

AMENDED IN SENATE APRIL 12, 2011  
AMENDED IN SENATE MARCH 29, 2011

**SENATE BILL**

**No. 454**

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**Introduced by Senator Pavley**

February 16, 2011

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An act to add Section 7110.05 to the Business and Professions Code, 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: enforcement.~~ *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, ~~building design and construction standards, energy and water efficiency design standards for new residential and nonresidential buildings, and appliance efficiency standards.~~

This bill would authorize the commission to petition a court of competent jurisdiction to enjoin a violation of the above standards. The 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 civil penalties collected in a civil action brought by the commission 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.*

*(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.

~~(2)~~

(3) 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.

~~(3)~~

(4) 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 by nearly 50 percent.  
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 by unlicensed contractors and  
22 without required permits. Contractors operating in the underground  
23 economy are in flagrant violation of California contracting law.  
24 Unlicensed and licensed contractors who market their services  
25 with these underground practices engage in unfair competition,  
26 undercutting legitimate contractors who endeavor to  
27 conscientiously comply with contracting, building, and business  
28 laws. This underground activity denies state and local governments  
29 license and building permit revenue, diminishing the ability of  
30 state and local agencies to provide enforcement services intended  
31 to protect consumers by ensuring compliance with these laws.  
32 These practices particularly damage and diminish the potential for  
33 conscientious compliance with the building energy efficiency  
34 standards.  
35 (d) The mission of the Contractors' State License Board is to  
36 protect consumers by regulating contractors to promote the health,  
37 safety, and general welfare of the public in matters related to  
38 construction. As a part of fulfilling this mission, it is important for

1 the board's licensing program to include efforts to eradicate the  
2 underground practice of performing construction work without  
3 building permits and failing to comply with the building energy  
4 efficiency standards.

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

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

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

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

38 7110.05. The State Energy Resources Conservation and  
39 Development Commission and the board shall collaborate to  
40 identify and investigate the failure of licensees and unlicensed

1 contractors to comply with the building energy efficiency standards  
2 and to obtain building permits, and *to* conduct an education and  
3 awareness campaign to increase knowledge of permitting  
4 requirements among contractors and consumers.

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

7 ~~25402.11. (a) If the commission finds that a violation of the~~  
8 ~~regulations adopted pursuant to subdivision (a) or (b) of Section~~  
9 ~~25402 and approved by the State Building Standards Commission~~  
10 ~~pursuant to Section 25402.2, or a violation of the regulations~~  
11 ~~adopted pursuant to subdivision (c) of Section 25402, has occurred~~  
12 ~~or is threatening to occur, the commission may, or the Attorney~~  
13 ~~General upon the request of the commission shall, petition a court~~  
14 ~~to enjoin the violation. The court may grant prohibitory or~~  
15 ~~mandatory injunctive relief as warranted by way of temporary~~  
16 ~~restraining order, preliminary injunction, and permanent injunction,~~  
17 ~~and may assess a civil penalty pursuant to subdivision (b):~~

18 ~~(b) (1) A person who violates a regulation adopted pursuant to~~  
19 ~~subdivision (a) or (b) of Section 25402 and approved by the State~~  
20 ~~Building Standards Commission pursuant to Section 25402.2, or~~  
21 ~~violates the regulations adopted pursuant to subdivision (c) of~~  
22 ~~Section 25402, shall be liable for a civil penalty not to exceed two~~  
23 ~~thousand five hundred dollars (\$2,500) for each violation.~~

24 ~~(2) For the purposes of this section, a person who performs work~~  
25 ~~that is subject to the regulations adopted pursuant to subdivision~~  
26 ~~(a) or (b) of Section 25402 and who is an unlicensed contractor or~~  
27 ~~who fails to obtain the required permit is deemed to be in violation.~~

28 ~~(c) For a person found to be in violation pursuant to subdivision~~  
29 ~~(b), the court shall impose a civil penalty pursuant to subdivision~~  
30 ~~(b). In assessing the amount of the civil penalty, the court shall~~  
31 ~~consider all of the following factors:~~

32 ~~(1) The nature and seriousness of the misconduct.~~

33 ~~(2) The number of violations.~~

34 ~~(3) The persistence of the misconduct.~~

35 ~~(4) The length of time over which the misconduct occurred.~~

36 ~~(5) The willfulness of the defendant's misconduct.~~

37 ~~(6) The defendant's assets, liabilities, and net worth.~~

38 ~~(d) (1) Civil penalties collected pursuant to this section in a~~  
39 ~~civil action brought by the Attorney General shall be deposited~~  
40 ~~into the General Fund.~~

1     ~~(2) Civil penalties collected pursuant to this section in a civil~~  
 2 ~~action brought by the commission shall be deposited into the~~  
 3 ~~Energy Resources Program Account and, upon appropriation by~~  
 4 ~~the Legislature, shall be expended by the commission for the~~  
 5 ~~education of the public on building and appliance energy efficiency~~  
 6 ~~and for the enforcement of regulations adopted pursuant to Section~~  
 7 ~~25402.~~

