

SENATE BILL 1014

F1

EMERGENCY BILL

0lr2883

By: **Senator Stoltzfus**

Introduced and read first time: February 24, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Maintenance of Effort Requirement – Waiver and Appeal**
3 **Process**

4 FOR the purpose of altering the date by which a county governing body must make a
5 request to the State Board of Education for a waiver from the maintenance of
6 effort requirement; clarifying the maintenance of effort requirement for which a
7 county may apply for a waiver; requiring the State Board to grant a waiver,
8 subject to certain limitations, under certain circumstances; requiring the State
9 Board to consider certain factors when making a decision whether to grant a
10 waiver; altering the date by which the State Board must inform the county
11 governing body whether the waiver application has been granted or denied;
12 requiring the State Board to inform certain county boards of education of a
13 certain decision within a certain time frame; authorizing certain parties to
14 appeal the decision of the State Board to the Office of Administrative Hearings
15 within a certain time frame; requiring the Office of Administrative Hearings to
16 conduct a hearing and issue a decision within a certain time frame and
17 according to certain provisions of law; requiring a certain decision to be based
18 on substantive grounds; providing that the decision of the Office of
19 Administrative Hearings is final; prohibiting the assessment of a certain
20 penalty until the Office of Administrative Hearings has issued a decision;
21 waiving the maintenance of effort provisions in law for certain fiscal years for
22 certain counties and Baltimore City; providing for the calculation of certain
23 levels of appropriations by the counties and Baltimore City for a certain fiscal
24 year; making this Act an emergency measure; and generally relating to the
25 maintenance of effort requirement for primary and secondary education.

26 BY repealing and reenacting, with amendments,
27 Article – Education
28 Section 5–202(d)
29 Annotated Code of Maryland
30 (2008 Replacement Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Education**

4 5–202.

5 (d) (1) To be eligible to receive the State share of the foundation program:

6 (i) The county governing body shall levy an annual tax
7 sufficient to provide an amount of revenue for elementary and secondary public
8 education purposes equal to the local share of the foundation program; and

9 (ii) The county governing body shall appropriate local funds to
10 the school operating budget in an amount no less than the product of the county's
11 full-time equivalent enrollment for the current fiscal year and the local appropriation
12 on a per pupil basis for the prior fiscal year.

13 (2) Except as provided in paragraph (3) of this subsection, for purposes
14 of this subsection, the local appropriation on a per pupil basis for the prior fiscal year
15 for a county is derived by dividing the county's highest local appropriation to its school
16 operating budget for the prior fiscal year by the county's full-time equivalent
17 enrollment for the prior fiscal year. For example, the calculation of the foundation aid
18 for fiscal year 2003 shall be based on the highest local appropriation for the school
19 operating budget for a county for fiscal year 2002. Program shifts between a county
20 operating budget and a county school operating budget may not be used to artificially
21 satisfy the requirements of this paragraph.

22 (3) For purposes of this subsection, for fiscal year 1997 and each
23 subsequent fiscal year, the calculation of the county's highest local appropriation to its
24 school operating budget for the prior fiscal year shall exclude:

25 (i) A nonrecurring cost that is supplemental to the regular
26 school operating budget, if the exclusion qualifies under regulations adopted by the
27 State Board; and

28 (ii) A cost of a program that has been shifted from the county
29 school operating budget to the county operating budget.

30 (4) The county board must present satisfactory evidence to the county
31 government that any appropriation under paragraph (3)(i) of this subsection is used
32 only for the purpose designated by the county government in its request for approval.

33 (5) Any appropriation that is not excluded under paragraph (3)(i) of
34 this subsection as a qualifying nonrecurring cost shall be included in calculating the
35 county's highest local appropriation to its school operating budget.

1 (6) Qualifying nonrecurring costs, as defined in regulations adopted by
2 the State Board, shall include but are not limited to:

3 (i) Computer laboratories;

4 (ii) Technology enhancement;

5 (iii) New instructional program start-up costs; and

6 (iv) Books other than classroom textbooks.

7 (7) (i) The [provisions] **MAINTENANCE OF EFFORT**
8 **REQUIREMENT IN PARAGRAPH (1)(II)** of this subsection [do] **DOES** not apply to a
9 county if the county is granted a temporary waiver or partial waiver from the
10 [provisions] **REQUIREMENT** by the State Board of Education based on a
11 determination that the county's fiscal condition significantly impedes the county's
12 ability to fund the maintenance of effort requirement.

