

HOUSE BILL 304

F1

EMERGENCY BILL

0lr1621
CF SB 310

By: **Delegates Jones, Conway, Hixson, Holmes, McIntosh, O'Donnell, Ross, and Schuh**

Introduced and read first time: January 27, 2010

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 23, 2010

CHAPTER _____

1 AN ACT concerning

2 **Education – Maintenance of Effort Requirement – Process and Factors**

3 FOR the purpose of altering provisions of law relating to a waiver from the
4 maintenance of effort requirement for funding public education; altering
5 provisions specifying to whom and the date by which a county governing body
6 must make a request to the State Board of Education for a waiver from the
7 maintenance of effort requirement; clarifying the maintenance of effort
8 requirement for which a county may apply for a waiver; requiring the State
9 Board of Education Superintendent of Schools to consider certain factors when
10 making a decision whether to grant a waiver; altering the date by which the
11 State Board of Education Superintendent must inform the county governing
12 body whether the waiver application has been granted or denied; authorizing a
13 county to appeal a decision by the State Superintendent regarding a waiver
14 from the maintenance of effort requirement to the State Board of Education;
15 requiring a county to file an appeal to the State Board within a certain period;
16 requiring the State Board to conduct a hearing on the appeal, consider certain
17 factors, and render a decision by a certain date; providing that the decision of
18 the State Board is final; making the imposition of a penalty for a county's
19 noncompliance with certain maintenance of effort provisions applicable in a
20 certain fiscal year; requiring the Maryland State Department of Education to
21 report to the General Assembly on or before a certain date; making this Act an
22 emergency measure; providing for the termination of this Act; and generally
23 relating to the maintenance of effort requirement for primary and secondary
24 education.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
2 Article – Education
3 Section 5–202(d) and 5–213
4 Annotated Code of Maryland
5 (2008 Replacement Volume and 2009 Supplement)

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

8 **Article – Education**

9 5–202.

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

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

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

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

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

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

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

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

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

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

9 (i) Computer laboratories;

10 (ii) Technology enhancement;

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

12 (iv) Books other than classroom textbooks.

13 (7) (i) The [provisions] **MAINTENANCE OF EFFORT**
14 **REQUIREMENT IN PARAGRAPH (1)(II)** of this subsection [do] **DOES** not apply to a
15 county if the county is granted a temporary waiver or partial waiver from the
16 [provisions] **REQUIREMENT** by the ~~State Board of Education~~ **STATE**
17 **SUPERINTENDENT** based on a determination that the county's fiscal condition
18 significantly impedes the county's ability to fund the maintenance of effort
19 requirement.

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

22 (iii) In order to qualify for the waiver under this paragraph for a
23 fiscal year, a county shall make a request for a waiver to the ~~State Board of Education~~
24 **STATE SUPERINTENDENT** by [April 1] **THE EARLIER OF THE SEVENTH DAY**
25 **FOLLOWING THE END OF THE LEGISLATIVE REGULAR SESSION OR ~~MAY 1~~ APRIL**
26 **20** of the prior fiscal year.

27 **(III) THE STATE ~~BOARD OF EDUCATION~~ SUPERINTENDENT**
28 **SHALL HOLD A PUBLIC HEARING BEFORE ACTING ON AN APPLICATION FOR A**
29 **WAIVER UNDER THIS PARAGRAPH IN ACCORDANCE WITH ~~ITS~~ THE REGULATIONS**
30 **OF THE DEPARTMENT.**

31 **(IV) WHEN CONSIDERING WHETHER TO MAKE A**
32 **DETERMINATION THAT A COUNTY'S FISCAL CONDITION SIGNIFICANTLY**
33 **IMPEDES THE COUNTY'S ABILITY TO FUND THE MAINTENANCE OF EFFORT**
34 **REQUIREMENT, THE STATE ~~BOARD OF EDUCATION~~ SUPERINTENDENT SHALL**
35 **CONSIDER THE FOLLOWING FACTORS:**

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

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

5 3. **RATE OF INFLATION RELATIVE TO GROWTH OF**
 6 **STUDENT POPULATION IN A COUNTY;**

7 4. **MAINTENANCE OF EFFORT REQUIREMENT**
 8 **RELATIVE TO A COUNTY'S STATUTORY ABILITY TO RAISE REVENUES;**

9 5. **A COUNTY GOVERNING BODY'S HISTORY OF**
 10 **EXCEEDING THE REQUIRED MAINTENANCE OF EFFORT AMOUNT UNDER**
 11 **PARAGRAPH (1)(II) OF THIS SUBSECTION;**

12 6. **THE EXISTENCE OF AN AGREEMENT BETWEEN A**
 13 **COUNTY GOVERNING BODY AND A COUNTY BOARD THAT A WAIVER SHOULD BE**
 14 **GRANTED; AND**

15 7. **SIGNIFICANT REDUCTIONS IN STATE AID TO A**
 16 **COUNTY AND MUNICIPALITIES OF THE COUNTY FOR THE FISCAL YEAR FOR**
 17 **WHICH A WAIVER IS APPLIED.**

