is directed to adopt, implement, administer, or enforce. The bill would authorize the Energy Commission to collect civil penalties for a violation thereof and, upon appropriation by the Legislature, would authorize the expenditure of those moneys by the commission for purposes of enforcement.

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 without the requisite building permits. Because a violation of this provision would be a crime under the Public Utilities Act, the bill would impose a state-mandated local program.

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:

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

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

5 (a) California's building and appliance energy efficiency
6 standards, specified in Part 6 of Title 24 of, and Article 4 of
7 Chapter 4 of Division 2 of Title 20 of, the California Code of
8 Regulations, respectively, represent a state resource for
9 accomplishing increased energy efficiency in newly constructed
10 buildings, additions, and alterations to existing buildings, and in
11 appliances. These standards are recognized as leading the nation
12 in energy savings and serving as one of the primary energy policy
13 tools that has resulted in California's per capita energy use staying
14 essentially constant over the past 30 years while that of the rest of
15 the United States increased steadily.

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

20 (c) The Governor and the Legislature recognize that many
21 buildings are being retrofitted without required permits. Contractors
22 operating in the underground economy are in flagrant violation of
23 California contracting law. In particular, these are contractors
24 operating without a license, and those, whether licensed or not,
25 that willfully and deliberately fail to obtain a building permit and
26 willfully and deliberately fail to comply with the building laws
27 and other laws of the state. Unlicensed and licensed contractors
28 who market their services with these underground practices engage
29 in unfair competition, undercutting legitimate contractors who
30 endeavor to conscientiously comply with contracting, building,
31 and business laws. This underground activity denies state and local
32 governments license and building permit revenue, diminishing the
33 ability of state and local agencies to provide enforcement services
34 intended to protect consumers by ensuring compliance with these
35 laws. These practices particularly damage and diminish the
36 potential for conscientious compliance with the building energy
37 efficiency standards.

1 (d) The mission of the Contractors' State License Board is to
2 protect consumers by regulating contractors to promote the health,
3 safety, and general welfare of the public in matters related to
4 construction. As a part of fulfilling this mission, it is important for
5 the board's licensing program to include efforts to eradicate the
6 underground practice of performing construction work without
7 building permits and failing to comply with the building energy
8 efficiency standards. It has become critically important for the
9 board to send a strong, definitive message to those whose objective
10 is illegal financial gain at the expense of safe building practices
11 and energy efficiency. In particular, the board should not tolerate
12 illegal practices related to building energy efficiency standards.

13 (e) The appliance efficiency standards deliver cost-effective
14 energy savings to consumers. They are an important component
15 of the state's programs to manage its energy consumption, conserve
16 natural resources, and improve the quality of life for all its citizens.
17 The Governor and Legislature recognize that significant quantities
18 of appliances are sold and offered for sale in California that do not
19 meet the state's energy efficiency standards. The products
20 needlessly consume resources and saddle consumers with hidden
21 long-term costs after the initial purchase.

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

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

33 7110.05. (a) The failure of a licensee to comply with the
34 building energy efficiency standards specified in Part 6 of Title
35 24 of the California Code of Regulations constitutes a cause for
36 disciplinary action.

37 (b) (1) Beginning with the fiscal year commencing on July 1,
38 2011, and each fiscal year thereafter, the board shall compile the
39 essential data necessary to create a report identifying the number
40 of civil penalties that the board assessed during the previous fiscal

1 year against licensees and unlicensed contractors for failure to
2 comply with the standards described in subdivision (a) of this
3 section and subdivision (b) of Section 7028.7. This report shall be
4 submitted to the Legislature no later than the first business day in
5 October of each year.

6 (2) The report to be submitted pursuant to this subdivision shall
7 be submitted in compliance with Section 9795 of the Government
8 Code.

9 (c) The State Energy Resources Conservation and Development
10 Commission shall collaborate with the board to identify and
11 investigate the failure of licensees and unlicensed contractors to
12 comply with the building energy efficiency standards and to obtain
13 building permits, and conduct an education and awareness
14 campaign to increase knowledge of permitting requirements among
15 contractors and consumers.

