

# HOUSE BILL REPORT

## HB 1278

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**As Reported by House Committee On:**  
Environment  
General Government & Information Technology

**Title:** An act relating to building energy use disclosure requirements.

**Brief Description:** Concerning building energy use disclosure requirements.

**Sponsors:** Representatives Fitzgibbon, Dunshee, Farrell, S. Hunt, Peterson, Fey and Tarleton.

**Brief History:**

**Committee Activity:**

Environment: 1/22/15, 2/5/15 [DPS];

General Government & Information Technology: 2/17/15, 2/23/15 [DP2S(w/o sub ENVI)].

**Brief Summary of Second Substitute Bill**

- Requires certain building owners to track the energy use of their buildings and disclose it to the Department of Commerce to be made publicly available.
- Authorizes the Department of Commerce to penalize building owners that fail to disclose required energy use information.
- Requires electric and natural gas utilities serving more than 25,000 customers to maintain and automatically update customer energy use data using a shareable internet-based tool created by the United States Environmental Protection Agency.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Farrell, Fey, Goodman and McBride.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Shea, Ranking Minority Member; Short, Assistant Ranking Minority Member; Harris, Pike and Taylor.

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*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.*

**Staff:** Jacob Lipson (786-7196).

## **Background:**

### Energy Benchmarking Requirements.

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 benchmarking data and ratings for the previous 12 months to prospective buyers, lenders, or renters. There are no penalties specified for noncompliance with disclosure requirements.

### Types of Buildings.

The State Building Code Council periodically updates the State Building Code, which is based on the International Building Code. The State Building Code categorizes buildings based on their functions, including:

- residential buildings, which are divided into several subcategories, including "R-2" buildings such as apartments, hotels, timeshare properties, and fraternities and sororities;
- factory buildings, which include buildings used for assembling, fabricating, manufacturing, packaging, repair, or processing operations; and
- utility and miscellaneous buildings, which include agricultural buildings, aircraft hangers, greenhouses, and sheds.

### Other Relevant Program Context.

On each customer billing statement, investor-owned gas and electric utilities regulated by the Utilities and Transportation Commission must provide information on customers' current month energy usage and a comparison against the energy usage in the same month of the previous year. The Department of Commerce (COM) contains the state energy office, which administers several energy-related state programs.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties made by the COM and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

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## **Summary of Substitute Bill:**

### Utility Requirements Related to Benchmarking.

Electric and gas utilities that serve over 25,000 customers must maintain energy use information for all buildings to which they provide service. Every billing period these utilities must also update and maintain energy use data dating back to January 1, 2016, for most types of buildings or campuses of buildings that exceed 20,000 square feet of temperature-controlled space (covered buildings). The following types of buildings, as defined in the State Building Code, are not covered buildings:

- residential buildings, except for "R-2" buildings with at least five dwelling units;
- factory buildings; and
- utility and miscellaneous buildings.

Beginning January 1, 2017, utilities must automatically upload the energy use data of covered buildings into Portfolio Manager. If a covered building owner requests the building's energy use data, the utility must provide it to the owner.

### Building Owner Requirements Related to Benchmarking.

If all of a covered building's utility service is provided by a utility or utilities that serve over 25,000 customers, the covered building owners must establish a Portfolio Manager account. These covered building owners must also request energy consumption and energy cost data for their buildings. Covered building owners must disclose the previous calendar year's energy use and cost data and benchmark performance ratings for their buildings to prospective lenders, purchasers, and renters. By April 1 of each year, beginning in 2017, building owners must transfer building energy use and benchmarking information to the COM via a sharing instrument in Portfolio Manager.

### Department of Commerce Benchmarking Program Implementation.

The COM is responsible for determining whether covered buildings have met benchmarking and energy use disclosure requirement, and for enforcing disclosure requirements. The COM may issue a notice of violation to a building owner that does not comply with benchmarking and disclosure requirements. If the building owner does not come into compliance within 90 days, the COM may issue a penalty of up to \$500, which may increase to cumulative penalties of \$1,000 after 180 days, \$2,000 after 270 days, and \$4,000 after one year. The COM may issue an additional penalty of up to \$500 if the building owner has previously been served with a notice of violation. Penalties are paid into the State General Fund, and are appealable to the PCHB. The COM may consider technical difficulties in deciding to assess a penalty.

