

Assembly Bill No. 802

Passed the Assembly September 11, 2015

Chief Clerk of the Assembly

Passed the Senate September 11, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 25301 and 25303 of, and to repeal and add Section 25402.10 of, the Public Resources Code, and to amend Section 381.2 of, to amend and renumber Section 384.2 of, and to add Section 913.8 to, the Public Utilities Code, relating to energy efficiency.

LEGISLATIVE COUNSEL’S DIGEST

AB 802, Williams. Energy efficiency.

(1) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission), at least every 2 years, to conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery, distribution, demand, and prices. Existing law requires the Energy Commission to use these assessments and forecasts to develop energy policies that conserve resources, protect the environment, ensure energy reliability, enhance the state’s economy, and protect public health and safety. Existing law requires the Energy Commission to prepare an integrated energy policy report every 2 years and requires the report to include an assessment and forecast of system reliability and the need for resource additions, efficiency, and conservation that considers certain criteria.

This bill would require the Energy Commission, in consultation with the Public Utilities Commission, to make all reasonable adjustments to its energy demand forecasts conducted pursuant to the above-described provisions to account for its findings of market conditions and existing baselines, and in making those adjustments, would authorize the commission to consider the results from specified programs.

The bill would require the Energy Commission to use the above-described assessments and forecasts relating to various aspects of the energy industry to develop and evaluate energy policies and programs.

(2) Existing law requires electric and gas utilities to maintain records of the energy consumption data of all nonresidential buildings to which they provide service and requires that this data

be maintained, in a format compatible for uploading to the United States Environmental Protection Agency's ENERGY STAR Portfolio Manager, for at least the most recent 12 months. Existing law also requires, upon the written authorization or secure electronic authorization of a nonresidential building owner or operator, an electric or gas utility to upload all of the energy consumption data for the account specified for a building to the United States Environmental Protection Agency's ENERGY STAR Portfolio Manager in a manner that preserves the confidentiality of the customer. Existing law requires an owner or operator to disclose the United States Environmental Protection Agency's ENERGY STAR Portfolio Manager benchmarking data and rating to a prospective buyer, lessee of the entire building, or lender that would finance the entire building based on a schedule of compliance established by the Energy Commission.

This bill would revise and recast these provisions. The bill would require utilities to maintain records of the energy usage data of all buildings to which they provide service for at least the most recent 12 complete months. Beginning no later than January 1, 2017, the bill would require each utility, upon the request and the written authorization or secure electronic authorization of the owner, owner's agent, or operator of a covered building, as defined, to deliver or provide aggregated energy usage data for a covered building to the owner, owner's agent, operator, or to the owner's account in the ENERGY STAR Portfolio Manager, subject to specified requirements. The bill would also authorize the commission to specify additional information to be delivered by utilities for certain purposes. The bill would delete the requirement of an owner or operator of a building to disclose the above-described information to a prospective buyer, lessee of the entire building, or lender that would finance the entire building. The bill would require the Energy Commission to adopt regulations providing for the delivery to the commission and public disclosure of benchmarking of energy use for covered buildings, as prescribed. The bill would authorize the Energy Commission to impose a civil fine, as provided, for a violation of these data submission requirements.

(3) Existing law requires the Energy Commission to develop and implement a comprehensive program to achieve greater energy savings in existing residential and nonresidential building stock.

Existing law requires the Public Utilities Commission (PUC) to investigate the ability of electrical corporations and gas corporations to provide various energy efficiency financing options to their customers for the purposes of implementing the program developed by the Energy Commission.

This bill would require the PUC, by September 1, 2016, to authorize electrical corporations and gas corporations to provide incentives, rebates, technical assistance, and support to their customers to increase the energy efficiency of existing buildings, as specified, and would authorize electrical corporations and gas corporations to recover the reasonable costs of those programs in rates. The bill would require the PUC to authorize electrical corporations and gas corporations to count all energy savings achieved through the authorized programs, unless determined otherwise, toward overall energy efficiency goals or targets established by the PUC. The bill would authorize the PUC to adjust the energy efficiency goals or targets of electrical corporations and gas corporations to reflect the estimated change in energy savings resulting from those programs.

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

SECTION 1. It is the intent of the Legislature to support strategies that enhance energy efficiency. Building owners should have access to their buildings' energy usage information, which enables understanding of a building's energy usage for improved building management and investment decisions. It is the intent of the Legislature that the State Energy Resources Conservation and Development Commission create a benchmarking and disclosure program through which building owners of commercial and multifamily buildings above 50,000 square feet gross floor area will better understand their energy consumption through standardized energy use metrics.