16 SEC. 4. Section 17203 of the Business and Professions Code
17 is amended to read:

18 17203. Injunctive Relief—Court Orders

19 Any person who engages, has engaged, or proposes to engage
20 in unfair competition may be enjoined in any court of competent
21 jurisdiction. The court may make such orders or judgments,
22 including the appointment of a receiver, as may be necessary to
23 prevent the use or employment by any person of any practice which
24 constitutes unfair competition, as defined in this chapter, or as may
25 be necessary to restore to any person in interest any money or
26 property, real or personal, which may have been acquired by means
27 of such unfair competition. Any person may pursue representative
28 claims or relief on behalf of others only if the claimant meets the
29 standing requirements of Section 17204 and complies with Section
30 382 of the Code of Civil Procedure, but these limitations do not
31 apply to claims brought under this chapter by the Attorney General,
32 ~~or~~ by any district attorney, county counsel, city attorney, or city
33 prosecutor in this state, *or by the Energy Resources Conservation
34 and Development Commission to enforce any statute or regulation
35 that the commission is directed to adopt, implement, administer,
36 or enforce.*

37 SEC. 5. Section 17204 of the Business and Professions Code
38 is amended to read:

1 17204. Actions for Injunctions by Attorney General, District
2 Attorney, County Counsel, ~~and~~ City Attorneys, *or the Energy*
3 *Resources Conservation and Development Commission*

4 Actions for relief pursuant to this chapter shall be prosecuted
5 exclusively in a court of competent jurisdiction by the Attorney
6 General or a district attorney or by a county counsel authorized
7 by agreement with the district attorney in actions involving
8 violation of a county ordinance, or by a city attorney of a city
9 having a population in excess of 750,000, or by a city attorney in
10 a city and county or, with the consent of the district attorney, by
11 a city prosecutor in a city having a full-time city prosecutor in the
12 name of the people of the State of California upon their own
13 complaint or upon the complaint of a board, officer, person,
14 corporation, or association, *or by the Energy Resources*
15 *Conservation and Development Commission*, or by a person who
16 has suffered injury in fact and has lost money or property as a
17 result of the unfair competition.

18 SEC. 6. Section 17206 of the Business and Professions Code
19 is amended to read:

20 17206. Civil Penalty for Violation of Chapter

21 (a) Any person who engages, has engaged, or proposes to engage
22 in unfair competition shall be liable for a civil penalty not to exceed
23 two thousand five hundred dollars (\$2,500) for each violation,
24 which shall be assessed and recovered in a civil action brought in
25 the name of the people of the State of California by the Attorney
26 General, by any district attorney, by any county counsel authorized
27 by agreement with the district attorney in actions involving
28 violation of a county ordinance, by any city attorney of a city
29 having a population in excess of 750,000, by any city attorney of
30 any city and county, or, with the consent of the district attorney,
31 by a city prosecutor in any city having a full-time city prosecutor,
32 *or by the Energy Resources Conservation and Development*
33 *Commission to enforce any statute or regulation that the*
34 *commission is directed to adopt, implement, administer, or enforce,*
35 in any court of competent jurisdiction.

36 (b) The court shall impose a civil penalty for each violation of
37 this chapter. In assessing the amount of the civil penalty, the court
38 shall consider any one or more of the relevant circumstances
39 presented by any of the parties to the case, including, but not
40 limited to, the following: the nature and seriousness of the

1 misconduct, the number of violations, the persistence of the
2 misconduct, the length of time over which the misconduct occurred,
3 the willfulness of the defendant’s misconduct, and the defendant’s
4 assets, liabilities, and net worth.

5 (c) If the action is brought by the Attorney General, one-half of
6 the penalty collected shall be paid to the treasurer of the county in
7 which the judgment was entered, and one-half to the General Fund.

