

AGENDA ITEM #.5  
July 21, 2009  
State Legislation

MEMORANDUM

July 17, 2009

TO: County Council

FROM: Essie McGuire, Legislative Analyst 

SUBJECT: **Update on Maintenance of Effort Issues**

Today as part of its State Legislation briefing, the Council will discuss issues related to the State Maintenance of Effort (MOE) law and education funding. Several key members of the County Delegation have been invited to participate in the discussion.

The purpose of today's discussion is to review the FY10 and FY11 MOE threshold funding levels, summarize recent developments related to FY10 funding, and consider what State legislative changes the County might advocate next year.

**I. BACKGROUND: STATE MOE LAW**

State law requires local jurisdictions to fund school systems at a minimum level known as Maintenance of Effort (MOE). The law establishes a formula to determine the threshold funding level, based on enrollment and prior year funding. The calculation for local contribution is independent of any other funding, such as State or Federal aid. Regardless of any potential changes to other revenue sources, the County is required to maintain the level of its local contribution to the school system, adjusted only for enrollment. Relevant law and regulations are attached on circles 1-10.

In most years, the County has funded MCPS at a much higher level than the MOE threshold. For example, in FY09 the Council's approved appropriation was \$78 million higher than the MOE level for local contribution. In FY08, the County provided a local contribution that was \$83 million higher than MOE. Each year that the County funded MCPS above the MOE level has resulted in a corresponding increase in the MOE threshold for the following year.

**Over the past decade the County's cumulative funding above MOE is \$576.8 million** (see chart on circle 11). **Moreover, the County's annual support for MCPS starting in FY95 has averaged over 99 percent of the Board's request each year** (see chart on circle 12).

The State law related to MOE has three primary parts:

1. The **funding level**, which specifies that the County must appropriate at least as much per pupil as the prior year. Thus the yearly minimum is the previous year's appropriation adjusted only for increases or decreases in enrollment. Md. Code, Educ. §5-202(d)(1) and (2) (circles 3-4)
2. The **waiver provision**, which allows counties to apply to the State Board of Education for a temporary or partial waiver from the MOE provisions. Md. Code, Educ. §5-202(d)(7) (circle 4)
3. The **penalty** for not meeting MOE. If the State Superintendent or the State Board finds that a county has not met its MOE, the Comptroller must withhold the increase over the prior year allocated to the County in the General State School Fund. Md. Code, Educ. §5-213 (circle 8)

## II. MOE FUNDING FOR FY10

For FY10, the County appropriation required to meet MOE was \$1,529,554,447. This level represented an increase of just under \$16 million from the County's FY09 appropriation.

The County Executive's March 16 recommended FY10 operating budget assumed that a State waiver of the MOE threshold funding level would be approved to achieve a balanced budget. **His budget assumed full funding of the MCPS budget at the level requested by the Superintendent, funded in part by increases in State and Federal Aid.** After final budget action by the General Assembly, the County determined that the waiver amount needed was \$79,537,322<sup>1</sup> (request letter attached on circles 13-18). A waiver of this amount would have brought the County's contribution to \$1,450,017,125. The County Board of Education conditionally supported the County's waiver application to the State Board of Education (support letter attached at circles 19-22).

The Council's budget also assumed that the waiver would be approved to achieve a balanced budget. The Council also endorsed the approach that all education resources, local, State, and Federal, would be sufficient to support MCPS' educational and operational program at the level requested by the Superintendent, supported by the Board, and recommended by the Executive.

On May 15, the State Board of Education denied the County's waiver application (denial letter attached on circles 23-36). This decision created a \$79.5 million budget imbalance because the State law required this amount be appropriated to MCPS above

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<sup>1</sup> The County's original March 31 request was for a waiver amount of \$94,852,285. This amount anticipated possible reductions in State Aid under consideration in the General Assembly. However, after final State action and submission of the County Executive's budget amendments, the waiver needed to achieve a balanced budget with all resources was \$79,537,322. The County amended its waiver application orally at the State Board's public hearing and via email.

the agreed-upon level. To do so would have required reducing the amount appropriated to other County agencies by \$79.5 million, resulting in further extensive program reductions.

The Council's ultimate budget action was recommended by the County Executive and initially agreed to by MCPS. The Council appropriated to MCPS \$79.5 million of the \$111.3 million total debt service payment required for school construction. (This total is part of the debt service portion of the County's aggregate operating budget.) MCPS must transfer \$79.5 million to the Department of Finance in installments that correspond to the debt service payment schedule. The Council determined that this is a school-related expense and in so doing avoided unnecessary and drastic service reductions in other areas.<sup>2</sup>

The County Board of Education has since expressed concern that the budget resolution did not limit the debt service payment appropriation to FY10. However, the Council has not indicated its intent either to repeat or not repeat this appropriation of debt service payments in FY11.<sup>3</sup> **It is critical to note that the end result for MCPS in FY10 was full funding of its educational program request. No program reductions were taken by the Council beyond those already contained in the Board's budget.** All parties collaborated to achieve this outcome in the difficult economic conditions facing the County this year. As the late Blair Ewing, the State Board's Vice Chair, wrote in his dissent from the State Board's opinion:

The Montgomery County case is a unique one. The initial problem was that there was adequate money to fund the schools, but not adequate money to fund both the schools and the county government operations. The local school board, county executive, and the county council have now all agreed on adequate funding for both the schools and the county government operations, but need the waiver they have requested to make the agreement effective. This is an example of good government at work. It ought to be encouraged and supported. The waiver should be granted.

