

# HOUSE BILL REPORT

## HB 1697

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### As Reported by House Committee On: Government Operations & Elections

**Title:** An act relating to exempting from disclosure and copying valuable commercial information in records pertaining to solid waste collection companies in possession of the Washington utilities and transportation commission.

**Brief Description:** Exempting from disclosure and copying valuable commercial information in records pertaining to solid waste collection companies in possession of the Washington utilities and transportation commission.

**Sponsors:** Representative Hunt.

#### **Brief History:**

##### **Committee Activity:**

Government Operations & Elections: 2/20/13, 2/21/13 [DPS].

#### **Brief Summary of Substitute Bill**

- Exempts records filed by a solid waste company with the Utilities and Transportation Committee in the context of a tariff filing from disclosure under the Public Records Act.

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### HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Hunt, Chair; Bergquist, Vice Chair; Buys, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Alexander, Carlyle, Fitzgibbon, Kristiansen, Manweller, Orwall and Van De Wege.

**Staff:** Caitlin Forsyth (786-5793) and Jasmine Vasavada (786-7301).

#### **Background:**

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain

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statutory exemptions. Statutory exemptions are provided for certain financial, commercial, and proprietary information.

The Utilities and Transportation Commission (UTC) regulates the rates of all solid waste collection companies operating in the unincorporated area of a county, and some collection companies operating in cities and towns. Solid waste collection companies regulated by the UTC have exclusive authority to operate in areas specified by the UTC. The UTC has access to all accounts, records, and memoranda kept by the solid waste collection companies within its jurisdiction, including the accounts, records, and memoranda of the movement of traffic, sales of product, receipts, and expenditures of money.

In a tariff filing, a solid waste company files records with the UTC and proposes service rates. Some regulated companies also have business activities that are not regulated by the UTC. However, to ensure that the regulated companies are not cross-subsidizing (reporting costs from their nonregulated activities to support higher tariffs for their regulated activities) the UTC also looks at the company's nonregulated activity records. To further investigate for cross-subsidization, the UTC also asks to see records of affiliated interests, which are companies with ownership interests in the regulated companies.

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**Summary of Substitute Bill:**

Records filed with the UTC by a solid waste company in the context of a tariff filing, which concern nonregulated activities or are records of affiliated interests, are exempt from disclosure under the PRA.

**Substitute Bill Compared to Original Bill:**

The substitute bill makes the following changes:

- clarifies that the PRA exemption for solid waste company records filed with the UTC applies to records filed in the context of a tariff filing and which: (1) concern activities not regulated by the UTC; or (2) are records of affiliated interests not regulated by the UTC;
- removes references to contested proceedings and court procedures for determining the confidentiality of the records; and
- moves the PRA exemption to a different section of the PRA, in which exemptions related to the UTC are located.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

### **Staff Summary of Public Testimony:**

(In support) Many solid waste companies regulated by the UTC have been in their communities for over 100 years. It is important to protect these companies by keeping their proprietary records confidential. Companies that provide recycling services should be protected; the recycling rate in this state is much higher than the national average. These companies recognize the responsibility they have to report to the UTC but ask that sensitive commercial information not be subject to public records requests. The UTC has increased reporting requirements over the last decade and it is not fair for these regulated companies to become a clearinghouse for their unregulated competitors. Companies regulated by the UTC are at a severe disadvantage. The state should support fair market competition for these public services.

(In support with amendments) The PRA is one of the only tools nonregulated companies can use to see whether regulated companies are cross-subsidizing and improperly fixing their rates. These records should be more transparent. There are already laws that protect trade secrets and these laws should be enough to protect the regulated companies.

(Opposed) The bill language is too broad. The exemptions should be whittled down to protect only a small universe of records. The UTC-regulated companies operate in many nonregulated competitive areas but still get the protection of the monopolies granted to them by the UTC.

**Persons Testifying:** (In support) Brad Lovaas, Washington Refuse and Recycling Association; Kimberly Shanlen, Waste Management of Washington; and Ann Rendahl, Utilities and Transportation Commission.

(In support with amendments) Rowland Thompson, Allied Daily Newspapers.

(Opposed) John Yeasting, Construction Materials Recycling Association; Troy Lautenbach, Lautenbach Industries; and Arthur West.

**Persons Signed In To Testify But Not Testifying:** None.