

Senate Bill No. 454

Passed the Senate September 9, 2011

Secretary of the Senate

Passed the Assembly September 8, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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.

The people of the State of California do enact as follows:

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

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

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

(b) The appliance efficiency standards deliver cost-effective energy savings to consumers. They are an important component of the state's programs to manage its energy consumption, conserve natural resources, and improve the quality of life for all its citizens. The Governor and Legislature recognize that significant quantities of appliances are sold and offered for sale in California that do not meet the state's energy efficiency standards. The products needlessly consume resources and saddle consumers with hidden

long-term costs after the initial purchase. Furthermore, inadequate certification of appliances sold in California undermines the state's ability to ensure that products sold in California meet the state's efficiency standards.

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

SEC. 3. Section 25402.11 is added to the Public Resources Code, to read:

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

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

- (A) The nature and seriousness of the violation.
- (B) The number of violations.
- (C) The persistence of the violation.
- (D) The length of time over which the violation occurred.
- (E) The willfulness of the violation.
- (F) The violator's assets, liabilities, and net worth.

(G) The harm to consumers and to the state that resulted from the amount of energy wasted due to the violation.

(b) If the commission finds that a violation of the regulations adopted pursuant to subdivision (c) of Section 25402 has occurred or is threatening to occur, the commission may refer the matter to the Attorney General to petition a court to enjoin the violation. The court may grant prohibitory or mandatory injunctive relief as warranted by issuing a temporary restraining order, preliminary

injunction, or permanent injunction, and may assess a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, considering the factors specified in paragraph (2) of subdivision (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) This subdivision does not imply or create authority or responsibility, or expand existing authority or responsibility, of a public utility for the enforcement of the building energy and water

efficiency standards adopted pursuant to subdivision (a) or (b) of Section 25402 of the Public Resources Code, or appliance efficiency standards and certification requirements adopted pursuant to subdivision (c) of Section 25402 of the Public Resources Code.

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

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

Approved _____, 2011

Governor