

Article - Education

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§5–202.

(a) (1) In this section the following words have the meanings indicated.

(2) “Annual per pupil foundation amount” means:

(i) For fiscal years 2004 through 2008, the sum, rounded to the nearest dollar, of:

1. The fiscal year 2002 per pupil foundation amount of \$4,124;
and

2. The product of the difference between the target per pupil foundation amount and \$4,124 and:

A. 0.40 in fiscal year 2004;

B. 0.52 in fiscal year 2005;

C. 0.71 in fiscal year 2006; and

D. 0.83 in fiscal year 2007; and

(ii) For fiscal year 2008 and each fiscal year thereafter, the target per pupil foundation amount.

(3) “Assessed valuation of real property” means the most recent estimate made by the State Department of Assessments and Taxation before the annual State budget is submitted to the General Assembly, of the assessed value of real property for State purposes as of July 1 of the first completed fiscal year before the school year for which the calculation of State aid is made under this section.

(4) “Assessed value of personal property” means the most recent estimate by the State Department of Assessments and Taxation before the annual State budget is submitted to the General Assembly of the assessed value for county purposes of personal property as of July 1 of the first completed fiscal year before the school year for which the calculation is made under this section.

(5) “Foundation program” means the product of the annual per pupil foundation amount and a county’s full-time equivalent enrollment.

(6) “Full-time equivalent enrollment” means the sum of:

(i) The number of students enrolled in grades 1 through 12 or their equivalent in regular day school programs on September 30 of the previous school year;

(ii) Except as provided in item (iii) of this paragraph, the product of the number of students enrolled in kindergarten programs on September 30 of the prior school year and:

1. 0.60 in fiscal year 2004;
2. 0.70 in fiscal year 2005;
3. 0.80 in fiscal year 2006;
4. 0.90 in fiscal year 2007; and
5. 1.00 in fiscal year 2008 and each fiscal year thereafter;

(iii) In Garrett County, the number of students enrolled in kindergarten programs on September 30 of the prior school year; and

(iv) The number of full-time equivalent students, as determined by a regulation of the Department, enrolled in evening high school programs during the previous school year.

(7) “Local contribution rate” means the figure that is calculated as follows:

(i) Multiply the statewide full-time equivalent enrollment by \$624, and multiply this product by:

1. 0.46 in fiscal year 2004;
2. 0.47 in fiscal year 2005;
3. 0.48 in fiscal year 2006;
4. 0.49 in fiscal year 2007; and
5. 0.50 in fiscal year 2008 and each fiscal year thereafter;

(ii) Multiply the statewide full-time equivalent enrollment by the amount that the annual per pupil foundation amount exceeds \$624, and multiply this product by 0.50;

(iii) Add the two products calculated in items (i) and (ii) of this paragraph, and divide the resulting sum by the sum of the wealth of all of the counties in this State; and

(iv) Round the result obtained in item (iii) of this paragraph to seven decimal places and express as a percent with five decimal places.

(8) “Local share of the foundation program” means the product of the local contribution rate and a county’s wealth.

(9) “Net taxable income” means the amount certified by the State Comptroller for the second completed calendar year before the school year for which the calculation of State aid under this section is made, based on tax returns filed on or before:

- (i) September 1 after the current calendar year; and
- (ii) November 1 after the current calendar year.

(10) “Personal property” means all property classified as personal property under § 8–101(c) of the Tax – Property Article.

(11) “Real property” means all property classified as real property under § 8–101(b) of the Tax – Property Article.

(12) “State share of the foundation program” means the greater of:

(i) The difference between the foundation program and the local share of the foundation program; and

(ii) The result obtained by multiplying the annual per pupil foundation amount by the county’s full-time equivalent enrollment, and multiplying this product by:

- 1. 0.25 in fiscal year 2004;
- 2. 0.24 in fiscal year 2005;
- 3. 0.22 in fiscal year 2006;
- 4. 0.19 in fiscal year 2007; and
- 5. 0.15 in fiscal year 2008 and each fiscal year thereafter.

