



# IMT-RAP Model Utility Data Access Law (Annotated)



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## Introduction and Statement of Purpose

Collecting and analyzing baseline energy consumption data can catalyze improved building performance and deliver additional benefits including utility cost savings, increased building asset values, local job creation, improved indoor air quality, greater occupant comfort and productivity, and improved outdoor air quality from reduced building and power plant emissions. Building owners may use newly-accessed energy use data to benchmark their buildings' efficiency.<sup>1</sup> Such benchmarking is required to qualify for certain federal<sup>2</sup> and other incentives to modernize buildings.

When tenants receive bills directly from utilities, building owners do not have access to tenants' utility consumption data, and are therefore unable to accurately benchmark the performance of their buildings. This problem is the status quo for multi-tenant buildings like offices, multi-family housing, and warehouses. This model law addresses the problem by providing a clear process and authorization for utilities to provide whole-building energy consumption data to building owners, owners' agents, and building operators.

Customer privacy is protected by aggregating this data at a reasonable threshold, based on the number of unique tenants within a building. Over 70 utilities in the U.S. currently provide to their customers streamlined access to aggregate whole-building energy data.<sup>3</sup> Utilities benefit from having this aggregate data as they are able to better understand the characteristics and energy performance of the buildings they serve, enabling more targeted identification of energy savings and demand management opportunities.

Several states—including Colorado, Washington, Minnesota, New Jersey, Maryland, and California—have passed legislation requiring utilities to provide building owners with aggregated energy consumption data.<sup>4</sup> The language included here was developed using content from

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<sup>1</sup> To identify opportunities to save energy, hundreds of thousands of owners across the U.S. regularly benchmark the energy efficiency of their buildings by using benchmarking software and inputting data regarding their buildings' characteristics, operations, and energy usage. Benchmarking is inexpensive and yields excellent returns on investment to individual ratepayers and to society. However, in order to accurately benchmark, building operators must have access to data for all utility consumption within the building.

<sup>2</sup> Several federal incentives are based on measured performance, including the 179D Commercial Buildings Energy-Efficiency Tax Deduction, the \$4.3 billion Home Efficiency Rebates program, the \$2 billion Green and Resilient Retrofit Program for affordable housing, and preferential mortgage terms for qualifying energy efficient housing through the Federal Housing Administration, Fannie Mae, and Freddie Mac.

<sup>3</sup> [Map showing utilities that offer whole-building energy data](#) in the United States. As of 2023, at least 70,000 commercial and multifamily properties across the U.S. are receiving energy consumption data from their utility providers

<sup>4</sup> In addition, several local jurisdictions have passed laws impacting access to data from municipal utilities or have engaged in regulatory proceedings at the state level.

those laws, and modified based on best practices and lessons learned including from utilities that have implemented data access solutions.

The intent of this model law is to demonstrate how states (and local governments with municipal utilities) can enable authorized recipients to access buildings' energy consumption data. With aggregated whole-building data, owners of multi-tenant buildings can measure energy use, enabling them to identify and invest in improvements that will secure a broad array of benefits for themselves, their tenants, and state economies. This law also empowers homeowners and other utility account holders with improved access for themselves and their authorized third parties to their utility consumption data, saving them time and money and creating new markets for innovative services delivered to those account holders.

Drawing on best practice experience in several jurisdictions, this law gives the utility regulator responsibility for implementation. The regulator should refer to best practices and recommendations for implementation.<sup>5</sup> Robust stakeholder engagement at the regulatory level helps to ensure regulations meet the unique needs of each jurisdiction and its communities.<sup>6</sup>

## How to read this model law

Throughout this document, the reader will find italicized discussion sections explaining the purpose of certain provisions and definitions and, in some cases, suggesting alternative language. States should not include these discussion sections in their laws. Here [is a version of this law without the discussion](#).

IMT uses brackets to indicate values that states should customize. For example, readers will see [DATE] to indicate a place where the jurisdiction should fill in the appropriate date. In other places, IMT suggests a value that governments can choose to adopt or modify as appropriate. For example, the definition of AGGREGATION THRESHOLD suggests a threshold of [THREE] or more non-residential QUALIFIED ACCOUNTS. States may choose to use this threshold [THREE] or to change it as they and their stakeholders see fit. Throughout the law, IMT designates defined terms with all capital letters.

