

# HOUSE BILL 1239

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By: **Delegates Stocksdale, McDonough, Shewell, and Stukes**

Introduced and read first time: February 8, 2008

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Education – Foster Child Incentive Program**

3 FOR the purpose of establishing a Foster Child Incentive Program; authorizing a  
4 certain foster parent or legal guardian of an eligible student to enroll the  
5 eligible student in a participating school and use scholarship funds to offset  
6 certain costs relating to the attendance at the participating school of the eligible  
7 student; establishing eligibility to participate in the Program; establishing  
8 certain criteria a participating school must meet to be eligible to participate in  
9 the Program; authorizing a certain participating school to accept or deny  
10 admission to a certain qualifying student under certain circumstances;  
11 requiring certain participating schools and certain county boards to provide  
12 certain notices and information at certain times; providing for the  
13 administration of funds for the Program; establishing the amount of a  
14 scholarship; prohibiting a participating school from refunding, rebating, or  
15 sharing scholarship moneys with a certain eligible student or a certain foster  
16 parent or legal guardian; requiring the State Department of Education to  
17 develop a certain application, certify certain schools, debar certain schools  
18 under certain circumstances, ensure the annual distribution of certain  
19 information, and adopt certain regulations; prohibiting the Department from  
20 regulating the educational curriculum or program of a certain participating  
21 school and imposing certain regulations beyond those necessary to enforce the  
22 requirements of the Program; requiring the Department to conduct a review of  
23 the Program or contract with a private consulting firm to conduct a review of  
24 the Program on or before a certain date; establishing requirements for the  
25 review of the Program; requiring a certain report on or before a certain date;  
26 defining certain terms; and generally relating to the Foster Child Incentive  
27 Program.

28 BY repealing and reenacting, with amendments,  
29 Article – Education  
30 Section 4–122(b)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2006 Replacement Volume and 2007 Supplement)

3 BY adding to  
4 Article – Education  
5 Section 4–122.2  
6 Annotated Code of Maryland  
7 (2006 Replacement Volume and 2007 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article – Education**

11 4–122.

12 (b) (1) **[A] EXCEPT AS PROVIDED IN § 4–122.2 OF THIS SUBTITLE, A**  
13 **child in an out-of-county living arrangement shall receive an appropriate education**  
14 **from the service providing local education agency.**

15 (2) The service providing local education agency shall include a child  
16 enrolled as the result of an out-of-county living arrangement in their full-time  
17 equivalent enrollment as provided by § 5–202(a)(6) of this article.

18 **4–122.2.**

19 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
20 **MEANINGS INDICATED.**

21 (2) **“ELIGIBLE STUDENT” MEANS ANY ELEMENTARY OR**  
22 **SECONDARY STUDENT WHO IS ELIGIBLE TO ATTEND PUBLIC SCHOOL AND WHO**  
23 **IS:**

24 (I) **A CHILD WHO IS PLACED BY A STATE AGENCY, A**  
25 **LICENSED CHILD PLACEMENT AGENCY AS PROVIDED UNDER § 5–507 OF THE**  
26 **FAMILY LAW ARTICLE, OR A COURT IN AN APPROVED FAMILY HOME TO**  
27 **RECEIVE CONTINUOUS 24-HOUR CARE AND SUPPORTIVE SERVICES; OR**

28 (II) **A CHILD WHO IS PLACED BY A STATE AGENCY, A**  
29 **LICENSED CHILD PLACEMENT AGENCY AS PROVIDED UNDER § 5–507 OF THE**  
30 **FAMILY LAW ARTICLE, OR A COURT IN THE HOME OF A RELATIVE RELATED BY**  
31 **BLOOD OR MARRIAGE WITHIN THE FIFTH DEGREE OF CONSANGUINITY OR**  
32 **AFFINITY UNDER THE CIVIL LAW RULE TO RECEIVE CONTINUOUS 24-HOUR**  
33 **CARE AND SUPPORTIVE SERVICES.**

1           (3) **“FINANCIALLY RESPONSIBLE COUNTY” MEANS THE COUNTY**  
2 **WHERE THE FOSTER PARENT OR LEGAL GUARDIAN OF AN ELIGIBLE STUDENT**  
3 **RESIDES.**

