

CONCURRENCE IN SENATE AMENDMENTS

AB 2788 (Gloria and Gabriel)

As Amended August 25, 2020

Majority vote

SUMMARY:

This measure requires immigration authorities to obtain a court-ordered subpoena or judicial warrant to gain access to a customer's electrical and gas consumption data.

Major Provisions

Specifically, this bill mandates that electrical corporations, gas corporations and local publicly owned electric utility shall not share, disclose, or otherwise make accessible to any immigration authority a customer's electrical or gas consumption data without a court-ordered subpoena or judicial warrant.

The Senate Amendments:

Senate amendments were limited to adding the following coauthors: Assembly Member Gabriel, Assembly Member Carrillo and Senator Rubio.

COMMENTS:

Privacy of Customer Utility Data – State law mandates the privacy of utility customer's data. Consistent with that mandate, the California Public Utilities Commission (CPUC) rules prohibit the investor-owned utilities, as well as third party contractors, from releasing meter usage data to any third party without the affirmative and separate consent of the customer for each request unless the party making the request possesses a subpoena issued by a court. Customer consent may be verified through an electronic signature authorization process pursuant to the Uniform Electronic Transactions Act of California. Local publicly owned electric utilities are also subject to the limitations associated with the release of their customer's utility data as provided in existing law and under the provisions of this measure.

Annual Report – Utilities under the CPUC's jurisdiction must annually report to the CPUC the number of demands received for disclosure of customer data pursuant to a legal process and the number of customers whose records were disclosed. These transparency reports have revealed that Immigration and Customs Enforcement (ICE) is requesting and receiving utility data of number of customers. Upon reviewing these transparency reports, the American Civil Liberties Union (ACLU) highlighted that a single utility received the largest number of data demands by far and handed over the records of 4,062 customers in a single year. Under existing law, ICE may issue its own administrative subpoenas to gain access to utility data without first securing judicial or court order subpoenas.

Utility Data – In 2019, the 9th Circuit case (*United States v. California*, 9th Cir. 2019 (<https://law.justia.com/cases/federal/appellate-courts/ca9/18-16496/18-16496-2019-04-18.html>)) allowed the state to restrict access to information as long as it is not immigration status information. Utility ratepayer information, like consumption data, is not direct evidence of a customer's immigration status. Further, this decision also left intact the provisions of SB 54 (De Leon), Chapter 495, Statutes of 2017 which relate to restrictions on law enforcement sharing information with immigration authorities. Utility data can reveal information about where a person lives, the number of people in a household, and when individuals are home.

There is nothing inherent in a utility customer's energy and gas usage data that indicates their immigration status. The State is allowed to regulate the disclosure of utility customers' consumption data because it is not an infringement on immigration enforcement activities. The provisions of AB this bill establish the requirement that immigration authorities must have a court-ordered subpoena or judicial warrant in order to receive a customer's electrical or gas consumption data. This bill does not prohibit access to utility data, rather it allows immigration officials access to this data via judicial warrant or court-ordered subpoena. In so doing, this measure further protects customers' private electrical and gas consumption data.

According to the Author:

AB 2788 increases privacy protections for customer electric and gas consumption data. Smart meters give customers, and utilities, a snapshot of their energy usage throughout the day. They allow customers to have greater control of their usage and allow utilities to incentivize different energy behavior via time of day energy rates. Smart meters typically take hourly recordings of energy usage that is communicated to the utility who can then share it with their customers. This data could be used to determine where a person lives, the number of people in a household, and their comings and goings. The disclosure reports from large energy utilities have shown disturbing trends in the release of private meter data. Immigration and Customs Enforcement (ICE) has made significant requests for account information and has obtained the data through an administrative subpoena process. Undocumented immigrants are especially vulnerable to these disclosures since through them ICE can learn a person's typical routine. Strengthening privacy protections for smart meter data builds on California's commitment to protecting our immigrant communities.

Arguments in Support:

American Civil Liberties Union: "AB 2788 expands on California's existing protections for this data by requiring a court-ordered subpoena or judicial warrant prior to its disclosure to immigration authorities. In doing so, it protects the most vulnerable residents from unregulated disclosure of their sensitive personal information for purposes against their interests, while reinforcing the importance of personal privacy for all Californians. For all of these reasons, the ACLU of California supports AB 2788."

Arguments in Opposition:

There is no registered opposition to this bill.

FISCAL COMMENTS:

This bill is keyed non-fiscal by the Legislative Counsel.

VOTES:**ASM UTILITIES AND ENERGY: 13-0-2**

YES: Holden, Friedman, Carrillo, Cunningham, Eggman, Cristina Garcia, Eduardo Garcia, Mayes, Muratsuchi, Wood, Reyes, Santiago, Ting

ABS, ABST OR NV: Patterson, Chen

ASSEMBLY FLOOR: 62-0-17

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooley, Cooper, Cunningham, Daly, Eggman, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Lackey, Levine, Limón, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Nazarian, O'Donnell, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Bigelow, Brough, Chen, Choi, Megan Dahle, Diep, Flora, Fong, Gallagher, Kiley, Mathis, Muratsuchi, Obernolte, Patterson, Quirk, Voepel, Waldron

SENATE FLOOR: 31-0-9

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Bates, Borgeas, Chang, Dahle, Grove, Jones, Melendez, Moorlach, Morrell

UPDATED:

VERSION: August 25, 2020

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