

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 84 (Chairman, Education, Health, and Environmental Affairs)
 (Departmental - Transportation)
Education, Health, and Environmental Affairs

**Maryland Port Administration - Public Records - Confidentiality of Commercial
Contracts and Proprietary Information**

This departmental 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, including rates in stevedoring and terminal services contracts; (2) a proposal generated, received, or negotiated by MPA for a business to locate, expand, or remain in the State; or (3) research or data compiled for MPA to assess its competitive position with respect to other ports.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: The Department of Transportation has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

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).

Additional Information

Prior Introductions: None.

Cross File: A substantially similar bill (HB 254) was introduced in the Commerce and Government Matters Committee. However, that bill has a June 1 effective date.

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

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ncs/jr

Analysis by: Ann Marie Maloney

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