### III. MOE FUNDING FOR FY11

The starting point for calculating MOE in FY11 will be the \$1,529,554,447 appropriation of local dollars in FY10; this results in a per pupil amount of \$11,249 as the basis for calculating the FY11 MOE level. The last official enrollment projection for the upcoming school year estimates 137,977 students, and was published in October 2008.<sup>4</sup> The actual enrollment used for the FY11 MOE calculation will not be settled until the school system finalizes its official enrollment on September 30, as required by the State.

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<sup>2</sup> The Council's appropriation resolution for the MCPS FY10 Operating Budget is attached on circles 37-41 and details the requirements of this arrangement.

<sup>3</sup> The Council appropriates funds in the operating budget annually and cannot legally bind itself to decisions on future budgets or appropriate funds in a budget that has not yet been adopted. Charter §311 prohibits the expenditure of funds in excess of the amount appropriated by the Council.

<sup>4</sup> Superintendent's Recommended FY10 Capital Budget, Appendix A-1. The MOE calculation does not include enrollment for Pre-Kindergarten or Head Start services. MCPS does include these figures in its total enrollment projections, which are therefore generally higher than the MOE enrollment calculation.

**Using this enrollment projection and the FY10 per pupil amount yields a possible FY11 MOE threshold level of \$1,552,103,273, an increase of \$22.5 million over the FY10 level.**

The final amount will depend on how actual enrollment compares to projections. This MOE calculation is based on an enrollment projection that is nearly a year old; it anticipates 2,008 students over the FY09 MOE enrollment level. The actual could be higher or lower and will not be captured until the official September 30 count. But in any case it is likely to be a significant increase. At the per pupil amount of \$11,249, an increase of even 1,000 students would equal an MOE increase of \$11 million.

**The FY11 MOE level includes the \$79.5 million currently allocated for debt service payments in FY10. If the Council does not repeat the debt service appropriation to MCPS in FY11 and instead appropriates the identical amount of debt service dollars to County Government, an increase in County funds of \$102 million could be needed for the MCPS budget to meet MOE in FY11 using the estimate calculated above.**

#### **IV. RECENT DEVELOPMENTS RELATED TO FY10 MOE FUNDING**

There have been a number of recent actions and requests regarding FY10 MOE funding decisions.

- Immediately after the State Board's waiver denial, Senator Richard Madeleno requested advice from the Attorney General's office on the calculation of the penalty. A May 20 letter of advice from Assistant Attorney General Bonnie Kirkland states that the penalty is the increase in Foundation Aid, Geographic Cost of Education Index (GCEI), and Supplemental Grant aid (see circles 42-44).<sup>5</sup>
- In a June 4 letter to State Superintendent Nancy Grasmick, MCPS Superintendent Dr. Jerry Weast expressed concern about the County's debt service appropriation in the FY10 budget and requested early resolution as to whether the County action met MOE. Dr. Weast also requested that the school system not be assessed a penalty if the State finds that the County did not meet MOE (see circles 46-47). Council staff understands that Superintendent Grasmick has forwarded this letter to the Attorney General for review.
- On June 1 the Wicomico County Board of Education requested an Attorney General opinion on whether Wicomico County met MOE by requiring school operating funds

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<sup>5</sup> The law is not precise as to how to calculate the potential penalty for not meeting MOE. While it clearly references the increase in State Aid over the previous year, it does not use language which reflects current categories of State Aid. The difference in State Aid in the three categories cited by the letter of advice for Montgomery County in FY10 depends on several assumptions. Circle 45 contains Council staff's discussion of the variables and concludes that the potential penalty could most likely range from \$33.4 million to \$45.9 million.

to be used to pay debt service on school construction projects. Wicomico County's MOE waiver application was also denied by the State Board. (see circles 48-49)

- Prince George's County filed an appeal of the State Board's denial of its waiver application in Prince George's County Circuit Court. A press release on the Prince George's County website noted that the county believes the State Board did not properly apply the criteria for consideration, but that the county is not seeking to reduce the FY10 funding of its schools. (see circle 50)
- In a June 25 letter to Ulysses Currie, Chair of the Senate Budget and Taxation Committee, Maryland Association of Counties (MACo) President Wilson H. Parran outlined concerns about the waiver and specifically the State Board's process in reaching its waiver decisions. (see circles 51-53)

## V. LEGISLATIVE ISSUES

The County's FY10 experience with MOE illuminated many unintended consequences, ambiguities, and inconsistencies in the three primary components of the MOE law.<sup>6</sup> Council staff briefly outlines below some issues in each area.

A threshold question is whether a minimum local funding prerequisite should continue in the law at all. The current law creates serious disincentives for counties to fund above the minimum level. It does not acknowledge the joint responsibility of all government levels, local, State, and Federal, in maintaining continuity of support for education. It does not recognize the reality of severe economic downturns. However, the remainder of this discussion assumes that repealing the MOE provisions entirely is not feasible and that adjustments should be sought instead.

