

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 914 (Delegate Walkup, *et al.*)
Health and Government Operations

**Maryland Port Administration - Denial of Inspection of a Public Record -
Reporting Requirement**

This bill requires the Maryland Port Administration (MPA) to submit a report to the Governor and the General Assembly by October 1 of each year that includes the title and synopsis of any public record or part of a public record to which a custodian denies inspection pursuant to State law that authorizes denial of certain records.

Fiscal Summary

State Effect: None. The bill's requirements could be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapter 357 of 2002 authorizes the custodian of a public record to deny public inspection of the following proprietary and commercial contract information belonging to 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.

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.

Background: Until the enactment of Chapter 357, it was unclear whether competing ports and customers could obtain contract and rates information under the Maryland Public Information Act. MPA advised that such access would hinder its ability to negotiate contracts and provide 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.

Additional Information

Prior Introductions: None.

Cross File: SB 489 (Senator Pipkin) – Education, Health, and Environmental Affairs.

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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