## Findings:

- (a) The Legislature finds and declares that optimizing energy use through whole-building utility data access is in the public interest because it provides consumers, building owners, utilities, and states with significant economic benefits. The Legislature further finds the following:

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<sup>5</sup> [Key Recommendations for Utilities Providing Whole-Building Aggregated Energy Consumption Data](#)

<sup>6</sup> Public Utility Commission Stakeholder Engagement: A Decision-Making Framework (2021) <https://pubs.naruc.org/pub/7A519871-155D-0A36-3117-96A8D0ECB5DA>

- (1) Implementing building energy use data access legislation catalyzes the development of a strong market for building energy services which will positively impact [state's] economy through significant job growth; and
- (2) Improving the energy use efficiency of the existing building stock is a key strategy to help preserve the affordability of rental housing; and
- (3) Energy use reductions stemming from data access can result in direct cost savings to customers and in peak load reductions that benefit all ratepayers; and
- (4) Data access programs allow utilities to maximize the value of their energy use efficiency portfolio by engaging customers and directing them to energy efficiency programs and by enabling utilities to target low-performing buildings; and
- (5) Implementing building data access enables building owners in [state] to qualify for certain federal and other incentives to help them improve their assets; and
- (6) Energy use data access is the foundation of a successful efficiency strategy and enables building owners to track energy use performance over time, set performance goals, and justify cost-effective energy use upgrades; and
- (7) Absent whole-building energy use data access legislation, building owners lack an efficient, defined process to obtain energy performance of their buildings in a manner that protects consumer confidentiality.

## **Sec. 1. Definitions**

***Discussion:** Each jurisdiction should endeavor to align definitions with those already used in the jurisdiction's laws and rules.*

For the purposes of this section, the following terms have the meanings given.

- (a) **ACCOUNT HOLDER(S)** means the person or entity authorized to access or modify utility account details. Account holder may also be referred to as the "customer."
- (b) **AGGREGATED USAGE DATA** means an aggregation of COVERED USAGE DATA, where all data associated with a QUALIFIED BUILDING or QUALIFIED PROPERTY including, but not limited to, data from tenant meters and from owner meters are combined into one collective data point per UTILITY DATA TYPE, per time period, and where any unique identifiers or other personal information are removed or dissociated from individual meter data. The utility shall provide all necessary data points for QUALIFIED DATA RECIPIENTS to comply with reporting requirements to which they are subject, including any such data that the utility possesses.

***Discussion:** As noted above, AGGREGATED USAGE DATA is the quantity resulting from the aggregation of utility consumption into a single value that effectively removes or mitigates the risk of re-identification of the consumption data of any individual entity.*

*AGGREGATED USAGE DATA should reflect any data the utility possesses regarding onsite energy production including the amount of electricity sold back to the utility. Whenever the utility has the necessary data, AGGREGATED USAGE DATA should capture total (gross) grid electricity consumption, rather than net (or net-metered) consumption. Combining data into a single “net consumption” value prevents the recipient from differentiating between the amount of grid electricity versus onsite renewable electricity that was used in the operation of the property, and therefore may prevent the calculation of accurate performance metrics. Without the needed data, recipients will not have an accurate and complete accounting of their energy and emissions performance.*

(c) **AGGREGATION THRESHOLD** means [THREE] or more unique non-residential **QUALIFIED ACCOUNTS** or [FIVE] or more unique **QUALIFIED ACCOUNTS** of a PROPERTY or building during the period for which data is requested.

***Discussion:** The aggregation threshold is intended to define the level at which, once COVERED USAGE DATA has been aggregated into AGGREGATED USAGE DATA, the risk of re-identification of the usage associated with any individual account has been removed or acceptably mitigated. The majority of utilities offering data access solutions are using an AGGREGATION THRESHOLD in the range of 2 to 5 accounts, which aligns with prior studies examining data access (for building owners) and data privacy (for individual tenants).<sup>7</sup>*

*If a property does not meet the AGGREGATION THRESHOLD, then the utility will require authorization from the account holder prior to sharing the account holder’s data. The AGGREGATION THRESHOLD should be aligned with any reporting requirements to which QUALIFIED DATA RECIPIENTS are subject.*

*Buildings or properties that contain no residences are subject to the [THREE] threshold. Buildings or properties that include one or more residences are subject to the [FIVE] threshold.*

(d) **BENCHMARKING TOOL** means the ENERGY STAR Portfolio Manager web-based tool, or any prudent and cost effective alternative system or tool approved by the COMMISSION that (1) enables the periodic entry of a building's energy use data and other descriptive information about a building, and (2) rates a building's energy efficiency against that of comparable buildings nationwide.