4           (4) **“LOCAL CURRENT EXPENSE PER STUDENT” HAS THE**  
5 **MEANING STATED IN § 4-122 OF THIS SUBTITLE.**

6           (5) **“PARTICIPATING SCHOOL” MEANS EITHER A PUBLIC SCHOOL**  
7 **OUTSIDE THE LOCAL SCHOOL SYSTEM IN THE FINANCIALLY RESPONSIBLE**  
8 **COUNTY OR ANY NONPUBLIC SCHOOL THAT PROVIDES EDUCATION TO**  
9 **ELEMENTARY OR SECONDARY STUDENTS THAT PARTICIPATE IN THE PROGRAM.**

10           (6) **“PROGRAM” MEANS THE FOSTER CHILD INCENTIVE**  
11 **PROGRAM.**

12           (b) (1) **THERE IS A FOSTER CHILD INCENTIVE PROGRAM.**

13           (2) **UNDER THE PROGRAM, A FOSTER PARENT OR LEGAL**  
14 **GUARDIAN OF AN ELIGIBLE STUDENT MAY ENROLL AN ELIGIBLE STUDENT IN A**  
15 **PARTICIPATING SCHOOL AND THE ELIGIBLE STUDENT MAY RECEIVE A**  
16 **SCHOLARSHIP TO OFFSET COSTS RELATING TO ENROLLING IN AND ATTENDING**  
17 **A PARTICIPATING SCHOOL, INCLUDING TUITION, FEES, AND OTHER**  
18 **EDUCATIONAL COSTS.**

19           (3) **AN ELIGIBLE STUDENT MAY ENROLL IN A PARTICIPATING**  
20 **SCHOOL UNDER THE PROGRAM:**

21                   (i) **REGARDLESS OF THE PLACEMENT OUTSIDE OF FOSTER**  
22 **CARE OF THE ELIGIBLE STUDENT; AND**

23                   (ii) **UNTIL THE FIRST OF:**

24                           1. **THE GRADUATION FROM HIGH SCHOOL OF THE**  
25 **ELIGIBLE STUDENT; OR**

26                           2. **THE 21ST BIRTHDAY OF THE ELIGIBLE STUDENT.**

27           (c) **TO BE ELIGIBLE TO PARTICIPATE IN THE PROGRAM, A**  
28 **PARTICIPATING SCHOOL SHALL:**

29                   (1) **OPERATE IN THE STATE;**

30                   (2) **COMPLY WITH ALL APPLICABLE HEALTH AND SAFETY LAWS**  
31 **AND REGULATIONS;**

1           **(3) IF REQUIRED, HOLD A VALID OCCUPANCY PERMIT;**

2           **(4) CERTIFY TO THE DEPARTMENT THAT THE PARTICIPATING**  
3 **SCHOOL WILL NOT DISCRIMINATE AGAINST AN ELIGIBLE STUDENT ON THE**  
4 **BASIS OF RACE, COLOR, NATIONAL ORIGIN, OR RELIGION;**

5           **(5) COMPLY WITH ALL APPLICABLE STATE LAWS AND**  
6 **REGULATIONS RELATING TO:**

7                   **(I) BACKGROUND CHECKS FOR EMPLOYEES; AND**

8                   **(II) PROHIBITIONS ON EMPLOYMENT OF INDIVIDUALS NOT**  
9 **ALLOWED TO WORK IN PARTICIPATING SCHOOLS;**

10           **(6) REPORT REGULARLY ON THE PROGRESS OF AN ELIGIBLE**  
11 **STUDENT ENROLLED IN THE PARTICIPATING SCHOOL UNDER THE PROGRAM TO**  
12 **THE FOSTER PARENT OR LEGAL GUARDIAN OF THE ELIGIBLE STUDENT;**

13           **(7) IN ACCORDANCE WITH THE REQUIREMENTS OF THE**  
14 **DEPARTMENT, SUBMIT TO THE DEPARTMENT AN ANNUAL ACCOUNTING REPORT**  
15 **OF THE USE OF PROGRAM FUNDS THAT IS:**

16                   **(I) COMPLETED BY A CERTIFIED PUBLIC ACCOUNTANT;**  
17 **AND**

18                   **(II) CERTIFIED BY AN INDEPENDENT AUDITOR AS BEING**  
19 **FREE FROM MATERIAL MISSTATEMENTS; AND**

20           **(8) IF IT IS TO RECEIVE \$50,000 OR MORE IN PROGRAM FUNDS**  
21 **FOR A SINGLE ACADEMIC YEAR, DEMONSTRATE FINANCIAL VIABILITY BY FILING**  
22 **WITH THE DEPARTMENT PRIOR TO THE BEGINNING OF THE ACADEMIC YEAR:**