- **Calculation:** Should the formula be based on a measure of support for educational program other than spending? Can it be based on system adequacy or function year to year? If spending remains the measure, should it reflect all resources, not just local dollars? Do some expenditures (compensation, benefits) vary too much to be part of the calculation?
  - The formula assumes there can never be a reason to spend less per pupil than in the previous year, which precludes legitimate budget savings. For example, this year the school unions agreed to forgo the negotiated COLA wage adjustment, a savings of nearly \$89 million. However, since the waiver was denied, the County could not realize those savings. Similarly, the Board's requested budget acknowledged the economic climate by approving program reductions and other efficiencies to control spending. Again, State law makes no room for this kind of positive approach to occur. While there is a correlation between increased per

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<sup>6</sup> The law could benefit from technical clean-up, including consolidating similar provisions, using uniform language across all provisions, and clarifying the penalty calculation. This packet does not address these technical issues in detail.

pupil spending and educational success, the current MOE structure penalizes attempts to provide quality service at a lower cost.

- School budgets vary across counties in terms of what is included; thus each system's base is unique, but the formula counts everything without consistency. For example, the MCPS budget includes its pre-funding requirements for retiree health benefits (OPEB) payments; some other counties budget these funds centrally for all agencies, and thus they are not included in the MOE base calculation. In Montgomery County, school health services are budgeted in DHHS; in some other counties they are budgeted in the schools.
- School funding could be determined to be adequate based on substantive measurements, rather than spending alone. For example, if a school system met a test for performance adequacy (such as test scores) and met certain minimum program requirements (such as class size), the State could conclude that spending was adequate, regardless of the dollar amount spent.
- **Waiver:** Should the process be improved? Is the State Board of Education the right body to decide waiver applications?
  - The State Board arguably has an inherent conflict of interest when deciding a waiver application because it is charged with advocating for public education and maximizing school funding. Another option could be to assign waiver decisions to the Board of Public Works.
  - Problems with applying the waiver criteria are outlined in MACo's letter. They include the uniform application to all counties (the three waiver denial letters issued in May were very similar) despite the different circumstances of applicants. The State Board also disregarded some criteria established by law or regulation and added others that were not.
  - The timing of the process created difficulty for many counties, both in application and decision. The law requires counties to apply prior to April 1, which is also before final State budget action. On the other end of the process, the State Board's denial was delivered to the County a day after the Council's scheduled date for budget reconciliation.
  - The procedure used by the State Board may also have violated the contested case provisions of the Administrative Procedure Act because the counties were never given the opportunity to contest the basic factual findings that the Board relied on in its decision. In fact, the Board made a complicated factual decision about the County's ability to fund MOE without receiving any evidence that the County could afford to fund MOE.

- **Penalty:** Is reduction of County funding in already tight economic conditions counterproductive to good fiscal policy and adequate support for public schools? Would another sanction encourage counties to meet the minimum level without additional negative impact on schools and local governments?
  - Any State Aid penalty should consider a county's past funding record and the effect of a County's failure to meet MOE in a given year on its educational programs. A penalty may be warranted only when a county exhibits an extended pattern of failing to fund MOE.
  - Another less punitive option could be to require counties to document how reduced funding would or would not affect the educational program and submit a plan to restore funding in future years.

<u>This packet contains the following attachments:</u>	<u>Circle #</u>
Md. Code, Educ. §5-202	1
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**§ 5-202. State financial assistance for public education.****(a) Definitions.**

(1) In this section the following words have the meanings indicated.

(2) "Annual per pupil foundation amount" means:

(i) For fiscal years 2004 through 2008, the sum, rounded to the nearest dollar, of:

1. The fiscal year 2002 per pupil foundation amount of \$4,124; and
2. The product of the difference between the target per pupil foundation amount and \$4,124 and:
  - A. 0.40 in fiscal year 2004;
  - B. 0.52 in fiscal year 2005;
  - C. 0.71 in fiscal year 2006; and
  - D. 0.83 in fiscal year 2007; and

(ii) For fiscal year 2008 and each fiscal year thereafter, the target per pupil foundation amount.

(3) "Assessed valuation of real property" means the most recent estimate made by the State Department of Assessments and Taxation before the annual State budget is submitted to the General Assembly, of the assessed value of real property for State purposes as of July 1 of the first completed fiscal year before the school year for which the calculation of State aid is made under this section.

(4) "Assessed value of personal property" means the most recent estimate by the State Department of Assessments and Taxation before the annual State budget is submitted to the General Assembly of the assessed value for county purposes of personal property as of July 1 of the first completed fiscal year before the school year for which the calculation is made under this section.

(5) "Foundation program" means the product of the annual per pupil foundation amount and a county's full-time equivalent enrollment.

(6) "Full-time equivalent enrollment" means the sum of:

(i) The number of students enrolled in grades 1 through 12 or their equivalent in regular day school programs on September 30 of the previous school year;

(ii) Except as provided in item (iii) of this paragraph, the product of the number of students enrolled in kindergarten programs on September 30 of the prior school year and:

1. 0.60 in fiscal year 2004;
2. 0.70 in fiscal year 2005;
3. 0.80 in fiscal year 2006;

4. 0.90 in fiscal year 2007; and

5. 1.00 in fiscal year 2008 and each fiscal year thereafter;

(iii) In Garrett County, the number of students enrolled in kindergarten programs on September 30 of the prior school year; and

(iv) The number of full-time equivalent students, as determined by a regulation of the Department, enrolled in evening high school programs during the previous school year.