13 (ii) [After a public hearing, the State Board of Education may
14 grant a waiver under this paragraph in accordance with its regulations.

15 (iii)] In order to qualify for the waiver under this paragraph for a
16 fiscal year, a county shall make a request for a waiver to the State Board of Education
17 by [April 1] **THE EARLIER OF THE SEVENTH DAY FOLLOWING THE END OF THE**
18 **REGULAR LEGISLATIVE SESSION OR MAY 1** of the prior fiscal year.

19 **(III) THE STATE BOARD SHALL HOLD A PUBLIC HEARING**
20 **BEFORE ACTING ON AN APPLICATION FOR A WAIVER UNDER THIS PARAGRAPH**
21 **IN ACCORDANCE WITH ITS REGULATIONS.**

22 **(IV) EXCEPT AS PROVIDED IN SUBPARAGRAPH (V) OF THIS**
23 **PARAGRAPH, THE STATE BOARD SHALL GRANT A WAIVER OF NO MORE THAN 5%**
24 **OF THE MAINTENANCE OF EFFORT REQUIREMENT UNDER PARAGRAPH (1)(II) OF**
25 **THIS SUBSECTION IF:**

26 **1. THE BOARD OF REVENUE ESTIMATES, IN ITS**
27 **DECEMBER OR MARCH REPORT, PROJECTS THAT REVENUE FROM THE**
28 **INDIVIDUAL INCOME TAX AND SALES AND USE TAX WILL BE LOWER IN THE NEXT**
29 **FISCAL YEAR THAN WAS PROJECTED FOR THE CURRENT FISCAL YEAR IN THE**
30 **MARCH ESTIMATE THE PRIOR YEAR;**

31 **2. THE STATE DEPARTMENT OF ASSESSMENTS AND**
32 **TAXATION DETERMINES THE COUNTY'S CONSTANT YIELD TAX RATE UNDER**
33 **§ 2-205(C) OF THE TAX – PROPERTY ARTICLE IS HIGHER THAN THE COUNTY'S**
34 **CURRENT PROPERTY TAX RATE; OR**

1 **3. A COUNTY GOVERNING BODY AND A COUNTY**
2 **BOARD HAVE ENTERED INTO AN AGREEMENT THAT A WAIVER SHOULD BE**
3 **GRANTED.**

4 **(v) THE STATE BOARD MAY GRANT A WAIVER OF MORE**
5 **THAN 5% IF THE BOARD FINDS THAT THE COUNTY'S FISCAL CONDITION**
6 **REQUIRES A LARGER WAIVER.**

7 **(vi) IF SUBPARAGRAPH (iv) OF THIS PARAGRAPH DOES NOT**
8 **APPLY, THEN THE STATE BOARD SHALL CONSIDER THE FOLLOWING FACTORS**
9 **WHEN MAKING THE DETERMINATION WHETHER A COUNTY'S FISCAL CONDITION**
10 **SIGNIFICANTLY IMPEDES THE COUNTY'S ABILITY TO FUND THE MAINTENANCE**
11 **OF EFFORT REQUIREMENT:**

12 **1. EXTERNAL ENVIRONMENTAL FACTORS SUCH AS A**
13 **LOSS OF A MAJOR EMPLOYER OR INDUSTRY AFFECTING A COUNTY OR A BROAD**
14 **ECONOMIC DOWNTURN AFFECTING MORE THAN ONE COUNTY;**

15 **2. A COUNTY'S TAX BASES;**

16 **3. THE RATE OF INFLATION RELATIVE TO GROWTH**
17 **OF STUDENT POPULATION IN A COUNTY;**

18 **4. A COUNTY'S MAINTENANCE OF EFFORT**
19 **REQUIREMENT RELATIVE TO THE COUNTY'S STATUTORY ABILITY TO RAISE**
20 **REVENUES;**

21 **5. A COUNTY GOVERNING BODY'S HISTORY OF**
22 **EXCEEDING THE MAINTENANCE OF EFFORT REQUIREMENT UNDER PARAGRAPH**
23 **(1)(ii) OF THIS SUBSECTION; AND**

