

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1026 (Wieckowski)
Version: March 24, 2022
Hearing Date: April 5, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Residential energy efficiency disclosure statement

DIGEST

This bill requires three things in relation to energy efficiency in rental housing: (1) landlords must disclose to prospective tenants how much energy a rental unit consumes and how much that energy costs before renting them the unit; (2) landlords must, upon request, make energy consumption and cost information available to current or prospective tenants or direct tenants to the relevant energy providers to obtain this information; and (3) the State Energy Resources Conservation and Development Commission (“Commission”) must develop suggested standards and a disclosure form for rental housing energy consumption.

EXECUTIVE SUMMARY

Before they move in to a new rental home, environmentally and cost conscious tenants may want to know how much energy their unit consumes and how much that is going to cost them. Nothing in existing law ensures that current or prospective tenants have access to this information, however. This bill seeks to increase energy efficiency transparency in the context of rental housing. It does so by requiring landlords to disclose energy consumption and cost information to current and prospective tenants. Prior to formalizing a new tenancy, the landlord would have to provide the disclosure directly; in other cases, directing the tenant to the relevant energy providers would be sufficient. To facilitate all of this, the bill gives prospective tenants the right to obtain past energy consumption information from utilities and directs the Commission to develop suggested standards for rental housing energy efficiency as well as a form that landlords can use to disclose the energy efficiency of their unit.

The bill is author-sponsored. Support comes from advocates for tenants and the environment who contend that the bill encourages energy efficiency and enables prospective tenants to gauge their true housing costs. Opposition comes from landlord trade associations who believe the bill imposes unhelpful new costs and burdens on property owners in the midst of a housing crisis. If the bill passes out of this Committee, it will next be heard by the Senate Energy, Utilities, and Communications Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires utilities to maintain records regarding the last 12 months' worth of energy consumption in buildings that the utility serves. (Pub. Res. Code § 25042.10(b).)
- 2) Requires utilities to provide the records described in (a), above, to the owner or operator of a nonresidential building or a residential building with more than five units, upon request. (Pub. Res. Code § 25042.10(c).)
- 3) Directs the State Energy Resources Conservation and Development Commission develop a public domain computer program that enables contractors, builders, architects, engineers, and government officials to estimate the energy consumed by residential and nonresidential buildings. (Pub. Res. Code § 25042.10(d).)
- 4) Requires residential landlords to disclose information to new tenants regarding all of the following, among other things:
 - a) The landlord's intent to demolish the building. (Civ. Code § 1940.6.)
 - b) The presence of nearby former military facilities that may contain live munition, if known to the landlord. (Civ. Code § 1940.7.)
 - c) Regular pest control service. (Civ. Code § 1940.8.)
 - d) Designated no smoking areas. (Civ. Code § 1947.5.)
 - e) Information about bed bugs. (Civ. Code § 1954.603.)
 - f) Presence of lead-based paint. (42 U.S.C. 4852d.)
 - g) Location in a flooding area. (Gov. Code § 8589.45.)
 - h) Death of a previous occupant within past three years. (Civ. Code § 1710.2.)

This bill:

- 1) Provides that a prospective residential tenant who will be paying utility costs has the right to obtain from the energy supplier for a unit offered for rent the amount of consumption and the cost of that consumption for the prior 12-month period.
- 2) Provides that a residential landlord who enters into a tenancy agreement for a unit that will be used by a tenant as a primary residence and for which utilities are not included in the rent shall provide to potential tenants, or upon request by a tenant or lessee, a specified residential energy efficiency disclosure statement.
- 3) Authorizes a landlord, in lieu of providing the energy efficiency disclosure pursuant to (2) above, to include in the application for the residential property the name of each supplier of energy that previously supplied the unit, if known, and the following statement: "You have the right to obtain a 12-month history of energy consumption and the cost of that consumption from the energy supplier."

