

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 613 (Delegate Pena-Melnyk, *et al.*)
Economic Matters and Ways and Means

Education - Maryland Education Fund - Establishment and Funding

This bill establishes a Maryland Education Fund to be supported with 70% of the remaining balances on gift certificates and gift cards that have been inactive for a period of four years from the date of purchase or one year from the date of last activity on the gift certificate or card, whichever is later. The fund may only be used to finance public school education, and money expended from the fund is supplemental to funding that would otherwise be appropriated for public education.

Fiscal Summary

State Effect: It is unclear whether Maryland would be able to obtain revenue from all unspent gift cards sold or issued in the State or if the escheatment rights of other states where retailers are domiciled would supersede Maryland's claim to the funds. If Maryland can access all the funds, special fund revenues would increase by an estimated \$5.7 million in FY 2009 and \$55.7 million in FY 2013. Special fund revenues would be significantly less if the State can only claim funds from unredeemed gift cards sold by companies located in Maryland. All funds collected would be spent to supplement appropriations for public education.

Local Effect: Local school revenues from State aid would increase by the amount of revenue generated for the Maryland Education Fund.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill provides that a gift certificate shall be presumed abandoned on the later of • four years from the date of purchase, or • one year after the date of last activity on the gift certificate. By March 1 of each year, a person who sells or issues gift certificates must remit to the Comptroller 70% of the remaining balance on each certificate that was presumed to be abandoned during the previous year. The Comptroller must distribute the revenues to the Maryland Education Fund. Notice of the four-year presumption of abandonment must be included on each gift certificate sold or issued.

A person that sells or issues gift certificates in Maryland has to maintain records on the certificates for at least two years after the date the certificate is presumed to be abandoned, and make the records available to the Comptroller upon request. The bill also narrows the definition of a gift certificate by excluding • a gift certificate sold by a charitable or nonprofit organization; • a card issued by an employer to an employee as proof of wages paid to the employee; and • a card issued by a public transit facility for the payment of any transit fares, parking fees, or transit-related expenses.

The Maryland Education Fund consists of revenue distributed to the fund, investment earnings, and any other money accepted for the benefit of the fund. The State Superintendent of Schools will administer the fund and adopt necessary regulations. Expenditures may only be made in accordance with the State budget.

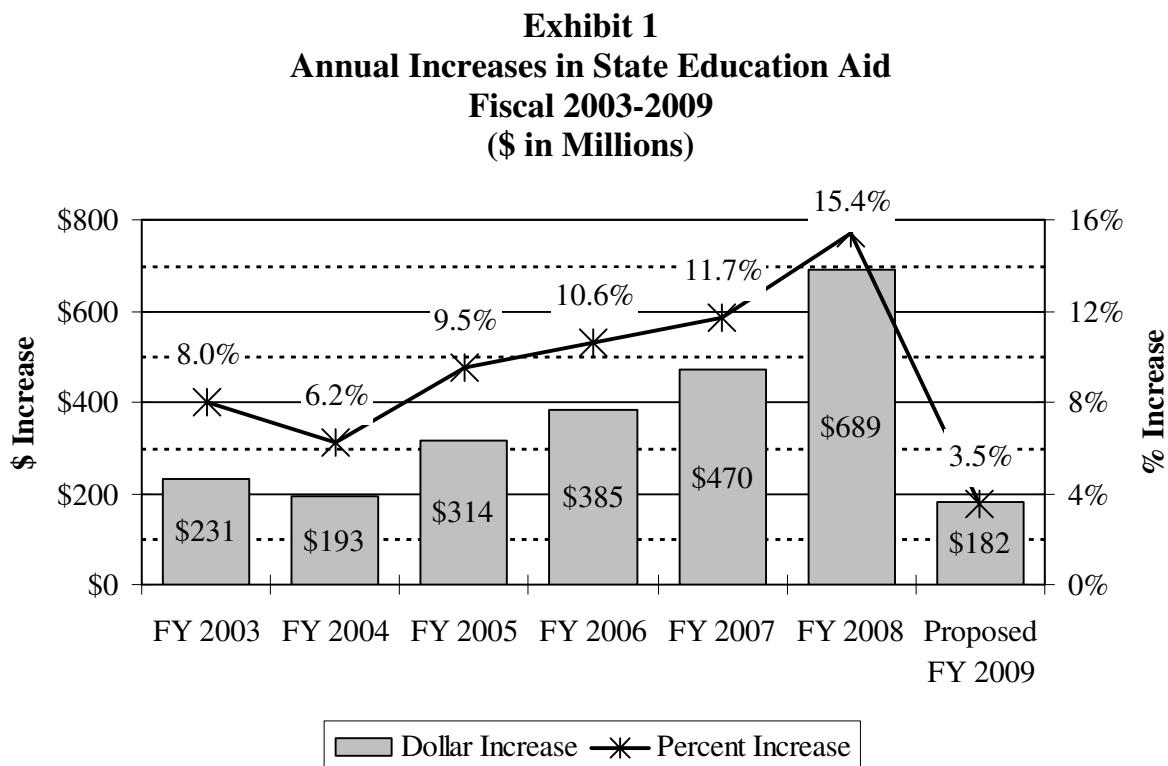
Current Law: A person may not sell or issue a gift certificate that is subject to expiration or a fee within four years after the date it is purchased. An expiration or fee that takes effect more than four years after the date of purchase must be printed on the gift certificate, on a sticker permanently affixed to the gift certificate, or on an envelope containing the gift certificate.