24 **6. SIGNIFICANT REDUCTIONS IN STATE AID TO A**
25 **COUNTY AND MUNICIPALITIES OF THE COUNTY FOR THE FISCAL YEAR FOR**
26 **WHICH A WAIVER IS APPLIED.**

27 **[(iv)] (vii) The State Board of Education shall inform the county**
28 **AND THE LOCAL SCHOOL BOARD OF ITS DECISION AS TO whether the waiver for a**
29 **fiscal year is approved or denied in whole or in part [by May 15 of the prior fiscal year]**
30 **NO LATER THAN 45 DAYS AFTER RECEIPT OF AN APPLICATION OR JUNE 1 OF**
31 **THE PRIOR FISCAL YEAR, WHICHEVER IS EARLIER.**

32 **[(v)] (viii) If the State Board of Education grants a county a**
33 **temporary waiver or partial waiver from the provisions of this subsection for any fiscal**

1 year, the minimum appropriation of local funds required under this subsection for the
2 county to be eligible to receive the State share of the foundation program for the next
3 fiscal year shall be calculated based on the per pupil local appropriation for the prior
4 fiscal year or the second prior fiscal year, whichever is greater.

5 **(8) (I) 1. A COUNTY GOVERNING BODY MAY APPEAL TO THE**
6 **CHIEF ADMINISTRATIVE LAW JUDGE, OR THE JUDGE'S DESIGNEE, THE**
7 **DECISION OF THE STATE BOARD UNDER PARAGRAPH (7)(VII) OF THIS**
8 **SUBSECTION IF THE STATE BOARD DOES NOT GRANT A WAIVER.**

9 **2. EXCEPT AS OTHERWISE PROVIDED IN THIS**
10 **PARAGRAPH, THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL CONDUCT A**
11 **HEARING ON EACH APPEAL IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF**
12 **THE STATE GOVERNMENT ARTICLE.**

13 **(II) AN APPEAL SHALL BE FILED NO LATER THAN 7 DAYS**
14 **AFTER THE COMPLAINANT HAS RECEIVED THE DECISION THAT THE STATE**
15 **BOARD MADE UNDER PARAGRAPH (7)(VII) OF THIS SUBSECTION.**

16 **(III) NOTWITHSTANDING ANY OTHER PROVISION OF LAW:**

17 **1. THE OFFICE OF ADMINISTRATIVE HEARINGS**
18 **SHALL CONDUCT A HEARING ON THE APPEAL WITHIN 14 DAYS AFTER**
19 **RECEIVING THE WRITTEN REQUEST FOR AN APPEAL;**

20 **2. THE OFFICE OF ADMINISTRATIVE HEARINGS**
21 **SHALL ISSUE TO THE PARTIES A WRITTEN DECISION WITHIN 14 DAYS AFTER THE**
22 **HEARING; AND**

23 **3. THE DECISION OF THE OFFICE OF**
24 **ADMINISTRATIVE HEARINGS SHALL BE FINAL.**

25 **(IV) THE DECISION OF THE OFFICE OF ADMINISTRATIVE**
26 **HEARINGS SHALL BE MADE ON SUBSTANTIVE GROUNDS BASED ON PARAGRAPH**
27 **(7)(VI) OF THIS SUBSECTION.**

28 **(V) A PENALTY MAY NOT BE ASSESSED UNDER § 5-213 OF**
29 **THIS SUBTITLE UNTIL THE OFFICE OF ADMINISTRATIVE HEARINGS HAS ISSUED**
30 **A DECISION.**

31 **SECTION 2. AND BE IT FURTHER ENACTED, That:**

32 **(a) Notwithstanding any other provision of law, for fiscal year 2010 only, the**
33 **penalty provision under § 5-213 of the Education Article may not be applied to any**
34 **State aid increase provided under § 5-202 of the Education Article; and**

1 (b) Notwithstanding any other provision of law, for fiscal year 2011 only, the
2 counties and Baltimore City are not required to comply with the maintenance of effort
3 provisions of § 5–202(d) of the Education Article. For fiscal year 2012, the required
4 level of appropriation by the county governing body and Baltimore City shall be
5 calculated as provided in § 5–202(d)(7)(v) of the Education Article.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
7 measure, is necessary for the immediate preservation of the public health or safety,
8 has been passed by a yea and nay vote supported by three–fifths of all the members
9 elected to each of the two Houses of the General Assembly, and shall take effect from
10 the date it is enacted.