

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 795 (Stern)
Version: March 30, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
AM

SUBJECT

Energy: building energy efficiency: heating, ventilation, and air conditioning
equipment: sale registry and compliance tracking system: compliance documentation
data repository

DIGEST

This bill requires the California Energy Commission (CEC) to establish online systems to track sales of heating, ventilation and air conditioning (HVAC) equipment and track compliance documents for building energy efficiency standards. CEC promulgates building energy efficiency standards; however, building codes are enforced by local code enforcement officers. This bill requires the CEC to establish a centralized system containing all building energy efficiency compliance documentation for every project that requires a building permit or compliance documentation. The intent of the bill is that those tracking systems should enable code enforcement officers to monitor every project within their respective jurisdictions to ensure compliance with energy efficiency standards. The bill is sponsored by Natural Resources Defense Council and the Western States Council of Sheet Metal Workers. The bill is supported by various environmental organizations and associations representing the building trades. There is no known opposition. The bill passed out of the Senate Committee on Energy, Utilities and Communications on a vote of 13 to 4.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the CEC's authority to create regulations for building efficiency standards and requires the CEC to create cost-effective regulations for lighting, insulation, climate control systems, and other building design and construction standards that increase energy and water efficiency for new residential and new nonresidential buildings. Local governments may not issue permits for construction

and installation projects that fail to comply with the CEC's certified efficiency standards. (Pub. Res. Code § 25402(a-b).)

- 2) Establishes the CEC's authority to create regulations for appliance efficiency standards and requires the CEC to set minimum levels of operating efficiency and allows the CEC to set other cost-effective measures, 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. (Pub. Res. Code § 25402(c).)
- 3) Requires the CEC to adopt standards for appliances to facilitate the deployment of flexible demand technologies. These regulations may include labeling provisions to promote the use of appliances with flexible demand capabilities. (Pub. Res. Code § 25402(f).)
- 4) Requires the CEC to adopt a plan by January 1, 2019, to promote compliance with Part 6 of Title 24 of the California Code of Regulations in the installation of central air conditioning and heat pumps. The CEC must consult with the Contractors' State License Board (CSLB), local building officials, and other stakeholders to create the plan. The CEC is authorized to create regulations to increase compliance with permitting and inspection requirements for central air conditioning and heat pumps, based on the plan. (Pub. Res. Code § 25402.12.)
- 5) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
 - a) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
 - b) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 6) Governs the disclosure of information collected and maintained by public agencies pursuant to the CPRA. (Gov. Code §§ 7920.000 et seq.)
 - a) States that the Legislature, mindful of the individual right to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)
 - b) Defines "public records" as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)

- c) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.530.)

This bill:

- 1) Requires the CEC to establish a system to track HVAC equipment sales that would enable the CSLB and other enforcement agencies to verify that contractors and HVAC installers comply with permitting requirements and submit compliance documents for the installation of the HVAC equipment.
- 2) Authorizes the CEC to share information from the HVAC sales tracking system with local building officials, the CSLB, and other enforcement agencies.
- 3) Requires the CEC to establish a tracking system for compliance documents for enforcing the building energy efficiency standards, and requires this tracking system to do all of the following:
 - a) collect and store compliance, installation, and acceptance test documentation data for California's building energy efficiency standards;
 - b) allow local building departments and other enforcement agencies to review compliance, installation, and acceptance test documentation data for each construction and upgrade project in their jurisdiction to verify that all required documentation has been submitted;
 - c) link to or integrate with the HVAC sales tracking system required by this bill; and
 - d) enable the CEC to aggregate and use data from the tracking system to support the CEC's appliance and building energy efficiency regulations.
- 4) Establishes specific data-handling requirements for the CEC's administration of the HVAC sales and compliance document tracking systems, including the following:
 - a) prohibiting the public from having direct access to the tracking systems,
 - b) requiring the CEC to designate personal information, manufacturer information, or trade secrets collected by the systems as presumptively confidential under the CPRA; and
 - c) specifying that information that may be disclosed under the CPRA does not need to be disclosed in its original electronic format.
- 5) Requires each Integrated Energy Policy Report to include information about the status of the tracking systems and report any barriers to implementing the system, including the need for funding.
- 6) Allows the CEC to use its regular budget process to determine funding for the tracking systems, but requires the CEC to make good faith efforts to secure funding for the systems, including seeking any eligible, available federal funding.

