

SENATE BILL REPORT

SB 6141

As Amended by House, March 5, 2014

Title: An act relating to confidentiality of certain records filed with the utilities and transportation commission or the attorney general.

Brief Description: Concerning the confidentiality of certain records filed with the utilities and transportation commission or the attorney general.

Sponsors: Senators Roach, Hasegawa, Fain, Hobbs, Hatfield, Honeyford and Tom.

Brief History:

Committee Activity: Governmental Operations: 1/23/14, 2/06/14 [DP].

Passed Senate: 2/17/14, 45-3.

Passed House: 3/05/14, 96-2.

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Majority Report: Do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Hasegawa, Ranking Member; Conway, Dandel and McCoy.

Staff: Samuel Brown (786-7470)

Background: Public Records Act (PRA). The PRA, enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply. Under the PRA, a public record includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Utilities and Transportation Commission (UTC). The UTC is composed of three commissioners, appointed by the Governor, who serve six-year terms of office. The UTC regulates the state's transportation system as well as the rates, services, facilities, and practices of public utilities in the state, including solid waste collection companies.

Public records filed with the UTC or Attorney General by public utilities that contain valuable commercial information such as trade secrets; confidential marketing, cost, or financial information; or customer-specific usage and network configuration information are not subject to public disclosure under the PRA until notice is given to the person or persons directly affected by the information. Additionally, the person or persons directly affected by the information may request a superior court order protecting the records as confidential, thus exempting them from public disclosure, within ten days of receiving notice.

A court must determine that disclosure would result in private loss, including an unfair competitive disadvantage, to issue an order exempting records filed with the UTC or Attorney General from public disclosure.

Accounting by Solid Waste Collection Companies. Solid waste collection companies must file annual statements with the UTC showing gross operating revenues from operations within Washington State over the previous calendar year, and pay the UTC a fee of 1 percent of gross operating revenue.

Summary of Bill: Records filed by solid waste collection companies with the UTC or Attorney General that contain valuable commercial information such as trade secrets; confidential marketing, cost, or financial information; or customer-specific usage and network configuration information are not subject to public disclosure until notice is given to the person or persons directly affected by the information. Additionally, the person or persons directly affected by the information may request a superior court order protecting the records as confidential, thus exempting them from public disclosure, within ten days of receiving notice.

A court must determine that disclosure would result in private loss, including an unfair competitive disadvantage, to issue an order exempting records filed with the UTC or Attorney General by a solid waste collection company from public disclosure.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Over the years, the industry has changed, and portions of the solid waste stream are dealt with in an unregulated manner. When solid waste companies go to the UTC looking to change their rates, they must provide information about their regulated and unregulated businesses. It is appropriate for the UTC to see information about contracts and proprietary information about the company's unregulated businesses, not

those businesses' competitors. Unregulated businesses in those industries do not need to submit this type of information to the UTC. Companies must make a case that information should be kept confidential. This is a fair process with independent, third-party review by a judge. Solid waste companies want the exact same protection every other utility has. It is not fair for private, unregulated contracts and rates to be given to competitors, who then undercut our rates. Our rates are set at open public meetings. We have no problem submitting the required information to the UTC and letting them be our regulator. Our competitors in commercial recycling have abused the statutes. This process has been used effectively and provides everyone an opportunity to participate.

CON: There are concerns about the potential for cross-subsidization of commercially competitive recycling services at the cost of the regulated garbage ratepayers. There is no potential for contested hearings involving solid waste companies like for other public utilities. If solid waste companies want to stay in Title 81 RCW, disclosure is critical. Some testifiers are concerned that regulated assets were being used to conduct commercially competitive recycling services. This puts recycling companies, port-a-toilet companies, document shredders, and others at a disadvantage. This is the only utility in the state where cases are not reviewed by the Office of Public Counsel. This asks us to no longer have the ability to look at affiliated activities through public records requests. It depends on the UTC auditing staff to be experts in portable toilets, commercial recycling, and other affiliated activities.

Persons Testifying: PRO: Vicki Christophersen, WA Refuse and Recycling Assn.; Eddie Westmoreland, Waste Connections; Ann Rendahl, UTC.

CON: John Yeasting, Construction Demolition Recycling Assn.; Troy Lautenbach, Lautenbach Recycling.

House Amendment(s): The test the court uses to determine whether to issue a protective order is modified. The court must also find that the records are not necessary for further public review and the court must comment on the appropriate allocation of costs and revenues.