(7) "Local contribution rate" means the figure that is calculated as follows:

(i) Multiply the statewide full-time equivalent enrollment by \$624, and multiply this product by:

1. 0.46 in fiscal year 2004;

2. 0.47 in fiscal year 2005;

3. 0.48 in fiscal year 2006;

4. 0.49 in fiscal year 2007; and

5. 0.50 in fiscal year 2008 and each fiscal year thereafter;

(ii) Multiply the statewide full-time equivalent enrollment by the amount that the annual per pupil foundation amount exceeds \$624, and multiply this product by 0.50;

(iii) Add the two products calculated in items (i) and (ii) of this paragraph, and divide the resulting sum by the sum of the wealth of all of the counties in this State; and

(iv) Round the result obtained in item (iii) of this paragraph to seven decimal places and express as a percent with five decimal places.

(8) "Local share of the foundation program" means the product of the local contribution rate and a county's wealth.

(9) "Net taxable income" means the amount certified by the State Comptroller for the second completed calendar year before the school year for which the calculation of State aid under this section is made, based on tax returns filed on or before September 1 after this calendar year.

(10) "Personal property" means all property classified as personal property under § 8-101(c) of the Tax - Property Article.

(11) "Real property" means all property classified as real property under § 8-101(b) of the Tax - Property Article.

(12) "State share of the foundation program" means the greater of:

(i) The difference between the foundation program and the local share of the foundation program; and

(ii) The result obtained by multiplying the annual per pupil foundation amount by the county's full-time equivalent enrollment, and multiplying this product by:

1. 0.25 in fiscal year 2004;
2. 0.24 in fiscal year 2005;
3. 0.22 in fiscal year 2006;
4. 0.19 in fiscal year 2007; and
5. 0.15 in fiscal year 2008 and each fiscal year thereafter.

(13) "Target per pupil foundation amount" means:

(i) In fiscal years 2008, 2009, and 2010, \$6,694; and

(ii) In subsequent fiscal years:

1. The target per pupil foundation amount for the prior fiscal year increased by the same percentage as the lesser of:

A. The increase in the implicit price deflator for State and local government expenditures for the second prior fiscal year;

B. The Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the second previous fiscal year; or

C. 5%; or

2. If there is no increase in the implicit price deflator for State and local government expenditures for the second prior fiscal year or in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the second previous fiscal year, the target per pupil foundation amount for the prior fiscal year.

(14) "Wealth" means the sum of:

(i) Net taxable income;

(ii) 100 percent of the assessed value of the operating real property of public utilities;

(iii) 40 percent of the assessed valuation of all other real property; and

(iv) 50 percent of assessed value of personal property.

(b) *Distribution of State share of foundation program funds.*- Subject to the other provisions of this section, each year the State shall distribute the State share of the foundation program to each county board.

(c) Repealed by Acts 2005, ch. 444, § 8, approved May 26, 2005 and effective pursuant to Article III, § 31 of the Maryland Constitution.

(d) *Distribution of State share of foundation program funds - Eligibility.*-

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

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

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

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

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

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

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

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

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

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

(i) Computer laboratories;

(ii) Technology enhancement;

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

(iv) Books other than classroom textbooks.

(7) (i) The provisions of this subsection do not apply to a county if the county is granted a temporary waiver or partial waiver from the provisions by the State Board of Education based on a determination that the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement.

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

(iii) In order to qualify for the waiver under this paragraph for a fiscal year, a county shall make a request for a waiver to the State Board of Education by April 1 of the prior fiscal year.

(iv) The State Board of Education shall inform the county whether the waiver for a fiscal year is approved or denied in whole or in part by May 15 of the prior fiscal year.

(e) *Funding under miscellaneous programs.*-

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(1) In this subsection, "State financial assistance for public education" means the total financial assistance provided by the State to a county board under the following programs:

- (i) Funding for the foundation program under this section;
- (ii) In fiscal year 2009, 50% of the funding received under the GCEI adjustment grant program under subsection (f) of this section and in fiscal year 2010, 60% of the funding received under the GCEI adjustment grant program under subsection (f) of this section;
- (iii) Transportation aid under § 5-205 of this subtitle;
- (iv) Funding for compensatory education under § 5-207 of this subtitle;
- (v) Funding for students with limited English proficiency under § 5-208 of this subtitle;
- (vi) Funding for special education students under § 5-209 of this subtitle;
- (vii) Funding for the guaranteed tax base program under § 5-210 of this subtitle;
- (viii) 50% of the State payments for retirement contributions for employees of a local school system in accordance with the provisions of Division II of the State Personnel and Pensions Article; and
- (ix) Funding for supplemental grants under this subsection.

(2) (i) For fiscal years 2009 and 2010 only, the State shall provide a supplemental grant to a county board that does not receive at least a 1% increase in State financial assistance for public education over the amount received by the county board in the previous fiscal year.

(ii) The supplemental grant under this paragraph shall be the amount necessary to increase a county board's State financial assistance for public education by 1% over the amount received by the county board in the previous fiscal year.

(3) For fiscal year 2011 and each fiscal year thereafter, a county board shall receive a supplemental grant equal to the amount the county board received under paragraph (2) of this subsection in fiscal year 2010.