(13) “Target per pupil foundation amount” means:

(i) In fiscal years 2008, 2009, and 2010, \$6,694;

(ii) Except as provided in items (iii) and (iv) of this paragraph, in subsequent fiscal years:

1. The target per pupil foundation amount for the prior fiscal year increased by the same percentage as the lesser of:

A. The increase in the implicit price deflator for State and local government expenditures for the second prior fiscal year;

B. The Consumer Price Index for All Urban Consumers for the Washington–Baltimore metropolitan area, or any successor index, for the second prior

fiscal year; or

C. 5%; or

2. If there is no increase in the implicit price deflator for State and local government expenditures for the second prior fiscal year or in the Consumer Price Index for All Urban Consumers for the Washington–Baltimore metropolitan area, or any successor index, for the second prior fiscal year, the target per pupil foundation amount for the prior fiscal year;

(iii) In fiscal year 2012, \$6,694; and

(iv) In each of fiscal years 2013 through 2015:

1. The target per pupil foundation amount for the prior fiscal year increased by the same percentage as the lesser of:

A. The increase in the implicit price deflator for State and local government expenditures for the second prior fiscal year;

B. The Consumer Price Index for All Urban Consumers for the Washington–Baltimore metropolitan area, or any successor index, for the second prior fiscal year; or

C. 1%; or

2. If there is no increase in the implicit price deflator for State and local government expenditures for the second prior fiscal year or in the Consumer Price Index for All Urban Consumers for the Washington–Baltimore metropolitan area, or any successor index, for the second prior fiscal year, the target per pupil foundation amount for the prior fiscal year.

(14) “Wealth” means the sum of:

(i) Net taxable income;

(ii) 100 percent of the assessed value of the operating real property of public utilities;

(iii) 40 percent of the assessed valuation of all other real property; and

(iv) 50 percent of assessed value of personal property.

(b) Subject to the other provisions of this section, each year the State shall distribute the State share of the foundation program to each county board.

(c) Repealed.

(d) (1) (i) Subject to § 5–213.1 of this subtitle, the county governing body shall levy and appropriate an annual tax sufficient to provide an amount of revenue for elementary and secondary public education purposes equal to the local share of the foundation program.

(ii) 1. Except as provided in subparagraph 2 of this subparagraph and subject to § 5–213 of this subtitle, the county governing body shall appropriate local funds to the school operating budget in an amount no less than the product of the county’s full–time equivalent enrollment for the current fiscal year and the local appropriation on a per pupil basis for the prior fiscal year.

2. Except as provided in paragraph (3)(ii) of this subsection and subject to subparagraph (iii) of this paragraph, in each fiscal year if a county’s education effort, as defined in paragraph (10) of this subsection, is below 100% of the statewide 5–year moving average of education effort, the required maintenance of effort amount for the county shall be adjusted by increasing the per pupil amount by the lesser of:

- A. A county’s increase in the local wealth per pupil;
- B. The statewide average increase in local wealth per pupil; or
- C. 2.5%.

(iii) The calculation of local wealth for the purposes of paragraphs (1) and (10) of this subsection shall use the amount certified for net taxable income under subsection (k)(2)(ii) of this section based on tax returns filed on or before:

- 1. For fiscal years 2015 through 2017, September 1; and
- 2. For fiscal year 2018 and each fiscal year thereafter, November 1.

(2) Except as provided in paragraph (3)(i) of this subsection, for purposes of this subsection, the local appropriation on a per pupil basis for the prior fiscal year for a county is derived by dividing the county’s highest local appropriation to its school operating budget for the prior fiscal year by the county’s full–time equivalent enrollment for the prior fiscal year. For example, the calculation of the foundation aid for fiscal year 2003 shall be based on the highest local appropriation for the school operating budget for a county for fiscal year 2002. Program shifts between a county operating budget and a county school operating budget may not be used to artificially satisfy the requirements of this paragraph.

(3) (i) For purposes of this subsection, for fiscal year 1997 and each subsequent fiscal year, the calculation of the county’s highest local appropriation to its school operating budget for the prior fiscal year shall exclude:

- 1. A nonrecurring cost that is supplemental to the regular

school operating budget, if the exclusion qualifies under regulations adopted by the State Board;

2. A cost of a program that has been shifted from the county school operating budget to the county operating budget;

3. The cost of debt service incurred for school construction projects; and

4. For a county that shifts the recurring costs associated with providing retiree health benefits for current retirees to the county board, any reduction in those retiree health costs from the amount the county was required to appropriate in the previous year.

