

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 3, 2011

To: The Commission
(Meeting of May 5, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1124 (Skinner) – Low-income energy efficiency**
As amended: April 7, 2011

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

AB 1124 modifies two Energy Savings Assistance Program (ESAP; formerly the Low-Income Energy Efficiency Program) decisions of the California Public Utilities Commission (CPUC) and authorizes deed restricted low-income multifamily rental apartments to receive 100% subsidized replacement energy efficient furnaces, water heating systems, and energy efficiency measures in common area recommended by an energy audit. The bill also lowers eligibility criteria for participation in ESAP consistent with federal criteria.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The CPUC supports the efficient and cost effective use of ratepayer funds to reduce the energy burden and energy insecurity for low-income Californians, regardless of housing type they occupy.

However, the budget application process for the next triennial cycle of the ESAP is the more appropriate forum to discuss whether furnace and water heater repair and replacement in rental units is the responsibility of the landlord or should be funded by the ESAP, particularly since AB 1124 involves modification of the CPUC's previous decisions, D.07-12-051 and D.08-11-031.

Although efficient space heating and water heating systems in multifamily buildings may be sources of energy savings, the CPUC does not support the carte blanche inclusion of central system repairs and replacements in all deed restricted low-income multifamily rental housing at this time. Issues such as cost-effectiveness, cost impacts, over-

subsidizing landlords through the establishment of appropriate incentives and cost sharing mechanisms are most appropriately addressed in the ESAP budget application proceeding. Additionally, other CPUC energy efficiency programs, including Energy Upgrade California (multifamily), may provide incentives for replacements of these large central systems.

Categorical eligibility

Currently, the ESAP allows all units of whole multifamily buildings to participate in the program if 80% of the units are occupied by residents with incomes at or below 200% federal poverty level (FPL). The federally funded California Department of Community Services & Development (CSD) Weatherization Assistance Program (WAP) and Low-Income Home Energy Assistance Program (LIHEAP) allow whole multifamily building participation if 66% of the units are occupied by residents with incomes at or below 200% FPG. We support aligning low-income multifamily rental apartment eligibility between the CPUC's ESAP and the LIHEAP/WAP programs. However, rather than modify ESAP's eligibility levels, we recommend that the WAP/LIHEAP programs should be added as "categorically eligible" programs for ESAP. With categorical eligibility, customers who can provide documents proving participation in one of several state or federal programs do not need to provide additional income documentation in order to qualify for enrollment in ESAP and CARE.

Cost-effectiveness of furnace and water heating systems unknown

Section 2 of the bill dramatically changes the ESAP, mandating that deed restricted low-income multifamily rental apartment buildings receive energy audits and requiring that all deed restricted low-income multifamily rental apartments receive energy efficient furnaces, water heating systems, and common area measures that are not currently offered under the program.

The CPUC opposes this mandate especially in the absence of data on the energy savings potential or cost-effectiveness of these measures. The repair and replacement of large central systems (like large multifamily hot water and heating systems) are very costly. Without thorough analysis, the costs associated with these new measures could detract from ESAP's universal coverage goals. The ESAP has an established protocol for determining the cost-effectiveness and potential energy savings of new measures. Instituting new, and potentially costly, measures through legislation without sufficient scrutiny bypasses the transparent and open process of adopting program measures after analyzing their cost-effectiveness and program cost impacts.

Cost-effectiveness of audits unknown

The CPUC opposes the audit requirement since the ESAP currently requires contractors to conduct energy assessments of customers' homes for eligibility for different measures. The costs and program changes necessary to provide audits to all deed restricted low-income multifamily rental apartment buildings are unknown but

predictably very large. The cost-effectiveness of such audits is also unknown at this time. The development of specific audit protocols would be a costly and labor intensive process that ultimately may not improve ESAP. With a fixed budget and the goal of reaching all eligible and willing homes by 2020, established in the CPUC's Energy Efficiency Strategic Plan adopted in 2008 and subsequently codified in P.U. Code Section 382 (e), the cost of thousands of audits could slow down and even hamper the achievement of the program's planning goals. While ESAP does not offer or subsidize building audits, Energy Upgrade California Multifamily program may provide incentives for audit-based energy savings in deed restricted low-income multifamily rental apartment buildings.

