

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	03/04/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 4/17/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

13A 02 05 02—.05

3. Name of Promulgating Authority

Maryland State Department of Education

4. Name of Regulations Coordinator

Charlene L Necessary

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410-767-0467

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5. Name of Person to Call About this Document

Kristy Michel

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410-767-0011

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: February 1, 2015.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Elizabeth M. Kameen, Assistant Attorney General, (telephone #410-576-6465) on March 5, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Lillian M. Lowery, Ed.D.

Title

State Superintendent of Schools

Telephone No.

410-767-0467

Date

March 6, 2015

Title 13A
A STATE BOARD OF EDUCATION
Subtitle 02 LOCAL SCHOOL ADMINISTRATION

13A.02.05 Maintenance of Effort

Authority: Education Article, §§2-205 and 5-202, Annotated Code of Maryland

Notice of Proposed Action

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The Maryland State Board of Education proposes to amend Regulations .02—.05 under COMAR 13A.02.05 Maintenance of Effort.

This action was considered during a Maryland State Board of Education meeting on February 24, 2015.

Statement of Purpose

The purpose of this action is to align regulations with statute and set forth the procedures and calculations for the Maintenance of Effort escalator that went into effect on July 1, 2014.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Kristy Michel, Chief Operating Officer, Office of the Deputy for Finance and Administration, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0011(TTY 410-333-6442), or email to kristy.michel@maryland.gov, or fax to 410-333-2232. Comments will be accepted through May 18, 2015. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on June 23, 2015, 9:00 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2015

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

N/A

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

Attached Document:

Title 13A STATE BOARD OF EDUCATION

Subtitle 02 LOCAL SCHOOL ADMINISTRATION

Chapter 05 Maintenance of Effort

Authority: Education Article, §§2-205 and 5-202, Annotated Code of Maryland

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Agreed on Waiver" means a waiver based on an agreement to reduce recurring costs pursuant to Education Article §5-202(d)(9);

[(1)](2)—[(2)](3) (text unchanged)

(4) "Education effort" means a county's appropriation to the local school system divided by the county's wealth, as defined in Education Article, §5-202(a)(14), Annotated Code of Maryland.

(5) "Five-Year moving average of education effort" means the simple average of a county's education effort for the five preceding years.

[(3)](6) (text unchanged)

(7) "Impeded ability waiver" means a waiver for a fiscal year pursuant to Education Article, §5-202(d)(8), Annotated Code of Maryland.

[(4)](8) "Local board" means the local board of education and includes the [New] Board of School Commissioners of Baltimore City.

(9) "Local Wealth Per Pupil" means a county's wealth divided by the county's full-time equivalent enrollment.

(10) "Rebasing Waiver" means a waiver to rebase maintenance of effort permanently pursuant to Education Article, §5-202(d)(10), Annotated Code of Maryland.

(11) "Statewide five-year moving average of education effort" means the simple average of the five-year moving average of education effort for the 24 local school systems.

[(5)](12) "Supplemental" means expenditures that are in excess of the *original* appropriation to the regular school operating budget that qualify as nonrecurring costs.

.03 Nonrecurring Cost Exclusion.

A. Calculation.

(1)—(3) (text unchanged)

B. Procedure.

(1) [Beginning with fiscal year 1998, the] *The* county shall submit to the Department between January 1 and March 31 of the prior fiscal year, a written request to exclude qualifying nonrecurring costs that are supplemental to the regular school operating budget. The request shall include an explanation of why the cost qualifies as nonrecurring. Before submitting the written request, the county shall confer with the local board. The county shall send a copy of the written request to the local board.

(2)—(5) (text unchanged)

.04 Waiver of Maintenance of Effort Requirement.

A. [Procedure] Waiver Requests.

(1) [Beginning with fiscal year 1998, in] *In* order to qualify for a maintenance of effort waiver [for a fiscal year], a county shall make a request for a waiver *in writing* to the State Board of Education [by April 1 of the prior fiscal year.] *by the earlier of April 20 or the seventh day following the end of the legislative session of the fiscal year prior to the waiver year. The county shall send to the local board of education a copy of the waiver request.*

[(2)] The waiver request shall be in writing and shall be received by the Department between January 1 and March 31 of the prior fiscal year. The county shall send to the local board of education a copy of the waiver request.]

(2) *There are three types of waiver requests:*

(1) *Impeded Ability Waiver;*

(2) *Agreed on Waiver; and*

(3) *Rebasing Waiver.*

(3) *The State Board shall inform the county whether the waiver is approved or denied in whole or in part 30 days after receipt of an application or May 20th of the fiscal year prior to the waiver year, whichever is earlier.*

[(3)] The written request shall include the following:

(a) The amount the county proposes to appropriate to its school operating budget and the amount the county is required to appropriate to meet the maintenance of effort requirement;

(b) Information detailing the county's projected fiscal condition for the fiscal year the waiver is being requested and the current fiscal year, as well as information regarding the county's revenue stream from property tax, income tax, other taxes, and other revenue streams;

(c) If applicable, information regarding statutory prohibitions for raising revenues;

(d) Copies of the county's three most recent audited financial statements;

(e) The county's projected expenditure plan for the fiscal year in which the waiver is requested, as well as the current fiscal year expenditure plan; and

(f) Additional information in support of the waiver request as the county considers necessary.

