

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 514 (Delegate Menes, *et al.*)
Health and Government Operations

International Trade Agreement - Procurement Rules - General Assembly
Approval

This bill prohibits the Governor and any other State official, without explicit consent from the General Assembly, from: (1) binding the State to the government procurement rules of an international trade agreement; or (2) giving consent to the federal government to bind the State to the government procurement rules of an international trade agreement. The bill also declares invalid any consent previously given by the Governor or other State official to bind the State to the government procurement rules of an international trade agreement.

Fiscal Summary

State Effect: Potential increase in procurement costs, should the State choose to withdraw from the Agreement on Government Procurement (GPA) and implement price preferences for domestic contractors in State procurements.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: There are no similar restrictions in the statute. An opinion letter from the Office of the Attorney General states that in the absence of a statute governing the State's participation in international trade agreements, the Governor has authority to make

commitments to the U.S. Trade Representative (USTR) regarding Executive Branch procurement, so long as any commitment is consistent with State law.

Background: GPA is designed to ensure that government procurement in member nations does not favor domestic products or suppliers or discriminate against foreign products or suppliers. GPA establishes three main principles: (1) nondiscrimination on the basis of national origin in the procurement of goods and services; (2) transparency in the laws, regulations, and procedures governing government procurement; and (3) competitive contracting procedures.

When GPA was expanded to cover procurement by local government entities in the early 1990s, the USTR solicited governors to include state procurement in GPA. In 1993, Governor Schaefer confirmed that the USTR could bind certain Maryland Executive Branch procurements to GPA. Governor Schaeffer excluded certain agencies, and provided for certain conditions to apply, including but not limited to small business preferences, minority business enterprise rules, recycled products preferences, and preferences for State Use Industries and Blind Industries. When negotiations were completed in 1996, GPA included the Maryland agencies bound, and noted that conditions applied to these procurements.

When GPA was updated in 2003, the USTR again solicited governors to extend the state commitments to newly included countries in GPA. Governor Ehrlich responded, offering a commitment on behalf of Maryland, with the same conditions as those specified by Governor Schaeffer in 1993.

State Fiscal Effect: Should the General Assembly withdraw consent for coverage under GPA, the State would no longer be required to adhere to the nondiscrimination, competition, and transparency principles contained in GPA. This could potentially increase procurement costs through discrimination in favor of domestic bids over lower-priced bids from foreign GPA-member nations.

Additional Information

Prior Introductions: None.

Cross File: SB 401 (Senator Pinsky, *et al.*) – Education, Health, and Environmental Affairs.

Information Source(s): Department of General Services, Board of Public Works, Governor's Office, University System of Maryland, Maryland Department of Transportation, Department of Budget and Management, Office of the Attorney General (Opinions and Advice), Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2005
ncs/hlb

Analysis by: Martin L. Levine

Direct Inquiries to:
(410) 946-5510
(301) 970-5510