

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1850

Introduced by Assembly Member Charles Calderon

February 22, 2012

An act to amend Section 25402 of the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1850, as amended, Charles Calderon. Energy: appliance efficiency.

Existing

(1) Existing law—authorizes requires the State Energy Resources Conservation and Development Commission to prescribe, by regulation, appliance efficiency standards, based on reasonable and current use patterns, to promote the use of energy and water efficient appliances. Existing law requires these standards to become effective no sooner than one year after the date of adoption or revision.

~~This bill would make technical, nonsubstantive changes to that provision.~~

This bill would require the commission to prescribe the appliance efficiency standards only if it finds less restrictive, nonregulatory, or regulatory alternatives are not feasible, and that the standards do not harm employment, competition, consumer choice, or product innovation, and do not significantly affect retail prices and burden commerce, as specified.

The bill would additionally authorize the commission to prescribe other cost-effective measures that are technologically feasible and designed to minimize compliance burdens.

The bill would require the standards to become effective no sooner than 2 years after the date of adoption or revision.

(2) Existing law requires the appliance standards adopted or revised under these provisions to not result in any added total costs for consumers over the life of the appliances. Existing law requires the commission to consider other relevant factors in the adoption of the appliance standards.

This bill would require, for appliance standards that are effective on and after January 1, 2013, the discount rates, payback calculations, and life cycle cost estimates to use interest rates that are applicable to consumer financing and to use the average life of the products before replacement. The bill would additionally require the commission, in adopting the appliance standards, to consider impacts on interstate commerce. The bill would require the commission, before prescribing standards for consumer electronics and information technology equipment, to conduct an additional specified analysis and to make specified findings.

(3) Existing law provides that, within 5 years after the adoption of an appliance standard, a change in an appliance standard shall not become effective unless the commission adopts other cost-effective measures for that appliance.

This bill would additionally provide that a change in the appliance standard may become effective if the commission finds that the appliance standard is no longer needed.

(4) Existing law requires the commission to treat sales information of an individual manufacturer as confidential and provides that information is not a public record.

This bill would additionally require the commission to treat other confidential or proprietary business information as confidential under these provisions.

(5) This bill would require the commission to make certain determinations when retaining consultants.

*Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.*

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

1 SECTION 1. Section 25402 of the Public Resources Code is
2 amended to read:

1 25402. The commission shall, after one or more public
2 hearings, do all of the following, in order to reduce the wasteful,
3 uneconomic, inefficient, or unnecessary consumption of energy,
4 including the energy associated with the use of water:

5 (a) (1) Prescribe, by regulation, lighting, insulation climate
6 control system, and other building design and construction
7 standards that increase the efficiency in the use of energy and water
8 for new residential and new nonresidential buildings. The
9 commission shall periodically update the standards and adopt any
10 revision that, in its judgment, it deems necessary. Six months after
11 the commission certifies an energy conservation manual pursuant
12 to subdivision (c) of Section 25402.1, no city, county, city and
13 county, or state agency shall issue a permit for any building unless
14 the building satisfies the standards prescribed by the commission
15 pursuant to this subdivision or subdivision (b) that are in effect on
16 the date an application for a building permit is filed. Water
17 efficiency standards adopted pursuant to this subdivision shall be
18 demonstrated by the commission to be necessary to save energy.

19 (2) Prior to adopting a water efficiency standard for residential
20 buildings, the Department of Housing and Community
21 Development and the commission shall issue a joint finding
22 whether the standard (A) is equivalent or superior in performance,
23 safety, and for the protection of life, health, and general welfare
24 to standards in Title 24 of the California Code of Regulations and
25 (B) does not unreasonably or unnecessarily impact the ability of
26 Californians to purchase or rent affordable housing, as determined
27 by taking account of the overall benefit derived from water
28 efficiency standards. Nothing in this subdivision in any way
29 reduces the authority of the Department of Housing and
30 Community Development to adopt standards and regulations
31 pursuant to Part 1.5 (commencing with Section 17910) of Division
32 13 of the Health and Safety Code.