- 4) Requires a landlord who enters into a lease agreement to provide a specified residential energy efficiency disclosure statement to any person who requests the statement in person. Before a tenant or lessee enters into a contract or pays a deposit to rent or lease a property, the landlord or other person who, on behalf of a landlord, enters into a lease or tenancy at will agreement, shall provide the statement to the tenant or lessee, obtain the tenant's or lessee's signature on the statement, and sign the statement. The landlord or other person who, on behalf of a landlord, enters into a lease or tenancy at will agreement shall retain the signed statement for a minimum of three years.
- 5) Directs the Commission to prepare and post on the internet a residential energy efficiency disclosure statement form for residential landlords to use to disclose information to tenants about the energy efficiency of the property as required under (2) and (4), above.
- 6) Directs the Commission to prepare and post on the internet suggested energy efficiency standards for residential property rented to a tenant as a primary residence.

COMMENTS

1. The dual problems the bill is intended to address

This bill has both environmental and consumer protection aims.

a. Ensuring rental housing consumers know how much their utility bill will cost

In the rental housing context, payment of utilities is usually structured in one of two ways. Either the utilities are included in the rent, or they are billed to the tenant separately. In the former scenario, tenants searching for new rental housing know how much they will be paying for utilities each month. In the latter case, they have to guess, though accommodating landlords sometimes provide an estimate up front or if asked. If the tenant's guess or the landlord's estimate is wrong, the tenant may end up locked into a lease where the actual utility costs are substantially higher than what the tenant anticipated. By requiring advance disclosure of the likely utility costs for the unit based upon the amount of energy consumed at the unit in the previous 12 months, the bill seeks to provide rental housing consumers with greater transparency about what the true cost of renting a unit will be before they enter into a lease.

b. Incentivizing energy efficiency in rental housing

As the leasing of rental housing is currently structured, unless utilities are included in the rent, there are limited incentives for a landlord to improve the energy efficiency of the residential units they own. Tenants currently have no way to know how much the

utility bill will be when they are comparing units. In the present, hot rental market, they may have few choices anyway. So landlords have only a mild incentive to tout the energy efficiency of their units as a selling point. Once tenants are in the unit, the problem is even worse. The landlord will typically be the one to pay for replacement of any major fixtures and appliances, such as dishwashers, refrigerators, stoves, ovens, air-conditioners, and heaters. The tenant will pay for the energy that those things consume. Rather than incur the cost of replacing inefficient appliances and fixtures, an economically rational landlord will keep the inefficient devices and simply leave it to the tenant to pay for what those energy hogs consume. At the same time, the tenant has little reason to replace the inefficient appliances and fixtures, either. The tenant's utility bill might decrease some, but to get those savings the tenant will have to pay a lot (probably more than the utility bill savings is worth) for the replacement and it is unlikely that the tenant will be able to keep the replacement appliance or fixture when the tenant moves out. The author of the bill refers to this as a "split incentive problem."

This bill seeks to realign the incentives involved to encourage greater energy efficiency in the rental housing context. The idea is that if landlords must disclose the energy efficiency of their units to prospective tenants, then energy efficiency will become one of the ways in which landlords compete against one another for the best tenants. In this sense, the bill could accurately be characterized as employing a market-based solution to improving energy efficiency in the rental housing context.

Under the bill, the Commission would set standards for rental housing energy efficiency against which each dwelling unit could be graded. The bill does not specify the exact form these standards would take. In the author's vision, however, the system would operate much like energy efficiency disclosures in other consumer contexts.

Other models include the EnergyStar system, the "expected fuel price" labels commonly seen on cars, and the "Green-Yellow-Red" color-coded health inspection systems found at restaurants in many parts of California.

High ratings on the rental energy standard could be a point of pride for landlords. Those rated "green" or "exceeds" on energy efficiency would likely advertise that fact in rental postings. Those with "red" or "fails" ratings would be more likely to want to invest in efficiency improvements as they'd need to disclose this to a potential renter.