(ii) For purposes of the adjustment required under paragraph (1)(ii)2 of this subsection, a county that dedicates to public school construction any additional State funds received from recurring retiree health costs shifted to the county board may exclude those retiree health costs from the highest local appropriation on a per pupil basis.

(4) The county board must present satisfactory evidence to the county government that any appropriation under paragraph (3)(i)1 of this subsection is used only for the purpose designated by the county government in its request for approval.

(5) Any appropriation that is not excluded under paragraph (3)(i)1 of this subsection as a qualifying nonrecurring cost shall be included in calculating the county's highest local appropriation to its school operating budget.

(6) Qualifying nonrecurring costs, as defined in regulations adopted by the State Board, shall include but are not limited to:

(i) Computer laboratories;

(ii) Technology enhancement;

(iii) New instructional program start-up costs; and

(iv) Books other than classroom textbooks.

(7) (i) Subject to subparagraph (ii) of this paragraph, if a county's ability to fund the maintenance of effort requirement in paragraph (1)(ii) of this subsection is impeded, the county shall apply under paragraph (8) of this subsection to the State Board for a waiver.

(ii) If a county fails to apply to the State Board for a waiver from the maintenance of effort requirement and fails to meet the maintenance of effort requirement:

1. The county shall be assessed in accordance with § 5–213 of this subtitle; and

2. The minimum appropriation of local funds required under this subsection for the next fiscal year shall be calculated based on the per pupil local appropriation for the prior fiscal year in which the county met the maintenance of effort requirement under paragraph (1)(ii) of this subsection.

(8) (i) The maintenance of effort requirement in paragraph (1)(ii) of this subsection does not apply to a county if the county requests and is granted a waiver from the requirement by the State Board based on:

1. A determination under this paragraph that the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement;

2. Subject to paragraph (9) of this subsection, an agreement between the county and the county board to reduce recurring costs; or

3. Subject to paragraph (10) of this subsection, a determination that a county's ability to meet the maintenance of effort requirement is permanently impeded.

(ii) In order to qualify for a waiver for a fiscal year, a county shall make a request for a waiver to the State Board by the earlier of the seventh day following the end of the legislative regular session or April 20 of the prior fiscal year.

(iii) The State Superintendent shall provide a preliminary assessment of a waiver request to the State Board before a public hearing held in accordance with subparagraph (iv) of this paragraph.

(iv) Before acting on a request for a waiver, the State Board shall hold a public hearing in accordance with regulations adopted by the State Board.

(v) Except as provided in paragraph (9) of this subsection, when considering whether to grant a county's waiver request, the State Board shall consider the following factors:

1. External environmental factors such as a loss of a major employer or industry affecting a county or a broad economic downturn affecting more than one county;

2. A county's tax base;

3. Rate of inflation relative to growth of student population in a county;

4. Maintenance of effort requirement relative to a county's

statutory ability to raise revenues;

5. A county's history of exceeding the required maintenance of effort amount under paragraph (1)(ii) of this subsection;

6. An agreement between a county and a county board that a waiver should be granted;

7. Significant reductions in State aid to a county and municipalities of the county for the fiscal year for which a waiver is requested;

8. The number of waivers a county has received in the past 5 years; and

9. The history of compensation adjustments for employees of the county board and county government.

(vi) The State Board shall inform the county whether the waiver for a fiscal year is approved or denied in whole or in part no later than 30 days after receipt of an application or May 20 of the prior fiscal year, whichever is earlier.

(vii) Except as provided in paragraphs (9) and (10) of this subsection, if a county is granted a waiver from the provisions of this subsection by either the State Board or the General Assembly for any fiscal year, the minimum appropriation of local funds required under this subsection for the next fiscal year shall be calculated based on the per pupil local appropriation for the prior fiscal year in which the county met the maintenance of effort requirement under paragraph (1)(ii) of this subsection.

(9) (i) This paragraph applies to a county that requests a waiver under paragraph (8)(i)2 of this subsection.

