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Health and Government Operations  
Committee

*Chair*

Health Occupations and  
Long-Term Care Subcommittee

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Joint Committee on Administrative,  
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**Testimony of Delegate Samuel I. Rosenberg**

**Before the House Health and Government Operations Committee**

**In Support of**

**House Bill 712**

**Public Information Act - Denials - Confidential Information**

Madame Chair and Members of the Committee:

This bill is about transparency and ensuring that the public has access to the information it needs to determine whether elected and appointed officials are fulfilling their obligations as stewards of taxpayers' resources.

The legislation emanates from a response to a request under the confidential information exemption to the Maryland Public Information Act (MPIA). That request was for information related to the payment in lieu of taxes (PILOT) agreement Baltimore City entered into with the developers of the former Legg Mason tower in Harbor East.

As is often the case with such projects, there was substantial public dialogue about whether the size and terms of the PILOT were necessary or good policy when it was approved in 2009. The issue rose again several years later when the city agreed to a payout of a profit-sharing agreement with the developer.

Among those asking questions was the Abell Foundation, which attempted to get more information about the terms of the original deal and the information underpinning the city's decision to agree to the profit sharing buyout. The foundation made several attempts, first informally, then through MPIA requests, and finally in court.

More than four years after the foundation filed suit in circuit court, a judge ruled against disclosure of the records at the heart of these deals. At issue was the confidential commercial or financial information exemption of the MPIA.

Previously, Maryland's Attorney General and courts had interpreted that exemption based on a test established in a 1974 federal court decision related to a similar but not identical exemption in the Freedom of Information Act.

It held that commercial information in the government's possession should only be considered "confidential" and exempt from disclosure if it is likely to "cause substantial harm to the competitive position of the person from whom the information was obtained." In 2017, the Maryland Court of Appeals (now the Maryland Supreme Court) cited that same standard in deciding a case in Prince George's County.

However, in the time between arguments in the Abell Foundation's MPIA case and the circuit judge's decision, the U.S. Supreme Court overturned the "substantial competitive harm" test that had been in place for decades. Hypothesizing that Maryland courts would follow suit, the circuit judge ruled against disclosure. That case is now on appeal.

The MPIA seeks to strike a balance between the public's right to know what government does on its behalf and legitimate needs for privacy and confidentiality. There was nothing wrong with how that balance was applied in Maryland before the recent Supreme Court decision, and this bill simply seeks to maintain that balance by codifying the "competitive harm" standard.

Opponents may argue that this bill will lead to a flurry of new litigation or place burdens on state and local governments, but that is not the case. It simply maintains the standard that had been in place. Since at least 1978, the Office of the Attorney General advised state agencies to use a competitive harm test in determining whether the confidential commercial information exception applies.

I am working with all interested parties to develop suitable amendments, and with this process in mind, I am happy to answer any questions.

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