



Board of Education of Howard County
Testimony Submitted to the Maryland House of Delegates,
Health and Government Operations Committee
March 12, 2024



Board of Education
of Howard County

HB1383: UNFAVORABLE
Howard County Board of Education - Liquidated Damages - Policy and Requirements Ho. Co. 3-24

The Board of Education of Howard County (the Board) opposes **HB1383 Howard County Board of Education - Liquidated Damages - Policy and Requirements Ho. Co. 3-24** as a mandate on local school system policy and contracting practices.

Jennifer Swickard Mallo, *Chair*

Yun Lu, Ph.D., *Vice Chair*

Linfeng Chen, Ph.D.

Jacky McCoy

Jolene Mosley

Robyn C. Scates, Esq.

Antonia Watts

Lamia Ayaz
Student Member

William J. Barnes
*Acting Superintendent,
Secretary/Treasurer*

Following the initial introduction of HB1383 as a local bill in Howard County prior to the 2024 session of the Maryland General Assembly, the Board expressed concerns to the bill sponsor regarding many areas that were inconsistent with existing statutory governance and authority of local boards of education. The Board appreciates the changes made prior to passage by the Howard County Delegation to align the bill more closely with the sponsor's stated intent of transparency in the use of liquidated damages for school system procurements.

Although improved, the bill as presented today did not go far enough to erase the Board's initial concerns. HB1383 currently contains three main areas: requirements for the contents of the Board policy related to contracting and liquidated damages; a requirement for student transportation procurement contracts valued at \$1 million dollars or more to include a liquidated damages clause unless voted on by the Board; and a requirement for the Board to document a vote if deciding not to pursue liquidated damages when a breach of contract has occurred. This legislation, which limits the local board's decision-making authority, will weaken the Board's bond with the local community and adversely impact the community's participation in the governance and operation of the Howard County Public School System (HCPSS).

HB1383 dictates the implementation of contract terms which is wholly within the Board's authority. It also continues to maintain a focus on one contract type in (D) in reaction to concerns with student transportation from the current school year, rather than allowing the Board to develop overarching best practices within its own policy on the purchase of school system commodities and services. The ability of the Board to develop a process to document a decision to pursue or not pursue liquidated damages, while added to items to be considered in the policy under the amended version, is still then mandated in (E) including the requirement to document, vote, and provide reasons for not pursuing liquidated damages. This particular provision is concerning as the requirement to document by vote, which is typically done at a public session, would likely inhibit candor in future legal actions by the Board when a breach of contract occurs. The decision to pursue certain contract terms may be legal advice subject to attorney client privilege and legislation demanding that the Board divulge such confidential communication would destroy that privilege in any possible litigation.

For these reasons, we urge an UNFAVORABLE report of HB1383 from this Committee.