***Discussion:** States may instead refer to any alternative system or tool that rates the performance of a qualifying building in relation to similar buildings and accounts for the impacts of year-to-year weather variations, building size, location, and several operating characteristics, if the state determines it is a prudent and cost-effective alternative.*

(e) **COMMISSION or AGENCY** means the “Public Utilities Commission,” “Public Service Commission” or other body hereby granted regulatory authority over UTILITIES.

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<sup>7</sup> [Briefing Document: Statistical Analysis of Data Access and Privacy](#)

**Discussion:** *Where states use an alternative name for the body that regulates investor owned electric and gas utilities, then states should adopt that name.*

*Where a COMMISSION does not have the authority to regulate a qualified utility (e.g., in cases involving a cooperative or municipal utility), then states should add additional provisions in this law identifying the relevant governing body for those utility types (e.g., the duly authorized governing authority of a municipally owned electric utility or the board of a cooperative utility), and any other modifications necessary herein to make this law applicable to those utility types.*

*Where more than one agency or body has regulatory oversight over qualified utilities, this law should designate one commission or agency (e.g., the state energy office) as the lead agency, enabling it to take action in consultation with the other agencies. "In consultation with" means that the lead agency cannot issue a determination before other affected agencies have the opportunity to provide written comment. In most cases, IMT recommends that this law name as the implementing agency, the commission or agency that already regulates the most QUALIFIED UTILITIES.*

*Wherever the authority lies, states should ensure that the relevant agency provides clear guidance and a path to recovery of reasonable costs.*

*For simplicity, this document uses the term "COMMISSION" throughout.*

- (f) **COVERED USAGE DATA** means electric, gas, DISTRICT ENERGY, water, or fuel delivery data collected from one or more UTILITY meters that reflects the quantity and time period of UTILITY usage in the building, PROPERTY or portion thereof.
- (g) **DATA RECIPIENT(S)** means any of the following:
  - (1) An owner of the PROPERTY or building;
  - (2) An owner of a portion of a PROPERTY with regard to COVERED USAGE DATA only for the UTILITY consumption it or its tenants (if any) pay for and consume in the owned portion;
  - (3) A tenant with regard to COVERED USAGE DATA only for the UTILITY consumption it or its subtenants (if any) pay for and consume in the space leased by the tenant;
  - (4) The board in the case of a condominium or cooperative ownership of the PROPERTY or building; or
  - (5) An agent authorized to receive the COVERED USAGE DATA by any of the above.
- (h) **DISTRICT ENERGY** means steam, hot water, chilled water, and other heat and/or heat rejection services delivered through fixed pipes to multiple properties.
- (i) **QUALIFIED ACCOUNT(S)** means a UTILITY account that serves some or all of a building or PROPERTY for which COVERED USAGE DATA is requested and that—as affirmed by the DATA RECIPIENT—was not controlled by the DATA RECIPIENT or its subsidiary during the time period for which COVERED USAGE DATA is requested.

- (j) **PROPERTY** means any of the following:
- (1) A single tax parcel;
  - (2) Two or more tax parcels held in the cooperative or condominium form of ownership and governed by a single board of managers
  - (3) Two or more co-located tax parcels owned or controlled by the same entity.
- (k) **QUALIFIED BUILDING** means a building that meets the AGGREGATION THRESHOLD.
- (l) **QUALIFIED DATA RECIPIENT(S)** means DATA RECIPIENT(S) with respect to a QUALIFIED PROPERTY or QUALIFIED BUILDING:

*Discussion: Only QUALIFIED DATA RECIPIENTS may request whole-building utility consumption data referred to here as "AGGREGATED USAGE DATA".*

