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Governor Temporarily Delays Commencement of Energy Consumption Disclosure Requirement

Assembly Bill 1103 ("AB 1103") requires the disclosure of energy consumption data for the most recent twelve months from the United States Environmental Protection Agency's Energy Star Portfolio Manager ("Portfolio Manager") as part of the sale, lease, or financing of an entire nonresidential building transacted on or after January 1, 2010 (the "Disclosure Commencement Date").

On October 11, 2009, Governor Schwarzenegger signed Assembly Bill 531 ("AB 531") into law, temporarily delaying for an indefinite period of time the January 1, 2010 commencement date under AB 1103. However, owners and operators of nonresidential buildings should not delay preparations for the eventual disclosure requirement as compliance will require advanced preparations.

Information in this alert is useful to owners and operators of non-residential property.

Conclusions and Suggestions

In order to ensure compliance with AB 1103, all owners and operators of nonresidential buildings should:

- Register for an account with Portfolio Manager
- Create a profile within Portfolio Manager for each nonresidential building owned
- Coordinate with each electrical or gas utility to automate the uploading of data to Portfolio Manager to the extent possible
- Track the implementation of AB 531 to determine the revised Disclosure Commencement Date to be set by the State Energy Resources Conservation and Development Commission ("ERCDC")
- Ensure the Disclosure Data (defined below) is disclosed as part of any sale, lease, or financing affecting an entire nonresidential building concluded on or after the revised Disclosure Commencement Date

Background

AB 1103, which was signed into law on October 12, 2007, requires the tracking of the energy use of all nonresidential buildings and the disclosure of such energy use as part of the sale, lease, or financing of an entire nonresidential building. The stated purpose of the disclosure requirement is to "motivate building operators to take actions to improve their buildings' energy profiles" and "to allow building owners and operators to compare their buildings'

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performance to that of similar buildings and to manage their buildings' energy costs. AB 1103 added Section 25402.10 to the California Public Resources Code ("Section 25402.10").

Subsection (a) of Section 25402.10 requires electric and gas utilities, on and after January 1, 2009, to maintain records of the energy consumption data of all nonresidential buildings to which they provide service in a format capable for uploading to Portfolio Manager.

Subsection (d) of Section 25402.10 requires nonresidential building owners or operators, on and after January 1, 2010, to disclose Portfolio Manager benchmarking data and ratings ("Disclosure Data") for the most recent 12-month period, to a prospective buyer, lessee, or lender of the entire building.

AB 531

AB 531 revised subsection (d) of Section 25402.10 to remove the firm January 1, 2010 deadline and instead require disclosure of the Disclosure Data on a schedule of compliance established by the ERCDC. The stated purpose of AB 531 is to "remove the hard implementation date of January 1, 2010 and instead allow the [ERCDC] to develop an implementation schedule in order to ensure that the goals of AB 1103 are met without harming potential transactions for which we do not yet have a viable process established for benchmarking." AB 531 does not otherwise alter the disclosure requirements under AB 1103.

Please contact us with any questions.

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