COMMENTS

1. Stated need for the bill

The author writes:

SB 795 promotes California's energy efficiency and greenhouse gas reduction goals by requiring the CEC to seek federal and other funding necessary to develop two related electronic registries that would (1) provide a Title 24 energy code compliance documentation data repository accessible to building officials to simplify and improve enforcement; and (2) track heating, ventilation, and air conditioning (HVAC) equipment sales to ensure installers comply with permit and code requirements by cross-referencing with the energy code compliance documentation data repository.

While California has adopted robust energy code construction requirements and installation verification requirements, these requirements have low enforcement rates. This lack of enforcement stems from two issues. First, reports by the CEC and by the CPUC have found permits are obtained for HVAC replacements as little as 10% of the time - meaning they have no oversight to ensure code-compliant equipment has been installed and installed correctly. Second, even when permits are pulled, California Energy Code compliance verification requirements are not being enforced by local building officials due to resource constraints. Due to budget restraints at the local building department level. Local building officials continue to testify that, given limited time and resources, energy code enforcement under Title 24 is their lowest priority. As a result, study after study shows that the majority of buildings do not achieve the energy savings assumed under adopted code requirements. Studies have estimated that this lack of compliance increases California's peak energy demand by hundreds of megawatts. Lack of enforcement puts contractors that pull permits and comply with the California Energy Code at a disadvantage because they must bid against contractors that cut costs by ignoring these requirements altogether. Acceptance Test Technician Certification Providers have also testified that lack of enforcement has made their programs uneconomical and may drive them out of business - undermining a key Energy Commission requirement for ensuring buildings are constructed as efficiently as they are designed.

A data registry would facilitate enforcement by removing actual and perceived burdens on enforcement resources. Currently a building inspector may have to review hundreds of energy code compliance documents and cross check these requirements with building plans to verify all the required documents have been submitted. A single, accessible state compliance document repository and data registry would significantly improve enforcement and compliance by providing a

building official the ability to go to one registry to confirm that all compliance documents for a project have been completed and submitted.

AB 795 also addresses projects that fail to pull permits at all (and thus have zero building department enforcement or oversight) by directing the Commission to create a related HVAC sales registry and compliance tracking system. Currently, however, there is no way to readily track and identify HVAC replacements that are installed without a permit. To address this issue, past Energy Commission reports have called for developing an HVAC equipment sale registry that can be used to track HVAC sales to ensure that permit requirements are being followed for all HVAC installations.

2. Background

The Senate Committee on Energy, Utilities and Communications analyzed the bill's provisions as they relate to the state's role in building code enforcement (in respect to HVAC systems), utility of an HVAC equipment sales tracking system and a separate repository to track compliance documents for all building energy efficiency standards, and the privacy concerns regarding the information that will be contained on the HVAC tracking system and compliance repository.¹ This bill passed that Committee with committee amendments that narrowed the compliance document tracking system to only include information regarding code enforcement for HVAC and lighting control installations, as opposed to all features of a building. Due to timing, these amendments will be taken in this Committee. The specific amendments can be found in Comment 4 below. This analysis will focus on the provisions of the bill in this Committee's jurisdiction – privacy concerns and limitation on access to public records.

3. Public right of access under the CPRA and privacy

California generally recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right. At the same time, the state recognizes that this right must be balanced against the right to privacy. The general right of access to public records may, therefore, be limited where records include personal information or information of a sensitive nature.

