

SENATE BILL REPORT

SHB 1896

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, March 31, 2015

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: Passed House: 3/05/15, 98-0.

Committee Activity: Energy, Environment & Telecommunications: 3/18/15, 3/25/15, 3/31/15 [DPA].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: Do pass as amended.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; McCoy, Ranking Minority Member; Braun, Brown, Cleveland, Habib, Honeyford and Ranker.

Staff: William Bridges (786-7416)

Background: Proprietary Information of Retail Electric Customers. Except for small utilities, each electric utility must provide its retail electric customers 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 how customers can control access to the information.

Proprietary customer information means the following:

- information relating to the source and amount of electricity used by a retail electric customer;
- a retail electric customer's payment history;
- household data made available by the customer solely by virtue of the utility-customer relationship; and
- information in a retail electric customer's bill.

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.

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.

Private Information of Investor-Owned Electric Utility Customers. The Utilities and Transportation Commission (UTC) prohibits investor-owned electric utilities from disclosing or selling private consumer information to third parties, including a utility's affiliates or subsidiaries, 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 first obtains the customer's written or electronic permission.

Private consumer information includes the following:

- the customer's name, address, telephone number;
- any personally identifying information; and
- information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer that is available to the utility solely by virtue of the customer-utility relationship.

Customer Information Held by Public Utilities Under the Public Records Act (PRA). Under the PRA, all state and local agencies must disclose public records upon request unless the records fall within certain statutory exemptions, such as the following:

- information that would be highly offensive to a reasonable person and is not of legitimate concern to the public; and
- addresses, telephone numbers, electronic contact information, and customer-specific utility usage and billing information in increments less than a billing cycle of the customers of a public utility, excepting disclosure for child support enforcement.

Exemptions under the PRA must be narrowly construed. The PRA recognizes exemptions from public disclosure as provided in other statutes.

Energy Benchmarking Information. The U.S. Environmental Protection Agency's Energy Star portfolio manager provides energy management tools and resources for building and plant owners to track and assess energy and water consumption, performance, and cost information. The program uses a national energy performance rating system as a benchmark to assess a building's efficiency relative to similar buildings nationwide.

In 2009 the Legislature required electric utilities with more than 25,000 customers to maintain energy consumption data for all nonresidential and qualifying public agency buildings to which they provide service. Upon written authorization of a building owner or operator, a qualifying utility must upload all of the energy consumption data to the Energy Star portfolio manager in a form that does not disclose personally identifying information. The property owner or operator of a nonresidential building must disclose energy performance data to prospective buyers, lessees, or lenders.

Consumer Protection Act (CPA). The CPA prohibits unfair and deceptive practices in the marketplace, and may be enforced by the Attorney General of Washington or by private lawsuits. Remedies include injunctive relief, fines, treble damages, and recovery of court costs and attorneys' fees.

Summary of Bill (Recommended Amendments): Requiring Electric Utilities to Disclose Their Policies Concerning Private Customer Information. In addition to the requirements governing proprietary customer information, each electric utility must also provide its retail electric customers an explanation of the utility's policies governing the confidentiality of private customer information. Small utilities continue to be exempt from this requirement.

The definition of private customer information includes a 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.

Prohibiting Electric Utilities from Disclosing or Selling Private or Proprietary Customer Information. An electric utility, including a small utility, may not sell private or proprietary retail electric customer information. In addition, an electric utility, including a small utility, may not disclose private or proprietary retail electric customer information to third parties, including a utility's affiliates or subsidiaries, 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 first obtains the customer's written or electronic permission. Customer permission is not required for a disclosure to a third party under a contract directly related to the utility's business if the contract specifies no further disclosure by the third party. A violation of this provision is a violation of the CPA

An electric utility must retain certain information for each instance of a customer's consent for disclosure, if provided electronically. A utility may insert marketing information into customer bills and may collect and release customer information in aggregate form so long as the information does not allow any specific customer to be identified.

Prohibiting the Capture and Sale of Private or Proprietary Customer Information for a Commercial Purpose. A person may not capture, obtain, or disclose private or proprietary customer information for commercial purposes without the retail electric customer's written or electronic permission.

A person who legally possesses private or proprietary customer information that is captured or obtained for a commercial purpose may not sell, lease, or otherwise disclose the information unless:

- the retail electric customer consents to the disclosure;
- the disclosure is necessary to complete a financial transaction requested by the retail electric customer and the utility or third party keeps the information confidential with specified exceptions; or
- the disclosure is required or expressly permitted by a federal or state statute.

Person means any individual, partnership, corporation, limited liability company, or other organization or commercial entity. A violation of this provision is a violation of the CPA.

Creating an Exception for Energy Benchmarking. Among other things, the act does not apply to energy benchmarking programs authorized by (1) federal law; (2) state law; or (3) local laws that are consistent with the personally identifying information requirements of the state energy benchmarking statute.

EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Amendments): Clarifies that an electric utility may not sell private or proprietary customer information. Clarifies that an electric utility may disclose private or proprietary information to third parties by contract in order to conduct the utility's business provided that the contract prohibits further disclosure of the information. Clarifies that the prohibition against capturing or disclosing private or proprietary customer information for a commercial purpose does not apply to electric utilities. Clarifies that this chapter does not apply to energy benchmarking programs authorized by (1) federal law; (2) state law; or (3) local laws that are consistent with the personally identifying information requirements of the state law concerning energy benchmarking.

Appropriation: None.

Fiscal Note: Available on original bill.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Substitute House Bill: PRO: The bill takes a UTC rule that protects customer information of investor-owned utilities and applies it to all electric utilities by statute. The prime sponsor will work with stakeholders to perfect the bill. The WA Public Utility District Association (WPUDA) supports the prohibition against disclosing private and proprietary customer information to third parties for marketing purposes.

OTHER: This is a sensible bill that needs some small refinements to allow utilities to continue their practice of hiring third-party consultants that use aggregated customer data to evaluate the effectiveness of conservation programs. The UTC supports the bill and will continue to work with stakeholders on any amendments.

Persons Testifying: PRO: Representative Smith, prime sponsor; Dave Warren, WPUDA.

OTHER: Stan Price, NW Energy Efficiency Council; Lauren McCloy, UTC; Rose Feliciano, Seattle City Light.

Persons Signed in to Testify But Not Testifying: No one.