(f) *Adjustments for regional differences.* -

(1) In this subsection, "GCEI adjustment" means the foundation program for each county multiplied by:

- (i) 0.000 in Allegany;
- (ii) 0.018 in Anne Arundel;
- (iii) 0.042 in Baltimore City;
- (iv) 0.008 in Baltimore;
- (v) 0.021 in Calvert;
- (vi) 0.000 in Caroline;
- (vii) 0.014 in Carroll;

- (viii) 0.000 in Cecil;
- (ix) 0.020 in Charles;
- (x) 0.000 in Dorchester;
- (xi) 0.024 in Frederick;
- (xii) 0.000 in Garrett;
- (xiii) 0.000 in Harford;
- (xiv) 0.015 in Howard;
- (xv) 0.010 in Kent;
- (xvi) 0.034 in Montgomery;
- (xvii) 0.048 in Prince George's;
- (xviii) 0.011 in Queen Anne's;
- (xix) 0.002 in St. Mary's;
- (xx) 0.000 in Somerset;
- (xxi) 0.000 in Talbot;
- (xxii) 0.000 in Washington;
- (xxiii) 0.000 in Wicomico; and
- (xxiv) 0.000 in Worcester.

(2) To the extent funds are provided in the State budget for the grants under this subsection, in addition to the State share of the foundation program, each county board may receive a grant to reflect regional differences in the cost of education that are due to factors outside of the control of the local jurisdiction.

(3) Subject to paragraph (4) of this subsection, the amount of the grant to each county board under this subsection shall equal the GCEI adjustment for the county board multiplied times:

- (i) 0.50 in fiscal year 2006;
- (ii) 0.62 in fiscal year 2007;
- (iii) 0.74 in fiscal year 2008;
- (iv) 0.86 in fiscal year 2009; and
- (v) 1.00 in fiscal year 2010 and each fiscal year thereafter.

(4) For any fiscal year, if sufficient funds are not provided in the State budget to fully fund the grants provided under this subsection, the grant to each county board under this subsection shall equal the amount determined under paragraph (3) of this subsection multiplied by a fraction:

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- (i) The numerator of which is the amount provided in the State budget to fund the grants; and
- (ii) The denominator of which is the sum of the amounts calculated under paragraph (3) of this subsection for all the county boards.
- (g) *Social Security contributions for county board or local school system employees.*- Any employer Social Security contributions required by federal law for any employee of a county board or local school system shall remain the obligation of the employer.

(h) *Supplemental retirement allowance in Montgomery County.*-

(1) The Montgomery County Board shall provide from the Montgomery County Public Schools Employees' Pension System Trust the supplemental retirement allowance required under paragraph (2) of this subsection.

(2) (i) The Montgomery County Board, through the Montgomery County Public Schools Employees' Pension System Trust, shall pay a supplemental retirement allowance to an employee of the County Board who retires on or after July 1, 1999, as a member of the Teachers' Pension System of the State of Maryland.

(ii) The supplemental retirement allowance shall equal the product of the member's years of creditable service earned in the Montgomery County Public Schools Employees' Pension System times the sum of:

1. 0.08% of the retiree's average final compensation that does not exceed the Social Security integration level; and
2. 0.15% of the retiree's average final compensation that exceeds the Social Security integration level.

[An. Code 1957, art. 77, §§ 128A, 128B; 1978, ch. 22, § 2; chs. 419, 420; 1979, ch. 407; ch. 423, § 1; 1980, ch. 531; 1981, ch. 2, § 3; ch. 114; ch. 774, § 1; 1982, ch. 17, § 7; chs. 693, 746, 806, 888; 1983, ch. 69; 1984, ch. 85, § 1; 1985, chs. 122, 223; 1986, chs. 123, 484, 580; 1987, ch. 11, § 1; ch. 277; 1988, ch. 6, § 1; 1989, ch. 5, § 1; 1990, ch. 217; 1992, 1st Sp. Sess., ch. 1, § 7; 1992, 2nd Sp. Sess., ch. 1; 1993, ch. 5, § 1; 1994, ch. 606; 1995, ch. 3, § 1; 1996, ch. 77; ch. 175, § 1; 1997, ch. 635, § 9; ch. 636, § 9; 1999, ch. 632; 2000, ch. 61, § 1; ch. 80, § 2; 2002, ch. 121; ch. 288, § 2; 2003, ch. 21, § 1; 2004, ch. 430, § 1; 2005, ch. 444, § 8; 2007 Sp. Sess., ch. 2, § 2.]



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\*\*\* CURRENT THROUGH ACTS OF THE 2009 REGULAR SESSION EFFECTIVE JUNE 1, 2009, WITH  
ANNOTATIONS THROUGH APRIL 30, 2009. \*\*\*

EDUCATION  
DIVISION II. ELEMENTARY AND SECONDARY EDUCATION  
TITLE 5. FINANCING  
SUBTITLE 2. STATE AND FEDERAL AID TO EDUCATION

**GO TO MARYLAND STATUTES ARCHIVE DIRECTORY**

*Md. EDUCATION Code Ann. § 5-213 (2009)*

§ 5-213. Withholding or suspending payment of funds

(a) Suspension of payments upon noncompliance. -- After notification from the State Superintendent that a county is not complying with the provisions of the State program of public education, the State Comptroller shall withhold any installment due the county from the General State School Fund.

