

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 403
Budget and Taxation

(Senator Pinsky, *et al.*)

Education - Maintenance of Effort - Penalty

This bill shifts the penalty for a county governing body that fails to meet the public school maintenance of effort (MOE) requirement from the local board of education to the county governing body.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: None. The general fund reduction due to a MOE penalty is simply shifted from the local board of education to the county governing body.

Local Effect: If a county governing body fails to meet MOE, the MOE penalty will be withheld from the county governing body and not the local board of education.

Small Business Effect: None.

Analysis

Bill Summary: If the State Superintendent of Schools finds that a county governing body is not complying with the MOE requirement, the State Superintendent must notify the county governing body and the local board about the noncompliance. If a county governing body disputes the finding within 30 days after the issuance of a notice of noncompliance, the dispute must be promptly referred to the State Board of Education, which is required to make a final determination.

Upon receipt of certification of noncompliance by the Superintendent or the State board, the Comptroller must suspend, until notification of compliance is received, the MOE penalty from the county governing body. The MOE penalty is equal to the State's aid due the local board of education under Section 5-202 of the Education Article that exceeds the amount the local board received in the prior fiscal year. The Comptroller and the county governing body may not suspend payment of any funds due the local board of education as provided under Section 5-202 as a result of the county governing body failing to meet MOE.

Current Law: 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. If the State Superintendent finds that a county or Baltimore City is not in compliance with the MOE requirement, the State Superintendent must notify the county or Baltimore City of their noncompliance.

Upon receipt of certification of noncompliance by the State Superintendent or the Maryland State Department of Education (MSDE), the Comptroller must suspend, until notification of compliance is received, payment of any funds due the county for the current fiscal year under Section 5-202, to the extent that the State aid due the county in the current fiscal year exceeds the amount the county received in the prior fiscal year.

Background: Chapter 175 of 1996 added an MOE 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.

MSDE has certified that Montgomery and Prince George's counties have failed to make MOE for fiscal 2010. 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 made MOE in fiscal 2010.

Local Effect: **Exhibit 1** estimates the MOE penalty for fiscal 2011 by county based on the proposed fiscal 2011 State budget. The amount a county would lose for failing to make MOE varies considerably; Montgomery County would lose \$41.2 million while 11 counties and Baltimore City would lose no money. The actual penalty, however, will be based on the adopted State budget.

Under current law, the MOE penalty would be withheld from the local board of education. Under the bill, the MOE penalty would be withheld from the county governing body.

Exhibit 1
Estimated Maintenance of Effort Penalty for Fiscal 2011
Based on Proposed State Budget

County	Estimated Penalty	County	Estimated Penalty
Allegany	\$0	Harford	0
Anne Arundel	10,017,013	Howard	8,914,821
Baltimore City	0	Kent	0
Baltimore	5,235,603	Montgomery	41,248,603
Calvert	0	Prince George's	0
Caroline	0	Queen Anne's	0
Carroll	0	St. Mary's	1,422,334
Cecil	500,293	Somerset	0
Charles	993,516	Talbot	13,806
Dorchester	638,157	Washington	2,121,454
Frederick	1,254,254	Wicomico	1,442,468
Garrett	0	Worcester	0
Total			\$73,802,322

Source: Department of Legislative Services

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Department of Education, Carroll and Harford counties, Maryland Association of Counties, Department of Legislative Services

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