

Senate Bill No. 49

CHAPTER 697

An act to amend Sections 25402 and 25402.11 of, and to add and repeal Section 25311 of, the Public Resources Code, relating to energy.

[Approved by Governor October 9, 2019. Filed with Secretary
of State October 9, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 49, Skinner. Energy: appliance standards and State Water Project assessment.

(1) Existing law requires the Natural Resources Agency every 3 years to update the state's climate adaptation strategy to identify vulnerabilities to climate change by sector, including, among others, water and energy. Existing law requires the agency to annually report to the Legislature on actions taken by each applicable agency to implement the state's climate adaptation strategy.

Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission), at least every 2 years, to conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices to develop and evaluate energy policies and programs that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety.

Under existing law, the Department of Water Resources operates the State Water Resources Development System, known as the State Water Project, in accordance with the California Water Resources Development Bond Act to supply water to persons and entities in the state.

This bill would require the Natural Resources Agency, in collaboration with the Energy Commission and the Department of Water Resources, to assess the opportunities and constraints for potential operational and structural upgrades to the State Water Project to aid California in achieving its climate and energy goals, and to provide associated recommendations consistent with specified purposes and California's energy goals. The bill would require that the assessment and recommendations include specified elements, including recommendations for state, federal, and other applicable funding sources, as specified. The bill would require that the assessment and recommendations be provided to the appropriate policy committees of the Legislature before January 1, 2022.

(2) Existing law authorizes the Energy Commission to prescribe, by regulation, energy efficiency standards, including appliance efficiency standards, to reduce the wasteful, uneconomic, inefficient, or unnecessary

consumption of energy, including the energy associated with the use of water, as specified.

This bill would require that those energy efficiency standards also manage energy loads to help maintain electrical grid reliability. The bill would require the Energy Commission to adopt, by regulation, and periodically update, standards for appliances to facilitate the deployment of flexible demand technologies, as specified, and would require that those standards be cost effective and prioritize appliances with specified attributes. The bill would require that the flexible demand appliance standards become effective no sooner than one year after the date of their adoption or updating. The bill would require the Energy Commission to consult with the Public Utilities Commission and load-serving entities to better align the flexible demand appliance standards with demand response programs administered by the state and load-serving entities and to incentivize flexible demand appliances. The bill would authorize the Energy Commission to establish an administrative enforcement process to enforce the flexible demand appliance standards with an administrative civil penalty not to exceed \$2,500 for each violation, or to refer a violation to the Attorney General for an enforcement action in a court. The bill would require the Energy Commission, on or before January 1, 2021, and as necessary thereafter, to include as part of each integrated energy policy report a description of any actions it has taken relating to flexible demand appliance standards and the standards' cost to consumers.

The people of the State of California do enact as follows:

SECTION 1. Section 25311 is added to the Public Resources Code, to read:

25311. (a) The Natural Resources Agency, in collaboration with the commission and the Department of Water Resources, shall assess the opportunities and constraints for potential operational and structural upgrades to the State Water Resources Development System to aid California in achieving its climate and energy goals and shall provide associated recommendations consistent with the purposes described in Section 11125 of the Water Code and California's energy goals. The assessment shall include an examination of the system's actual and potential contributions to the achievement of the state's climate goals without impacting the system's purposes. The assessment shall include a timeline for the possible implementation of its recommendations that could assist California in achieving its statewide climate and energy goals. To the extent the recommendations benefit statewide energy goals and are consistent with the system's purposes, the assessment shall also provide recommendations for state, federal, and other applicable funding sources.

(b) (1) The assessment and recommendations shall be provided to the appropriate policy committees of the Legislature before January 1, 2022.

(2) The assessment and recommendations to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(3) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2026.

SEC. 2. Section 25402 of the Public Resources Code is amended to read:

25402. The commission shall, after one or more public hearings, do all of the following in order to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy, including the energy associated with the use of water, and to manage energy loads to help maintain electrical grid reliability:

(a) (1) Prescribe, by regulation, lighting, insulation, climate control system, and other building design and construction standards that increase efficiency in the use of energy and water for new residential and new nonresidential buildings. The commission shall periodically update the standards and adopt any revision that, in its judgment, it deems necessary. Six months after the commission certifies an energy conservation manual pursuant to subdivision (c) of Section 25402.1, a city, county, city and county, or state agency shall not issue a permit for a building unless the building satisfies the standards prescribed by the commission pursuant to this subdivision or subdivision (b) that are in effect on the date an application for a building permit is filed. Water efficiency standards adopted pursuant to this subdivision shall be demonstrated by the commission to be necessary to save energy.

