

SENATE BILL REPORT

SB 6545

As Passed Senate, February 17, 2004

Title: An act relating to the treatment of confidential and proprietary information filed with the utilities and transportation commission and the attorney general.

Brief Description: Exempting from public disclosure certain records filed with the utilities and transportation commission.

Sponsors: Senators Schmidt, Eide and Esser.

Brief History:

Committee Activity: Technology & Communications: 1/29/04, 2/2/04 [DP].
Passed Senate: 2/17/04, 39-8.

SENATE COMMITTEE ON TECHNOLOGY & COMMUNICATIONS

Majority Report: Do pass.

Signed by Senators Schmidt, Chair; Esser, Vice Chair; Berkey, Eide, McCaslin, Poulsen and Stevens.

Staff: William Bridges (786-7424)

Background: The Public Disclosure Act was passed by initiative in 1972. Under the act, all public records are subject to disclosure unless specifically exempt. The act requires all exemptions to be narrowly construed; accordingly, a government agency claiming an exemption bears the burden of proving that a requested record is within the scope of the claimed exemption.

Commercial information filed with Washington Utilities and Transportation Commission (WUTC) or the Attorney General may be exempt from public disclosure, either through a commission proceeding or by court order.

The process for seeking protective court orders is established in the Public Disclosure Act and a related statute concerning WUTC records. When submitting information to the WUTC or Attorney General, persons must designate which records or portions of records contain "valuable commercial information." Valuable commercial information is not subject to disclosure if the following events have occurred: (1) the persons directly affected by the information have been given notice of the records request; and (2) the persons have obtained a protective court order within ten days of the notice. In granting the order, a court must determine that the information is confidential and that disclosure would result in private loss, which includes an unfair competitive advantage.

Summary of Bill: The Public Disclosure Act and a related statute, which governs protective court orders for records submitted to the WUTC, are revised. If the WUTC receives a request for records that contain valuable commercial information, the owner of the information must

be notified of the request. Within ten business days of receiving the notice, the owner of the information must provide a written statement of the continuing need for confidentiality, which must be provided to the requester. After receiving this notice, the WUTC and the Attorney General must continue to exempt the information from disclosure.

If the requester of information seeks a court order to compel disclosure, the owner of the information must be joined as a party to that action. The requester must demonstrate the following to the court: (1) actual and pressing need to obtain the information; and (2) that the release of the information is in the public interest. The court shall not order the release of the information without a specific finding that the release will not produce undue hardship on the owner of the information. Under appropriate circumstances, the court may issue an order allowing the release of the information to the requester with restrictions.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Regulated industries are required to file sensitive proprietary information with the WUTC. While the commission can protect such information from other parties in a proceeding, that protection does not extend to the general public. Therefore, anybody can walk in off the street and request confidential information, which forces companies to spend time and money to stop the disclosure. This bill shares the cost of protecting confidential information with those who are seeking it; for example, Comcast recently expended a large amount of time and money to stop the disclosure, to a member of the public, data which contained the names, phone numbers, and account numbers of more than 140 customers.

Testimony Against: The existing process for treating confidential records is fair and promotes open government. The industry won its most recent to protect confidential information. This bill is designed to deal with cases that seldom arise. And when they do arise, elected judges are best equipped to decide what the public has a right to see. The bill switches the burden for protecting information from big companies to public citizens. While portions of this bill may be based on a current Department of Health exemption, that exemption is designed to protect very sensitive medical records, which is not the case with records filed with the WUTC.

Testified: Glenn Blackmon, WUTC (con); Terrence Stapleton, Wash. Independent Telephone Ass'n (pro); Mary Taylor, AT&T (pro); Rowland Thompson, Allied Daily Newspapers of Wash. (con); Rhonda Weaver, Comcast (pro); Steve Wehrly, MCI (pro).