- (m) **QUALIFIED PROPERTY** means a PROPERTY that meets the AGGREGATION THRESHOLD.
- (n) **QUALIFIED UTILITY(IES)** means a LARGE QUALIFIED UTILITY, a MEDIUM QUALIFIED UTILITY, or a SMALL QUALIFIED UTILITY, which are defined as follows:
- (1) **LARGE QUALIFIED UTILITY** means a UTILITY that 1) has [100,000] or more active accounts, customers, or commercial or industrial service connections in the state or that 2) has more than [50] active accounts, customers, or commercial or industrial service connections in the state and has over [\$500,000,000] in annual revenue from within the state.
  - (2) **MEDIUM QUALIFIED UTILITY** means a UTILITY that does not qualify as a LARGE QUALIFIED UTILITY and 1) has [10,000] or more active accounts, customers, or commercial or industrial service connections in the state or that 2) has more than [50] active accounts, customers, or commercial or industrial service connections in the state and has [\$40,000,000-\$500,000,000] in annual revenue from within the state.
  - (3) **SMALL QUALIFIED UTILITY** means a UTILITY that that does not qualify as a MEDIUM or LARGE QUALIFIED UTILITY and has 1) more than [1,000] active accounts, customers, or commercial or industrial service connections in the state or 2) has more than [20] active accounts, customers, or commercial or industrial service connections in the state and has more than [\$10,000,000] in annual revenue from within the state.

*Discussion: Large utilities have more resources to make information technology improvements and serve more customers that will benefit from data. Accordingly, this law requires large utilities to move faster to make system improvements to provide data.*

- (o) **UTILITY** means a company, cooperative, association, or government entity that distributes and sells electricity, natural gas, delivered fuel (fuel oil, propane, kerosene, and coal), or DISTRICT ENERGY for use in buildings.



**Discussion:** Where possible, use instead a definition of “utility” that has already been established in your state. The definition of utility should include any entity that should be required to provide data pursuant to this Act, including DISTRICT ENERGY providers, cooperatives, municipal utilities, and other entities that may not be regulated by the COMMISSION.

Consumer-owned utilities serve about 25% of the U.S. population, including cities and many large rural areas. These utilities include city-owned or municipal utilities governed by the city council or an elected commission. They also include public utility districts, which are utility-only government agencies, governed by a board elected by voters in the service territory, and cooperatives, which are private nonprofit entities governed by a board elected by the customers of the utility.<sup>8</sup> Municipal and cooperative utilities are typically exempted from Public Utility Commission regulation or have exemptions from other state laws because they are locally governed. States may legislatively require or encourage municipal utilities or cooperative utilities to undertake similar policies to investor owned utilities, but states may need to take alternative steps to enact this requirement depending on the statutory requirement in each state.

The inclusion of delivered fuel providers in this definition suggests regulating a part of the energy sector that is not traditionally regulated by utility regulators. States may consider removing this if it does not work for the regulatory framework or if there is little or no delivered fuel use in buildings.

(p) **UTILITY DATA TYPE** means one of four types: electric, gas, DISTRICT ENERGY, or fuel delivery.

## **Sec. 2. Utility data access**

(a) Within [90 DAYS] of passage of this law, the COMMISSION shall open a proceeding and establish, by rule or order, consistent with the state’s administrative procedures act or other relevant rules and the requirements of section 2(c), procedures to implement the requirements of Section 2 of this Act. The COMMISSION shall consider industry best practices in developing the implementing rules or order. The governing authority of a public utility district, municipally-owned utility formed under [chapter of state law], or cooperative utility may adopt a rule or regulations promulgated by the COMMISSION.

(b) The COMMISSION shall enact procedures whereby:

- (1) UTILITIES shall retain all consumption data for a period of not less than [TWO YEARS].
- (2) QUALIFIED UTILITIES shall retain monthly consumption data used for billing for a period of not less than [15 YEARS].