33 (3) Water efficiency standards and water conservation design
34 standards adopted pursuant to this subdivision and subdivision (b)
35 shall be consistent with the legislative findings of this division to
36 ensure and maintain a reliable supply of electrical energy and be
37 equivalent to or superior to the performance, safety, and protection
38 of life, health, and general welfare standards contained in Title 24
39 of the California Code of Regulations. The commission shall
40 consult with the members of the coordinating council as established

1 in Section 18926 of the Health and Safety Code in the development
2 of these standards.

3 (b) (1) Prescribe, by regulation, energy and water conservation
4 design standards for new residential and new nonresidential
5 buildings. The standards shall be performance standards and shall
6 be promulgated in terms of energy consumption per gross square
7 foot of floorspace, but may also include devices, systems, and
8 techniques required to conserve energy and water. The commission
9 shall periodically review the standards and adopt any revision that,
10 in its judgment, it deems necessary. A building that satisfies the
11 standards prescribed pursuant to this subdivision need not comply
12 with the standards prescribed pursuant to subdivision (a). Water
13 conservation design standards adopted pursuant to this subdivision
14 shall be demonstrated by the commission to be necessary to save
15 energy. Prior to adopting a water conservation design standard for
16 residential buildings, the Department of Housing and Community
17 Development and the commission shall issue a joint finding
18 whether the standard (A) is equivalent or superior in performance,
19 safety, and for the protection of life, health, and general welfare
20 to standards in the California Building Standards Code and (B)
21 does not unreasonably or unnecessarily impact the ability of
22 Californians to purchase or rent affordable housing, as determined
23 by taking account of the overall benefit derived from the water
24 conservation design standards. Nothing in this subdivision in any
25 way reduces the authority of the Department of Housing and
26 Community Development to adopt standards and regulations
27 pursuant to Part 1.5 (commencing with Section 17910) of Division
28 13 of the Health and Safety Code.

29 (2) In order to increase public participation and improve the
30 efficacy of the standards adopted pursuant to subdivisions (a) and
31 (b), the commission shall, prior to publication of the notice of
32 proposed action required by Section 18935 of the Health and Safety
33 Code, involve parties who would be subject to the proposed
34 regulations in public meetings regarding the proposed regulations.
35 All potential affected parties shall be provided advance notice of
36 these meetings and given an opportunity to provide written or oral
37 comments. During these public meetings, the commission shall
38 receive and take into consideration input from all parties
39 concerning the parties' design recommendations, cost
40 considerations, and other factors that would affect consumers and

California businesses of the proposed standard. The commission shall take into consideration prior to the start of the notice of proposed action any input provided during these public meetings.

(3) The standards adopted or revised pursuant to subdivisions (a) and (b) shall be cost effective when taken in their entirety and when amortized over the economic life of the structure compared with historic practice. When determining cost-effectiveness, the commission shall consider the value of the water or energy saved, impact on product efficacy for the consumer, and the life-cycle cost of complying with the standard. The commission shall consider other relevant factors, as required by Sections 18930 and 18935 of the Health and Safety Code, including, but not limited to, the impact on housing costs, the total statewide costs and benefits of the standard over its lifetime, economic impact on California businesses, and alternative approaches and their associated costs.

(c) (1) (A) Prescribe, by regulation, standards for minimum levels of operating efficiency *for appliances, only if the commission finds less restrictive, nonregulatory, or regulatory alternatives are not feasible*, based on a reasonable use pattern, ~~and~~. *The commission shall prescribe these standards only if it finds that these standards do not harm employment, competition, consumer choice, or product innovation and utility. The commission shall prescribe these standards only if it finds that the standards do not significantly affect retail prices and do not burden small- and medium-sized businesses, competition, and interstate and intrastate commerce.*

(B) *The commission may prescribe other technologically feasible, cost-effective measures that are designed to minimize compliance burdens, including incentive programs, fleet averaging, energy and water consumption labeling not preempted by federal labeling law, and consumer education programs, to promote the use of energy and water efficient appliances whose use, as determined by the commission, requires a significant amount of energy or water on a statewide basis.* ~~The~~

(C) *The minimum levels of operating efficiency prescribed in the standards shall be based on feasible and attainable efficiencies or feasible improved efficiencies that will reduce the energy or water consumption growth rates.* ~~The~~

(D) *The standards shall become effective no sooner than ~~one~~ year two years after the date of adoption or revision. A new*

1 appliance manufactured on or after the effective date of the
2 standards shall not be sold or offered for sale in the state, unless
3 it is certified by the manufacturer of the appliance to be in
4 compliance with the standards. The standards shall be drawn so
5 that they do not result in any added total costs for consumers over
6 the designed life of the appliances concerned.