(ii) 1. The State Board shall grant a waiver request in the amount that has been agreed on by the county and county board that is attributable to reductions in recurring costs.

2. If the reduction in recurring costs includes reductions in personnel or personnel costs, then the State Board shall grant a waiver request in the amount that has been mutually agreed on by the county, county board, and exclusive employee representative.

(iii) The amount of the agreed on waiver may be less than the entire amount of the reduction in recurring costs.

(iv) The amount of the agreed on waiver may not:

1. Exceed the entire amount of the reduction in recurring costs; or

2. Reduce a county's education appropriation below the amount required in paragraph (1)(i) of this subsection.

(v) The minimum appropriation of local funds required under this subsection for the next fiscal year shall be calculated based on the per pupil local appropriation for the current fiscal year approved by the State Board under this paragraph.

(10) (i) In this paragraph the following terms have the meanings indicated.

1. "Education appropriation" includes any money redirected to a county board under § 5-213 or § 5-213.1 of this subtitle.

2. "Education effort" means a county's education appropriation divided by the county's wealth.

3. "5-year moving average" means the average of the 5 years before the waiver year.

4. "Waiver year" means the fiscal year for which a waiver from the maintenance of effort requirement in paragraph (1)(ii) of this subsection is requested.

(ii) This paragraph applies to a county that has:

1. Received a waiver under paragraph (8)(i)1 of this subsection from the maintenance of effort requirement; and

2. A required county education appropriation under paragraph (1)(ii) of this subsection for the waiver year that exceeds 100% of the statewide 5-year moving average of education effort times a county's local wealth.

(iii) A county that satisfies the requirements under subparagraph (ii) of this paragraph may request a rebasing waiver from the State Board.

(iv) When considering whether to grant a county's waiver request under this paragraph, the State Board shall consider the following factors:

1. Whether a county has submitted sufficient evidence that the factors in paragraph (8)(v) of this subsection will affect a county's ongoing ability to meet the maintenance of effort requirement;

2. Whether a county is at its maximum taxing authority under the law;

3. Whether a county's education appropriation is commensurate with a county's wealth;

4. Whether a county's history of exceeding the required maintenance of effort has made meeting the maintenance of effort requirement in future years unsustainable; and

5. Whether a county has received a rebasing waiver in the past 5 years.

(v) If the State Board grants a rebasing waiver under this paragraph, the amount of the waiver for any fiscal year is limited to the lesser of:

1. An amount that would result in a county's education effort for the waiver year falling below the level established in subparagraph (ii)2 of this paragraph; or

2. A. For a county with a 5-year moving average for education effort that is less than or equal to 110% of the statewide 5-year moving average of education effort, 1% of the county's required maintenance of effort requirement;

B. For a county with a 5-year moving average for education effort that is more than 110% and less than or equal to 120% of the statewide 5-year moving average of education effort, 2% of the county's required maintenance of effort requirement; or

C. For a county with a 5-year moving average for education effort that is more than 120% of the 5-year moving statewide average of education effort, 3% of the county's required maintenance of effort requirement.

(vi) 1. If the State Board grants a rebasing waiver under this paragraph, the minimum appropriation of local funds required under this subsection for the next fiscal year shall be calculated based on the per pupil local appropriation for the current fiscal year approved by the State Board under this paragraph.

2. If the State Board grants a rebasing waiver to be implemented over a multiyear period, which may not exceed 3 years, in each year the minimum appropriation of local funds required under this subsection for the next fiscal year shall be calculated based on the per pupil local appropriation for the current fiscal year approved by the State Board under this paragraph.

(vii) If the State Board does not grant a waiver under this paragraph, the minimum appropriation of local funds required under this subsection for the next fiscal year shall be calculated based on the per pupil local appropriation for the prior fiscal year in which the county met the maintenance of effort requirement under paragraph (1)(ii) of this subsection.

(viii) Nothing in this paragraph precludes a county from also requesting a waiver from the maintenance of effort requirement under paragraph (9) of this subsection for the same fiscal year as the waiver requested under this

paragraph.

(11) In making the calculations required under this subsection, the Department shall consult with the Department of Budget and Management and the Department of Legislative Services.

