

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 223
Ways and Means

(Delegate Hixson, *et al.*)

Budget and Taxation

Maintenance of Effort - Penalty

This bill waives the fiscal 2010 county maintenance of effort (MOE) penalty for public education. The Senate Budget and Taxation Committee and the House Ways and Means Committee must study the appropriate calculation of the penalty for failing to meet the MOE requirement and the appropriate party against whom the penalty should be applied. The committees must report their findings and recommendations to the Legislative Policy Committee by December 31, 2010.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: The bill eliminates a general fund reduction of \$23.4 million in FY 2010 by suspending the MOE penalty. Revenues are not affected.

Local Effect: Montgomery County school revenues from State aid are not reduced by \$23.4 million due to the waiver of the MOE penalty for FY 2010.

Small Business Effect: None.

Analysis

Current Law/Background: To be eligible for increases in State education aid under Section 5-202 of the Education Article (the State share of the foundation program, the State's largest aid to education program; the geographic cost of education index; and the supplemental grant), a local jurisdiction must provide at least as much funding per pupil to the local school system as it provided in the previous fiscal year. Chapter 175 of 1996 added a waiver provision that allows counties to request from the State Board of

Education a partial or temporary waiver from the MOE requirement. Until fiscal 2010, the waiver option had never been used, but three counties (Montgomery, Prince George's, and Wicomico) applied for waivers for fiscal 2010. All three applications were denied by the State Board of Education. The three counties then each enacted a budget that included the full amount of MOE funding for the school system but also directed the school system to make payments through the county for debt service on school facilities. These payments had been made in previous fiscal years from the county budget rather than the school system budget. The counties used two slightly different budget mechanisms to do this.

The governing bodies of Montgomery and Prince George's counties each restricted some MOE funds by requiring that the local school system pay a part of the appropriation back to the county for debt service on school facilities. In Wicomico County, the county council did not require that the local school board use budgeted MOE funds to pay debt service. Rather, it passed a separate resolution directing the local board to defray part of the cost of debt service from the local board's school construction fund, which was not part of the MOE computation for fiscal 2010.

In a November 4, 2009 letter, the Office of the Attorney General expressed its opinion that the budget restrictions imposed by Montgomery and Prince George's counties were not permissible means of satisfying their MOE obligations for fiscal 2010. The method used by Wicomico County was deemed permissible.

Since it then appeared that Montgomery and Prince George's counties were not going to make their MOE obligation and neither county had received a waiver from the State Board of Education, the question became how to calculate the amount of funds to withhold from the counties (the MOE penalty). In fiscal 2010, instead of using solely general funds, the State used federal dollars from the State Fiscal Stabilization Fund, created under the American Recovery and Reinvestment Act of 2009 (ARRA), to partially fund its education aid formulas. Thus, the amount to be withheld could be calculated by either including or excluding the federal dollars as part of the State's aid.

In late fall, Montgomery County asked the State Superintendent of Schools to expedite review of the county's MOE appropriation. Following official notice that the county had not met the MOE requirement, Montgomery County appealed this decision to the State board. In a January 29, 2010 decision, the State Board of Education denied the appeal and determined the penalty amount to be withheld. The decision noted that a January 20, 2010 letter from the Office of the Attorney General suggested that, "although the matter is not entirely free from doubt, computation of 'the State's aid due the county in the current fiscal year' should include, for Fiscal Year 2010, any funds provided under ARRA that are to be distributed in accordance with ED §5-202." Despite this advice, the State Board of Education decided *not* to include the federal ARRA funds in its

calculation of the MOE penalty. This decision reduces Montgomery County's penalty from \$45.1 million to \$23.4 million.

The Maryland State Department of Education (MSDE) is in the process of certifying that other counties have met MOE. Once MSDE issues notice that a local government has not complied with MOE, the local government may appeal to the State board. If the State board agrees that a county has failed to meet MOE, the board will send a notice to the Comptroller to suspend payment of the penalty amount. However, the decision to exclude federal ARRA funds from the MOE penalty amount means that no other county can lose aid in fiscal 2010 except Talbot County, which could be penalized about \$28,000.

State Expenditures: It is anticipated that Montgomery and Prince George's counties will not meet MOE; however, only Montgomery County is in a position to lose State funds (\$23.4 million) because of the way the State Board of Education is calculating the MOE penalty. The bill, therefore, eliminates a \$23.4 million fiscal 2010 general fund expenditure reduction.

Local Revenues: MSDE has certified that Montgomery County has failed to meet MOE for fiscal 2010, and thus, under current law, the county is ineligible to receive its \$23.4 million increase in State aid in fiscal 2010. If the MOE penalty for 2010 is waived, Montgomery County revenues from the State's education aid formulas will not be reduced.

Prince George's County is also expected to fall short of meeting MOE; however, Prince George's County is not due to lose any State aid using the State Board of Education's method for calculating the MOE penalty.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, as amended, this bill is identical to SB 476.

Information Source(s): Maryland State Department of Education, Montgomery County, Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2010
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