

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

Revised

Senate Bill 240

(The President, *et al.*) (Administration)

Education, Health, and Environmental Affairs

Commerce and Government Matters

State Government - Access to Public Records - Public Security Documents

This emergency Administration bill authorizes a custodian of a public record to deny inspection of: (1) specified response procedures or plans prepared to prevent or respond to emergency situations; (2) specified building plans, blueprints, schematic drawings, diagrams, operational manuals, or records of other buildings or structures operated by the State or any of its political subdivisions; or (3) specified records prepared to prevent or respond to emergency situations. The custodian may deny inspection of a part of such a public record only to the extent that the inspection would: (1) jeopardize the security of a structure owned or operated by the State or any of its political subdivisions; (2) facilitate the planning of a terrorist attack; or (3) endanger the life or physical safety of an individual.

The bill requires the Attorney General to review the changes made by the bill and to submit a report to the Governor and the General Assembly by December 1, 2007 on the continued necessity of the bill and any recommendations for changing or modifying the bill.

Fiscal Summary

State Effect: Any change in State activities would not materially affect State finances.

Local Effect: Any change in local government activities would not materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law: Generally, a custodian of a public record must permit inspection of the record at a reasonable time.

A custodian must deny inspection of a public record or any part of a public record if: (1) the public record is privileged or confidential by law; or (2) the inspection would be contrary to: (a) a State statute; (b) a federal statute or regulation; (c) the Maryland Rules; or (d) an order of a court of record. Denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, and specified information about an individual maintained by a library. Denial of inspection is required for information in a public record relating to certain medical, psychological, and sociological information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

Unless otherwise provided, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of that part of the record. Other permissible denials include information relating to documents that would not be available through discovery in a lawsuit, certain information about publicly administered tests, research projects conducted by an institution of the State or a political subdivision, real estate appraisals of property to be acquired by the State prior to its acquisition, certain information on inventions owned by State public higher educational institutions, and trade secrets or confidential information owned by the Maryland Technology Development Corporation.

When a person is denied inspection of a public record, the person may file a complaint with the circuit court for the county where: (1) the complainant resides or has a principal place of business; or (2) the public record is located. The custodian, as defendant, has the burden of sustaining a decision to deny inspection and may submit a memorandum to the court in support of the decision. Such cases take precedence on the court's docket. The court may enjoin the governmental unit or its employee from withholding the record, order the record's production, and hold the employee in contempt. Allowable damages for successful plaintiffs include actual damages, punitive damages, counsel fees, and other litigation costs. If the action of the custodian in withholding the record was arbitrary or capricious, the court must send a certified copy of its finding to the custodian's appointing authority, who in turn, must take the disciplinary action that the circumstances warrant.

Under the State's Open Meetings Act, a closed session is permitted to discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including the deployment of fire and police services, and the development and implementation of emergency plans.

Background: In an effort to prepare a legislative response to terrorism and related topics, the Governor, Speaker of the House, and President of the Senate appointed a joint task force to study the State's laws in this area and make recommendations for changes. The task force consists of three senators, three delegates, and four representatives from the Executive Branch. This is one of a package of bills recommended by the task force.

Additional Information

Prior Introductions: None.

Cross File: HB 297 (The Speaker, *et al.*)(Administration) – Commerce and Government Matters.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Department of Health and Mental Hygiene, Office of the Attorney General, Department of Legislative Services

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Analysis by: Ryan Wilson

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510