

HOUSE BILL REPORT

HB 2264

As Passed House:
June 28, 2015

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

Brief Description: Amending the statewide minimum privacy policy for disclosure of customer energy use information.

Sponsors: Representatives Smith and Haler.

Brief History:

Committee Activity:

Technology & Economic Development: 6/12/15 [DP].

Third Special Session

Floor Activity:

Passed House: 6/28/15, 97-0.

Brief Summary of Bill

- Requires a consumer-owned utility to implement the Statewide Minimum Privacy Policy for disclosure of customer energy use information through a policy adopted by its governing board within one year.
- Makes disclosure or sale of private or proprietary information by a third party, when prohibited by certain contracts with an electric utility, enforceable under the Consumer Protection Act.
- Removes a provision that made violation by an electric utility of requirements relating to the Statewide Minimum Privacy Policy enforceable under the Consumer Protection Act.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: Do pass. Signed by 10 members: Representatives Morris, Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Magendanz, Nealey, Ryu, Santos, Wylie and Young.

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: Jasmine Vasavada (786-7301).

Background:

The Statewide Minimum Privacy Policy for Disclosure of Customer Energy Use Information. Legislation enacted in the 2015 regular session established the Statewide Minimum Privacy Policy (Privacy Policy) for disclosure of utility customer energy use information.

Effective July 24, 2015:

- an electric utility may not sell private or proprietary retail electric customer information;
- except under limited circumstances, an electric 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;
- customer permission is not required when the utility has a contract with a third party that is directly related to the conduct of the utility's business, if the contract prohibits the third party from further disclosing any private or proprietary customer information to certain other third parties; and
- a person other than an electric utility may not capture, obtain, or disclose private or proprietary customer information for commercial purposes except under limited circumstances.

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

"Private consumer information" includes the customer's name, address, telephone number, and any other personally identifying information.

Enforcement of the Privacy Policy.

Violation of the Privacy Policy is declared an unfair and deceptive act in trade or commerce and an unfair method of competition for purposes of applying the Consumer Protection Act.

Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce directly or indirectly affecting the people of Washington. The CPA allows a person injured by a violation of the act to bring a private cause of action for damages. In addition, the CPA allows the Attorney General (AG) to bring a CPA action in the name of the state or on behalf of persons residing in the state. In an action brought by the AG, the prevailing party may, at the discretion of the court, recover the costs of the action and reasonable attorneys' fees.

The CPA includes express language stating that it does not apply to actions or transactions that are regulated by the Utilities and Transportation Commission (UTC). Therefore, the CPA does not apply to regulated actions of an investor-owned utility. In addition, the CPA has been construed to be inapplicable to actions of municipal corporations, including public

utility districts, on the grounds that actions of such municipal corporations have not been deemed to be actions "in the conduct of trade or commerce."

Disclosure of Private Customer Energy Information by Investor-Owned Utilities.

The 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.

Consumer-Owned Utilities.

"Consumer-owned utility" (COU) means a municipal electric utility, a public utility district, an irrigation district, a cooperative, or a mutual corporation or association, that is engaged in the business of distributing electricity to more than one retail electric customer in the state. The UTC does not have authority to regulate COUs, which are instead primarily regulated by their own governing bodies. The State Auditor's Office has authority to examine the financial affairs of all local governments, including public utility districts and municipal electric utilities, and to audit the compliance of COUs with the Energy Independence Act.

Summary of Bill:

The Statewide Minimum Privacy Policy for Disclosure of Customer Energy Use Information.

An electric utility's authority to disclose private or proprietary customer information to a third party with which the utility has a contract is modified. In addition to prohibiting the third party from further disclosing the customer information, the contract must prohibit the third party from selling the information to a party that is not the utility and not a party to the contract with the utility.

Implementation by Consumer-Owned Utilities.

A consumer-owned utility (COU) must implement the Statewide Minimum Privacy Policy for disclosure of customer energy use information through a policy adopted by its governing board within one year of the effective date of the act. The policy must include provisions ensuring compliance with the statewide minimum privacy policy and must include procedures, consistent with applicable law, for investigation and resolution of complaints by a retail electric customer whose private or proprietary information may have been sold by the COU or disclosed by the utility for the purposes of marketing services or product offerings without the customer's permission.

Consumer Protection Act.

Disclosure or sale of private or proprietary customer information by an electric utility is no longer declared an unfair or deceptive act in trade or commerce and enforceable under the Consumer Protection Act (CPA). Disclosure or sale of private or proprietary customer information by a third party remains enforceable as a CPA violation, if a contract with the utility prohibited the third party from further disclosure or sale of the customer information.

Appropriation: None.

Fiscal Note: Available.

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) This bill is a trailer bill at the request of the Governor's Office that clarifies the process for enforcing the Statewide Minimum Privacy Policy (Privacy Policy). If there is a failure by a governing board of a consumer-owned utility (COU) to take appropriate action upon request by a consumer, Consumer Protection Act enforcement is still available. Changes were made in the Senate that resulted in some redundancy. Consumer-owned utilities have historically not been subject to the Consumer Protection Act. There is always recourse to the governing boards, who are elected officials. The State Auditor's Office would be able to enforce the Privacy Policy if there was a violation by a COU.

(Opposed) None.

(Information only) The Attorney General's Office worked with the sponsor on this language.

Persons Testifying: (In support) Representative Smith, prime sponsor; and Dave Warren, Washington Public Utilities District Association.

(Information only) Mike Webb, Office of the Attorney General.

Persons Signed In To Testify But Not Testifying: None.