Penalty provisions are phased in to apply to buildings of different sizes as follows:

- Beginning with calendar year 2016 data, penalties may be issued for buildings over 75,000 square feet.
- Beginning with calendar year 2017 data, penalties may be issued for buildings over 50,000 square feet.
- Beginning with calendar year 2018 data, penalties may be issued for buildings over 20,000 square feet.

Using information submitted by building owners, the COM must make available information on building energy use across different cities, counties, and utilities.

The COM may designate a nonprofit organization to assist in energy-benchmarking program implementation and may contract to provide outreach and technical assistance to building owners with higher-than-average energy use or inefficient performance.

Other public entities are allowed to adopt different or additional energy use disclosure requirements than those required by state law, but building owners would still be required to comply with the state law.

**Substitute Bill Compared to Original Bill:**

The requirements that gas and electric utilities provide recent energy use and cost data on bills sent to customers are eliminated. The Department of Commerce, rather than the Department of Ecology, is made the agency responsible for administering the benchmarking program. The minimum size of buildings subject to energy use benchmarking requirements is increased to 20,000 square feet from 10,000 square feet. Benchmarking requirements for buildings that do not exclusively receive utility service from gas or electric utilities serving over 25,000 customers are eliminated. Building energy use information is no longer required to be aggregated prior to public disclosure and is no longer subject to a temporary Public Records Act exemption. The release of building energy use information under the benchmarking program is also declared to not create a cause of action against utilities, owners, or the Department of Commerce. Certain new terms are used to describe the building energy use information that must be disclosed under the act, and the buildings subject to energy benchmarking requirements. Building owners must share energy cost data and building characteristic information with the Department of Commerce. The Department of Commerce is authorized to consider technical difficulties in deciding whether to assess a penalty for noncompliance by a building owner. The requirement for building owners to transfer energy use data to the Department of Commerce is delayed until April 1, 2017.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 9, relating to the jurisdiction of the Pollution Control Hearings Board, which takes effect June 30, 2019.

**Staff Summary of Public Testimony:**

(In support) Utility customers in commercial and residential buildings in Washington spend billions of dollars on energy bills, but don't have context about their overall energy use or access to information about how their energy use compares to others. Benchmarking buildings has been shown to lead to real reductions in energy use and greenhouse gas emissions by influencing the decisions of buyers and renters. Benchmarking is analogous to a miles-per-gallon rating for a car. The 2012 State Energy Strategy recommends that larger buildings benchmark their energy use, and the Portfolio Manager benchmarking tool is easy-to-use. You can't manage or change what you don't measure, and energy benchmarking will

empower customers and change their preferences. This bill will also encourage, but does not require, building owners to invest in energy-efficient renovations and improvements. This will also help the State track progress towards its energy efficiency improvement and greenhouse gas reduction goals. The Department of Commerce is a more appropriate implementing agency than the Department of Ecology. Seattle's benchmarking program is working well, and it has become routine for people buying commercial properties to ask for the energy use information of the buildings they are considering purchasing. Penalty authority is important to the functioning of benchmarking programs: state benchmarking compliance is currently almost nonexistent, while Seattle has almost 100 percent compliance without frequently having to use their penalty authority. The threshold for buildings covered by the bill should be 20,000 square feet, rather than 10,000 square feet.

(Other) The residential billing statement part of this legislation is of at least as much concern as the benchmarking requirements. Utilities use a variety of billing software, and some would have difficulty updating their software to accommodate the required energy use information by the 2016 deadline. These utilities might face hundreds of thousands of dollars of costs, plus ongoing operational cost increases. For certain residential billing statements, utilities would be required to send out a second page on their periodic billing statements. Utilities could be dragged into a legal quagmire in the PCHB by building owners facing penalties for non-compliance, since building owners will have a defense to non-compliance by blaming it on their utility. The Public Records Act exemptions for building energy use data might not line up with what utilities are currently required to make public. The allowance for local governments to enact their own disclosure requirements is written too broadly.

(With concerns) There should be careful thought given to when the owner of a building should be responsible for uploading certain information, as opposed to the utility's account customer. Some information should be updated quarterly, rather than monthly. Since customer consent is currently required before a utility can upload their energy use information into Portfolio Manager, the bill should hold utilities harmless if they share the information required by the bill. Adding information to residential utility bills is a complicated undertaking, and if a second physical piece of paper is needed for the customer bill, it will substantially drive up utility costs.