2. California precedents for energy consumption disclosures at building-wide level

The author of the bill points out that existing California law already contains policies that are similar in concept to what this bill proposes. Specifically, legislation enacted in 2007 requires electric or gas utilities to compile information regarding the last twelve

months' worth of utility consumption for each nonresidential building that they serve and to make that information available to building owners or operators upon request. (AB 1103, Saldana, Ch. 533, Stats. 2007.) Just as landlords would have to disclose this energy consumption information to prospective tenants under this bill, AB 1103 also required nonresidential building owners to disclose this energy consumption information to prospective buyers or anyone proposing to rent out the entire building.

AB 802 (Williams, Ch. 590, Stats. 2015) expanded on AB 1103 in at least two ways. First, it extended the utility consumption reporting information requirements to large, multi-family residential complexes. Second, AB 802 established a mechanism making it easier for interested parties and the public to access each building's energy consumption information more easily.¹ As a result of AB 802, current prospective tenants of a multi-family residential complex can obtain information about the energy efficiency of the building as a whole, but they still cannot find out this information with respect to any individual dwelling unit.

3. Maine's precedent for energy consumption disclosure for individual rental units

As a model for drafting this bill, the author has utilized a Maine statute on the books there since 2005. (Me. Rev. Stat. tit. 14, § 6030-C.) When it originally passed, the Maine statute included a reporting requirement. By 2008, the Maine Public Utilities Commission was to publish an assessment of whether the energy efficiency disclosure requirement was having the desired impact. That report concludes that while the program has "raised some awareness among landlords and renters about the disclosure form and the law's goals" and "compliance appears to be on the rise," ultimately "the requirements are far from universally accepted or even known."² The report blames the program's minimal saturation level on the absence of any penalty for non-compliance and the lack of sufficient resources dedicated to disseminating information about the program.³ Since that report, the original Maine statute has been amended and strengthened five times, most recently in 2011. That legislative arc of 17 years suggests, at a minimum, that Maine has not experienced the rental housing energy efficiency disclosure mandate as problematic.

A number of local jurisdictions around the U.S. -- including Oakland and San Francisco in California; Boulder, Colorado; and Burlington, Vermont -- have also adopted some

¹ Interestingly, AB 802 also eliminated AB 1103's requirement that the seller of a building disclose the energy consumption figures for the building to prospective buyers or anyone intending to rent the entire building. The legislative history does not seem to indicate why this change was made, though it seems logical that the increase in public access to the energy consumption information would have rendered private disclosure unnecessary.

² *Report to the Joint Committee on Utilities and Energy on L.D. 2704* (Dec. 31, 2007) Maine Public Utilities Commission
<https://web.archive.org/web/20150907210827/http://www.maine.gov/mpuc/legislative/archive/2006legislation/DisclosureFormRpt.doc>, p. 1 (as of Mar. 30, 2022).

³ *Id.* at p.

form of energy efficiency requirements and standards for rental housing. While there are positive reports from some of these jurisdictions, they appear to vary significantly between one another, the Maine statute, and the proposal in this bill. Most notably, the existing city programs appear to rely much more on energy efficiency inspections and the subsidizing investments in energy efficiency.⁴ Neither of those components are part of what this bill proposes.

Unfortunately, text of the Maine statute after which the bill in print is modeled is about as clear as Bar Harbor mud. One must dig around in the muck a bit to figure out what all those words mean. To streamline the language and clarify the nature of landlords' duties under the legislation, the author proposes to offer amendments in Committee that recast and simplify the text.

4. Assessing the burden imposed by the disclosure requirement

The disclosure requirements of this bill impose a new and additional burden on landlords. As the author points out, however, similar disclosures are not an uncommon feature of existing law. For example, depending on the age and nature of the rental property in question, landlords may have to disclose information about bedbugs, the presence of lead-based paint, no-smoking areas, intent to demolish the building, pest control contracts, the risk of flooding, and even whether there are any former military installations nearby where active explosives could still be present. (See Existing Law, above, for individual citations to these laws.)

