

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
State Board of Education**  
(DLS Control No. 15-024)

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**Overview and Legal and Fiscal Impact**

These regulations (1) modify the procedures and evaluation criteria applicable to a county's request for a waiver from maintenance of effort requirements for funding public schools; (2) establish the circumstances in which a county that is below the statewide average education effort level must increase its per pupil funding effort; and (3) establish the procedures for calculating the required amount of increased effort.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**State Board of Education:**

Local School Administration: Maintenance of Effort: COMAR 13A.02.05.02-.05

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**Legal Analysis**

**Background**

Minimum annual appropriations from each county (including Baltimore City) to the local school system are governed by a maintenance of effort provision under State law. This provision requires each county to provide, at a minimum, the greater of (1) the local share of the foundation amount, which is a uniform percentage of the local wealth base applicable to all counties; or (2) the per pupil amount provided by the county in the previous year. Historically, county contributions have exceeded the local share of the foundation amount, and, in most years, also exceeded the amount provided the previous year. However, in times of fiscal constraint, meeting maintenance of effort requirements has become a challenge.

Chapter 175 of 1996 established a waiver process that allowed a county to request from the State board a one-year waiver from the maintenance of effort requirement. Chapter 6 of 2012 altered the penalty for noncompliance with maintenance of effort requirements, the waiver process, and the calculation of annually required amounts. Chapter 6 also established three types of waivers and specified the criteria that the State board must consider when evaluating each type of waiver request. In addition, Chapter 6 required that, beginning in fiscal 2015, a county that is below the statewide five-year moving average education effort level must increase its per pupil maintenance of effort amount by the lesser of (1) the increase in local wealth per pupil; (2) the statewide average increase in local wealth per pupil; or (3) 2.5%.

## **Summary of Regulations**

These regulations alter existing maintenance of effort waiver provisions to align with some of the changes made by Chapter 6 of 2012. More specifically, in addition to defining relevant terms, the regulations require a county to submit a waiver request to the State board by April 20 or the seventh day following the end of the legislative session of the fiscal year prior to the waiver year, whichever is earlier. On receipt of the waiver request, the State Superintendent of Schools must provide a preliminary assessment of the request to the State board. The State board must inform the county whether the waiver is approved or denied by May 20 or within 30 days after receipt of an application, whichever is earlier.

The regulations establish the following three types of waivers (1) an impeded ability waiver; (2) an agreed on waiver; and (3) a rebasing waiver. A county applying for an impeded ability waiver for a fiscal year must identify the amount requested, address whether the request is contested, and fully explain how several specified factors impact and support the request. In addition to the factors previously required to be addressed in a waiver request, the factors include the county's history of exceeding maintenance of effort requirements, an agreement between the county and the county board that a waiver should be granted, significant reductions in State aid, the number of waivers received in the past five years, and the history of compensation adjustments for employees of the county and the county board.

A request for an agreed on waiver must be based on an agreement between the county and the county board to reduce recurring costs. The county must submit the amount of the waiver request, identify the cost reductions by line item in the county board's budget, compare the requested appropriation amount to the local share of foundation amount, and include documentation of the cost reduction agreement and any agreement with the exclusive employee representative regarding a reduction in personnel or personnel costs.

To qualify for a waiver to rebase the maintenance of effort level permanently, a county must obtain an impeded ability waiver, submit the requested rebasing amount, and demonstrate that its education effort exceeds the average statewide education effort. The county must also demonstrate ongoing problems with meeting maintenance of effort requirements based on specified factors, including the county's maximum taxing authority, education appropriation compared to wealth, and history of exceeding maintenance of effort requirements.

In addition, the regulations establish the circumstances in which a county will be designated "low-effort" and consequently required to increase its local per pupil funding effort. The regulations also establish the method of calculating the increased maintenance of effort amount.

## **Legal Issue**

The regulations present no legal issue of concern.

## **Statutory Authority and Legislative Intent**

The State board cites §§ 2-205 and 5-202 of the Education Article as authority for these regulations. Section 2-205 requires the State board to determine the elementary and secondary educational policies of the State and to adopt regulations for the administration of the public

schools. Section 5-202 establishes the formulas used to determine the distribution of State financial assistance to county boards for public education and the required local share of the foundation or maintenance of effort amounts. Section 5-202(d) also authorizes the State board to grant a county's application for a waiver from the maintenance of effort requirement based on (1) a determination that the county's fiscal condition significantly impedes the county's ability to fund the requirement; (2) an agreement between the county and the county board to reduce recurring costs; or (3) a determination that the county's ability to meet the requirement is permanently impeded. Section 5-202(d) further specifies the procedures for making and reviewing a waiver request and the criteria the State board must consider in reviewing a request. Finally, § 5-202(d)(1)(ii)2 requires a county that is below the statewide five-year moving average education effort level to increase its annual per pupil maintenance of effort amount by the lesser of (1) the county's increase in local wealth per pupil; (2) the statewide average increase in local wealth per pupil; or (3) 2.5%.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The regulations implement changes to State law under Chapter 6 of 2012 (Senate Bill 848) regarding local government maintenance of effort in funding of public schools. Therefore, any fiscal impact is attributable to that legislation and not the regulations. The regulations specify requirements for each of three types of maintenance of effort waiver requests. The regulations also set out the conditions under which the local government in a low-effort county must increase local per pupil funding effort for public schools, as well as the procedure for calculating the required amount of increased effort. The fiscal and policy note for Senate Bill 848 noted that required maintenance of effort amounts for some counties may increase under the bill.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no economic impact on small business in the State. The Department of Legislative Services concurs.

## **Contact Information**

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