SUGGESTED AMENDMENTS:

Although we suggest that any modifications to ESAP be made and discussed in the upcoming 2012-2014 budget applications, if the legislature were to pass this bill we recommend the following amendments to give the CPUC the flexibility needed for prudent program design and implementation.

SEC. 2. Section 383 is added to the Public Utilities Code, to read:

383. (a)(1) As used in this section, "low-income multifamily rental apartment building" means a building that meets all of the following requirements prior to receiving assistance:

(A) Has five or more dwelling units.

(B) ~~At least 66 percent of the total dwelling units are occupied by households with incomes below 200 percent of the federal poverty level. Are Currently enrolled in the federally funded Department of Community Services & Development administered Low-Income Home Energy Assistance Program (LIHEAP) or Weatherization Assistance Program (WAP).~~

(C) A deed restriction or affordability covenant is held by a federal, state, or local governmental entity that ensures that the percentage of units described in subparagraph (B) will be available at an affordable rent for a period of at least 15 years following installation of the energy efficiency improvement.

~~(2) The commission shall establish certification requirements to implement this subdivision the United States Department of Energy's Weatherization Assistance Program for Low Income Persons.~~

(b) The commission ~~shall ensure~~ *may allow that* low-income multifamily rental apartment buildings receive the following forms of assistance pursuant to ~~the Low Income Energy Efficiency (LIEE) program, a successor program, or other~~ energy efficiency programs under the jurisdiction of the commission:

(1) Energy efficient furnaces and water heating systems.

(2) Energy efficiency measures in common areas recommended by an energy audit.

(c) Financial assistance pursuant to this section ~~shall be for 100 percent of the cost of the improvement less a percentage equal to the percent of total dwelling units not occupied by households with incomes 200 percent below the federal poverty level~~ *may be leveraged with other energy efficient programs to cover the cost of the improvements.*

(d) The commission ~~shall~~ *may require* ~~utilize the Low Income Energy Efficiency (LIEE) program~~ *energy efficiency programs under the jurisdiction of the commission,* as implemented by an electrical corporation or gas

corporation, to incorporate ~~all~~ some or all of the following elements in serving low-income multifamily rental apartment buildings:

(1) Use a whole building, performance-based approach based on site-specific measures recommended by an energy audit of the building.

(2) Provide a single point of entry for low-income multifamily rental apartment building residents so that they can access efficiently and effectively ~~the Low Income Energy Efficiency (LIEE) program~~ energy efficiency programs under the jurisdiction of the commission and other energy efficiency program resources.

(3) Eliminate barriers to accessing energy retrofit programs for owners of low-income multifamily rental apartment buildings.

(e) The commission shall develop and implement a pilot program for eligible multifamily housing units consistent with this section in an on-going or new energy efficiency proceeding.

EXPLANATION OF BILL'S IMPACT ON CPUC PROGRAMS, PRACTICE & POLICY:

AB 1124 would require a substantial overhaul of the ESAP. In fact, the bill as currently drafted effectively creates a new energy efficiency program for buildings occupied by low income customers. Mandatory energy audits, treatment of common areas, replacement or upgrades to large, centralized heating and water heating systems, changes in program eligibility practically amounts to the creation of a new program at staggering costs.

The dramatic changes in program design and associated costs could essentially mean the derailment of the CPUC's statutory mandate of providing energy efficiency measures to all low income customers in California. The increased costs would inevitably mean higher surcharges for all ratepayers.

While AB 1124 would require dramatic and potentially detrimental changes to ESAP, Energy Upgrade California Multifamily may be a more appropriate program to promote these measures. As a program specifically designed for multifamily buildings, EUC MF will be an audit-based, energy efficiency program along the lines envisioned by AB 1124 as currently drafted.

BACKGROUND INFORMATION ON IMPACTED PROGRAMS, PRACTICE OR POLICY:

Formerly known as the Low Income Energy Efficiency Program or LIEE, the Energy Savings Assistance Program is a resource program designed to garner significant energy savings in California while providing an improved quality of life for the state's low-income population. ESAP was initially established by several IOUs in the 1980s as a direct assistance program and later formally established as a CPUC directed program in 1990. The program, its budget, and the participating households have grown significantly since its inception. Currently, the program has an average annual budget of \$320 million and treats roughly 375,000 households.

Participants include owners and renters of single family, multi-family, and non-profit group living homes. Components of the program include the installation of weatherization measures and energy efficiency measures, minor home repairs, and energy education. Installing such measures helps customers reduce energy consumption, resulting in bill savings for program participants.