(2) Before adopting a water efficiency standard for residential buildings, the Department of Housing and Community Development and the commission shall issue a joint finding whether the standard (A) is equivalent or superior in performance, in safety, and for the protection of life, health, and general welfare to standards in Title 24 of the California Code of Regulations and (B) does not unreasonably or unnecessarily impact the ability of Californians to purchase or rent affordable housing, as determined by taking account of the overall benefit derived from water efficiency standards. Nothing in this subdivision in any way reduces the authority of the Department of Housing and Community Development to adopt standards and regulations pursuant to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code).

(3) Water efficiency standards and water conservation design standards adopted pursuant to this subdivision and subdivision (b) shall be consistent with the legislative findings of this division to ensure and maintain a reliable supply of electrical energy and be equivalent to or superior to the performance, safety, and protection of life, health, and general welfare standards contained in Title 24 of the California Code of Regulations. The commission shall consult with the members of the coordinating council as established in Section 18926 of the Health and Safety Code in the development of these standards.

(b) (1) Prescribe, by regulation, energy and water conservation design standards for new residential and new nonresidential buildings. The standards

shall be performance standards and shall be promulgated in terms of energy consumption per gross square foot of floorspace, but may also include devices, systems, and techniques required to conserve energy and water. The commission shall periodically review the standards and adopt any revision that, in its judgment, it deems necessary. A building that satisfies the standards prescribed pursuant to this subdivision need not comply with the standards prescribed pursuant to subdivision (a). Water conservation design standards adopted pursuant to this subdivision shall be demonstrated by the commission to be necessary to save energy. Before adopting a water conservation design standard for residential buildings, the Department of Housing and Community Development and the commission shall issue a joint finding whether the standard (A) is equivalent or superior in performance, in safety, and for the protection of life, health, and general welfare to standards in Title 24 of the California Code of Regulations and (B) does not unreasonably or unnecessarily impact the ability of Californians to purchase or rent affordable housing, as determined by taking account of the overall benefit derived from the water conservation design standards. This subdivision does not in any way reduce the authority of the Department of Housing and Community Development to adopt standards and regulations pursuant to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code).

(2) In order to increase public participation and improve the efficacy of the standards adopted pursuant to subdivision (a) and this subdivision, the commission shall, before publication of the notice of proposed action required by Section 18935 of the Health and Safety Code, involve parties who would be subject to the proposed regulations in public meetings regarding the proposed regulations. All potential affected parties shall be provided advance notice of these meetings and given an opportunity to provide written or oral comments. During these public meetings, the commission shall receive and take into consideration input from all parties concerning the parties' design recommendations, cost considerations, and other factors that would affect consumers and California businesses of the proposed standard. The commission shall take into consideration before the start of the notice of proposed action any input provided during these public meetings.

(3) The standards adopted or revised pursuant to subdivision (a) and this subdivision shall be cost-effective when taken in their entirety and when amortized over the economic life of the structure compared with historic practice. When determining cost-effectiveness, the commission shall consider the value of the water or energy saved, impact on product efficacy for the consumer, and the life-cycle cost of complying with the standard. The commission shall consider other relevant factors, as required by Sections 18930 and 18935 of the Health and Safety Code, including, but not limited to, the impact on housing costs, the total statewide costs and benefits of the standard over its lifetime, economic impact on California businesses, and alternative approaches and their associated costs.

(c) (1) (A) Prescribe, by regulation, standards for minimum levels of operating efficiency, based on a reasonable use pattern, and may prescribe 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 whose use, as determined by the commission, requires a significant amount of energy or water on a statewide basis. The minimum levels of operating efficiency shall be based on feasible and attainable efficiencies or feasible improved efficiencies that will reduce the energy or water consumption growth rates. The standards shall become effective no sooner than one year after the date of adoption or revision. A new appliance manufactured on or after the effective date of the standards shall not be sold or offered for sale in the state, unless it is certified by the manufacturer of the appliance to be in compliance with the standards. The standards shall be drawn so that they do not result in any added total costs for consumers over the designed life of the appliances concerned.

(B) In order to increase public participation and improve the efficacy of the standards adopted pursuant to this subdivision, the commission shall, before publication of the notice of proposed action required by Section 18935 of the Health and Safety Code, involve parties who would be subject to the proposed regulations in public meetings regarding the proposed regulations. All potential affected parties shall be provided advance notice of these meetings and given an opportunity to provide written or oral comments. During these public meetings, the commission shall receive and take into consideration input from all parties concerning the parties' design recommendations, cost considerations, and other factors that would affect consumers and California businesses of the proposed standard. The commission shall take into consideration before the start of the notice of proposed action any input provided during these public meetings.

(C) The standards adopted or revised pursuant to this subdivision shall not result in any added total costs for consumers over the designed life of the appliances concerned. When determining cost-effectiveness, the commission shall consider the value of the water or energy saved, impact on product efficacy for the consumer, and the life-cycle cost to the consumer of complying with the standard. The commission shall consider other relevant factors, as required by Sections 11346.5 and 11357 of the Government Code, including, but not limited to, the impact on housing costs, the total statewide costs and benefits of the standard over its lifetime, economic impact on California businesses, and alternative approaches and their associated costs.

