

HOUSE BILL REPORT

SB 5303

As Passed House:

April 5, 2021

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: Senator Hunt; by request of Department of Health.

Brief History:

Committee Activity:

State Government & Tribal Relations: 3/10/21, 3/15/21 [DP].

Floor Activity:

Passed House: 4/5/21, 81-16.

Brief Summary of Bill

- Exempts from disclosure certain information or records obtained by the Department of Health from the federal Food and Drug Administration, such as trade secrets and confidential commercial information, to the extent they are exempt from disclosure under federal law.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 5 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Volz, Ranking Minority Member; Dolan and Gregerson.

Minority Report: Do not pass. Signed by 2 members: Representatives Walsh, Assistant Ranking Minority Member; Graham.

Staff: Jason Zolle (786-7124).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

The Public Records Act.

The Public Records Act (PRA) generally requires state and local governmental entities to make many government records available to the public upon request. There are, however, over 500 statutory exemptions for certain records or information contained in records, including:

- certain trade secrets and proprietary data; and
- specific information compiled by law enforcement, when nondisclosure is essential to certain objectives.

The Freedom of Information Act.

The Freedom of Information Act (FOIA) is a federal law that similarly provides for the disclosure of information and documents controlled by the United States government. The FOIA also contains a number of exemptions to disclosure, including:

- trade secrets and commercial or financial information that is privileged or confidential; and
- records compiled for law enforcement purposes, subject to certain conditions.

Prior Legislation.

In 2019 the Legislature prohibited the disclosure of certain records and information, including trade secrets and confidential commercial information, that are obtained by the state Department of Agriculture from the federal Food and Drug Administration (FDA) pursuant to a contract or commissioning agreement, to the extent that the information or records are exempt from disclosure under the FOIA.

Summary of Bill:

To the extent that they are exempt from disclosure under FOIA, the following information or records obtained by public health laboratories within the Department of Health from the FDA pursuant to a contract to obtain funding for monitoring food supplies for harmful contaminants are exempt from public disclosure under the PRA:

- trade secrets;
- confidential commercial information;
- information protected by the federal deliberative process privilege;
- information compiled for law enforcement purposes; and
- information expressly required to be kept confidential by other federal laws.

Appropriation: None.

Fiscal Note: Not requested.

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 bill is about granting just a limited exemption for public health laboratories, which is necessary to allow them to receive critical grant funds. The laboratories rely on FDA grant support, but the FDA is now requiring a strict confidentiality agreement in order to get funds. Right now the laboratories cannot enter into the agreement because certain information in their possession is subject to public disclosure under the PRA. Even with this bill, all of the work product and investigations done by the laboratories would still be open to public inspection, as would investigations by the Department of Health. This bill simply allows the laboratories to maintain contracts that they would lose if they cannot protect certain information.

(Opposed) None.

Persons Testifying: Senator Hunt, prime sponsor; Ailyn C. Pérez-Osorio, Washington State Department of Health; and Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: None.