A sum payable on a written instrument, including a check, certificate of deposit, draft, or money order, is generally presumed abandoned three years from the date of issuance. The holder of property that is presumed abandoned must send written notice to the owner of the property before filing a required report with the Comptroller on the nature of the abandoned property. After the required notification procedures have been performed, the property must be delivered or paid to the Comptroller and the State takes custody of the property. Gift certificates and gift cards are not subject to these laws.

In fiscal 2009, mandated State funding for public elementary and secondary education totals \$5.2 billion.

Background: From fiscal 2002 to 2008, State funding for public education in Maryland increased by \$2.3 billion (79%), from \$2.9 billion in fiscal 2002 to \$5.2 billion in

fiscal 2008. The proposed fiscal 2009 State budget includes a considerably smaller increase for public schools than the record-setting increases of recent years due to the completion of the Bridge to Excellence in Public Schools phase-in in fiscal 2008 and adjustments made to mandated spending levels during the 2007 special session. The proposed budget includes an increase of \$182 million for public education, as shown in **Exhibit 1**. Total State funding by school system is shown in **Exhibit 2**.



Note: The exhibit does not reflect minor adjustments to funding proposed in Supplemental Budget #1.

Estimates of the share of gift card funds that go unused generally range from 5% to 10%, although a recent *Consumer Reports* survey found 27% of gift card recipients reported one or more unused cards. TowerGroup, an international advisory research and consulting firm for the global financial services industry, estimates that, out of \$82 billion in gift cards sold in 2006, approximately \$8 billion went unused in the first year. TowerGroup notes that retailers do not generate revenue from gift cards until they are used or until they are declared dormant; however, the money used to purchase the unredeemed gift cards may generate interest for the retailer. A November 2007 article on CFO.com states that Best Buy determined that, on average, gift cards that have not been used after two years will never be used. The article claims that Best Buy was able to move \$39 million from liability to income in 2005 due to unredeemed gift cards.

Exhibit 2
Proposed Fiscal 2009 State Aid for Elementary and Secondary Education

<u>County</u>	<u>Total Aid (\$ in Millions)</u>	<u>Estimated Aid Per Pupil</u>
Allegany	\$93.3	\$10,597
Anne Arundel	331.3	4,637
Baltimore City	901.6	11,931
Baltimore	591.6	5,922
Calvert	98.8	5,810
Caroline	46.7	8,645
Carroll	162.6	5,826
Cecil	109.7	6,951
Charles	168.0	6,415
Dorchester	33.8	7,657
Frederick	231.6	5,795
Garrett	28.7	6,636
Harford	237.2	6,225
Howard	238.1	4,884
Kent	12.1	5,911
Montgomery	531.6	3,943
Prince George's	1,010.1	8,272
Queen Anne's	35.4	4,679
St. Mary's	105.5	6,495
Somerset	28.6	10,479
Talbot	13.4	3,215
Washington	154.0	7,182
Wicomico	120.6	8,369
Worcester	22.9	3,626
Unallocated	42.5	52
Total	\$5,349.9	\$6,561

Note: The exhibit does not reflect minor adjustments to State funding proposed in Supplemental Budget #1.