7 ~~In~~

8 *(E) In order to increase public participation and improve the*
9 *efficacy of the standards adopted pursuant to this subdivision, the*
10 *commission shall, prior to publication of the notice of proposed*
11 *action required by Section 18935 of the Health and Safety Code,*
12 *involve parties who would be subject to the proposed regulations*
13 *in public meetings regarding the proposed regulations. All potential*
14 *affected parties shall be provided advance notice of these meetings*
15 *and given an opportunity to provide written or oral comments.*
16 *During these public meetings, the commission shall receive and*
17 *take into consideration input from all parties concerning the parties'*
18 *design recommendations, cost considerations, and other factors*
19 *that would affect consumers and California businesses of the*
20 *proposed standard. The commission shall take into consideration*
21 *prior to the start of the notice of proposed action any input provided*
22 *during these public meetings.*

23 *(F) When retaining consultants for purposes of this subdivision,*
24 *the commission shall determine their expertise, objectivity, and*
25 *independence on the matter for which they are retained.*

26 ~~The~~

27 *(G) The standards adopted or revised pursuant to this subdivision*
28 *shall not result in any added total costs for consumers over the*
29 *designed life of the appliances concerned. When determining*
30 *cost-effectiveness, the commission shall consider the value of the*
31 *water or energy saved, impact on product efficacy for the*
32 *consumer, and the life-cycle cost to the consumer of complying*
33 *with the standard. For standards adopted by the commission that*
34 *become effective on and after January 1, 2013, discount rates,*
35 *payback calculations, and life cycle cost estimates shall use interest*
36 *rates that are applicable to consumer financing and shall use the*
37 *average life of the product before replacement. The commission*
38 *shall consider other relevant factors, as required by Sections*
39 *11346.5 and 11357 of the Government Code, including, but not*
40 *limited to, the impact on housing costs, the total statewide costs*

1 and benefits of the standard over its lifetime, economic impact on
2 California businesses *and interstate commerce*, and alternative
3 approaches and their associated costs.

4 *(H) Before prescribing standards for consumer electronics and*
5 *information technology equipment, the commission shall conduct*
6 *an additional analysis that evaluates the need and priority for*
7 *those standards, prioritizes standards with a payback of three*
8 *years or less, and takes into account, whether or not payback is*
9 *measured under the applicable test procedures, the energy use of*
10 *those products, and their functions that decrease energy use*
11 *through activities such as Internet commerce, online meetings,*
12 *telework, and the use of smart grid technology. The commission*
13 *shall make specific findings that these standards do not burden or*
14 *adversely impact those functions and activities.*

15 (2) A new appliance, except for plumbing fitting, regulated
16 under paragraph (1), that is manufactured on or after July 1, 1984,
17 shall not be sold, or offered for sale, in the state, unless the date
18 of the manufacture is permanently displayed in an accessible place
19 on that appliance.