(4) The State Board may request additional information from the county as it considers necessary.]

B. Public Hearing.

(1) *Upon receipt of the waiver request, the State Superintendent of Schools shall provide a preliminary assessment of the waiver request to the State Board.*

[(1)](2)—(3)(4)(text unchanged)

[C. Standard for Granting a Waiver.

(1) The State Board's decision on whether to approve or deny in whole or in part a waiver request shall be based on a determination that the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement.

(2) The State Board may consider the following:

(a) External environmental factors such as a loss of a major business or industry;

- (b) Tax bases;
 - (c) Rate of inflation relative to growth of student population; and
 - (d) Maintenance of effort requirement relative to the county's statutory ability to raise revenues.
- (3) The county has the burden of proof by a preponderance of the evidence.
- (4) The State Board shall 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.]

C. Standards for Granting Waivers.

(1) *For an Impeded Ability Waiver for a fiscal year, the county must address whether the waiver request is contested, submit the amount of the waiver request and a full explanation of how each of the factors below impact and support the request for this waiver:*

(a) *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;*

(b) *A county's tax base;*

(c) *Rate of inflation relative to growth of the student population in the county;*

(d) *Maintenance of effort requirement relative to the county's statutory ability to raise revenues;*

(e) *The county's history of exceeding the required maintenance of effort amount;*

(f) *An agreement between a county and a county board that a waiver should be granted.*

(g) *Significant reductions in State aid to the county and municipalities of the county for the fiscal year for which a waiver is requested;*

(h) *The number of waivers the county has received in the past 5 years;*

(i) *The history of compensation adjustments for employees of the county board and county government; and*

(j) *Other factors, upon request by the State Board.*

(2) *For an Agreed Upon Waiver based on an agreed-upon reduction in recurring costs, the county must submit:*

(a) *The amount of the agreed-upon reduction in recurring costs by line item in the local board's budget;*

(b) *The amount of the waiver request;*

(c) *A comparison of the requested appropriation level to the amount required by Education Article, §5-202(d)(1)(i), Annotated Code of Maryland;*

(d) *The document that sets forth the mutual agreement between the county and the local board; and*

(e) *If the reduction in recurring costs includes reductions in personnel or personnel costs, the document that reflects the agreement of the exclusive employee representative.*

(3) *For a Rebasing Waiver to rebase maintenance of effort permanently, the county shall:*

(a) *Have obtained a waiver for a fiscal year under §C(1) of this regulation;*

(b) *Submit the amount requested to be permanently rebased; and*

(c) *Demonstrate that the county education appropriation under Education Article, §5-202(d)(1)(ii), Annotated Code of Maryland, for the waiver year exceeds 100% of the statewide 5-year moving average of education effort times a county's local wealth; and*

(d) *Submit a full explanation of whether and how:*

(i) *The county is at its maximum taxing authority under the law;*

(ii) *The county's education appropriation is commensurate with the county's wealth;*

(iii) *The county's history of exceeding the required maintenance of effort has made meeting the*

maintenance of effort requirement in future years unsustainable;

(iv) *The county has or has not received a rebasing waiver in the past 5 years; and*

(v) *The factors set forth in §C(1)(a)—(i) of this regulation affect the county's ongoing ability to meet the maintenance of effort requirement.*

.05 Additional Maintenance of Effort for Low-Effort Counties.

A. Procedure.

(1) *In each fiscal year in which a county's prior year's education effort is below 100 percent of the statewide five-year moving average of education effort, the Department will designate the county as a low-effort county.*

(2) *The local board in a low-effort county shall adjust the maintenance of effort amount for the county by increasing the per pupil amount by the lesser of:*

(a) *A county's increase in local wealth per pupil between the prior fiscal year and current fiscal year;*

(b) *The statewide average increases in local wealth per pupil between the prior fiscal year and the current fiscal year; or*

(c) *2.5 percent.*

(3) *If the number calculated pursuant to §A(2)(a) or (b) of this Regulation is a negative number, the adjustment to the maintenance of effort amount shall be zero.*

B. Calculations.

(1) *For the purpose of calculating the five-year moving average of education effort, the Department's calculation of wealth in each fiscal year included in the five-year period shall be based on the amount the Comptroller certifies as net taxable income based on tax returns filed on or before:*

(a) *September 1st for fiscal years 2015-2017; and*

(b) November 1st for fiscal year 2018 and each fiscal year thereafter.

(2) To calculate a county's increase in local wealth per pupil, divide the current fiscal year's local wealth per pupil by the prior fiscal year's local wealth per pupil and subtract 1.

(3) To calculate the statewide average increase in local wealth per pupil, add together the 24 changes in local wealth per pupil as calculated in §B(2) of this Regulation and divide by 24.

LILLIAN M. LOWERY, Ed.D.
State Superintendent of Schools