Because California has 16 climate zones and a myriad of housing types, differences exist in program implementation and measure eligibility between the IOUs. Measures approved in the program are different for each utility because their costs-effectiveness differs depending on climate zone, cost, temperature, weather, and other factors.

FISCAL IMPACT:

We estimate a fiscal impact of \$456,706 for three additional analyst positions and one-half of an Administrative Law Judge, including travel costs.

STATUS:

AB 1124 is awaiting consideration in the Assembly Utilities and Commerce Committee.

SUPPORT/OPPOSITION:

None on file

STAFF CONTACTS:

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BILL LANGUAGE:

BILL NUMBER: AB 1124 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 7, 2011

INTRODUCED BY Assembly Member Skinner
(Coauthors: Senators DeSaulnier and Hancock)

FEBRUARY 18, 2011

An act to add Section ~~385.5~~ 383 to the Public Utilities Code, relating to ~~the Low Income Energy Efficiency program~~ energy .

LEGISLATIVE COUNSEL'S DIGEST

AB 1124, as amended, Skinner. Low-Income Energy Efficiency program.

Existing law authorizes the Public Utilities Commission to establish programs to provide financial assistance for energy efficiency improvements ~~for existing residential and nonresidential building stock~~ . ~~Pursuant to this authorization, the~~ The Public Utilities Commission established the Low-Income Energy Efficiency (LIEE) program to pay for the cost of energy efficiency improvements ~~to dwellings occupied by~~ for low-income households. Decisions issued by the commission held, among other things, that repairs or replacements of furnaces or water heating systems for a multifamily building occupied by low-income households do not qualify for financial assistance under the LIEE program.

This bill would state the intent of the Legislature to ~~disapprove the above holding~~ *modify the application* of those decisions and would ~~provide that the energy efficiency improvements to furnaces or water heating systems for multifamily buildings occupied by low income households in a majority of the units are eligible for financial assistance under the LIEE program and other energy efficiency programs under the jurisdiction of the commission~~ *require the commission to ensure that low-income multifamily rental apartment buildings, as defined, receive energy efficient furnaces and water heating systems and energy efficiency measures in common areas recommended by an energy audit pursuant to the LIEE program, a successor program, or other energy efficiency program under the jurisdiction of the commission. The bill would impose additional requirements on the LIEE program in serving low-income multifamily rental apartment buildings* .

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The Legislature enacted Chapter 470 of the Statutes of 2009 (Chapter 470) and directed the Public Utilities Commission (PUC) and the State Energy Resources Conservation and Development Commission (Energy Commission) to develop policies and plans to encourage improvement to all existing buildings in California.

(2) Pursuant to Chapter 470, the Energy Commission is required to develop a comprehensive program to achieve greater energy savings in the state's existing residential and nonresidential building stock and energy efficiency financing options.

(3) Pursuant to Chapter 470, the PUC is required to investigate the ability of the electrical corporations and gas corporations to provide various energy efficiency financing options to their customers for the purposes of implementing the program developed by the Energy Commission and to assess the implementation of the program by the electrical corporations and the gas corporations.

(4) The residential ~~sectors~~ sector represents approximately 32 percent of the total electricity usage and 36 percent of the total natural gas consumption, and low-income households consume 27 percent more energy due to the age and condition of the housing they can afford to live in.

(5) The PUC has approved the use of ratepayer funds to pay for 100 percent of the cost of certain energy efficiency improvements to dwellings occupied by low-income households with incomes below 200 percent of the federal poverty level in the form of the Low-Income Energy Efficiency (LIEE) program.

(6) More than one-half of the eligible low-income households with incomes below 200 percent of the federal poverty level live in multifamily *rental apartment* buildings.

(7) The primary opportunity for energy savings in many multifamily *rental apartment* buildings is in increasing the efficiency of the heating and hot water systems.

(8) Decision 07-12-051 issued by the PUC on December 12, 2007, stated that "w]e are not convinced that utility ratepayers should assume the costs of appliance repairs and replacements."

~~—(8)—~~

(9) Decision 08-11-031 issued by the PUC on November 10, 2008, reaffirmed the position of the PUC stated in Decision 07-12-051 by ruling that "no furnace repair and replacement or water heater repair or replacement work shall occur in violation of our holding in D.07-12-051 that heating and water heating in rental housing are the responsibility of the landlord."