(12) (i) A county shall submit to the Superintendent the county's approved budget no later than 7 days after approval of the budget or June 30, whichever is earlier.

(ii) No later than 15 days after receipt of the county's approved budget the Superintendent shall certify whether the county has met the funding requirements established under this subsection and shall notify the county and county board of that certification.

(13) On or before December 31 of each year the Department shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly, on all waiver requests, maintenance of effort calculations made by the Department and the county, the Department's decisions regarding waiver requests, the Department's certification of whether a county has met the requirement, and any other information relating to a county's request for a waiver and the Department's maintenance of effort decisions.

(e) (1) In this subsection, "State financial assistance for public education" means the total financial assistance provided by the State to a county board under the following programs:

(i) Funding for the foundation program under this section;

(ii) In fiscal year 2009, 50% of the funding received under the GCEI adjustment grant program under subsection (f) of this section and in fiscal year 2010, 60% of the funding received under the GCEI adjustment grant program under subsection (f) of this section;

(iii) Transportation aid under § 5-205 of this subtitle;

(iv) Funding for compensatory education under § 5-207 of this subtitle;

(v) Funding for students with limited English proficiency under § 5-208 of this subtitle;

(vi) Funding for special education students under § 5-209 of this subtitle;

(vii) Funding for the guaranteed tax base program under § 5-210 of this subtitle;

(viii) 50% of the State payments for retirement contributions for employees of a local school system in accordance with the provisions of Division II of the State Personnel and Pensions Article; and

(ix) Funding for supplemental grants under this subsection.

(2) (i) For fiscal years 2009 and 2010 only, the State shall provide a supplemental grant to a county board that does not receive at least a 1% increase in State financial assistance for public education over the amount received by the county board in the previous fiscal year.

(ii) The supplemental grant under this paragraph shall be the amount necessary to increase a county board's State financial assistance for public education by 1% over the amount received by the county board in the previous fiscal year.

(3) (i) Subject to subparagraph (ii) of this paragraph, for fiscal year 2011, and each fiscal year thereafter, a county board shall receive a supplemental grant equal to the amount the county board received under paragraph (2) of this subsection in the prior fiscal year.

(ii) A supplemental grant may not be less than zero.

(f) (1) In this subsection, "GCEI adjustment" means the foundation program for each county multiplied by:

- (i) 0.000 in Allegany;
- (ii) 0.018 in Anne Arundel;
- (iii) 0.042 in Baltimore City;
- (iv) 0.008 in Baltimore;
- (v) 0.021 in Calvert;
- (vi) 0.000 in Caroline;
- (vii) 0.014 in Carroll;
- (viii) 0.000 in Cecil;
- (ix) 0.020 in Charles;
- (x) 0.000 in Dorchester;
- (xi) 0.024 in Frederick;
- (xii) 0.000 in Garrett;

- (xiii) 0.000 in Harford;
- (xiv) 0.015 in Howard;
- (xv) 0.010 in Kent;
- (xvi) 0.034 in Montgomery;
- (xvii) 0.048 in Prince George's;
- (xviii) 0.011 in Queen Anne's;
- (xix) 0.002 in St. Mary's;
- (xx) 0.000 in Somerset;
- (xxi) 0.000 in Talbot;
- (xxii) 0.000 in Washington;
- (xxiii) 0.000 in Wicomico; and
- (xxiv) 0.000 in Worcester.

(2) In addition to the State share of the foundation program, each county board shall receive a grant to reflect regional differences in the cost of education that are due to factors outside of the control of the local jurisdiction.

(3) The amount of the grant to each county board under this subsection shall equal the GCEI adjustment for the county board multiplied times:

- (i) 0.50 in fiscal year 2006;
- (ii) 0.62 in fiscal year 2007;
- (iii) 0.74 in fiscal year 2008;
- (iv) 0.86 in fiscal year 2009; and
- (v) 1.00 in fiscal year 2010 and each fiscal year thereafter.

(g) Any employer Social Security contributions required by federal law for any employee of a county board or local school system shall remain the obligation of the employer.

(h) (1) The Montgomery County Board shall provide from the Montgomery County Public Schools Employees' Pension System Trust the supplemental retirement allowance required under paragraph (2) of this subsection.