Still, complex or burdensome requirements can be especially hard on smaller landlords of the so-called "mom-and-pop" variety. In this case, the current bill language includes a less burdensome option that, while providing far less comprehensive energy efficiency information to prospective tenants, would at least still provide them with a way to obtain basic energy consumption and cost information before entering into a lease. Specifically, in some instances, the bill in print allows landlords to comply with its energy efficiency disclosure mandate by referring tenants to the relevant utility provider where, the bill states, the tenants would have the right to find out the amount of energy consumed by that unit in the previous 12 months. To minimize any burden imposed by this bill on smaller, "mom-and-pop" landlords, the author proposes to offer amendments in Committee that would ensure this simpler, alternative method of disclosure is available to them. Since providing prospective tenants with the last 12 months' worth of utility records for a rental unit might implicate some privacy concerns, the author proposes to include language clarifying that the energy provider is prohibited from disclosing any personally identifying information when giving out this information.

⁴ See, generally, Peteson and Lalit. *Better Rentals, Better City: Smart Policies to Improve Your City's Rental Housing Energy Performance* (2018) Rocky Mountain Institute http://rmi.org/wp-content/uploads/2018/05/Better-Rentals-Better-City_Final3.pdf (as of Mar. 27, 2022).

5. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- allow small landlords to comply with the energy efficiency disclosure requirements by referring prospective tenants to the relevant utility provider;
- limit the landlord's duty to disclose energy efficiency to prospective tenants only;
- provide further detail about the circumstances in which the disclosure duty arises;
- clarify that when an energy supplier is providing information to prospective tenants about the amount and cost of energy used by the unit in the past 12 months, the energy supplier is prohibited from revealing personally identifying information about the former tenants; and
- recast the bill language for simplicity and clarity.

A mock-up of the amendments in context is attached to this analysis.

6. Arguments in support of the bill

According to the author:

When consumers are seeking out new rental housing, they do so knowing what their general budget is. Unfortunately, there's one cost that they can't fully account for: Energy use. Under current law, consumers generally do not know much about the efficiency of the rental unit they commit to. The appliances can be old and outdated; the building could lack insulation; the windows single-pane. Renters may quickly discover that their energy bills exceed their budgets, through no fault of their own. Because they pay the power bills, there's no incentive for the landlord to make energy- and money-saving efficiency upgrades, while the tenant has no incentive to upgrade windows or replace an old refrigerator they can't take with them when they move again. This is known as the "split incentive" problem.

I'm carrying SB 1026 to empower consumers with a baseline of information on what the energy efficiency is of a potential rental unit. The bill would require a basic disclosure by the landlord at the time of signing a lease, similar to a requirement for all rental leases in the state of Maine. It would further create a rating system by which consumers could know if the unit meets, exceeds, or fails basic tenets of modern energy efficiency and give them access to the energy usage of the past year. I believe this will help renters make better decisions on where to live, and hopefully encourage landlords to seek out our numerous energy efficiency upgrade grants and programs when changing tenants.

SUPPORT

None known

OPPOSITION

California Association of Realtors

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 802 (Williams, Ch. 590, Stats. 2015) expanded, to include residential buildings with 5 or more units, the requirement for electric or gas utilities to compile energy consumption information for the last twelve months for any nonresidential building they serve. At the same time, the bill eliminated the requirement for building owners to disclose this information to prospective buyers or lessees of the whole building.

AB 1103 (Saldana, Ch. 533, Stats. 2007) required electric or gas utilities to compile information regarding the last twelve months' worth of utility consumption for each nonresidential building that the utilities serve and to provide this information to building owners or operators upon request. The bill also required nonresidential building owners to disclose this energy consumption information to prospective buyers or lessees of the entire building.