~~—(9)—~~

(10) The PUC has interpreted that decision to mean that, with respect to the LIEE program, only minor repairs and adjustments may be made to furnaces and water heaters for the purpose of increasing energy efficiency. As a consequence, contractors implementing the LIEE program have generally avoided investing LIEE funds in improving the efficiency of furnaces and water heaters even though ~~this is the largest potential energy saving in multifamily buildings~~ these are the largest potential energy savings in many multifamily *rental apartment* buildings .

(b) It is the intent of the Legislature to do all of the following:

(1) Promote the investment of existing ratepayer energy efficiency

funds to increase the efficiency of furnace and water heating systems in multifamily ~~housing~~ rental apartment buildings occupied by low-income households to achieve the maximum potential energy savings in the residential sector.

(2) Promote the use of ratepayer funds to pay for ~~improvements to~~ energy efficient heating and water heater systems in multifamily ~~properties~~ rental apartment buildings and in particular in those that have contracts with federal, state, or local governmental agencies that require them to serve low-income households ~~in a majority of the units for not less than 30 years~~ .

(3) ~~Disapprove the~~ Modify the application of Decision 07-12-051 and Decision 08-11-031, insofar as those decisions disallowed the repair or replacement of furnaces and water heaters through the LIEE or other residential energy efficiency programs under the PUC's jurisdiction.

~~SEC. 2. Section 385.5 is added to the Public Utilities Code, to read:~~

~~385.5. (a) Energy efficiency improvements to furnaces and water heating systems for multifamily buildings occupied by low income households in a majority of the units shall be eligible for financial assistance pursuant to the Low Income Energy Efficiency (LIEE) program and other energy efficiency program under the jurisdiction of the commission.~~

~~(b) The commission shall give priority consideration in the approval of an eligible energy efficiency improvement as specified in subdivision (a) that has all of the following objectives:~~

~~(1) Demonstrate the greater cost effectiveness of energy retrofits to larger multifamily buildings using a whole building, performance based approach.~~

~~(2) Demonstrate the advantage of a program with a single point of entry for low income multifamily properties, recognizing the unique needs of low income multifamily housing.~~

~~(3) Eliminate barriers to accessing energy retrofit programs for providers of low income multifamily properties.~~

~~(4) Align income eligibility and other programmatic requirements with other federal and state energy rebate and incentive programs to maximize leveraging opportunities.~~

SEC. 2. Section 383 is added to the Public Utilities Code , to read:

383. (a) (1) As used in this section, "low-income multifamily rental apartment building" means a building that meets all of the following requirements prior to receiving assistance:

(A) Has five or more dwelling units.

(B) At least 66 percent of the total dwelling units are occupied by households with incomes below 200 percent of the federal poverty level.

(C) A deed restriction or affordability covenant is held by a federal, state, or local governmental entity that ensures that the percentage of units described in subparagraph (B) will be available at an affordable rent for a period of at least 15 years following installation of the energy efficiency improvement.

(2) The commission shall establish certification requirements to implement this subdivision the United States Department of Energy's Weatherization Assistance Program for Low-Income Persons.

(b) The commission shall ensure that low-income multifamily rental

apartment buildings receive the following forms of assistance pursuant to the Low-Income Energy Efficiency (LIEE) program, a successor program, or other energy efficiency program under the jurisdiction of the commission:

(1) Energy efficient furnaces and water heating systems.

(2) Energy efficiency measures in common areas recommended by an energy audit.

(c) Financial assistance pursuant to this section shall be for 100 percent of the cost of the improvement less a percentage equal to the percent of total dwelling units not occupied by households with incomes 200 percent below the federal poverty level.

(d) The commission shall require the Low-Income Energy Efficiency (LIEE) program, as implemented by an electrical corporation or gas corporation, to incorporate all of the following elements in serving low-income multifamily rental apartment buildings:

(1) Use a whole building, performance-based approach based on site-specific measures recommended by an energy audit of the building.

(2) Provide a single point of entry for low-income multifamily rental apartment building residents so that they can access efficiently and effectively the Low-Income Energy Efficiency (LIEE) program and other energy efficiency program resources.

(3) Eliminate barriers to accessing energy retrofit programs for owners of low-income multifamily rental apartment buildings.