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## **AB 802 Repeals Energy Disclosure Requirement for Commercial Property Transactions**

If you have recently leased, sold, financed, or refinanced a commercial building, you may be aware of California's energy use disclosure requirement. Under existing law, Assembly Bill 1103 ("AB 1103"), an owner or operator of a nonresidential building must disclose benchmarking data and ratings for the building's energy efficiency to any prospective buyer, lessee, or lender. (Public Resources Code § 25402.10.) The benchmarking data and ratings are generated by utilities, which must provide the energy consumption data in response to a request by the building owner or operator.

Since AB 1103's disclosure requirements went into effect on January 1, 2014, the bill has encountered several challenges to implementation. Perhaps most notably, some utilities have refused to release utility usage data without consent from building tenants, who may delay or refuse to provide their consent. In addition, the platform and software adopted by the United States Environmental Protection Agency to collect, track, and manage energy consumption data has demonstrated technical problems.

On October 8, 2015, Governor Jerry Brown signed into law Assembly Bill 802 ("AB 802"), which repeals AB 1103 effective January 1, 2016. AB 802 addresses many of the problems identified by critics of AB 1103. Specifically, under AB 802:

- Building owners and operators no longer need to disclose energy benchmarking data to prospective buyers, lessees, or lenders.
- Each utility must maintain energy usage data for the buildings it serves for at least the most recent twelve calendar months, and must provide the benchmark data within four weeks of a building owner or operator's request.
- Building owners and operators of nonresidential buildings with at least three active utility accounts, *as well as residential buildings with over five active utility accounts*, are eligible to request the benchmark data. (Owners and operators of buildings with fewer

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than three (nonresidential) or five (residential) active utility accounts must obtain tenant authorization before a utility will provide the data.)

- Aggregate energy usage data provided pursuant to AB 802 is not considered customer utility usage information or confidential information, and building owners and utilities are not liable for the use or disclosure of such aggregated energy usage data.
- The California Energy Commission will develop regulations regarding public disclosure of the benchmark data by January 1, 2017.
- Cities and counties may establish their own benchmarking programs with stricter requirements.

Proponents of AB 802 argue that the collection and dissemination of energy consumption benchmarking data will help building owners identify opportunities for saving energy. At the very least, AB 802 will reduce the private disclosure burdens on building owners and operators beginning January 1, 2016.

#### About Smith LLP

*Smith LLP is an Oakland-based general law practice with special focus and expertise in real estate law, complex municipal and commercial transactions and litigation. More information is available at [www.smithllpgroup.com](http://www.smithllpgroup.com).*

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