23                   **(I) A SURETY BOND PAYABLE TO THE STATE IN AN AMOUNT**  
24 **EQUAL TO THE AGGREGATE AMOUNT OF PROGRAM FUNDS THE PARTICIPATING**  
25 **SCHOOL EXPECTS TO RECEIVE FOR THE ACADEMIC YEAR; OR**

26                   **(II) A CERTIFIED FINANCIAL STATEMENT THAT**  
27 **DEMONSTRATES THE ABILITY OF THE PARTICIPATING SCHOOL TO PAY AN**  
28 **AGGREGATE AMOUNT EQUAL TO THE AMOUNT OF PROGRAM FUNDS THE**  
29 **PARTICIPATING SCHOOL EXPECTS TO RECEIVE FOR THE ACADEMIC YEAR.**

30           **(D) (1) A PARTICIPATING SCHOOL MAY ACCEPT AN ELIGIBLE**  
31 **STUDENT UNDER THE PROGRAM ON A FIRST-COME,**

1 FIRST-SERVED BASIS UNTIL THE PARTICIPATING SCHOOL RECEIVES MORE  
2 APPLICATIONS FOR PLACEMENTS UNDER THE PROGRAM THAN THE  
3 PARTICIPATING SCHOOL HAS SPACES.

4 (2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
5 PARAGRAPH, IF A PARTICIPATING SCHOOL IS OVERSUBSCRIBED AS DESCRIBED  
6 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PARTICIPATING SCHOOL  
7 SHALL FILL SPACES ACCORDING TO A RANDOM SELECTION PROCESS.

8 (II) IF A PARTICIPATING SCHOOL IS OVERSUBSCRIBED, THE  
9 PARTICIPATING SCHOOL MAY GIVE PREFERENCE TO AN ELIGIBLE STUDENT  
10 WHO HAD PREVIOUSLY ENROLLED IN THE PARTICIPATING SCHOOL.

11 (3) IF AN ELIGIBLE STUDENT IS DENIED ADMISSION TO A  
12 PARTICIPATING SCHOOL BECAUSE THE PARTICIPATING SCHOOL IS  
13 OVERSUBSCRIBED, THE ELIGIBLE STUDENT MAY USE FUNDS UNDER THE  
14 PROGRAM TO ATTEND A PARTICIPATING SCHOOL THAT HAS SPACES AVAILABLE.

15 (E) (1) ON ACCEPTING FOR ENROLLMENT AN ELIGIBLE STUDENT  
16 UNDER THE PROGRAM, A PARTICIPATING SCHOOL SHALL PROMPTLY NOTIFY  
17 THE COUNTY BOARD OF THE FINANCIALLY RESPONSIBLE COUNTY OF THE  
18 ACCEPTANCE.

19 (2) ON RECEIVING NOTIFICATION UNDER PARAGRAPH (1) OF  
20 THIS SUBSECTION, A COUNTY BOARD OF A FINANCIALLY RESPONSIBLE COUNTY  
21 SHALL PROVIDE PROMPTLY THE PARTICIPATING SCHOOL WITH A COMPLETE  
22 COPY OF THE SCHOOL RECORDS OF THE ELIGIBLE STUDENT, IN ACCORDANCE  
23 WITH THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (20 U.S.C. §  
24 1232G, 34 C.F.R. PART 99).

25 (F) (1) FUNDS FOR THE PROGRAM SHALL BE ADMINISTERED  
26 ACCORDING TO THIS SUBSECTION.

27 (2) AN ELIGIBLE STUDENT ENROLLED IN THE PROGRAM  
28 QUALIFIES FOR AN ANNUAL SCHOLARSHIP IN AN AMOUNT EQUAL TO THE  
29 LESSER OF:

30 (I) THE LOCAL CURRENT EXPENSE PER STUDENT IN THE  
31 FINANCIALLY RESPONSIBLE COUNTY; OR

32 (II) THE ANNUAL COST PER STUDENT TO THE  
33 PARTICIPATING SCHOOL, INCLUDING:

34 1. OPERATING COSTS;

