

HOUSE BILL REPORT

SHB 1896

As Passed Legislature

Title: An act relating to providing a statewide minimum privacy policy for disclosure of customer energy use information.

Brief Description: Providing a statewide minimum privacy policy for disclosure of customer energy use information.

Sponsors: House Committee on Technology & Economic Development (originally sponsored by Representatives Smith, Hudgins, Tarleton and Young).

Brief History:

Committee Activity:

Technology & Economic Development: 2/11/15, 2/18/15 [DPS].

Floor Activity:

Passed House: 3/5/15, 98-0.

Senate Amended.

Passed Senate: 4/13/15, 48-0.

House Concurred.

Passed House: 4/20/15, 94-1.

Passed Legislature.

Brief Summary of Substitute Bill

- Prohibits an electric utility, including a small utility, from selling private or proprietary customer information.
- Prohibits an electric utility from disclosing private or proprietary retail electric customer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a retail electric customer who does not already subscribe to the service or product, unless the utility has first obtained the customer's written or electronic permission.
- Prohibits a person from capturing, obtaining, or disclosing private or proprietary customer information for commercial purposes without the retail electric customer's written or electronic permission, with certain exceptions.
- Makes the disclosure or sale of private or proprietary retail electric customer information to an electric utility's affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings, without the

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customer's written or electronic permission, an unfair or deceptive act in trade or commerce and an unfair method of competition for the purposes of applying the Consumer Protection Act (CPA).

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Harmsworth, Magendanz, Nealey, Ryu, Santos, Wylie and Young.

Staff: Nikkole Hughes (786-7156).

Background:

Disclosures to Retail Electric Customers.

Except for small utilities, each electric utility must provide its retail electric customers with certain disclosures, including:

- a complete, itemized listing of all rates and charges for which the customer is responsible;
- an explanation of the metering or measurement policies and procedures; and
- an explanation of the utility's policies governing the confidentiality of proprietary customer information, including the circumstances under which the information may be disclosed and the ways in which customers can control access to the information.

"Small utility" means any consumer-owned utility with 25,000 or fewer electric meters in service, or that has an average of seven or fewer customers per mile of distribution line.

"Proprietary customer information" means information that relates to the source and amount of electricity used by a retail electric customer, a retail electric customer's payment history, household data, and information contained in an electric bill.

Disclosures of Private Information.

The Utilities and Transportation Commission (UTC) prohibits investor-owned utilities from disclosing or selling private consumer information with or for a utility's affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility obtains the customer's written or electronic permission. "Private consumer information" includes the customer's name, address, telephone number, and any other personally identifying information.

Consumer-owned utilities are not under the regulatory jurisdiction of the UTC.

Consumer Protection Act.

The Washington Consumer Protection Act (CPA) declares that unfair and deceptive practices in trade or commerce are illegal. The CPA allows a person injured by an unfair or deceptive practice to bring a private cause of action for damages. The Office of the Attorney General may investigate and prosecute claims under the CPA on behalf of the state or individuals in the state.

Energy Benchmarking Programs.

In 2009 the Legislature enacted a law that requires gas and electric utilities serving more than 25,000 customers to maintain energy use data for nonresidential buildings and certain public agency buildings. This data must be maintained in such a way as to allow it to be inputted into the United States Environmental Protection Agency's Energy Star Portfolio Manager (Portfolio Manager), which is an Internet-based program that allows users to track their energy consumption data and to benchmark the energy use of their buildings against comparable buildings.

Gas and electric utilities serving over 25,000 customers must upload building energy use data into Portfolio Manager. In doing so, the utility may not disclose personally identifying information.

Owners of nonresidential buildings that are over 10,000 square feet in size must disclose Portfolio Manager data and ratings for the previous 12 months to prospective buyers, lenders, or renters. There are no penalties specified for noncompliance with disclosure requirements.

Summary of Substitute Bill:

Disclosures to Retail Electric Customers.

Each electric utility, except for a small utility, must provide its retail electric customers with an explanation of the utility's policies governing the confidentiality of private, as well as proprietary, customer information, including the circumstances under which the information may be disclosed and the ways in which customers can control access to the information. "Private customer information" includes a retail electric customer's name, address, telephone number, and other personally identifying information. The definition for "proprietary customer information" is expanded to include the technical configuration and destination of the electricity used by a retail electric customer.

Sales of Retail Electric Customers' Information.

An electric utility, including a small utility, may not sell private or proprietary customer information.

Disclosures of Retail Electric Customers' Information.

An electric utility, including a small utility, may not disclose private or proprietary retail electric customer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a retail electric customer who does

not already subscribe to the service or product, unless the utility has first obtained the customer's written or electronic permission.

An electric utility must retain certain information for each instance of a retail electric customer's consent for disclosure of his or her private or proprietary customer information, if provided electronically. A utility may collect and release retail electric customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

Customer permission is not required for the disclosure of private or proprietary customer information by an electric utility to a third party with which the utility has a contract that is directly related to conduct of the utility's business, provided that the contract prohibits the third party from further disclosing any private or proprietary customer information.

A person may not capture, obtain, or disclose private or proprietary customer information for commercial purposes unless the following conditions apply:

- the person receives a retail electric customer's written or electronic permission to capture, obtain, or disclose private or proprietary customer information;
- the customer information is disclosed to an electric utility or third party as necessary to enforce or complete a financial transaction that the retail electric customer required or authorized, provided that the electric utility or third party maintains confidentiality of the customer information and does not further disclose it; or
- the disclosure is required or expressly permitted by a federal or state law.

"Person" means any individual, partnership, corporation, limited liability company, or other organization or commercial entity, other than an electric utility.

Consumer Protection Act.

The following acts are established as unfair or deceptive acts in trade or commerce and an unfair method of competition under the CPA:

- the disclosure or sale of private or proprietary retail electric customer information to an electric utility's affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings, without the customer's written or electronic permission; and
- the capture or disclosure of private or proprietary customer information by a person for commercial purposes, without a retail electric customer's written or electronic permission.

Energy Benchmarking Programs.

Energy benchmarking programs authorized by federal, state, or local laws that are consistent with certain personally identifying information requirements are exempt from the requirements of chapter 19.29A RCW.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on April 20, 2015.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The purpose of this bill is equity and consumer protection. The investor-owned utilities already operate under these rules in Washington Administrative Code. This bill would extend the minimum privacy policy to other electric utilities in order to protect the information of all Washington electric customers. The distribution grid is digitizing and there is a huge amount of customer information becoming available. Electricity usage data is valuable but potentially dangerous for the customer.

(Opposed) None.

Persons Testifying: Representative Smith, prime sponsor; and Dave Warren, Washington Public Utility District Association.

Persons Signed In To Testify But Not Testifying: None.