18 [(iv)] (v) The ~~State Board of Education~~ **STATE**
 19 **SUPERINTENDENT** shall inform the county **IN WRITING** whether the waiver for a
 20 fiscal year is approved or denied in whole or in part [by May 15 of the prior fiscal year]
 21 **NO LATER THAN 45 30 DAYS AFTER RECEIPT OF AN APPLICATION OR ~~JUNE 1~~**
 22 **MAY 20 OF THE PRIOR FISCAL YEAR, WHICHEVER IS EARLIER.**

23 [(v)] (vi) If the ~~State Board of Education~~ **STATE**
 24 **SUPERINTENDENT** grants a county a temporary waiver or partial waiver from the
 25 provisions of this subsection for any fiscal year, the minimum appropriation of local
 26 funds required under this subsection for the county to be eligible to receive the State
 27 share of the foundation program for the next fiscal year shall be calculated based on
 28 the per pupil local appropriation for the prior fiscal year or the second prior fiscal year,
 29 whichever is greater.

30 **(VII) 1. IF THE STATE SUPERINTENDENT DENIES A**
 31 **COUNTY A WAIVER FOR A FISCAL YEAR IN WHOLE OR IN PART UNDER**
 32 **SUBPARAGRAPH (V) OF THIS PARAGRAPH, THE COUNTY MAY APPEAL THE**
 33 **DECISION OF THE STATE SUPERINTENDENT TO THE STATE BOARD.**

1 **2. THE APPEAL TO THE STATE BOARD SHALL BE IN**
2 **WRITING AND FILED NO LATER THAN 5 DAYS AFTER THE COUNTY RECEIVES THE**
3 **DECISION OF THE STATE SUPERINTENDENT.**

4 **3. THE STATE BOARD PROMPTLY SHALL CONDUCT A**
5 **HEARING ON THE APPEAL AND RENDER A WRITTEN DECISION WHETHER TO**
6 **UPHOLD, MODIFY, OR OVERTURN THE DECISION OF THE STATE**
7 **SUPERINTENDENT BY JUNE 1 OF THE PRIOR FISCAL YEAR.**

8 **4. THE DECISION OF THE STATE BOARD SHALL BE**
9 **MADE ON SUBSTANTIVE GROUNDS IN ACCORDANCE WITH THE FACTORS**
10 **DESCRIBED IN SUBPARAGRAPH (IV) OF THIS PARAGRAPH.**

11 **5. THE DECISION OF THE STATE BOARD IS FINAL.**

12 5-213.

13 (a) After notification from the State Superintendent that a county is not
14 complying with the provisions of the State program of public education, the State
15 Comptroller shall withhold any installment due the county from the General State
16 School Fund.

17 (b) (1) If the Superintendent finds that a county is not complying with the
18 maintenance of local effort provisions of § 5-202 of this subtitle or that a county fails
19 to meet the requirements of Subtitle 4 of this title, the Superintendent shall notify the
20 county of such noncompliance.

21 (2) If a county disputes the finding within 30 days of the issuance of
22 such notice, the dispute shall be promptly referred to the State Board of Education
23 which shall make a final determination.

24 (3) Upon receipt of certification of noncompliance by the
25 Superintendent or the State Board, as the case may be, the Comptroller shall suspend,
26 until notification of compliance is received:

27 **(I) FOR NONCOMPLIANCE WITH SUBTITLE 4 OF THIS TITLE,**
28 **payment of any funds due the county for the current fiscal year, as provided under §**
29 **5-202 of this subtitle which are appropriated in the General State School Fund, to the**
30 **extent that the State's aid due the county in the current fiscal year under that section**
31 **in the Fund exceeds the amount which the county received in the prior fiscal year;**
32 **AND**

33 **(II) FOR NONCOMPLIANCE WITH § 5-202(D) OF THIS**
34 **SUBTITLE, PAYMENT OF ANY FUNDS DUE THE COUNTY FOR THE FOLLOWING**
35 **FISCAL YEAR, AS PROVIDED UNDER § 5-202 OF THIS SUBTITLE WHICH ARE**
36 **APPROPRIATED IN THE GENERAL STATE SCHOOL FUND, IN THE AMOUNT THAT**

1 THE STATE'S AID DUE THE COUNTY IN THE CURRENT FISCAL YEAR UNDER THAT
 2 SECTION IN THE FUND EXCEEDED THE AMOUNT THAT THE COUNTY RECEIVED
 3 IN THE PRIOR FISCAL YEAR.

4 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,
 5 2012, the Maryland State Department of Education shall report to the House Ways
 6 and Means Committee and the Senate Budget and Taxation Committee, in accordance
 7 with § 2-1246 of the State Government Article, on the implementation of this Act.

8 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act is an
 9 emergency measure, is necessary for the immediate preservation of the public health
 10 or safety, has been passed by a yea and nay vote supported by three-fifths of all the
 11 members elected to each of the two Houses of the General Assembly, and shall take
 12 effect from the date it is enacted. It shall remain effective through June 30, 2013, and,
 13 at the end of June 30, 2013, with no further action required by the General Assembly,
 14 this Act shall be abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.