1                                   **2. CAPITAL COSTS; AND**

2                                   **3. COSTS ASSOCIATED WITH ANY SPECIAL NEEDS OF**  
3 **THE ELIGIBLE STUDENT.**

4                   **(3) FOR EACH ELIGIBLE STUDENT ENROLLED UNDER THE**  
5 **PROGRAM IN A PARTICIPATING SCHOOL ON DECEMBER 31, THE FINANCIALLY**  
6 **RESPONSIBLE COUNTY SHALL PAY THE PARTICIPATING SCHOOL THE AMOUNT**  
7 **DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION.**

8                   **(4) (I) EACH PARTICIPATING SCHOOL SHALL:**

9                                   **1. NOTIFY THE STATE SUPERINTENDENT OF THE**  
10 **NAME OF EACH ELIGIBLE STUDENT WHO IS ENROLLED IN THE PARTICIPATING**  
11 **SCHOOL UNDER THE PROGRAM AS OF DECEMBER 31 OF EACH YEAR; AND**

12                                   **2. MAKE AN INITIAL DETERMINATION OF THE**  
13 **FINANCIALLY RESPONSIBLE COUNTY FOR EACH ELIGIBLE STUDENT ENROLLED**  
14 **IN THE PARTICIPATING SCHOOL UNDER THE PROGRAM.**

15                                   **(II) ON OR BEFORE JANUARY 31, THE PARTICIPATING**  
16 **SCHOOL SHALL SEND A COPY OF THE NOTICE TO THE FINANCIALLY**  
17 **RESPONSIBLE COUNTY AND THE STATE SUPERINTENDENT.**

18                                   **(III) WITHIN 30 DAYS AFTER THE DATE ON WHICH THE**  
19 **NOTICE IS SENT, THE COUNTY THAT IS INITIALLY DETERMINED TO BE THE**  
20 **FINANCIALLY RESPONSIBLE COUNTY MAY APPEAL THE DETERMINATION TO THE**  
21 **STATE SUPERINTENDENT.**

22                                   **(IV) THE STATE SUPERINTENDENT SHALL DECIDE AN**  
23 **APPEAL UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH AND MAKE A FINAL**  
24 **DETERMINATION REGARDING THE FINANCIALLY RESPONSIBLE COUNTY FOR**  
25 **EACH ELIGIBLE STUDENT WHO IS ENROLLED IN A PARTICIPATING SCHOOL**  
26 **UNDER THE PROGRAM.**

27                                   **(5) BY JANUARY 15 OF EACH YEAR, EACH COUNTY BOARD SHALL**  
28 **PROVIDE THE STATE SUPERINTENDENT THE DATA NECESSARY TO COMPUTE**  
29 **THE LOCAL CURRENT EXPENSE PER STUDENT UNDER THIS SUBSECTION.**

30                                   **(6) IF BY MAY 15 A FINANCIALLY RESPONSIBLE COUNTY FAILS TO**  
31 **MAKE THE REQUIRED PAYMENT TO A PARTICIPATING SCHOOL UNDER THE**  
32 **PROGRAM, THE STATE SUPERINTENDENT SHALL:**

1                   (I)    **DEDUCT FROM THE NEXT PAYMENT OF STATE AID TO**  
2 **THE FINANCIALLY RESPONSIBLE COUNTY AN AMOUNT EQUAL TO THE AMOUNT**  
3 **OWED UNDER THIS SUBSECTION; AND**

4                   (II)   **PAY THOSE FUNDS TO THE PARTICIPATING SCHOOL.**

5                   (7)    **A PARTICIPATING SCHOOL MAY NOT REFUND, REBATE, OR**  
6 **SHARE SCHOLARSHIP MONEYS WITH:**

7                   (I)    **AN ELIGIBLE STUDENT WHO IS ENROLLED IN THE**  
8 **PARTICIPATING SCHOOL; OR**

9                   (II)   **A FOSTER PARENT OR LEGAL GUARDIAN OF THE**  
10 **ELIGIBLE STUDENT.**

11           (G)    **THE DEPARTMENT SHALL:**

12                   (1)    **DEVELOP A UNIFORM APPLICATION FOR AN ELIGIBLE**  
13 **STUDENT AND THE FOSTER PARENT OR LEGAL GUARDIAN OF THE ELIGIBLE**  
14 **STUDENT TO USE FOR APPLYING UNDER THE PROGRAM TO A PARTICIPATING**  
15 **SCHOOL;**

16                   (2)    **CERTIFY A PARTICIPATING SCHOOL AS TO ITS ELIGIBILITY TO**  
17 **PARTICIPATE IN THE PROGRAM;**

