

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**  
**Revised**

House Bill 254 (Delegates Arnick and Wood)

Commerce and Government Matters Education, Health, and Environmental Affairs

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**Maryland Port Administration - Access to Public Records - Permissible Denials**

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This bill authorizes the custodian of a public record to deny public inspection of the following proprietary and commercial contract information belonging to the Maryland Port Administration (MPA) or any private operating company that it creates: (1) rates or proposed rates generated, received, or negotiated by MPA for stevedoring and terminal services contracts; (2) a proposal generated, received, or negotiated by MPA for stevedoring or terminal facilities or services to increase waterborne commerce in the State; or (3) research or analysis compiled for MPA to evaluate its competitive position with respect to other ports.

The bill prohibits the custodian from denying access of records related to State employees that would otherwise be available to the exclusive representative of State employee organizations, pursuant to specified memoranda of understanding, including the identical sections of successor memoranda. Before the inspection of any part of a public record related to a State employee, the representative must enter into a nondisclosure agreement with MPA to ensure the confidentiality of the information. The bill is effective June 1, 2001.

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**Fiscal Summary**

**State Effect:** Minimal or none. The proposed changes will not materially affect State activities or finances.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Current Law:** Public inspection is currently allowed for rates or proposed rates generated, received, or negotiated by MPA, as well as proposals generated, received, or negotiated by MPA for business recruitment and research or data compiled for MPA to assess its competitive position.

A custodian must generally deny inspection of a public record or part of a record if it is privileged or confidential by law or if inspection would be contrary to a State or federal statute, rules adopted by the Court of Appeals, or an order of a court of record. Examples of public records for which a custodian may deny public inspection include:

- trade secrets and confidential commercial, financial, geological, or geophysical information;
- certain licensing records;
- records of investigations conducted by the Attorney General; and
- inventions owned by State public institutions of higher education (for four years).

The Department of Legislative Services notes that State agencies can invoke “executive privilege” that allows inter-agency and intra-agency correspondence to be confidential in certain circumstances. The Department of Business and Economic Development, which regularly recruits businesses to expand or move to the State, advises that this privilege is used in its recruiting procedures but that it does not apply to correspondence with private companies.

**Background:** MPA advises that the Maryland Public Information Act allows competing ports and customers to obtain contract and rates information that significantly hinders MPA’s ability to negotiate contracts and provides competing states the ability to undermine business marketing strategies. Other states, particularly Virginia, are not subject to similar public information requirements because the contracts are not handled by a state entity.

The administration cites several examples of such information requests, including the Port of Philadelphia, which requested the Mediterranean Shipping Company’s ten-year lease agreement with the Port of Baltimore and a stevedoring company that requested terms of previously negotiated contracts. While this information was not released, MPA is seeking to clarify the law to specify that such contracts are not public. MPA further advises that under the bill, the amount of the contracts would be available but specific rates paid for services would not.

According to the American Association of Ports Authorities, only 20 of 115 public seaports are run by state administrative departments or state port authorities, including South Carolina and Indiana (others are operated by bi-state, county, or municipal port authorities or independent organizations.) The South Carolina Ports indicated that no contractual information is public and the Indiana Ports Commission advised that contract information is available to certain requestors (e.g., the Army Corps of Engineers).

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 84 (Chairman, Education, Health, and Environmental Affairs) (Departmental – Transportation) – Education, Health, and Environmental Affairs. However, SB 84 is effective October 1, 2002, rather than June 1.

**Information Source(s):** Department of Transportation (Maryland Port Administration), Department of Business and Economic Development, Attorney General's Office, American Association of Ports Authorities, Department of Legislative Services

**Fiscal Note History:** First Reader - January 30, 2002  
ncs/jr Revised - House Third Reader - March 21, 2002  
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