(2) (i) The Montgomery County Board, through the Montgomery County Public Schools Employees' Pension System Trust, shall pay a supplemental retirement allowance to an employee of the county board who retires on or after July 1, 1999, as a member of the Teachers' Pension System of the State of Maryland.

(ii) The supplemental retirement allowance shall equal the product of the member's years of creditable service earned in the Montgomery County Public Schools Employees' Pension System times the sum of:

1. 0.08% of the retiree's average final compensation that does not exceed the Social Security integration level; and

2. 0.15% of the retiree's average final compensation that exceeds the Social Security integration level.

(i) (1) In this subsection, "total direct education aid" means the total financial assistance provided by the State to a county board under the following programs:

(i) Funding for the foundation program including funds for the Geographic Cost of Education under this section;

(ii) Transportation aid under § 5–205 of this subtitle;

(iii) Funding for compensatory education under § 5–207 of this subtitle;

(iv) Funding for students with limited English proficiency under § 5–208 of this subtitle;

(v) Funding for special education students under § 5–209 of this subtitle;

(vi) Funding for the guaranteed tax base program under § 5–210 of this subtitle; and

(vii) Funding for grants provided under this subsection.

(2) For fiscal year 2012 only, if a county board's total direct education aid in the current fiscal year is less than the prior fiscal year by more than 6.5%, then the State shall provide a grant to the county board in an amount necessary to ensure that a decrease in total direct education aid is not more than 6.5%.

(3) For fiscal year 2013 only, if a county board's total direct education aid in the current fiscal year is less than the prior fiscal year by more than 5%, then the State shall provide a grant to the county board in an amount necessary to ensure that a decrease in total direct education aid is not more than 5%.

(4) For fiscal year 2014 only, if a county board's total direct education aid

in the current fiscal year is less than the prior fiscal year by more than 1%, then the State shall provide a grant to the county board equal to 25% of the decrease in total direct education aid from the prior fiscal year to the current fiscal year.

(5) (i) For fiscal years 2015 through 2017, a county board is eligible for a State grant under this paragraph if a county board's:

1. Full-time equivalent enrollment is less than 5,000;
2. Full-time equivalent enrollment in the current fiscal year is less than the prior fiscal year; and
3. Total direct education aid in the current fiscal year is less than the prior fiscal year by more than 1%.

(ii) The State shall provide a grant to a county board that is eligible under subparagraph (i) of this paragraph.

(iii) The grant shall be equal to 50% of the decrease in total direct education aid from the prior fiscal year to the current fiscal year.

(j) If a final court judgment requires the State to include in the budget bill money to satisfy a judgment against the county board of education, the State may deduct that amount from any other State funds that would otherwise be paid to the county board of education under this subtitle in the following fiscal year.

(k) (1) This subsection applies to education programs that use wealth to calculate State aid formulas under this subtitle.

(2) The Comptroller shall certify annually the amount of net taxable income based on both:

- (i) Tax returns filed on or before September 1; and
- (ii) Tax returns filed on or before November 1.

(3) For each fiscal year, State aid shall be calculated as follows:

(i) Once using the amount certified for net taxable income under paragraph (2)(i) of this subsection for tax returns filed on or before September 1; and

(ii) Again using the amount certified for net taxable income under paragraph (2)(ii) of this subsection for tax returns filed on or before November 1.

(4) Subject to paragraph (5) of this subsection, the amount of State aid for a county shall be the greater of the two calculations required under paragraph (3) of this subsection.

(5) If the amount of State aid for a county, using the calculation of State

aid under paragraph (3)(ii) of this subsection, is the greater of the two calculations under paragraph (3) of this subsection, payment of any increase in State aid resulting from the difference between the two calculations shall be phased in as follows:

(i) For fiscal year 2014, 20 percent of the difference between the two calculations;

(ii) For fiscal year 2015, 40 percent of the difference between the two calculations;

(iii) For fiscal year 2016, 40 percent of the difference between the two calculations;

(iv) For fiscal year 2017, 60 percent of the difference between the two calculations;

(v) For fiscal year 2018, 80 percent of the difference between the two calculations; and

(vi) For fiscal year 2019, and each fiscal year thereafter, the full amount of the calculation.

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