SEC. 2. Section 25301 of the Public Resources Code is amended to read:

25301. (a) At least every two years, the commission shall conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices. The commission shall use these assessments and forecasts to develop and evaluate energy policies and programs

that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety. To perform these assessments and forecasts, the commission may require submission of demand forecasts, resource plans, market assessments, related outlooks, individual customer historic electric or gas service usage, or both, and individual customer historic billing data, in a format and level of granularity specified by the commission from electric and natural gas utilities, transportation fuel and technology suppliers, and other market participants. These assessments and forecasts shall be done in consultation with the appropriate state and federal agencies including, but not limited to, the Public Utilities Commission, the Office of Ratepayer Advocates, the Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, the Department of Transportation, and the Department of Motor Vehicles. The commission shall maintain reasonable policies and procedures to protect customer information from unauthorized disclosure.

(b) In developing the assessments and forecasts prepared pursuant to subdivision (a), the commission shall do all of the following:

- (1) Provide information about the performance of energy industries.
- (2) Develop and maintain the analytical capability sufficient to answer inquiries about energy issues from government, market participants, and the public.
- (3) Analyze, develop, and evaluate energy policies and programs.
- (4) Provide an analytical foundation for regulatory and policy decisionmaking.
- (5) Facilitate efficient and reliable energy markets.

SEC. 3. Section 25303 of the Public Resources Code is amended to read:

25303. (a) The commission shall conduct electricity and natural gas forecasting and assessment activities to meet the requirements of paragraph (1) of subdivision (a) of Section 25302, including, but not limited to, all of the following:

- (1) Assessment of trends in electricity and natural gas supply and demand, and the outlook for wholesale and retail prices for

commodity electricity and natural gas under current market structures and expected market conditions.

(2) Forecasts of statewide and regional electricity and natural gas demand including annual, seasonal, and peak demand, and the factors leading to projected demand growth, including, but not limited to, projected population growth, urban development, industrial expansion and energy intensity of industries, energy demand for different building types, energy efficiency, and other factors influencing demand for electricity. With respect to long-range forecasts of the demand for natural gas, the report shall include an evaluation of average conditions, as well as best and worst case scenarios, and an evaluation of the impact of the increasing use of renewable resources on natural gas demand.

(3) Evaluation of the adequacy of electricity and natural gas supplies to meet forecasted demand growth. Assessment of the availability, reliability, and efficiency of the electricity and natural gas infrastructure and systems, including, but not limited to, natural gas production capability both in and out of state, natural gas interstate and intrastate pipeline capacity, storage and use, and western regional and California electricity and transmission system capacity and use.

(4) Evaluation of potential impacts of electricity and natural gas supply, demand, and infrastructure and resource additions on the electricity and natural gas systems, public health and safety, the economy, resources, and the environment.

(5) Evaluation of the potential impacts of electricity and natural gas load management efforts, including end-user response to market price signals, as a means to ensure reliable operation of electricity and natural gas systems.

(6) Evaluation of whether electricity and natural gas markets are adequately meeting public interest objectives including the provision of all of the following: economic benefits; competitive, low-cost reliable services; customer information and protection; and environmentally sensitive electricity and natural gas supplies. This evaluation may consider the extent to which California is an element within western energy markets, the existence of appropriate incentives for market participants to provide supplies and for consumers to respond to energy prices, appropriate identification of responsibilities of various market participants, and an assessment of long-term versus short-term market performance. To the extent

this evaluation identifies market shortcomings, the commission shall propose market structure changes to improve performance.

(7) Identification of impending or potential problems or uncertainties in the electricity and natural gas markets, potential options and solutions, and recommendations.

(8) (A) Compilation and assessment of existing scientific studies that have been performed by persons or entities with expertise and qualifications in the subject of the studies to determine the potential vulnerability to a major disruption due to aging or a major seismic event of large baseload generation facilities, of 1,700 megawatts or greater.

(B) The assessment specified in subparagraph (A) shall include an analysis of the impact of a major disruption on system reliability, public safety, and the economy.

(C) The commission may work with other public entities and public agencies, including, but not limited to, the California Independent System Operator, the Public Utilities Commission, the Department of Conservation, and the Seismic Safety Commission as necessary, to gather and analyze the information required by this paragraph.

(D) Upon completion and publication of the initial review of the information required pursuant to this paragraph, the commission shall perform subsequent updates as new data or new understanding of potential seismic hazards emerge.

(b) Commencing November 1, 2003, and every two years thereafter, to be included in the integrated energy policy report prepared pursuant to Section 25302, the commission shall assess the current status of the following:

(1) The environmental performance of the electric generation facilities of the state, to include all of the following:

(A) Generation facility efficiency.

(B) Air emission control technologies in use in operating plants.

(C) The extent to which recent resource additions have, and expected resource additions are likely to, displace or reduce the operation of existing facilities, including the environmental consequences of these changes.