Source: Department of Legislative Services

In *Texas v. New Jersey* (380 U.S. 518 (1965)), the U.S. Supreme Court ruled that the state with the first right to escheat abandoned property is the state of the creditor's last known address. If there is no known address for the creditor, the state where the debtor is located has the second right to the abandoned property. In the case of gift cards, the recipient of the card is the creditor. Since a retailer selling or issuing a gift card does not record the address of the recipient, the right to escheat would presumably fall under the second rule, which allows the debtor's state to take possession of the abandoned property. In the case of a gift card, that would presumably be the state of the retailer's corporate domicile; however, the Supreme Court has not specifically made any rulings about the escheatment of unredeemed gift card balances.

State Revenues: The amount of revenue generated for the Maryland Education Fund would depend greatly on whether all unspent balances on gift cards sold in Maryland may be claimed by the State. If the funds can be claimed by the State, revenues could total an estimated \$5.7 million in fiscal 2009, \$28.4 million in fiscal 2010, \$49.6 million in fiscal 2011, and \$55.7 million by fiscal 2013. The information and assumptions used to derive these estimates are stated below.

- TowerGroup reports a total of \$82 billion spent nationally on gift cards and gift certificates in calendar 2006; however, approximately \$23 billion is attributable to bank cards that can be used in many stores and do not fall under the statutory definition of gift certificates. This leaves an estimated \$59 billion spent nationally on qualifying gift cards, up from an estimated \$51 billion in calendar 2005.
- If Maryland consumers purchased 2% of the \$59 billion in gift cards sold nationally, approximately \$1.2 billion in gift cards were sold in the State in 2006. Based on reports of gift card sales during the last two holiday seasons, annual 6% increases in gift card sales are anticipated for calendar 2007 through 2009.
- Based on available estimates, it is assumed that 6% of gift card purchases go unspent in Maryland. Under the bill, Maryland's share of the unredeemed cards would be 70%.
- Due to the bill's October 1, 2008 effective date, the State will collect revenues in fiscal 2009 from approximately one-quarter of Maryland gift card purchases from calendar 2004. Future year revenue estimates reflect a full calendar year of revenue.
- Chapter 456 of 2005 prohibited gift cards issued in Maryland after July 1, 2006 from having an expiration date prior to four years from the date the card was issued. The Comptroller estimates that approximately one-third of the gift cards

and gift certificates sold prior to July 1, 2006 have expiration dates earlier than four years after the date of issuance; therefore, revenues will not be collected for approximately one-third of the cards that were sold before that date. This would reduce Maryland Education Fund revenues in fiscal 2009 and 2010.

These estimates assume that the remaining balances on all gift cards sold or issued in Maryland would escheat to the State; however, it is unclear whether this would occur. Supreme Court decisions suggest that another possible result is that only those gift cards and gift certificates sold by companies that are incorporated in Maryland would escheat to the State. In this case, revenues for the Maryland Education Fund would be much lower.

State Expenditures: It is assumed that annual expenditures from the Maryland Education Fund would equal the revenues generated from unredeemed gift cards. The funding must supplement existing State funding for public education, which totals \$5.35 billion fiscal 2009 and is estimated at \$6.0 billion for fiscal 2013.

The bill requires the State Superintendent of Schools to adopt regulations to carry out the purpose of the fund but does not indicate how the funds would be distributed. It is assumed, however, that most or all of the revenues would be distributed to the 24 local school systems.

Local Revenues: Revenues for local school systems could increase by an estimated \$5.7 million in fiscal 2009 and \$55.7 million in fiscal 2013 if the State is able to claim 70% of all unspent balances from gift cards sold in the State. It is unclear, however, whether the State would be able to obtain these funds in total. The bill does not specify how any revenues generated for the Maryland Education Fund would be distributed.

Small Business Effect: Small businesses that issue gift certificates would forfeit 70% of any unspent funds from the gift certificates, although they would retain 30% of the remaining balances and any interest they make on the money that was originally used to purchase the gift certificates. Businesses may also incur administrative expenses relating to added bookkeeping responsibilities.

Additional Information

Prior Introductions: A similar bill was introduced last year as HB 1080. The bill was referred to interim study by the House Economic Matters Committee.

Cross File: SB 998 (Senators Pugh and Harrington) – Finance and Education, Health, and Environmental Affairs.

Information Source(s): Comptroller's Office, Maryland State Department of Education, TowerGroup, *Consumer Reports*, *Baltimore Sun*, CFO.com, Department of Legislative Services

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