20 (3) During the period of five years after the commission has
21 adopted a standard for a particular appliance under paragraph (1),
22 no increase or decrease in the minimum level of operating
23 efficiency required by the standard for that appliance shall become
24 effective, unless the commission adopts other cost-effective
25 measures for that appliance *or finds that the regulation is no longer*
26 *needed.*

27 (4) Neither the commission nor any other state agency shall
28 take any action to decrease any standard adopted under this
29 subdivision on or before June 30, 1985, prescribing minimum
30 levels of operating efficiency or other energy conservation
31 measures for any appliance, unless the commission finds by a
32 four-fifths vote that a decrease is of benefit to ratepayers, and that
33 there is significant evidence of changed circumstances. Before
34 January 1, 1986, the commission shall not take any action to
35 increase a standard prescribing minimum levels of operating
36 efficiency for any appliance or adopt a new standard under
37 paragraph (1). Before January 1, 1986, any appliance manufacturer
38 doing business in this state shall provide directly, or through an
39 appropriate trade or industry association, information, as specified
40 by the commission after consultation with manufacturers doing

1 business in the state and appropriate trade or industry associations
2 on sales of appliances so that the commission may study the effects
3 of regulations on those sales. These informational requirements
4 shall remain in effect until the information is received. The trade
5 or industry association may submit sales information in an
6 aggregated form in a manner that allows the commission to carry
7 out the purposes of the study. The commission shall treat any sales
8 *or other confidential or proprietary business* information of an
9 individual manufacturer as confidential and that information shall
10 not be a public record. The commission shall not request any
11 information that cannot be reasonably produced in the exercise of
12 due diligence by the manufacturer. *The commission shall rely on*
13 *the most current data possible and, wherever feasible, rely on data*
14 *no older than one year prior to the commencement of the formal*
15 *rulemaking.* At least one year prior to the adoption or amendment
16 of a standard for an appliance, the commission shall notify the
17 Legislature of its intent, and the justification to adopt or amend a
18 standard for the appliance. Notwithstanding paragraph (3) and this
19 paragraph, the commission may do any of the following:

20 (A) Increase the minimum level of operating efficiency in an
21 existing standard up to the level of the National Voluntary
22 Consensus Standards 90, adopted by the American Society of
23 Heating, Refrigeration, and Air Conditioning Engineers or, for
24 appliances not covered by that standard, up to the level established
25 in a similar nationwide consensus standard.

26 (B) Change the measure or rating of efficiency of any standard,
27 if the minimum level of operating efficiency remains substantially
28 the same.

29 (C) Adjust the minimum level of operating efficiency in an
30 existing standard in order to reflect changes in test procedures that
31 the standards require manufacturers to use in certifying compliance,
32 if the minimum level of operating efficiency remains substantially
33 the same.

34 (D) Readopt a standard preempted, enjoined, or otherwise found
35 legally defective by an administrative agency or a lower court, if
36 final legal action determines that the standard is valid and if the
37 standard that is readopted is not more stringent than the standard
38 that was found to be defective or preempted.

1 (E) Adopt or amend any existing or new standard at any level
2 of operating efficiency, if the Governor has declared an energy
3 emergency as described in Section 8558 of the Government Code.

4 (5) Notwithstanding paragraph (4), the commission may adopt
5 standards pursuant to Commission Order No. 84-0111-1, on or
6 before June 30, 1985.

7 (d) Recommend minimum standards of efficiency for the
8 operation of any new facility at a particular site that are technically
9 and economically feasible. No site and related facility shall be
10 certified pursuant to Chapter 6 (commencing with Section 25500),
11 unless the applicant certifies that standards recommended by the
12 commission have been considered, which certification shall include
13 a statement specifying the extent to which conformance with the
14 recommended standards will be achieved.

15 Whenever this section and Chapter 11.5 (commencing with
16 Section 19878) of Part 3 of Division 13 of the Health and Safety
17 Code are in conflict, the commission shall be governed by that
18 chapter of the Health and Safety Code to the extent of the conflict.

19 (e) The commission shall do all of the following:

20 (1) Not later than January 1, 2004, amend any regulations in
21 effect on January 1, 2003, pertaining to the energy efficiency
22 standards for residential clothes washers to require that residential
23 clothes washers manufactured on or after January 1, 2007, be at
24 least as water efficient as commercial clothes washers.

25 (2) Not later than April 1, 2004, petition the federal Department
26 of Energy for an exemption from any relevant federal regulations
27 governing energy efficiency standards that are applicable to
28 residential clothes washers.

29 (3) Not later than January 1, 2005, report to the Legislature on
30 its progress with respect to the requirements of paragraphs (1) and
31 (2).