

LIGHTS OUT ON AB 1103

Author(s): Candice B. Harper

After many years of Trainor Fairbrook bulletins advising you of the ever-changing, always delayed implementation of AB 1103 (also known as the Commercial Energy Use Disclosure Program), the Legislature has finally provided some welcome news. On January 1, 2016, you will no longer, as a property owner, have the obligation to furnish your buyers, tenants and lenders with energy information! The law has been re-written and replaced with a new energy disclosure law. As we said from the beginning, AB 1103 was an unnecessary, unworkable, costly nightmare to which no one, not the buyers, tenants or lenders, paid any attention. But, with the plug pulled on AB 1103, we now have something new to write about.

Effective January 1, 2016, Assembly Bill 802, signed by Governor Brown on October 8, 2015, places the burden for providing energy use data on the utility companies under an entirely re-written energy disclosure law.

Under prior law, before selling, financing or leasing an entire building consisting of more than 10,000 square feet, a commercial building owner was required to obtain energy consumption data for their commercial building from the utility providers. The information was either uploaded directly by the utility company, or uploaded or input by the building owner, to the United States Environmental Protection Agency's ENERGY STAR Portfolio Manager for at least the most recent twelve-month period. Then building owners were required to disclose this information to any prospective buyer, lender or tenant of an entire building. However, citing privacy concerns, many utility companies refused to provide this information without first receiving tenant consent. Among other issues, this refusal by the utility companies made it very difficult for commercial building owners, particularly retail and industrial owners, to comply with the law. Fortunately, the Legislature and Governor provided relief under AB 802.

AB 802 is a more comprehensive set of energy benchmarking legislation. One component of this legislation provides for the California Energy Commission to develop a benchmarking and disclosure program to allow owners of commercial and multifamily buildings to better understand the energy consumption of a building. Commencing January 1, 2016, each utility

provider will be required to maintain records of the energy use data of all covered buildings to which service is provided. A “covered building” is a building with no residential utility accounts or a building with five or more active utility accounts, residential or nonresidential. Effective January 1, 2017, upon request by a building owner or an owner’s agent, each utility provider must provide the aggregated energy use data for the building to an owner within four weeks of a request. The legislation specifically exempts owners and the utilities from liability for disclosure of the aggregated energy data. No tenant consent is required if there are three or more active utility accounts in a building. If there are less than three utility accounts, consent from the account holder is required for the utility company to provide the owner with the energy use data. Perhaps most importantly, there is no disclosure requirement by the owner of a building to a prospective purchaser, tenant or lender. However, there will be a public disclosure requirement under the regulations to be adopted by the California Energy Commission. How that public disclosure is accomplished will be determined in the regulations that the California Energy Commission will now need to create and adopt (stand by for more bulletins!).

The other principal purpose for maintaining the energy use data is to enable the California Energy Commission to conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery, distribution, demand and prices in order to develop conservation policies, protect the environment, ensure energy reliability, enhance the economy and protect public health and safety. In developing the assessments and forecasts, the commission must provide information about the performance of energy industries, develop and maintain the analytical capability sufficient to answer inquiries about energy issues from government, market participants and the public, analyze, develop and evaluate energy policies and programs, provide an analytical foundation for regulatory and policy decision making, and facilitate efficient and reliable energy markets. Requiring the utility companies, rather than building owners, to record energy use data will hopefully do far more to achieve these goals.

It remains to be seen how the effects of this law on commercial building owners will play out, but for now, we are rejoicing the fact that commercial building owners no longer have the burden of disclosing energy consumption to prospective buyers, tenants or lenders.