8     ~~(3) In a civil action brought by the commission pursuant to this~~  
 9 ~~section, upon the granting of relief, the court shall award to the~~  
 10 ~~commission the reasonable costs incurred by the commission in~~  
 11 ~~investigating and prosecuting the action.~~

12     ~~(e) The commission may adopt regulations establishing an~~  
 13 ~~administrative enforcement process for a violation of a regulation~~  
 14 ~~adopted pursuant to subdivision (a) or (b) of Section 25402 and~~  
 15 ~~approved by the State Building Standards Commission pursuant~~  
 16 ~~to Section 25402.2 or a regulation adopted pursuant to subdivision~~  
 17 ~~(e) of Section 25402. The enforcement process shall be a public~~  
 18 ~~process under which the commission may issue a notice of violation~~  
 19 ~~and correction, and for the assessment of administrative civil~~  
 20 ~~penalties up to the amounts specified in subdivision (b) considering~~  
 21 ~~the factors specified in subdivision (c).~~

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

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

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

30     ~~25402.11. (a) (1) The commission may adopt regulations~~  
 31 ~~establishing an administrative enforcement process for a violation~~  
 32 ~~of a regulation adopted pursuant to subdivision (c) of Section~~  
 33 ~~25402 and for the assessment of an administrative civil penalty~~  
 34 ~~not to exceed two thousand five hundred dollars (\$2,500) for each~~  
 35 ~~violation. The process shall comply with the requirements of~~  
 36 ~~Chapter 4 (commencing with Section 11400) and Chapter 4.5~~  
 37 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~  
 38 ~~2 of the Government Code.~~

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

- 1 (A) *The nature and seriousness of the violation.*
- 2 (B) *The number of violations.*
- 3 (C) *The persistence of the violation.*
- 4 (D) *The length of time over which the violation occurred.*
- 5 (E) *The willfulness of the violation.*
- 6 (F) *The violator's assets, liabilities, and net worth.*
- 7 (b) *If the commission finds that a violation of the regulations*
- 8 *adopted pursuant to subdivision (c) of Section 25402 has occurred*
- 9 *or is threatening to occur, the commission may, or the Attorney*
- 10 *General upon the request of the commission shall, petition a court*
- 11 *to enjoin the violation. The court may grant prohibitory or*
- 12 *mandatory injunctive relief as warranted by issuing a temporary*
- 13 *restraining order, preliminary injunction, or permanent injunction,*
- 14 *and may assess a civil penalty not to exceed two thousand five*
- 15 *hundred dollars (\$2,500) for each violation, considering the factors*
- 16 *specified in paragraph (2) of subdivision (a).*
- 17 (c) (1) *Civil penalties collected pursuant to this section in a*
- 18 *civil action brought by the Attorney General shall be deposited*
- 19 *into the General Fund.*
- 20 (2) *Civil penalties collected pursuant to this section in a civil*
- 21 *action brought by the commission shall be deposited into the*
- 22 *Appliance Efficiency Enforcement Subaccount, which is hereby*
- 23 *established in the Energy Resources Program Account. The moneys*
- 24 *in the Appliance Efficiency Enforcement Subaccount may be*
- 25 *expended by the commission, upon appropriation by the*
- 26 *Legislature, for the education of the public regarding appliance*
- 27 *energy efficiency and for the enforcement of the regulations*
- 28 *adopted pursuant to subdivision (c) of Section 25402.*
- 29 (d) *An order imposing an administrative civil penalty shall be*
- 30 *subject to judicial review pursuant to subdivisions (a) and (b) of*
- 31 *Section 25534.2.*
- 32 (e) *A person shall not be liable for a civil penalty pursuant to*
- 33 *subdivision (b) if that person is subject to an administrative civil*
- 34 *penalty pursuant to subdivision (a).*
- 35 SEC. 5. Section 25900 of the Public Resources Code is
- 36 amended to read:
- 37 25900. Except as provided in Sections 25402.11 and 25531,
- 38 if the commission finds that any provision of this division is
- 39 violated or a violation is threatening to take place that constitutes
- 40 an emergency requiring immediate action to protect the public

1 health, welfare, or safety, the Attorney General, upon request of  
2 the commission, shall petition a court to enjoin the violation. The  
3 court may grant prohibitory or mandatory injunctive relief as  
4 warranted by way of temporary restraining order, preliminary  
5 injunction, and permanent injunction.

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

8 399.4. (a) (1) In order to ensure that prudent investments in  
9 energy efficiency continue to be made that produce cost-effective  
10 energy savings, reduce customer demand, and contribute to the  
11 safe and reliable operation of the electric distribution grid, it is the  
12 policy of this state and the intent of the Legislature that the  
13 commission shall continue to administer cost-effective energy  
14 efficiency programs authorized pursuant to existing statutory  
15 authority.

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

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

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

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

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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