(2) A new appliance, except for a plumbing fitting, regulated under paragraph (1), that is manufactured on or after July 1, 1984, shall not be sold, or offered for sale, in the state, unless the date of the manufacture is permanently displayed in an accessible place on that appliance.

(3) During the period of five years after the commission has adopted a standard for a particular appliance under paragraph (1), an increase or decrease in the minimum level of operating efficiency required by the

standard for that appliance shall not become effective, unless the commission adopts other cost-effective measures for that appliance.

(4) Neither the commission nor any other state agency shall take any action to decrease any standard adopted under this subdivision on or before June 30, 1985, prescribing minimum levels of operating efficiency or other energy conservation measures for any appliance, unless the commission finds by a four-fifths vote that a decrease is of benefit to ratepayers, and that there is significant evidence of changed circumstances. Before January 1, 1986, the commission shall not take any action to increase a standard prescribing minimum levels of operating efficiency for any appliance or adopt a new standard under paragraph (1). Before January 1, 1986, any appliance manufacturer doing business in this state shall provide directly, or through an appropriate trade or industry association, information, as specified by the commission after consultation with manufacturers doing business in the state and appropriate trade or industry associations on sales of appliances so that the commission may study the effects of regulations on those sales. These informational requirements shall remain in effect until the information is received. The trade or industry association may submit sales information in an aggregated form in a manner that allows the commission to carry out the purposes of the study. The commission shall treat any sales information of an individual manufacturer as confidential and that information shall not be a public record. The commission shall not request any information that cannot be reasonably produced in the exercise of due diligence by the manufacturer. At least one year before the adoption or amendment of a standard for an appliance, the commission shall notify the Legislature of its intent, and the justification to adopt or amend a standard for the appliance. Notwithstanding paragraph (3) and this paragraph, the commission may do any of the following:

(A) Increase the minimum level of operating efficiency in an existing standard up to the level of the National Voluntary Consensus Standards 90, adopted by the American Society of Heating, Refrigerating and Air-Conditioning Engineers or, for appliances not covered by that standard, up to the level established in a similar nationwide consensus standard.

(B) Change the measure or rating of efficiency of any standard, if the minimum level of operating efficiency remains substantially the same.

(C) Adjust the minimum level of operating efficiency in an existing standard in order to reflect changes in test procedures that the standards require manufacturers to use in certifying compliance, if the minimum level of operating efficiency remains substantially the same.

(D) Readopt a standard preempted, enjoined, or otherwise found legally defective by an administrative agency or a lower court, if final legal action determines that the standard is valid and if the standard that is readopted is not more stringent than the standard that was found to be defective or preempted.

(E) Adopt or amend any existing or new standard at any level of operating efficiency, if the Governor has declared an energy emergency as described in Section 8558 of the Government Code.

(5) Notwithstanding paragraph (4), the commission may adopt standards pursuant to Commission Order No. 84-0111-1, on or before June 30, 1985.

(d) Recommend minimum standards of efficiency for the operation of a new facility at a particular site that are technically and economically feasible. A site and related facility shall not be certified pursuant to Chapter 6 (commencing with Section 25500), unless the applicant certifies that standards recommended by the commission have been considered, which certification shall include a statement specifying the extent to which conformance with the recommended standards will be achieved.

(e) (1) Not later than January 1, 2004, amend any regulations in effect on January 1, 2003, pertaining to the energy efficiency standards for residential clothes washers to require that residential clothes washers manufactured on or after January 1, 2007, be at least as water efficient as commercial clothes washers.

(2) Not later than April 1, 2004, petition the federal Department of Energy for an exemption from any relevant federal regulations governing energy efficiency standards that are applicable to residential clothes washers.

(f) (1) Adopt, by regulation, and periodically update, 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. The flexible demand appliance standards shall be based on feasible and attainable efficiencies or feasible improvements that will enable appliance operations to be scheduled, shifted, or curtailed to reduce emissions of greenhouse gases associated with electricity generation. The standards shall become effective no sooner than one year after the date of their adoption or updating.

(2) In adopting the flexible demand appliance standards, the commission shall consider the National Institute of Standards and Technology's reliability and cybersecurity protocols, or other cybersecurity protocols that are equally or more protective, and shall adopt, at a minimum, the North American Electric Reliability Corporation's Critical Infrastructure Protection standards.

