

SENATE BILL REPORT

ESB 5761

As Passed Senate, March 3, 2017

Title: An act relating to exempting certain confidential fish and shellfish harvest information from disclosure under chapter 42.56 RCW, the public records act.

Brief Description: Exempting certain confidential fish and shellfish harvest information from disclosure under chapter 42.56 RCW, the public records act.

Sponsors: Senators McCoy, Hunt and Hasegawa.

Brief History:

Committee Activity: Natural Resources & Parks: 2/14/17, 2/16/17 [DPS, DNP].

Floor Activity:

Passed Senate: 3/03/17, 45-0.

Brief Summary of Engrossed Bill

- Exempts certain tribal fish and shellfish harvest information and certain commercial shellfish growers' harvest information from disclosure under the Public Records Act.

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5761 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pearson, Chair; Hawkins, Vice Chair; Van De Wege, Ranking Minority Member; Fortunato.

Minority Report: Do not pass.

Signed by Senator McCoy.

Staff: Kelsey Morfitt (786-7407)

Background: The Department of Fish and Wildlife (DFW) manages fish and shellfish in state waters and offshore waters. This includes collecting fish and shellfish harvest information. Salmon fisheries within Puget Sound and the Strait of Juan de Fuca are jointly managed by DFW and the Puget Sound treaty tribes.

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 Puget Sound Salmon Management Plan of 1985 (Plan), as adopted by the court in *United States v. Washington*, states that fish-related data is the property of the party providing it, and disclosing this information to the state does not infringe on the tribe's right to confidentiality of that data. The information released pursuant to this Plan may only be released for fisheries management planning. However, if the tribe is notified, the state may release tribal fish data if compelled by a legal process.

The Public Records Act (PRA) mandates disclosure of public records unless the record is specifically exempted. Public records include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

Under the PRA, certain information collected by DFW is exempt from public disclosure. For example, personally identifiable information of recreational and commercial licensees is exempt from disclosure. However, DFW may release this information when it is needed by government agencies to manage fish and wildlife, enforce child support orders, suspend drivers' licenses, and enforce firearm possession violations. DFW disclosure exemptions also include sensitive fish data and some commercial fish catch records.

Summary of Engrossed Bill: Certain fish and shellfish harvest information is exempt from public disclosure under the PRA. Specifically, a tribal fisher's name, signature, harvest value, and tax information is exempt.

Additionally, a commercial shellfish farmer's name, signature, harvest value, and tax information is also exempt from public disclosure. All of this information must still be provided to DFW.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This legislation aligns tribal disclosure with case law. Under treaty agreements, the state said it would not disclose confidential tribal fish harvest information, and the state disclosed this information.

OTHER: Commercial shellfish growers would like the same information exempted from public disclosure like the tribes. The bill should be amended to list out what can be disclosed and what cannot be disclosed on a fish ticket.

Persons Testifying: PRO: Senator John McCoy, Prime Sponsor; Jeanne Cushman, Squaxin Island Tribe; Kevin Lyon, Squaxin Island Tribe.

OTHER: Jim Jesernig, Pacific Coast Shellfish Growers Assn.; Rowland Thompson, Allied Daily Newspapers of Washington.

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