The bill prohibits the public from having direct access to the tracking systems, requires the CEC to designate personal information, manufacturer-specific sales data, or trade secrets collected by the systems as presumptively confidential under the CPRA, and specifies that information which may be disclosed under the CPRA does not need to be disclosed in its original electronic format. The intent of the author is that the tracking systems will not be public facing and accessible only by enforcement agencies and those

¹ Sen. Comm. on Energy, Util. and Communications analysis of SB 795 (2023-24 reg. sess.) as amended Mar. 30, 2023 p. 5-6.

required to input information into the tracking systems. Additionally the bill deems personal information, proprietary information to a manufacturer, and trade secrets as presumptively confidential under the CPRA with the intent of it being prohibited from disclosure. In order to ensure that the intent of the author is enacted and this information is prohibited from disclosure, the author may wish to amend the bill to make it clear that the tracking systems are not available to the public and that any information in the tracking systems that is personal information, aggregate manufacturer-specific sales data, or a trade secret is not a public record and is prohibited from being disclosed to the public.

Under the bill, the CEC may share information contained in the tracking systems with local building official and other enforcement agencies. As the Senate Committee on Energy, Utilities and Communications notes, there is nothing in the bill that ensures that sensitive information is to be kept confidential if it is shared by the CEC. The author may wish to amend the bill to expressly prohibit a local building official or other enforcement agency that is shared information to keep it confidential in the same manner as the CEC.

4. Senate Committee on Energy, Utilities and Communications amendments

As explained above in Comment 2, this bill passed the Senate Committee on Energy, Utilities and Communications with committee amendments that narrowed the compliance document tracking systems to just include information regarding code enforcement for HVAC and lighting control installations, as opposed to all features of a building. These specific amendments are as follows:

Amendment 1

On page 6, in line 18, strike out "Regulations." and insert:

Regulations for the installation of heating, ventilation, and air-conditioning (HVAC) equipment and lighting controls.

Amendment 2

On page 6, in line 13, strike out "Regulations." and insert:

Regulations for the installation of HVAC equipment and lighting controls.

5. Proposed Senate Judiciary Committee amendments

The specific amendments to address the issues raised above in Comment 3 are:

Amendment 1

On page 2, in line 3, strike out "air conditioning" and insert:

air-conditioning

Amendment 2

On page 5, in line 4, strike out “air conditioning” and insert:

air-conditioning

Amendment 3

On page 5, in line 20, after “(b)” insert:

(1)

Amendment 4

On page 5, strike out lines 28 to 30, inclusive, and insert:

(2) Information contained in the HVAC equipment sales registry and compliance tracking system that is confidential pursuant to paragraph (2) of subdivision (c) shall be kept confidential by a local building official or other enforcement agency that is shared the information pursuant to paragraph (1).

(c) (1) The HVAC equipment sales registry and compliance tracking system shall not be publicly available. The public may request access to information in the registry and compliance tracking system that, except as provided in paragraph (2), is a public record pursuant to Article 3 (commencing with Section 7922.570) of Chapter 1 of Part 3 of Division 10 of Title 1 of the Government Code.

Amendment 5

On page 5, in line 31, strike out “The commission shall designate information” and insert:

Information

Amendment 6

On page 5, in line 33, after the first comma insert:

aggregate

Amendment 7

On page 5, in line 34, strike out “as presumptively confidential under” and insert:

is confidential and not a public record, and shall not be disclosed to the public pursuant

Amendment 8

On page 5, in line 39, strike out “nonconfidential data” and insert:

information or data in the HVAC equipment sales registry and compliance tracking

Amendment 9

On page 7, in line 3, after “(c)” insert:

(1)

Amendment 10

On page 7, strike out lines 11 to 13, inclusive, and insert:

(2) Information contained in the electronic statewide compliance documentation data repository that is confidential pursuant to paragraph (2) of subdivision (d) shall be kept confidential by a local building official or other enforcement agency that is shared the information pursuant to paragraph (1).

(d) (1) The electronic statewide compliance documentation data repository shall not be publicly available. The public may request access to information in the registry and compliance tracking system that, except as provided in paragraph (2), is a public record pursuant to Article 3 (commencing with Section 7922.570) of Chapter 1 of Part 3 of Division 10 of Title 1 of the Government Code.

Amendment 11

On page 7, in line 14, strike out “The commission shall designate information” and insert:

Information.