(2) The geographic distribution of statewide environmental, efficiency, and socioeconomic benefits and drawbacks of existing generation facilities, including, but not limited to, the impacts on natural resources including wildlife habitat, air quality, and water

resources, and the relationship to demographic factors. The assessment shall describe the socioeconomic and demographic factors that existed when the facilities were constructed and the current status of these factors. In addition, the report shall include how expected or recent resource additions could change the assessment through displaced or reduced operation of existing facilities.

(c) In the absence of a long-term nuclear waste storage facility, the commission shall assess the potential state and local costs and impacts associated with accumulating waste at California's nuclear powerplants. The commission shall further assess other key policy and planning issues that will affect the future role of nuclear powerplants in the state. The commission's assessment shall be adopted on or before November 1, 2008, and included in the 2008 energy policy review adopted pursuant to subdivision (d) of Section 25302.

(d) The commission, in consultation with the Public Utilities Commission, shall make all reasonable adjustments to its energy demand forecasts conducted pursuant to Sections 25301 and 25302 to account for its findings of market conditions and existing baselines, and, in making those adjustments, may consider the results from subdivisions (b) and (d) of Section 381.2 of the Public Utilities Code.

SEC. 4. Section 25402.10 of the Public Resources Code is repealed.

SEC. 5. Section 25402.10 is added to the Public Resources Code, to read:

25402.10. (a) For the purposes of this section, the following terms have the following meanings:

(1) "Benchmark" means to obtain information on the energy use in an entire building for a specific period to enable that usage to be tracked or compared against other buildings.

(2) "Covered building" for purposes of this section means either or both of the following:

(A) Any building with no residential utility accounts.

(B) Any building with five or more active utility accounts, residential or nonresidential.

(3) "Energy" means electricity, natural gas, steam, or fuel oil sold by a utility to a customer for end uses addressed by the ENERGY STAR Portfolio Manager system.

(4) “ENERGY STAR Portfolio Manager” means the tool developed and maintained by the United States Environmental Protection Agency to track and assess the energy performance of buildings.

(b) On and after January 1, 2016, each utility shall maintain records of the energy usage data of all buildings to which they provide service for at least the most recent 12 complete calendar months.

(c) (1) Subject to the requirements of paragraph (2), beginning no later than January 1, 2017, each utility shall, upon the request and written authorization or secure electronic authorization of the owner, owner’s agent, or operator of a covered building, deliver or otherwise provide aggregated energy usage data for a covered building to the owner, owner’s agent, building operator, or to the owner’s account in the ENERGY STAR Portfolio Manager. The commission may specify additional information to be delivered by utilities to enable building owners to complete benchmarking of the energy use in their buildings and in other systems or formats for information delivery and automation.

(2) The delivery of information by utilities pursuant to this section shall be subject to the following requirements:

(A) For covered buildings with three or more active utility accounts, each utility shall deliver information showing the aggregated energy usage data of all utility customers in the same building for each of the 12 prior months. Notwithstanding any other law, energy usage data aggregated in this manner shall not be deemed customer utility usage information or confidential information by the utility for purposes of delivery to the owner, owner’s agent, or operator of a building. The building owner and utility shall not have any liability for any use or disclosure of aggregated energy usage data delivered as required by this section.

(B) For covered buildings not subject to subparagraph (A), each utility shall deliver the information showing the aggregated energy usage data of all utility customers in the same building for each of the prior 12 months if the accountholder provides written or electronic consent for the delivery of the accountholder’s energy usage data to the owner, owner’s agent, operator, or utility.

(C) Each utility shall deliver, upload, or otherwise provide aggregated energy usage data within four weeks of receiving a

request from an owner, owner's agent, or operator of a covered building.

(D) Each utility shall make available the covered building energy usage data aggregated at a monthly level unless otherwise specified by the commission.

(E) The building owner and utility shall not have any liability for any use or disclosure by others of usage information delivered as required by this section.

(d) The commission shall adopt regulations providing for the delivery to the commission and public disclosure of benchmarking of energy use for covered buildings, as follows:

(1) This subdivision shall not require the owner of a building with 16 or fewer residential utility accounts to collect or deliver energy usage information to the commission.

(2) The commission may do, but is not limited to doing, all of the following in regulations adopted pursuant to this subdivision:

(A) Identify and provide for the collection of the energy usage data for the calculation of benchmarking of energy use.

(B) Identify and provide for the collection of the covered building characteristic information deemed necessary by the commission for the calculation of benchmarking of energy use.

(C) Specify the manner in which certain benchmarking of energy use shall be publicly disclosed.

(D) Determine which covered buildings, in addition to those described in paragraph (1), are not subject to the public disclosure requirement.

