

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1131
Ways and Means

(Delegate O'Donnell, *et al.*)

Education - Maintenance of Effort Waiver - Appeal Process

This bill establishes a process for a county governing body or a local board of education to appeal the State Board of Education's maintenance of effort (MOE) waiver decision. The bill also clarifies that the State board must inform the local board of education and the county governing body whether the MOE waiver is approved or denied in whole or in part.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: The Office of Administrative Hearings (OAH) can handle any additional appeals with existing resources.

Local Effect: County governing bodies and local boards of education can appeal the State board's waiver decision using existing resources.

Small Business Effect: None.

Analysis

Bill Summary: A county governing body or a local board of education may appeal the State board's MOE waiver decision to OAH. OAH must conduct each appeal hearing in accordance with the Administrative Procedure Act of the State Government Article.

An appeal must be filed no later than seven days after the complainant (*i.e.*, a county governing body or local board of education) has received the decision of the State board. OAH must conduct a hearing on the appeal within 14 days after receiving the written

request for an appeal. The decision of OAH is required to be made on substantive grounds based on a determination that the local jurisdiction's fiscal condition significantly impedes the jurisdiction's ability to fund the MOE requirement. OAH must issue to the parties a written decision within 14 days after the hearing, and the decision of OAH is final. The MOE penalty may not be assessed until OAH has issued a decision.

Current Law: To be eligible for increases in State education aid under Section 5-202 of the Education Article (the State share of the foundation program, the State's largest aid to education program; the geographic cost of education index; and the supplemental grant), a local jurisdiction must provide at least as much funding per pupil to the local school system as it provided in the previous fiscal year. A county may request a waiver from this requirement by applying to the State Board of Education by April 1 of the prior fiscal year. By regulation, the waiver request must be in writing and must be received by the Maryland State Department of Education between January 1 and March 31 of the prior fiscal year. The county is required to send to the local board of education a copy of the waiver request.

Upon receipt of the waiver request, the State board must schedule a public hearing. Notice of the public hearing must include the time allotment for oral presentation.

The State board's decision on whether to approve or deny in whole or in part a waiver request must be based on a determination that the county's fiscal condition significantly impedes the county's ability to fund the MOE requirement. Specifically, the State board may consider the following:

- external environmental factors such as loss of a major business or industry;
- tax bases;
- rate of inflation relative to growth of student population; and
- the MOE requirement relative to the county's statutory ability to raise revenues.

The State Board of Education must issue its written decision to the county, with a copy to the local board, within 45 days from receipt of the written request, but no later than May 15. Nothing in statute or regulations provides for an appeal of the State board's decision.

Background: Chapter 175 of 1996 added a waiver provision that allows counties to request from the State Board of Education a partial or temporary waiver from the MOE requirement. Until fiscal 2010, the waiver option had never been used, but three counties (Montgomery, Prince George's, and Wicomico) applied for waivers for fiscal 2010. All three applications were denied by the State Board of Education.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of Administrative Hearings, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2010
ncs/mwc

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