



Wes Moore | Governor
Aruna Miller | Lt. Governor
Harry Coker, Jr. | Secretary of Commerce

DATE: March 5, 2026
BILL NO: Senate Bill 853
BILL TITLE: Economic Development Activity - Nondisclosure Agreements
COMMITTEE: Senate Education, Energy, and the Environment
POSITION: Letter of Concern

The Maryland Department of Commerce (Commerce) would like to express concerns with Senate Bill 853 Economic Development Activity - Nondisclosure Agreements.

Bill Summary:

Senate Bill 853 prohibits certain individuals, including a governing body and the employee of, contractors with and consultants to a governing body, from entering into a nondisclosure agreement with a person involved in an economic development activity, including establishing or operating a data center.

Rationale:

The current policy of the Department of Commerce is to not enter into nondisclosure agreements initiated by companies it is interacting with. Instead, Commerce refers companies, including data center companies, to Commerce's non-disclosure agreement that references the Public Information Act (PIA). The PIA requires that a State agency deny inspection of the part of the public record that contains information concerning trade secrets, confidential commercial information, or confidential financial information. The determination whether the information constitutes a trade secret, or confidential commercial or financial information, is generally left to the judgment of the business enterprise about which the information relates.

The wording "Nondisclosure Agreement" in the bill provides ambiguity on multiple levels. Commerce technically uses a non-disclosure agreement which, however, only references the PIA. Based on the bill as written, it is unclear whether Commerce would be prohibited from entering into its existing non-disclosure agreement or whether it would be exempt from the bill's requirements given that Commerce's non-disclosure agreement purely references the PIA. Furthermore, it is unclear whether renaming Commerce's existing non-disclosure agreement would exempt it from this provision.

Companies may request that a nondisclosure agreement be signed for a variety of reasons when discussing potential economic development projects with a state or local governing body. Publicly traded companies in particular have strict requirements on when certain information such as expansions or relocations are made public and reported to the SEC. Despite Commerce's belief that its existing practice would not violate the requirements of this legislation, the passage of Senate Bill 853 may have a chilling effect on interest in Maryland from site selection consultants and companies considering an expansion or relocation. The legislation sends a message to the business community that the State may not protect confidentiality of certain information.