(E) Set a schedule to implement the requirements for public disclosure adopted by the commission.

(F) Determine if compliance with a local or county benchmarking program fulfills the commission's requirements adopted pursuant to this subdivision.

(G) Identify categories of information it receives pursuant to this section that are protected from release under either the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(3) The commission shall determine who will deliver the energy usage data and related information for any covered building to the commission.

(e) The commission may ensure timely and accurate compliance with the data submission requirements of this section by using the enforcement measures identified in Section 25321. An owner of a covered building, or its agents or operators, shall not be liable for any noncompliance due to the failure of a utility to provide the information required for compliance.

(f) For buildings that are not covered buildings, and for customer information that is not aggregated pursuant to subparagraph (A) of paragraph (2) of subdivision (c), the commission may adopt regulations prescribing how utilities shall either obtain the customer's permission or determine that a building owner has obtained the customer's permission, for the owner to receive aggregated energy usage data or, where applicable, individual customer usage information, including by use of electronic authorization and in a lease agreement between the owner and the customer.

(g) The reasonable costs of an electrical or gas corporation in delivering electrical or gas usage data pursuant to this section or other information as required under state or federal law or by an order of the commission shall be recoverable in rates evaluated and approved by the Public Utilities Commission.

(h) The reasonable costs of local publicly owned electric utilities in disclosing electrical usage data pursuant to this section may be considered "cost-effective demand-side management services to promote energy efficiency and energy conservation" and thereby reimbursable by their general fund.

(i) Nothing in this section shall prevent a city or county from establishing its own benchmarking program requiring collection, delivery, and disclosure of building information.

SEC. 6. Section 381.2 of the Public Utilities Code is amended to read:

381.2. (a) The commission shall investigate the ability of electrical corporations and gas corporations to provide various energy efficiency financing options to their customers for the purposes of implementing the program developed pursuant to Section 25943 of the Public Resources Code.

(b) Recognizing the already underway 2015 commission work to adopt efficiency potential and goals, the Energy Commission work on its 2015 energy demand forecast, and the need to determine how to incorporate meter-based performance into determinations of goals, portfolio cost-effectiveness, and authorized budgets, the commission, in a separate or existing proceeding, shall, by September 1, 2016, authorize electrical corporations or gas corporations to provide financial incentives, rebates, technical assistance, and support to their customers to increase the energy efficiency of existing buildings based on all estimated energy savings and energy usage reductions, taking into consideration the overall reduction in normalized metered energy consumption as a measure of energy savings. Those programs shall include energy usage reductions resulting from the adoption of a measure or installation of equipment required for modifications to existing buildings to bring them into conformity with, or exceed, the requirements of Title 24 of the California Code of Regulations, as well as operational, behavioral, and retrocommissioning activities reasonably expected to produce multiyear savings. Electrical corporations and gas corporations shall be permitted to recover in rates the reasonable costs of these programs. The commission shall authorize an electrical corporation and gas corporation to count all energy savings achieved through the authorized programs created by this subdivision, unless determined otherwise, toward overall energy efficiency goals or targets established by the commission. The commission may adjust the energy efficiency goals or targets of an electrical corporation and gas corporation to reflect this change in savings estimation consistent with this subdivision and subdivision (d).

(c) Effective January 1, 2016, electrical corporations and gas corporations are authorized to implement the provisions of subdivision (b) for high opportunity projects or programs. The commission shall provide expedited authorization of high opportunity projects and programs to apply the savings baseline provisions in subdivision (b).

(d) In furtherance of subdivision (b), the commission, in consultation with the Energy Commission, shall consider all of the following:

- (1) The results of any interagency baseline assessment.

(2) Any available results from investor-owned utility baseline pilot studies ordered in D.14-10-046.

(3) Information necessary to ensure consistency with the energy forecast and planning functions of the Energy Commission and the Independent System Operator.

(e) The commission may direct electrical corporations and gas corporations to make filings that are necessary to ensure coordination with the energy forecast and planning functions of the Energy Commission and the Independent System Operator.

(f) The commission shall prioritize energy efficiency activities consistent with Sections 454.55 and 454.56.

SEC. 7. Section 384.2 of the Public Utilities Code is amended and renumbered to read:

913.7. The commission shall submit a report to the Legislature by July 15, 2009, and triennially thereafter, on the energy efficiency and conservation programs it oversees. The report shall include information regarding authorized utility budgets and expenditures and projected and actual energy savings over the program cycle.

SEC. 8. Section 913.8 is added to the Public Resources Code, to read:

913.8. In the report prepared pursuant Section 913.7, the commission shall include an assessment of each electrical corporation's and each gas corporation's implementation of the program developed pursuant to Section 25943 of the Public Resources Code.

Approved _____, 2015

Governor