

# HOUSE BILL REPORT

## HB 1385

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### As Passed Legislature

**Title:** An act relating to exempting United States food and drug administration nonpublic information from disclosure under the state public disclosure act.

**Brief Description:** Exempting United States food and drug administration nonpublic information from disclosure under the state public disclosure act.

**Sponsors:** Representatives Springer, Kretz, Blake, Chandler, Gregerson and Walsh; by request of Department of Agriculture.

#### **Brief History:**

##### **Committee Activity:**

Rural Development, Agriculture, & Natural Resources: 2/1/19, 2/8/19 [DP].

##### **Floor Activity:**

Passed House: 3/1/19, 93-0.

Passed Senate: 4/25/19, 48-0.

Passed Legislature.

#### **Brief Summary of Bill**

- Exempts from disclosure certain information obtained from the United States Food and Drug Administration.

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### HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 13 members: Representatives Blake, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chapman, Dye, Fitzgibbon, Kretz, Lekanoff, Orcutt, Schmick, Springer and Walsh.

**Staff:** Rebecca Lewis (786-7339).

#### **Background:**

Washington's Public Records Act.

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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.*

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions in the PRA or otherwise provided in state law. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

The PRA provides exemptions from public disclosure for certain information relating to agriculture and livestock. These exemptions include:

- information on the purchase, sale, or production of individual American ginseng growers or dealers;
- information for issuance of certificates of compliance for packers and shippers of fruits and vegetables;
- certain herd inventory management information for animal disease traceability submitted to the Washington State Department of Agriculture (WSDA) by an individual or business; and
- financial statements used to determine whether an applicant meets the minimum net worth requirements to operate a public livestock market.

#### Federal Freedom of Information Act.

The federal Freedom of Information Act (FOIA) provides for the disclosure of information and documents controlled by the United States government. Some types of information are exempt from disclosure under the FOIA, including trade secrets, certain commercial and financial information obtained from a person, and geological information and data concerning wells.

#### **Summary of Bill:**

Information or records obtained by the Washington State Department of Agriculture from the United States Food and Drug Administration (USFDA) pursuant to a USFDA contract or commissioning agreement are exempt from public disclosure under Washington's Public Records Act, as long as the information or records are also exempt from disclosure under the federal Freedom of Information Act. Examples of information that would be exempt are:

- confidential commercial information;
- information under the federal deliberative process privilege;
- information compiled by law enforcement; and
- information expressly required to be kept confidential by other federal laws.

**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 is an odd situation; it would seem that it would be in the public's best interest to disclose this kind of information. However, certain information provided by the United States Food and Drug Administration (USFDA) is not disclosable under federal law. The Washington State Department of Agriculture (WSDA) and the USFDA collaborate to respond to food safety emergencies, such as outbreaks or recalls. This work requires sharing information. Tension has recently come to light even though this is not a new issue. The WSDA is no longer participating in recall phone calls because some of the information provided could be subject to Washington's public disclosure laws, but not subject to federal disclosure laws. The WSDA is in a position to either abide with federal disclosure laws, or not receive information from the USFDA necessary to ensure food safety. This bill provides the narrowest of exemptions to Washington's public disclosure laws so that communication can be reopened between the state and the USFDA.

(Opposed) None.

(Other) While there is dissatisfaction that the federal government does not disclose certain food safety information, the exemptions in this bill are very narrow. Food safety is one of the most important duties of the WSDA. The bill does keep access to other information open. People need to be able to trust that food is safe.

**Persons Testifying:** (In support) Representative Springer, prime sponsor; and Steve Fuller, Washington State Department of Agriculture.

(Other) Rowland Thompson, Allied Daily Newspapers of Washington.

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