18                   (3)    **DEBAR A PARTICIPATING SCHOOL FROM PARTICIPATING IN**  
19 **THE PROGRAM IF THE DEPARTMENT FINDS THAT THE PARTICIPATING SCHOOL:**

20                   (I)    **INTENTIONALLY AND SUBSTANTIALLY MISREPRESENTS**  
21 **INFORMATION REQUIRED UNDER SUBSECTION (C) OF THIS SECTION;**

22                   (II)   **ROUTINELY FAILS TO COMPLY WITH ACCOUNTABILITY**  
23 **STANDARDS ESTABLISHED UNDER SUBSECTION (C)(7) AND (8) OF THIS**  
24 **SECTION; OR**

25                   (III)   **FAILS TO REFUND TO THE STATE IN A TIMELY MANNER**  
26 **A SCHOLARSHIP OVERPAYMENT;**

27                   (4)    **ENSURE THE ANNUAL DISTRIBUTION OF A LIST OF**  
28 **PARTICIPATING SCHOOLS UNDER THE PROGRAM; AND**

29                   (5)    **ADOPT REGULATIONS NECESSARY TO IMPLEMENT THE**  
30 **PROGRAM, INCLUDING:**

1                   **(I) REGULATIONS RELATING TO THE APPLICATION**  
2 **PROCESS FOR ELIGIBLE STUDENTS AND PARTICIPATING SCHOOLS;**

3                   **(II) QUALIFICATIONS FOR PARTICIPATING SCHOOLS TO**  
4 **ENROLL IN THE PROGRAM; AND**

5                   **(III) THE CALCULATION AND DISTRIBUTION OF**  
6 **SCHOLARSHIPS TO ELIGIBLE STUDENTS.**

7           **(H) THE DEPARTMENT MAY NOT:**

8                   **(1) REGULATE THE EDUCATIONAL CURRICULUM OR PROGRAM OF**  
9 **A PARTICIPATING SCHOOL THAT IS PARTICIPATING IN THE PROGRAM; OR**

10                   **(2) IMPOSE REGULATIONS NOT RELATED TO EDUCATIONAL**  
11 **CURRICULA AND PROGRAMS BEYOND THOSE NECESSARY TO ENFORCE THE**  
12 **REQUIREMENTS OF THE PROGRAM.**

13           SECTION 2. AND BE IT FURTHER ENACTED, That:

14           (a) On or before December 1, 2010, the State Department of Education shall:

15                   (1) conduct a review of the Foster Child Incentive Program; or

16                   (2) contract with a private consulting firm to conduct a review of the  
17 Foster Care Incentive Program.

18           (b) The review required under subsection (a) of this section shall assess:

19                   (1) the level of satisfaction of:

20                           (i) eligible students who participate in the Program; and

21                           (ii) foster parents or legal guardians of eligible students who  
22 participate in the Program;

23                   (2) the percentage of eligible students who participate in the Program  
24 who exhibited behavioral problems in their financially responsible counties as  
25 compared to the percentage of eligible students who participate in the Program who  
26 exhibit behavioral problems in participating schools;

27                   (3) average class sizes in participating schools experienced by eligible  
28 students who participate in the Program as compared to average class sizes in  
29 financially responsible counties; and

1           (4) the fiscal impact of the Program to the State and to financially  
2 responsible counties.

3           (c) The individuals who conduct the review required under subsection (a) of  
4 this section shall apply appropriate analytical and behavioral sciences methodologies.

5           (d) The following schools shall comply with requests for information from  
6 individuals who conduct a review under subsection (a) of this section, in accordance  
7 with the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g, 34 C.F.R.  
8 Part 99):

9           (1) public schools in financially responsible counties from which  
10 eligible students who participate in the Program transfer; and

11           (2) participating schools to which eligible students who participate in  
12 the Program transfer.

13           (e) The Department may:

14           (1) accept a grant from a private entity to conduct the review required  
15 under subsection (a) of this section; and

16           (2) require periodic updates of the review conducted under subsection  
17 (a) of this section.

18           (f) (1) On or before December 31, 2010, the Department shall report the  
19 results of the review conducted under subsection (a) of this section to the Governor  
20 and, in accordance with § 2-1246 of the State Government Article, the General  
21 Assembly.

22           (2) The report shall contain data and methodologies used to complete  
23 the review, in accordance with the Family Educational Rights and Privacy Act (20  
24 U.S.C. § 1232g, 34 C.F.R. Part 99).

25           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 June 1, 2008.