

SENATE BILL REPORT

SB 5303

As Passed Senate, February 23, 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 & Elections: 2/05/21, 2/12/21 [DP].

Floor Activity: Passed Senate: 2/23/21, 49-0.

Brief Summary of Bill

- Exempts from disclosure requirements certain information obtained by the Department of Health public health laboratories from the Food and Drug Administration for monitoring food contamination.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: Do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Wilson, J., Ranking Member; Hasegawa and Hawkins.

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

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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 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 the food supply, 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 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 the Department of Health public health laboratories from the Food and Drug Administration (FDA) pursuant to a FDA contract to obtain funding for monitoring food supplies for contamination are exempt from public disclosure if the information or records are also exempt from disclosure under the federal FOIA, including:

- trade secrets;
- 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: Not requested.

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 catches an exemption we did not make last time, but should have. This will allow Washington to receive \$750,000 per year of federal funding for state radiochemistry laboratories that conduct day-to-day surveillance of radiation levels at Hanford and tracked the Fukushima disaster. The state relies on FDA grants to sustain this work, but the FDA has imposed a requirement that the state sign a

confidentiality agreement before funds are released. This bill overcomes that conflict. This exemption applies only to FDA grant-funded activities, not state-directed laboratory activities.

CON: This bill needs further study. There has been a longtime lack of transparency in livestock testing, and this would limit journalists' and the public's access to pathogen test results. This could impact future pandemic investigations as well.

Persons Testifying: PRO: Senator Sam Hunt, Prime Sponsor; Ailyn Perez-Osorio, Washington State Department of Health.

CON: Sarah Schacht.

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