Amendment 12

On page 7, in line 16, after the first comma insert:

aggregate

Amendment 13

On page 7, in line 17, strike out “as presumptively confidential under” and insert:
is confidential, not a public record, and shall not be disclosed to the public pursuant to

Amendment 14

On page 7, in line 22, strike out “data designated as nonconfidential” and insert:
information or data in the electronic statewide compliance documentation data repository

Amendment 15

On page 8, in line 4, after “protect” insert:

The confidentiality of

Amendment 16

On page 8, in line 6, after “limits” insert:

access to the HVAC equipment sales registry and compliance tracking system and the electronic statewide compliance documentation data repository by the public. For these same reasons, it is necessary to also limit

Amendment 17

On page 8, in line 6, strike out “access the information”, strike out lines 7 and 8 and insert:

certain information contained in the registry and compliance tracking system and the data repository.

6. Statements in support

The Natural Resources Defense Council, a sponsor of the bill, writes in support stating:

HVAC systems are the largest energy users in homes and many commercial buildings. These systems are essential to keep Californians safe during cold winter days and hot summer days, and quality installation of these systems is critical to keep energy bills affordable and reduce climate pollution. Unfortunately, many HVAC systems are installed incorrectly and there is currently little oversight to improve these issues. Systems are often oversized, which impacts their efficiency, and duct systems that distribute conditioned air throughout buildings are frequently leaky and undersized. Poor installation leads to an estimated 20 to 30 percent HVAC energy waste, and unnecessary peak energy use that stresses the electric grid, increasing the risk of power shortages.

This situation is partly the result of noncompliance with the building code requirements for alterations. Installers and homeowners only apply for permits about 10 percent of the time. This lack of compliance is not only bad for public health and the environment, it also punishes contractors who do comply and are less able to compete with contractors who cut corners.

To improve HVAC compliance, SB 795 proposes two key steps: 1) developing an HVAC equipment sales registry and 2) developing a central compliance registry to track the status of permits and ensure installation quality requirements are met for HVAC replacement projects. In 2015, the Existing Building Energy Efficiency Action Plan recommended developing an equipment sales registry, but the recommendation was never acted upon. Taken together these two steps will

enhance the state's ability to enforce existing code requirements for HVAC installations.

SB 795 will reduce air pollution, lower energy bills, and help create a level playing field to promote quality HVAC installation and maintenance.

SUPPORT

Natural Resources Defense Council (sponsor)
Western States Council of Sheet Metal Workers (sponsor)
350 Humboldt
350 Sacramento
AIM Associates
American Institute of Architects California
Building Electrification Institute
California Building Industry Association
California Building Officials
California Environmental Voters
California State Pipe Trades Council
Carbon Zero Buildings, Inc.
Earthjustice
Indivisible Sacramento
Rewiring America
RMI
San Francisco Bay Physicians for Social Responsibility
Sierra Club California
Wooley Energy & Environment

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1164 (Stern, 2022) was substantially similar to this bill and required the CEC to create a compliance testing registry. The bill was held in the Assembly Appropriations Committee.

SB 49 (Skinner, Ch. 697, Stats. 2019) expanded the CEC's authority to create appliance efficiency standards to require the CEC to adopt standards to promote the deployment of appliances with flexible demand capabilities.

SB 1414 (Wolk, Ch. 678, Stats. 2016) required the CEC to create a plan to promote HVAC and heat pump installations' compliance with building codes. The bill also required customers or contractors to demonstrate that a permit for the installation of an HVAC or heat pump system is closed for the customer or contractor to obtain a rebate or incentive provided by a public utility.

AB 2021 (Levine, Ch. 734, Stats. 2006) established energy efficiency procurement and planning requirements for local publicly owned electric utilities. The bill also required the CEC to take certain steps for energy efficiency planning, including requiring the CEC to create a plan to improve HVAC energy efficiency and decrease the peak electricity demand of air conditioners.

PRIOR VOTES

Senate Committee on Energy, Utilities and Communications (13 Ayes, 4 Noes)