Amended Mock-up for 2021-2022 SB-1026 (Wieckowski (S))

Mock-up based on Version Number 97 - Amended Senate 3/25/22

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1941.8 is added to the Civil Code, to read:

1941.8. (a) ~~A prospective tenant who will be paying utility costs~~ has the right to obtain from an energy supplier ~~for the unit offered for rental~~ the average monthly amount of energy consumed~~consumption by the rental unit offered~~ and the average monthly cost of that consumption for the prior 12-month period. An energy supplier providing this information to a prospective tenant shall not disclose any personally identifying information about the former occupants of the unit.

(b)(1) The owner of a residential dwelling unit or the owner's agent~~A landlord~~ shall make the disclosures described in paragraph (2) to a prospective tenant before doing any of the following:

(A) Entering into a rental agreement with a prospective tenant.

(B) Requiring or accepting payment from the prospective tenant for an application screening fee, as provided in Section 1950.6.

(C) Requiring or accepting any other fees from a prospective tenant.

(D) Requiring or accepting any writings that would initiate a tenancy.

(2)(A) An owner of 10 or more residential dwelling units or the owner's agent shall comply with paragraph (1) by providing the prospective tenants with ~~or other person who, on behalf of a landlord, enters into a lease or tenancy at will agreement for residential property that will be used by a tenant or lessee as a primary residence shall provide to potential tenants or lessees who pay for an energy supply for the unit, or upon request by a tenant or lessee,~~ a residential energy efficiency disclosure statement in accordance with Section 25992 of the Public Resources Code that includes, but is not limited to, information about the energy efficiency of the property~~dwelling unit offered~~.

(B) An owner of fewer than 10 residential dwelling units or the owner's agent shall comply with paragraph (1) by doing one or both of the following:

(i) Providing the prospective tenants with a residential energy efficiency disclosure statement in accordance with Section 25992 of the Public Resources Code that includes, but is not limited to, information about the energy efficiency of the dwelling unit offered.

~~(ii) Including in the rental application for the dwelling unit~~Alternatively, the landlord may include in the application for the residential property the name and contact information for each supplier of energy that ~~previously~~ supplied the unit in the preceding 12 months, if known, and the following statement: “You have the right to obtain the recent average monthly amount and cost of energy for this unit ~~a 12-month history of energy consumption and the cost of that consumption~~ from the energy supplier.”

~~(b) A landlord or other person who, on behalf of a landlord, enters into a lease or tenancy at will agreement shall provide the residential energy efficiency disclosure statement required under subdivision (a) to any person who requests the statement in person. Before a tenant or lessee enters into a contract or pays a deposit to rent or lease a property, the landlord or other person who, on behalf of a landlord, enters into a lease or tenancy at will agreement, shall provide the statement to the tenant or lessee, obtain the tenant’s or lessee’s signature on the statement, and sign the statement. The landlord or other person who, on behalf of a landlord, enters into a lease or tenancy at will agreement shall retain the signed statement for a minimum of three years.~~

(c) Subdivision (b) shall not apply to either of the following:

(1) A residential rent agreement in which all energy consumption by the tenant is charged to the tenant as a fixed amount regardless of consumption, whether that charge is billed separately or incorporated into the overall rent.

(2) A residential rental lasting less than 30 days in length.

SEC. 2. Chapter 15 (commencing with Section 25992) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 15. Residential Energy Efficiency Disclosure Statement

25992. (a) For purposes of this section “commission” means the State Energy Resources Conservation and Development Commission.

(b) The commission shall prepare a residential energy efficiency disclosure statement form for landlords and other lessors of residential properties to use to disclose to tenants and lessees information about the energy efficiency of the property in order to comply with Section 1941.8 of the Civil Code. The commission shall post and maintain the statement form required by this subdivision on the internet in a format that is easily accessible to the public.

(c) The commission shall prepare suggested energy efficiency standards for landlords and other lessors of residential property ~~that is used by a tenant or lessee as a primary residence~~. The commission shall post and maintain the standards required pursuant to this subdivision on the internet in a format that is easily accessible to the public.