

Energy Efficiency Reporting for Commercial Properties starts Jan 2011.

California Assembly Bill 1103 (“AB 1103”) was made law in 2007 by the addition of Section 25402.10 to the California Public Resources Code with the stated goal of achieving a 20% increase in energy efficiency for commercial buildings by 2015. The law seeks to achieve this through data collection and disclosure regarding energy consumption records. Effective January 1, 2011, any owner selling, leasing or financing an entire non-residential building measuring 50,000 square feet or larger or any single owner occupied commercial building will have to disclose the building's “U.S. EPA's Portfolio Manager's Statement of Energy Performance” using a “California Energy Performance Disclosure Report.” Unlike many disclosures which are required at closing/signing, this report will have to be provided to a prospective buyer, tenant or lender at or before the time of initially “presenting” a contract of sale/lease and loan application.

How should you prepare? At least 30 days before a sale, refinance or lease of the entire building, a building owner should open an account at the U.S. EPA's ENERGY STAR® Portfolio Manager website <https://www.energystar.gov/istar/pmpam/index.cfm?fuseaction=userreg.showCreateAccountStandard>. The property/asset manager will then enter into that account such information as owner contact information, building type; identify all utility company meters and utility company accounts serving the building; and authorize and request all utility companies serving the building to release energy use data from the most recent 12 months to the owner's Portfolio Manager account. The EPA website is helpful but appears complex. Third party companies such as <http://www.ab1103.org/build.html> (a free sample report is available there) are already springing up to assist in making compliant disclosures easier and no doubt more will follow soon.

Tenants' utility usage is required data needed for the report. So in drafting new leases and lease amendments should require tenants who directly arrange and pay for their utilities to provide the statutorily required information, and otherwise cooperate, as well as waive claims against the landlord regarding breach of confidentiality or privacy (imagine, for example, an industrial user who perhaps doesn't want their competitors to know how much energy they use in their processes).

Disclosure requirements will be phased in. Starting January 1, 2012, the law will apply to nonresidential buildings that measure 10,000 to 50,000 square feet. As of July 1, 2012 only buildings less than 1,000 square feet will be exempt from the disclosure requirements. But why do it at all? There is a carrot and a stick. The “carrot” is that a building with a comparatively higher efficiency rating may be seen as more attractive to a prospective buyer, tenant or lender as an indicator of lower operational expenses. Although AB1103 has no express provision for penalties, the “stick” is that a non-compliant owner may have liability for civil suits related to general business practices, *e.g.* Bus. Code §§17200 *et seq.*, Title 20 complaint and investigation procedures, Article 4, §§ 1230 *et seq.* and anyone may file a complaint; CA Energy Commission response procedure may include investigation and a hearing and civil penalties under Pub. Res. Code § 25321 for continued or willful violations.

For more detail, go to <http://www.silverlawla.com/articles.html> to download the “Nonresidential Building Energy Performance Rating Disclosure Regulations Efficiency Committee Workshop Agenda” from the California Energy Commission's May 2010 meeting. This memo contains a detailed review of a sample EPA Energy Star Portfolio Manager created California Energy Performance Disclosure Report.