(b) Withholding of installments due. --

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

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

(3) Upon receipt of certification of noncompliance by the Superintendent or the State Board, as the case may be, the Comptroller shall suspend, until notification of compliance is received, payment of any funds due the county for the current fiscal year, as provided under § 5-202 of this subtitle which are appropriated in the General State School Fund, to the extent that the State's aid due the county in the current fiscal year under that section in the Fund exceeds the amount which the county received in the prior fiscal year.

**HISTORY:** An. Code 1957, art. 77, § 131; 1978, ch. 22, § 2; 1984, ch. 85, § 1; 1985, ch. 10, § 3; 1986, ch. 484; 1996, ch. 10, § 16; 2001, ch. 29, § 6; 2002, ch. 288, § 1; 2003, ch. 21, § 7.

**NOTES:** EDITOR'S NOTE. --Section 1, ch. 288, Acts 2002, effective July 1, 2003, redesignated former § 5-210 of this subtitle to be present § 5-213 of this subtitle.

13A.02.05.04

**.04 Waiver of Maintenance of Effort Requirement.****A. Procedure.**

(1) Beginning with fiscal year 1998, in order to qualify for a maintenance of effort waiver for a fiscal year, a county shall make a request for a waiver to the State Board of Education by April 1 of the prior fiscal year.

(2) The waiver request shall be in writing and shall be received by the Department between January 1 and March 31 of the prior fiscal year. The county shall send to the local board of education a copy of the waiver request.

(3) The written request shall include the following:

(a) The amount the county proposes to appropriate to its school operating budget and the amount the county is required to appropriate to meet the maintenance of effort requirement;

(b) Information detailing the county's projected fiscal condition for the fiscal year the waiver is being requested and the current fiscal year, as well as information regarding the county's revenue stream from property tax, income tax, other taxes, and other revenue streams;

(c) If applicable, information regarding statutory prohibitions for raising revenues;

(d) Copies of the county's three most recent audited financial statements;

(e) The county's projected expenditure plan for the fiscal year in which the waiver is requested, as well as the current fiscal year expenditure plan; and

(f) Additional information in support of the waiver request as the county considers necessary.

(4) The State Board may request additional information from the county as it considers necessary.

**B. Public Hearing.**

(1) Upon receipt of the waiver request, the State Board shall schedule a public hearing.

(2) Notice of the public hearing shall include the time allotment for oral presentation.

(3) The State Board may identify and call upon expert witnesses.

**C. Standard for Granting a Waiver.**

(1) The State Board's decision on whether to approve or deny in whole or in part a waiver request shall be based on a determination that the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement.

(2) The State Board may consider the following:

(a) External environmental factors such as a loss of a major business or industry;

(b) Tax bases;

(c) Rate of inflation relative to growth of student population; and

(d) Maintenance of effort requirement relative to the county's statutory ability to raise revenues.

(3) The county has the burden of proof by a preponderance of the evidence.

(4) The State Board shall issue its written decision to the county, with a copy to the local board, within 45 days from receipt of the written request, but no later than May 15.

<b>Maintenance of Effort (MOE)</b>			
<b>and Local Funding</b>			
<i>(in millions)</i>			
<b>Fiscal Year</b>	<b>MOE</b>	<b>App. Budget</b>	<b>Diff.</b>
FY01	884.1	959.8	75.7
FY02	983.0	1,029.7	46.7
FY03	1,050.7	1,079.2	28.5
FY04	1,101.6	1,136.4	34.8
FY05	1,144.3	1,217.2	72.9
FY06	1,224.2	1,285.8	61.6
FY07	1,290.3	1,384.7	94.4
FY08	1,373.7	1,456.9	83.2
FY09	1,452.5	1,531.5	79.0
FY10	1,529.6	1,529.6	0.0
<b>TOTAL</b>			<b>576.8</b>

**HISTORY OF MCPS OPERATING BUDGET**

<b>Fiscal Year</b>	<b>BOE Request</b>	<b>CE Rec</b>	<b>CE as % of BOE Request</b>	<b>Approved</b>	<b>Approved as % of BOE Request</b>	<b>Approved Year over Year Change</b>
FY95	831,083,917	830,920,454	99.98%	830,010,147	99.87%	
FY96	893,500,374	873,393,202	97.75%	878,160,420	98.28%	5.80%
FY97	923,300,664	914,579,959	99.06%	915,141,097	99.12%	4.21%
FY98	963,556,933	951,593,588	98.76%	958,416,196	99.47%	4.73%
FY99	1,035,831,965	1,018,768,106	98.35%	1,034,768,530	99.90%	7.97%
FY00	1,109,674,340	1,106,885,306	99.75%	1,105,644,145	99.64%	6.85%
FY01	1,220,920,067	1,204,584,463	98.66%	1,216,096,599	99.60%	9.99%
FY02	1,333,836,665	1,307,377,294	98.02%	1,323,625,477	99.23%	8.84%
FY03	1,398,594,671	1,398,594,671	100.00%	1,412,161,822	100.97%	6.69%
FY04	1,518,840,346	1,487,705,056	97.95%	1,498,374,041	98.65%	6.10%
FY05	1,587,373,378	1,585,853,126	99.90%	1,609,382,533	101.39%	7.41%
FY06	1,722,472,494	1,722,472,494	100.00%	1,713,736,154	99.49%	6.48%
FY07	1,839,194,639	1,839,194,639	100.00%	1,851,496,287	100.67%	8.04%
FY08	1,988,401,081	1,968,751,400	99.01%	1,985,017,619	99.83%	7.21%
FY09	2,111,237,124	2,060,121,163	97.58%	2,066,683,294	97.89%	4.11%
FY10	2,152,103,336	2,128,410,168	98.90%	2,200,577,000	102.25%	6.48%

Bud. For + EOE  
Town.