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<sup>8</sup> Lazar, J. (2016). Electricity regulation in the US: A guide (2nd edition). Regulatory Assistance Project. <https://www.raponline.org/knowledge-center/electricity-regulation-in-the-us-a-guide-2/>

- (3) UTILITY shall honor an ACCOUNT HOLDER's request to transmit the ACCOUNT HOLDER's COVERED USAGE DATA held by the UTILITY to any entity designated by the ACCOUNT HOLDER.
  - (4) A QUALIFIED DATA RECIPIENT with respect to a QUALIFIED BUILDING or a QUALIFIED PROPERTY may request that a QUALIFIED UTILITY provide AGGREGATED USAGE DATA for the QUALIFIED BUILDING or the QUALIFIED PROPERTY. AGGREGATED USAGE DATA shall include identifiers of all meters associated with the aggregate data and any other information needed for data quality assurance.
  - (5) UTILITIES shall deliver data requested under this subsection according to schedules set by the COMMISSION.
  - (6) The ACCOUNT HOLDER request process and UTILITY delivery of requested data shall be convenient and secure.
- (c) Within [100 DAYS] of opening a data access proceeding as described in Section 2(b) of this Act, the COMMISSION shall initiate or participate in a stakeholder process to inform its fulfillment of the requirements described in that section. The COMMISSION stakeholder process shall:
- (1) Be completed in no more than [18] months;
  - (2) Include stakeholder workshops organized and facilitated in a way that encourages representation from diverse stakeholders and ensures equitable opportunities for participation. Stakeholders shall not need formal intervention or legal representation to participate in the workshops;
  - (3) Include opportunities for dialogue and written comments;
  - (4) Allow stakeholder responses to a straw proposal drafted by COMMISSION staff or other stakeholders, as appropriate;
- (d) For purposes of this Act, stakeholders include but are not limited to: UTILITIES, DATA RECIPIENTS, tenants, environmental groups, consumer advocates, tenant advocates, housing advocates, local communities, and other interested members of the public.
- (e) Notwithstanding any other law, AGGREGATED USAGE DATA shall not be deemed customer utility usage information, personally identifiable information, critical energy infrastructure information, or confidential information and shall not be subject to protections as such.
- (f) Any COVERED USAGE DATA that a UTILITY provides to a DATA RECIPIENT pursuant to this subdivision must:
- (1) be available to be requested online and in printable paper form. Non-qualified UTILITIES may provide only paper request forms upon showing of hardship. A UTILITY's validation of the requestor's identity shall be consistent with, and no more onerous than, the UTILITY's then-current practices;
  - (2) be provided to the DATA RECIPIENT in a timeframe, frequency, and format and be delivered by a method as may be determined by the COMMISSION.

**Discussion:** 2(f) applies to all utilities, including very small utilities, and does not require aggregation of data. 2(g) does not apply to very small utilities and lays out additional data access services to be provided, including aggregation of utility usage data.

- (g) Any COVERED USAGE DATA that a QUALIFIED UTILITY provides to a DATA RECIPIENT pursuant to Section 2 of this Act must:
- (1) be provided to the DATA RECIPIENT
    - (A) Within [90] days after receiving the DATA RECIPIENT's valid written or electronic request if the request is received within [ONE YEAR] of passage of this law;
    - (B) Within [30] days after receiving the DATA RECIPIENT's valid written or electronic request if the request is received more than [ONE YEAR] after passage of this law;
  - (2) subject to Subsections 2(n) and 2(o) of this Act, include at least the most recent 48 consecutive months of COVERED USAGE DATA prior to the initial date the data was requested, regardless of whether the DATA RECIPIENT had a business relationship with the building or PROPERTY during that time period;
  - (3) include all necessary data points for DATA RECIPIENTS to comply with reporting requirements to which they are subject, including any such data that the utility possesses;
  - (4) be directly uploaded to the DATA RECIPIENT's BENCHMARKING TOOL account, delivered in a spreadsheet in a standard format consistent with the BENCHMARKING TOOL, or delivered in another format approved by the COMMISSION, depending on utility size per 2(h) below;
  - (5) be provided to the DATA RECIPIENT according to a schedule set by the COMMISSION, but no less than monthly;
  - (6) be provided until the DATA RECIPIENT revokes the request for usage data or is no longer a DATA RECIPIENT or is no longer a QUALIFIED DATA RECIPIENT with respect to AGGREGATED USAGE DATA;
  - (7) be accompanied by a list of all meters associated with the COVERED USAGE DATA including but not limited to AGGREGATED USAGE DATA and shall be accompanied by any other information the COMMISSION deems necessary including for data quality assurance.
  - (8) be provided at no cost to the DATA RECIPIENT.

