

Senate Bill 401 prohibits the Governor, or any other State official, from binding the State or giving consent to bind the State to the government procurement rules of an international trade agreement, at the request of the federal government, without the express consent of the General Assembly. More disturbingly, Senate Bill 401 also invalidates any consent previously given by the Governor or a State official to bind the State or give consent to bind the State to the government procurement of an international trade agreement. There is scant evidence that the General Assembly gave any serious thought to the legal ramifications of repudiating retroactively the actions taken by a previous governor in 1993. From a legal perspective, the retroactive feature of Senate Bill 401 is of questionable constitutionality. It is clear from a policy perspective this action dangerously raises doubts about what, if any, reliance one here or abroad can place on the actions of the government of the State of Maryland. This is simply irresponsible.

As the Chief Executive Officer of the State of Maryland, duly elected by the citizens of this great State, I have been entrusted with the responsibility to make prudent and conscientious decisions that benefit all of the citizens of Maryland. The decisions that this Administration makes are no different than any other Chief Executive has made.

In 1981, the Agreement on Government Procurement (GPA) was established to address the issue of government procurements under the General Agreement on Tariffs and Trade (GATT). The 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. The United States followed a process under which each state would specify which, if any, of its procurement activity would be subject to the GPA. Each state could also exclude aspects of its procurement activities from coverage. Participation in the GPA would increase exports from the State and create new jobs producing everything from the most basic commodities to the highest technology equipment and machinery. When GPA was expanded to cover procurement by local government entities in the early 1990's the United States Trade Representative solicited governors across the nation to include state procurement in GPA.

In 1993, Governor William Donald Schaefer sent a letter to the United States Trade Representative authorizing it to include procurements by certain State entities under the GATT Agreement on Government Procurement. Governor Schaefer excluded certain agencies and provided for certain conditions to apply, including, but not limited to minority business enterprise rules, recycled products preferences, small business preferences, and preferences for State Use Industries and Blind Industries. When negotiations were completed in 1996, GPA included the Maryland agencies bound by the letter from Governor Schaefer and noted that conditions applied to these procurements.

Subsequently, when the GPA was updated in 2003, I submitted a letter to the United States Trade Representative authorizing Maryland's participation in the GPA. My endorsement did not change the intent of the 1993 agreement, but simply consented to the expansion of the agreement to include more trading partners. Maryland's procurement laws are based on being fair and transparent. Participation in the GPA affirms these principles. In nine years of participation, no State procurement law has been preempted by the participation. Federal action is required to preempt the State