ROCKVILLE, MARYLAND

Have

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March 31, 2009

Mr. James H. DeGraffenreidt, Jr.  
President  
Maryland State Board of Education  
200 West Baltimore Street  
Baltimore, Maryland 21201

Dear Mr. DeGraffenreidt:

Pursuant to Section 5-202(d)(7) of Maryland Code, Education Article, Montgomery County hereby requests a waiver from the State's Maintenance of Effort (MOE) requirement as defined under Section 5-202(d)(1)-(6). The basis for this request is that the County's fiscal condition significantly impedes us from funding the MOE requirement without seriously impairing other County services, including public safety, services to the most vulnerable residents, post-secondary education, library and recreation services, and other vital locally funded public programs.

As defined under the Education Article, the County's local funding obligation for K-12 Public Education in FY10 would be \$1,529,554,447 in order to maintain per pupil spending constant at \$11,249 (as defined under the Education Article). The County Executive's Recommended FY10 Operating Budget includes local funding of \$1,454,702,161, a difference of \$74,852,285 from the amount required under the Education Article. However, given that the Maryland General Assembly is considering additional reductions in local aid that could be more than \$50 million for Montgomery County and could severely impact local services, we are requesting a waiver in the amount of \$94,852,285. In requesting this amount for the waiver, we are committed to not reducing any educational programs recommended by the Montgomery County Board of Education in its FY10 Recommended Budget.

We are also committed to appropriating local funding that, when combined with State education aid for Montgomery County Public Schools (MCPS), is no less than \$1,929,265,335, and to appropriating exclusively for public school purposes all mandated State and Federal aid, including all grants that are received.

This is the first time that Montgomery County has requested such a waiver. With the exception of FY92, when Maryland permitted a State-wide waiver of the MOE requirement, Montgomery County has not only met the MOE requirement, but significantly exceeded it. In the last ten years Montgomery County has increased its local contribution to K-12 Education by

over \$710 million to over \$1.5 billion. This represents an 86.6 percent increase in local funding – an average annual increase of 6.4 percent – which has enabled us to reduce class size, raise test scores, and meet the needs of the growing number of students eligible for FARMS and ESOL services. During the same period, student enrollment grew by only 7.8 percent. This represents a substantial and ongoing local commitment to investing this County's taxpayer funds in educating our children. In addition, the County's FY09-14 Approved Capital Improvements Program (CIP) budget includes over \$1.2 billion in locally supported funding for school construction, renovation, information technology, and other capital improvements in support of K-12 public education.

In addition to the County's local contribution to MCPS, the County Government also funds over \$37 million to operate several programs in support of the Public Schools' mission, including:

- School Safety: providing 177 Crossing Guards with seven Police Officer positions in support, at a cost of \$5.3 million;
- School Safety: providing 31 Police Officers as Educational Facility Officers assigned to 25 Public High Schools and two Middle Schools, at a cost of \$3.8 million;
- School Health: Providing 318 positions including nurses and health room technicians, at a cost of \$19.8 million;
- Wellness: Funding for various wellness programs, including School Suspension programs; reading, tutoring and mentoring programs; Infant and Toddlers programs; and Pre-Kindergarten programs, at a cost of \$3.5 million; and
- Linkages to Learning: providing early intervention services to students and families of elementary and middle school communities with the highest indicators of poverty to address non-academic issues that may interfere with a child's success at school, at a cost of \$4.9 million.

In developing the County's FY10 operating budget, Montgomery County was faced with closing a budget shortfall of nearly \$600 million. The causes of this serious shortfall were the national economic recession and the continuing international crisis in credit markets. Since May 2008, when the County Council approved the FY09 operating budget, the County has revised its FY09 and FY10 revenue projections downward by over \$340 million due to reductions in income, transfer, and recordation tax revenue, investment income, and State Highway User Aid. This revenue loss is nearly 10 percent of our total annual tax supported revenues. Attached is a copy of the County's latest review of economic indicators. In addition, some pertinent facts provided below indicate how the recession has impacted Montgomery County residents and led to this sharp decrease in revenues:

- Since December 2007, Montgomery County's unemployment rate has increased by 84 percent to 4.6 percent in January 2009. This is the highest level of unemployment in Montgomery County since 1990.
- Resident employment has been stagnant since calendar year 2006, with no increase in resident employment, despite the entry of thousands of residents into the job market.

- Home sales have declined 17.8 percent in 2008, 23.4 percent in 2007, and 20.5 percent in 2006.
- Average home sale prices have declined 11.9 percent in 2008. The most recent residential assessments plummeted 16.3 percent.
- The value of new residential construction (~\$400,000,000) in CY2008 was the lowest since 1999.

These economic factors have dramatically affected the County's revenue collections for income, transfer, and recordation taxes. Moreover, the Federal Reserve rate cuts have reduced projected FY10 investment income by nearly 60 percent.

