

AMENDED IN ASSEMBLY SEPTEMBER 2, 2011

AMENDED IN ASSEMBLY AUGUST 26, 2011

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 4, 2011

AMENDED IN SENATE APRIL 12, 2011

AMENDED IN SENATE MARCH 29, 2011

SENATE BILL

No. 454

Introduced by Senator Pavley

February 16, 2011

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. The bill would prohibit the commission from initiating an administrative enforcement process pursuant to those regulations under specified circumstances and until certain events have taken place.

(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 the improvement or installation has complied with applicable permitting requirements and licensing requirements, 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.

(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:

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 appliance energy efficiency standards, specified
6 in Article 4 (commencing with Section 1601) of Chapter 4 of
7 Division 2 of Title 20 of the California Code of Regulations,
8 represent a state resource for accomplishing increased energy
9 efficiency in appliances. These standards are recognized as leading
10 the nation in energy savings and serving as one of the primary
11 energy policy tools that has resulted in California’s per capita
12 energy use staying essentially constant over the past 30 years while
13 that of the rest of the United States increased steadily by nearly
14 50 percent.

15 (b) 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 (c) 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 25402.11 is added to the Public Resources
37 Code, to read:

1 25402.11. (a) (1) The commission may adopt regulations
2 establishing an administrative enforcement process for a violation
3 of a regulation adopted pursuant to subdivision (c) of Section
4 25402 and for the assessment of an administrative civil penalty
5 not to exceed two thousand five hundred dollars (\$2,500) for each
6 violation. The process shall comply with the requirements of
7 Chapter 4 (commencing with Section 11400) and Chapter 4.5
8 (commencing with Section 11500) of Part 1 of Division 3 of Title
9 2 of the Government Code.

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

- 12 (A) The nature and seriousness of the violation.
- 13 (B) The number of violations.
- 14 (C) The persistence of the violation.
- 15 (D) The length of time over which the violation occurred.
- 16 (E) The willfulness of the violation.
- 17 (F) The violator's assets, liabilities, and net worth.
- 18 (G) *The harm to consumers and to the state that resulted from*
19 *the amount of energy wasted due to the violation.*

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

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

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

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

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

8 (g) The commission shall not initiate an administrative
9 enforcement process pursuant to the regulations adopted pursuant
10 to this section against an entity for the unlawful sale or the unlawful
11 offer for sale of an appliance if both of the following apply:

12 (1) The appliance fully complies with all of the requirements
13 of the regulations adopted pursuant to subdivision (c) of Section
14 25402.

15 (2) The only basis for the commission's potential enforcement
16 action is that the appliance is not considered to be in compliance
17 because of the commission's delay in reviewing and processing
18 information submitted to it that demonstrates full compliance.

19 (h) In addition to the prohibitions specified in subdivision (g),
20 the commission shall not initiate an administrative enforcement
21 process pursuant to the regulations adopted pursuant to this section
22 for a violation of a standard adopted pursuant to subdivision (c)
23 of Section 25402 until both of the following occur:

24 (1) No fewer than 60 days have elapsed since the date when the
25 standard was published in the California Register.

26 (2) No fewer than 30 days have elapsed since the date when the
27 alleged violator received written notice of the ~~standard~~ *alleged*
28 *violation* and date when the commission provided public notice
29 of the standard.

30 SEC. 4. Section 25900 of the Public Resources Code is
31 amended to read:

32 25900. Except as provided in Sections 25402.11 and 25531,
33 if the commission finds that any provision of this division is
34 violated, or a violation is threatening to take place that constitutes
35 an emergency requiring immediate action to protect the public
36 health, welfare, or safety, the Attorney General, upon request of
37 the commission, shall petition a court to enjoin the violation. The
38 court may grant prohibitory or mandatory injunctive relief as
39 warranted by way of temporary restraining order, preliminary
40 injunction, and permanent injunction.

1 SEC. 5. Section 399.4 of the Public Utilities Code is amended
2 to read:

3 399.4. (a) (1) In order to ensure that prudent investments in
4 energy efficiency continue to be made that produce cost-effective
5 energy savings, reduce customer demand, and contribute to the
6 safe and reliable operation of the electric distribution grid, it is the
7 policy of this state and the intent of the Legislature that the
8 commission shall continue to administer cost-effective energy
9 efficiency programs authorized pursuant to existing statutory
10 authority.

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

15 (b) (1) Any rebates or incentives offered by a public utility for
16 an energy efficiency improvement or installation of energy efficient
17 components, equipment, or appliances in buildings shall be
18 provided only if the recipient of the rebate or incentive certifies
19 that the improvement or installation has complied with any
20 applicable permitting requirements and, if a contractor performed
21 the installation or improvement, that the contractor holds the
22 appropriate license for the work performed.

23 (2) This subdivision does not imply or create authority or
24 responsibility, or expand existing authority or responsibility, of a
25 public utility for the enforcement of the building energy and water
26 efficiency standards adopted pursuant to subdivision (a) or (b) of
27 Section 25402 of the Public Resources Code, or appliance
28 efficiency standards and certification requirements adopted
29 pursuant to subdivision (c) of Section 25402 of the Public
30 Resources Code.

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

38 SEC. 6. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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