(3) The flexible demand appliance standards shall be cost effective. When determining cost-effectiveness, solely for purposes of this subdivision, the commission may consider, as appropriate, the cost of flexible demand appliances compared to nonflexible demand appliances, the value of increased or decreased emissions of greenhouse gases associated with the timing of an appliance's use, the life-cycle cost to the consumer from using a product that complies with the standard, and the life-cycle costs and benefits to consumers, including the ability to conserve energy and better align consumer and electric system demand. The commission shall consider other relevant factors, as required by Sections 11346.5 and 11357 of the Government Code, including, but not limited to, the impact on housing costs, the total statewide costs and benefits of the standard over its lifetime, the economic impact on California businesses, and alternative approaches and their associated costs.

(4) The commission shall consult with the Public Utilities Commission and load-serving entities to better align the flexible demand appliance

standards with demand response programs administered by the state and load-serving entities and to incentivize the deployment of flexible demand appliances.

(5) The flexible demand appliance standards shall prioritize all of the following:

(A) Appliances that can more conveniently have their electrical demand controlled by load-management technology and third-party load-management programs.

(B) Appliances with load-management technology options that are readily available.

(C) Appliances that have a user-friendly interface and follow a straightforward setup and connection process, such as remote setup by means of an internet website or application.

(D) Appliances with load-management technology options that follow simple standards for third-party direct operation of the appliances.

(E) Appliances that are interoperable or open source.

(6) On or before January 1, 2021, and as necessary thereafter, the commission shall include as part of each integrated energy policy report adopted pursuant to Chapter 4 (commencing with Section 25300) a description of any actions it has taken pursuant to this subdivision and the flexible demand appliance standards' cost to consumers.

(7) For purposes of this subdivision, both of the following definitions apply:

(A) "Flexible demand" means the capability to schedule, shift, or curtail the electrical demand of a load-serving entity's customer through direct action by the customer or through action by a third party, the load-serving entity, or a grid balancing authority, with the customer's consent.

(B) "Load-serving entity" has the same meaning as defined in Section 380 of the Public Utilities Code.

SEC. 3. Section 25402.11 of the Public Resources Code is amended to read:

25402.11. (a) (1) The commission may adopt regulations establishing an administrative enforcement process for a violation of a regulation adopted pursuant to subdivisions (c) and (f) of Section 25402 and for the assessment of an administrative civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation. The process shall comply with the requirements of Chapter 4 (commencing with Section 11370) and Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In assessing the amount of an administrative penalty, the commission shall consider all of the following factors:

(A) The nature and seriousness of the violation.

(B) The number of violations.

(C) The persistence of the violation.

(D) The length of time over which the violation occurred.

(E) The willfulness of the violation.

(F) The violator's assets, liabilities, and net worth.

(G) The harm to consumers and to the state that resulted from the amount of energy wasted due to the violation.

(b) If the commission finds that a violation of the regulations adopted pursuant to subdivisions (c) and (f) of Section 25402 has occurred or is threatening to occur, the commission may refer the matter to the Attorney General to petition a court to enjoin the violation. The court may grant prohibitory or mandatory injunctive relief as warranted by issuing a temporary restraining order, preliminary injunction, or permanent injunction, and may assess a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, considering the factors specified in paragraph (2) of subdivision (a).

(c) Penalties collected pursuant to this section shall be deposited into the Appliance Efficiency Enforcement Subaccount, which is hereby established in the Energy Resources Programs Account. The moneys in the Appliance Efficiency Enforcement Subaccount may be expended by the commission, upon appropriation by the Legislature, for the education of the public regarding appliance energy efficiency and for the enforcement of the regulations adopted pursuant to subdivisions (c) and (f) of Section 25402.

(d) An order imposing an administrative civil penalty shall be subject to judicial review pursuant to subdivisions (a) and (b) of Section 25534.2.

(e) A person shall not be liable for a civil penalty pursuant to subdivision (b) if that person is subject to an administrative civil penalty pursuant to subdivision (a).

(f) In a civil action brought on behalf of the commission pursuant to this section, upon granting relief, the court shall award to the commission the reasonable costs incurred by the commission in investigating and prosecuting the action.

(g) The commission shall not initiate an administrative enforcement process pursuant to the regulations adopted pursuant to this section against an entity for the unlawful sale or the unlawful offer for sale of an appliance if both of the following apply:

(1) The appliance fully complies with all of the requirements of the regulations adopted pursuant to subdivisions (c) and (f) of Section 25402.

(2) The only basis for the commission's potential enforcement action is that the appliance is not considered to be in compliance because of the commission's delay in reviewing and processing information submitted to it that demonstrates full compliance.

(h) In addition to the prohibitions specified in subdivision (g), the commission shall not initiate an administrative enforcement process pursuant to the regulations adopted pursuant to this section for a violation of a standard adopted pursuant to subdivisions (c) and (f) of Section 25402 until both of the following occur:

(1) No fewer than 60 days have elapsed since the date when the standard was published in the California Register.

(2) No fewer than 30 days have elapsed since the date when the alleged violator received written notice of the alleged violation and date when the commission provided public notice of the standard.

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