(Opposed) This bill won't actually create the building energy efficiency increases that it promises. The legal authority of the state to require energy use information is questionable. Nonprofit organizations designated to help with the benchmarking program would not be subject to public disclosure, which is problematic. The 10,000 square foot threshold for building participating in the benchmarking program requires too many small buildings to participate. Utilities would be the more appropriate source of energy use information, rather than placing requirements on building owners.

**Persons Testifying:** (In support) Representative Fitzgibbon, prime sponsor; Hedia Adelman, Department of Ecology; Chuck Murray, Department of Commerce Energy Office; John McCoy, Northwest Energy Coalition; Jennifer N. Brown, Home Performance Washington; Rose Feliciano, Seattle City Light; Stan Price, Northwest Energy Efficiency Council; Graydon Manning, Net-Zero Consulting; and Rebecca Johnson, Climate Solutions.

(Other) Dave Warren, Washington Public Utilities District Association.

(With concerns) Nancy Atwood, Puget Sound Energy.

(Opposed) Chester Baldwin, International Council of Shopping Centers.

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

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment. Signed by 4 members: Representatives Hudgins, Chair; Senn, Vice Chair; Morris and Takko.

**Minority Report:** Do not pass. Signed by 3 members: Representatives MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; McCabe.

**Staff:** Derek Rutter (786-7157).

### **Summary of Recommendation of Committee On General Government & Information Technology Compared to Recommendation of Committee On Environment:**

The second substitute bill authorizes building owners to submit an explanatory comment to the Department of Commerce (COM) to identify variations in their submitted energy data and directs the COM to make those explanatory comments publicly available. It also requires building owners to indicate to the COM if a building is occupied solely by the owner or by a single tenant and if the building's energy use is proprietary commercial activity. The COM is prohibited from publicly disclosing energy information of buildings occupied solely by the owner or by a single tenant when it relates to proprietary commercial activities, unless those data are aggregated with data from other buildings.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 9, relating to jurisdiction of the Pollution Control Hearings Board, which takes effect June 30, 2019.

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

(In support) Continued improvement in building energy use efficiency is an important component of sustainable development and addressing climate change. Tenants, residents, clients, and investors should all have a view into how buildings perform, including how much energy they use. However, building owners must be able to explain any extreme variances in their data through an explanatory note.

The "Energy Efficiency Round Table," which included environmental organizations, cities, and private organizations involved in promoting energy efficiency, helped craft this legislation; it is a high priority this session. It is difficult to manage what is not measured, and this bill will give property owners a tool to measure their energy usage. To be clear, the bill does not require property owners to take any action, but will hopefully inspire them to make improvements once they see where they stand.

This program is similar to Seattle's program, where there is a high rate of compliance, so the state should not expect very much penalty revenue. The goal is to reach out to building owners rather than be in an "enforcement mode." An outreach program has helped the Seattle program reach 99-percent compliance without issuing many fines; 540 buildings were out of compliance in 2013, and only 16 were out of compliance in 2014.

Knowing energy use levels in various buildings will help business owners in making a total cost of occupancy calculation. Current state law requires disclosure, but in contrast to the experience in Seattle, statewide compliance is low. A uniform state program would be helpful for local governments that would otherwise want energy use disclosure rules, and the information made available would help build a market for low-energy development. Further, the recent changes to the bill reduce the fiscal note, and the bill will help create jobs.

(With concerns) Pacific Power supports energy efficiency, but this bill changes the benchmarking system established in 2009 from a cooperative process to a compliance and enforcement-based model with penalties. It is possible, even likely, that a building owner who does not want to participate could switch to another electric provider to which requirements do not apply in order to avoid fines, which are not inconsequential. This would undermine the purpose of the bill. The penalties should be removed, or the requirements should be expanded to include all utilities serving all buildings across the state.

(Opposed) None.

**Persons Testifying:** (In support) Spencer Reeder, Vulcan Real Estate; JJ McCoy, Northwest Energy Coalition; Noah Reandeau, Northwest Energy Efficiency Council; April Putney, King County; Rose Feliciano, Seattle City Light; and Ben Serrurier, Climate Solutions.

(With concerns) Kathleen Collins, Pacific Power.

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