**Discussion:** Based on feedback from stakeholders, (9) above could be struck, allowing for a fee-for-service model. The rationale for allowing 90 days to provide data within the first year that the utility is implementing this service is that 90 days should provide sufficient time for the manual provision of data. Shortening the provision time to 30 days in 2(g)(B) reflects the ability of a utility to provide this data automatically after one year once the utility has its systems in place.

- (h) The COMMISSION shall direct that COVERED USAGE DATA shall be delivered to the DATA RECIPIENT in the following formats and timelines:

- (1) No later than [DATE], a LARGE QUALIFIED UTILITY shall provide requested data by direct upload to the DATA RECIPIENT's BENCHMARKING TOOL account, or, at the DATA RECIPIENT's request, send the data using a spreadsheet in a standard format consistent with BENCHMARKING TOOL.
- (2) No later than [DATE], a MEDIUM QUALIFIED UTILITY shall provide data requested by a DATA RECIPIENT using a spreadsheet in a standard format consistent with BENCHMARKING TOOL. No later than [TWO YEARS] after first receiving a request for AGGREGATED USAGE DATA, a MEDIUM QUALIFIED UTILITY shall provide the data by direct upload to the DATA RECIPIENT's BENCHMARKING TOOL account, or, at the DATA RECIPIENT's request, send the data using a spreadsheet in a standard format consistent with BENCHMARKING TOOL.
- (3) No later than [DATE], a SMALL QUALIFIED UTILITY shall provide data requested by a DATA RECIPIENT using a spreadsheet in a standard format consistent with BENCHMARKING TOOL at the DATA RECIPIENT's request.

**Discussion:** *Alternatively, if the goal is to keep this portion of the law shorter and/or to provide greater discretion to the COMMISSION, the above subsection could be replaced with this sentence: "The COMMISSION shall issue rules and deadlines for large, medium, and small utilities, whereby larger utilities will be required to move more quickly."*

- (i) To ensure the validity and usefulness of COVERED USAGE DATA, the UTILITY shall provide the best available consumption and other information, consistent with the UTILITY's records as presented to the ACCOUNT HOLDER on the UTILITY's customer portal and on the ACCOUNT HOLDER's bills.
- (j) The COMMISSION shall by [DATE] establish by rule or order procedures for DATA RECIPIENTS to request and receive timely revisions correcting erroneous COVERED USAGE DATA.
- (k) Once COVERED USAGE DATA has been entered into the BENCHMARKING TOOL, such data may not be deleted or altered by utility systems, except as is necessary to correct errors or reflect re-bills. Whenever previously provided COVERED USAGE DATA is changed to correct errors, notification must be provided to the DATA RECIPIENT.

**Discussion:** *This ensures that changes to data are not made without notice to affected parties.. It is important to note that any update/correction to an individual consumption value that was included in the aggregation of AGGREGATED USAGE DATA should result in an update/correction to the corresponding value(s) for the AGGREGATED USAGE DATA.*

- (l) The COMMISSION shall within [90 DAYS] of passage of this law adopt a standard form for UTILITY ACCOUNT HOLDERS to authorize the sharing of their COVERED USAGE DATA.

- (m) For PROPERTIES that do not meet the AGGREGATION THRESHOLD and therefore require ACCOUNT HOLDER authorization, the UTILITY shall provide COVERED USAGE DATA to DATA RECIPIENTS upon ACCOUNT HOLDER authorization, which:
- (1) may be provided in COMMISSION-approved form;
  - (2) may be provided in a lease agreement provision; and
  - (3) remains valid until the ACCOUNT HOLDER revokes it, regardless of how the authorization is provided.

