

SENATE BILL REPORT

HB 1385

As Passed Senate, April 25, 2019

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: Passed House: 3/01/19, 93-0.

Committee Activity: State Government, Tribal Relations & Elections: 3/11/19, 3/15/19 [DP].

Floor Activity:

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

Brief Summary of Bill

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

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Zeiger, Ranking Member; Hasegawa and Takko.

Staff: Samuel Brown (786-7470)

Background: Public Records Act. The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires all state and local government agencies to make all public records available for public inspection and copying unless certain statutory exemptions apply. Over 500 specific references in the PRA or other statutes remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential. The provisions requiring public

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records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

The PRA provides exemptions from public disclosure for certain information relating to agriculture and livestock, including:

- 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.

Freedom of Information Act. The 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 WSDA from the Food and Drug Administration (FDA) pursuant to a FDA contract or commissioning agreement are exempt from public disclosure if the information or records are also exempt from disclosure under the federal FOIA, including:

- confidential commercial information;
- information protected 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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This squares the PRA with FOIA. To have a well-run and integrated food safety system, WSDA works with the FDA and sometimes holds information the FDA considers nonpublic under federal law. Because the PRA requires disclosure of some information protected under FOIA, the ability to collaborate is inhibited, WSDA has not been allowed to participate in some conference calls on outbreaks, and federal contracts are at risk. This is the narrowest possible exemption, crafted to restore the flow of information.

OTHER: This is a narrow exemption, applying just to information WSDA receives from the FDA.

Persons Testifying: PRO: Representative Larry Springer, Prime Sponsor; Steve Fuller, WSDA.

OTHER: Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: No one.