8 If the action is brought by a district attorney or county counsel,
9 the penalty collected shall be paid to the treasurer of the county in
10 which the judgment was entered. Except as provided in subdivision

11 (e), if the action is brought by a city attorney or city prosecutor,
12 one-half of the penalty collected shall be paid to the treasurer of
13 the city in which the judgment was entered, and one-half to the
14 treasurer of the county in which the judgment was entered. The
15 aforementioned funds shall be for the exclusive use by the Attorney
16 General, the district attorney, the county counsel, and the city
17 attorney for the enforcement of consumer protection laws. *If the*
18 *action is brought by the Energy Resources Conservation and*
19 *Development Commission, the penalties collected under this*
20 *section, upon appropriation to the commission by the Legislature,*
21 *shall be used by the commission to enforce any statute or*
22 *regulation that the commission is directed to adopt, implement,*
23 *administer, or enforce.*

24 (d) The Unfair Competition Law Fund is hereby created as a
25 special account within the General Fund in the State Treasury. The
26 portion of penalties that is payable to the General Fund or to the
27 Treasurer recovered by the Attorney General from an action or
28 settlement of a claim made by the Attorney General pursuant to
29 this chapter or Chapter 1 (commencing with Section 17500) of
30 Part 3 shall be deposited into this fund. Moneys in this fund, upon
31 appropriation by the Legislature, shall be used by the Attorney
32 General to support investigations and prosecutions of California’s
33 consumer protection laws, including implementation of judgments
34 obtained from such prosecutions or investigations and other
35 activities which are in furtherance of this chapter or Chapter 1
36 (commencing with Section 17500) of Part 3.

37 (e) If the action is brought at the request of a board within the
38 Department of Consumer Affairs or a local consumer affairs
39 agency, the court shall determine the reasonable expenses incurred

1 by the board or local agency in the investigation and prosecution
2 of the action.

3 Before any penalty collected is paid out pursuant to subdivision
4 (c), the amount of any reasonable expenses incurred by the board
5 shall be paid to the Treasurer for deposit in the special fund of the
6 board described in Section 205. If the board has no such special
7 fund, the moneys shall be paid to the Treasurer. The amount of
8 any reasonable expenses incurred by a local consumer affairs
9 agency shall be paid to the general fund of the municipality or
10 county that funds the local agency.

11 (f) If the action is brought by a city attorney of a city and county,
12 the entire amount of the penalty collected shall be paid to the
13 treasurer of the city and county in which the judgment was entered
14 for the exclusive use by the city attorney for the enforcement of
15 consumer protection laws. However, if the action is brought by a
16 city attorney of a city and county for the purposes of civil
17 enforcement pursuant to Section 17980 of the Health and Safety
18 Code or Article 3 (commencing with Section 11570) of Chapter
19 10 of Division 10 of the Health and Safety Code, either the penalty
20 collected shall be paid entirely to the treasurer of the city and
21 county in which the judgment was entered or, upon the request of
22 the city attorney, the court may order that up to one-half of the
23 penalty, under court supervision and approval, be paid for the
24 purpose of restoring, maintaining, or enhancing the premises that
25 were the subject of the action, and that the balance of the penalty
26 be paid to the treasurer of the city and county.

27 SEC. 7. Section 399.4 of the Public Utilities Code is amended
28 to read:

29 399.4. (a) (1) In order to ensure that prudent investments in
30 energy efficiency continue to be made that produce cost-effective
31 energy savings, reduce customer demand, and contribute to the
32 safe and reliable operation of the electric distribution grid, it is the
33 policy of this state and the intent of the Legislature that the
34 commission shall continue to administer cost-effective energy
35 efficiency programs authorized pursuant to existing statutory
36 authority.

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

1 ***(b) Any rebates or incentives provided by any public utility for***
2 ***energy efficiency improvements and installation of energy efficient***
3 ***components, equipment, or appliances in buildings shall be***
4 ***provided only if required building permits are obtained.***

5 ~~(b)~~

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

13 **SEC. 8. No reimbursement is required by this act pursuant to**
14 **Section 6 of Article XIII B of the California Constitution because**
15 **the only costs that may be incurred by a local agency or school**
16 **district will be incurred because this act creates a new crime or**
17 **infraction, eliminates a crime or infraction, or changes the penalty**
18 **for a crime or infraction, within the meaning of Section 17556 of**
19 **the Government Code, or changes the definition of a crime within**
20 **the meaning of Section 6 of Article XIII B of the California**
21 **Constitution.**