***Discussion:*** *This provision applies to owners that occupy their own buildings and to owners and tenants of single--tenant buildings and of many multi-tenant buildings.*

- (n) Pursuant to section 2 of this Act, the UTILITY shall provide to a DATA RECIPIENT unaggregated data regarding usage by an ACCOUNT HOLDER that has vacated the PROPERTY unless the ACCOUNT HOLDER has explicitly notified the UTILITY that the ACCOUNT HOLDER forbids the sharing of such data.
- (o) QUALIFIED ACCOUNT holders shall not be entitled to forbid the sharing of AGGREGATED USAGE DATA with QUALIFIED DATA RECIPIENTS except upon a showing that aggregation of data would present a proximate and foreseeable threat to national security and where each such showing is deemed credible by the COMMISSION.
- (p) Access to COVERED USAGE DATA under this section shall be subject to any rules and regulations the COMMISSION has adopted or may choose to adopt, where the rules do not conflict with this section.
- (q) Except in cases where the UTILITY has not followed processes established by this law or the UTILITY is grossly negligent, the UTILITY shall be held harmless for third-party misuse of data shared pursuant to this law and no cause of action may be initiated against the UTILITY for such subsequent misuse.
- (r) Prior to filing for cost recovery, QUALIFIED UTILITIES must first demonstrate good faith efforts to secure federal, state, or other relevant funding options. Thereafter, QUALIFIED UTILITIES may file for cost recovery of the reasonable and prudently-incurred costs of providing COVERED USAGE DATA, which may include establishing, operating, and maintaining data aggregation and data access services, for the COMMISSION to evaluate.

***Discussion:*** *Funding for data access requirements may be available through federal, state, or third party financial institutions, and may be available to investor owned, municipal, or cooperative utilities. States may want to consider encouraging utilities to explore these funding opportunities.<sup>9</sup> States may want to consider providing funding to support municipal and cooperative utilities to provide data access information.*

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<sup>9</sup> Building Modernization Legislative Toolkit - Supporting Investment in Building Modernization  
<https://toolkits.raponline.org/building-modernization/funding-and-finance/>

*Where appropriate, especially for very small utilities, the COMMISSION can set rules so that there can be minimal up-front costs to utilities to manually generate spreadsheets with aggregated data to send to data recipients. In setting these rules though, keep in mind that fulfilling a large number of such requests manually is slow, labor-intensive and costly.*

*For utilities receiving a large number of data requests, automating the process of fulfilling requests will provide customers better and faster service at a lower cost. Accordingly, this model law requires large utilities to do so. Based on a sampling of utilities, the typical up-front costs for utilities to automate provision of this data were in the mid six-figure range (e.g., \$300-600k), although there were numerous examples above and below this range. Custom solutions to provide the data—whether built in-house or developed by a vendor—in instances reached seven figures due to the size and scope of the project, while solutions based on existing commercial products with limited or no modifications were generally in the low-to-mid six-figures. There are also ongoing costs to provide automated upload of the data such as for technical enhancements, typically in the low-to-mid six figures annually, with lower costs for custom-built solutions, and higher costs for existing commercial products due to licensing fees.*

(s) To carry out its responsibilities under this Act, the COMMISSION shall be allocated additional annual funds of [INSERT \$\$ AMOUNT]. In performing its responsibilities under this Act, the COMMISSION may select and engage outside consultants with experience in benchmarking and utility data access.

**Discussion:** *In most states, utility commissions are funded through fees or taxes paid by regulated utilities. In a handful of states, funds are appropriated year by year through the state's general fund. New legislative mandates can stretch utility staff capacity; commissioners and staff must balance new requirements against the commission's routine business. Additionally, new topic areas that arise during the energy transition frequently need staff with different skills and competencies.<sup>10</sup> Few government agencies can retain all of these new competencies internally. To address this gap, some states allow utility commissions to fill gaps in expertise or conduct independent investigations by hiring external consultants for policy or rulemaking dockets.<sup>11</sup> However, most state budgets for consultants are fairly limited. What's more, even where commissions have external consulting budgets, they may be inadequate for timely achievement of state goals.<sup>12</sup> Therefore, when adding new legislative requirements on commissions, in consultation with the commissioners may reveal whether a provision such as 2(p) is needed to provide the commission with the resources necessary to comply with the law in a timely manner.*

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<sup>10</sup> Ciulla, J., Cross-Call, D., Felder, C., Gold, R., and Schwartz, A. (2022). The People Element: Positioning PUCs for the 21st-Century Success. RMI. [https://rmi.org/wp-content/uploads/2022/01/the\\_people\\_element\\_positioning\\_pucs\\_for\\_21st\\_century\\_success.pdf](https://rmi.org/wp-content/uploads/2022/01/the_people_element_positioning_pucs_for_21st_century_success.pdf)

<sup>11</sup> Id.

<sup>12</sup> Id.