To close the budget deficit, produce a balanced budget, and fund essential services including K-12 Education, the County Executive and the County Council have made a number of significant budget reductions for FY09, and the County Executive has also recommended major reductions for FY10, including the following:

- Total mid-year FY09 reductions of \$48.8 million in Montgomery County Government, Montgomery College, the Maryland-National Capital Park and Planning Commission, and MCPS;
- Total FY10 reductions of \$130.4 million across the same four agencies;
- The abolishment of nearly 400 positions in Montgomery County Government, with nearly half of these positions filled;
- The elimination of all General Wage Adjustments for all employees across all agencies of local government;
- The elimination of the planned \$25 million increase in pre-funding of retiree health insurance;
- A reduction of \$50 million in current revenue funding to the capital budget; and
- A reduction in the County's reserve of nearly \$40 million.

If the County were required to fund the additional \$94.8 million local contribution, it would mean even deeper reductions in locally funded services, at a time when local crime rates are rising and the need for emergency assistance for individuals and families in crisis is steeply increasing.

Montgomery County has benefited in several ways from funding received or expected to be received from the Federal Fiscal Stabilization Act and the American Recovery and Reinvestment Act of 2009. In FY10, MCPS will receive \$6.1 million for Title I programs for disadvantaged children and \$15.3 million for Individuals with Disabilities Education Act (IDEA) programs. The Title I funding will be used to add three schools to receive Title I funding and add eight new full-day Head Start classes, so that all Title I schools that have Head Start classes can offer full-day Head Start classes. The Title I funding will also allow recipient schools to restore teacher positions to reduce class size, support reading and mathematics intervention, and provide ESOL support. The IDEA funding will allow for the restoration of reductions originally proposed for

the FY10 budget, including 20.5 special education teachers, five secondary intensive reading teachers, and tuition for students in non-public placement, special educational instructional materials. The IDEA funding will also allow the addition of hours based staffing at 15 additional middle schools, technology to implement the Universal Design for Learning program, and other program improvements. The additional funding from the Title I grants and IDEA grants, however, are targeted grants for specific purposes and does not represent general aid. While a portion of this funding will allow MCPS to restore certain positions and activities that may have otherwise been eliminated in the FY10 budget, this aid generally did not have a positive or negative impact on meeting the State MOE requirement.

In addition, on February 20, 2009, Governor O'Malley announced more than \$720 million of funding for Maryland public education resulting from the American Recovery and Reinvestment Act. Under the Governor's plan, every school district in Maryland will be made whole and the Geographic Cost of Education Index (GCEI) will be funded at 100 percent for the first time. For Montgomery County this meant an increase of \$21.6 million in funding. The Governor's proposal also included restoration of proposed reductions in supplemental grant and non-public placement funding to local school systems. For Montgomery County, this meant an increase of \$4.8 million in funding. The anticipated receipt of this funding in the FY10 budget allowed the County to limit the amount of this waiver request by approximately \$26.4 million.

While we are still exploring other formula funding and competitive grant opportunities under the ARRA, Montgomery County Government and other local public agencies expect to receive approximately \$36 million in funding for a variety of specific purposes, including transportation projects, bus replacement, workforce training, energy projects, public safety equipment, housing, weatherization, emergency shelter grants, Community Development Block Grants, homelessness prevention, and Community Services Block Grants. Since this funding is targeted for specific purposes and frequently carries standard Federal non-supplantation requirements, it cannot be used to supplement the County's local contribution or provide capacity for Montgomery County to increase its local contribution for K-12 schools.

We are confident that granting this waiver request will not adversely affect the quality of our local public schools. In fact, the County Executive's recommended budget for FY10 would fund nearly 99 percent of the Montgomery County Board of Education's request. The only recommended reductions are to additional funding increases requested for certain benefit funds, including additional pre-funding for retiree health insurance (\$12.3 million), the employee health insurance benefit fund (\$7.1 million), and the MCPS Employees' Retirement and Pension Systems Plan (\$4.3 million). These reductions can be made without affecting the existing level of benefits for these employees.

In addition, as you are aware, the State has recently revised downward its own revenue estimates for FY09 and FY10 by over \$1 billion. This has very troubling implications for Montgomery County and other subdivisions across the State because of impending reductions in local aid formulas that may be necessary to produce a balanced budget for the State. Further

reductions in local aid will require Montgomery County to identify additional programmatic and service reductions to its own residents to maintain a balanced and sustainable budget.

Montgomery County's ability to raise further revenue from additional local taxes has two major constraints. First, Section 305 of the Montgomery County Charter (see attached) requires the unanimous vote of the nine members of the County Council to increase real property tax revenue beyond the rate of inflation (less new construction and other minor categories). We do not support such an increase in the property tax rate, since it would impose an additional burden on families and businesses during this difficult economic time, and also given the fact that the County exceeded the limits imposed by Section 305 of the Charter in FY09 (an increase of 13 percent). Second, Montgomery County's income tax rate is currently at the State-allowed maximum rate, 3.2 percent.

In closing, we want to stress that education, especially K-12 Education, is one of the most important priorities of Montgomery County. We are very proud of the accomplishments of our Public School system in reducing class size, significantly improving test scores, and preparing our children to be productive, well-educated, and responsible citizens. We are committed to investing the resources necessary to achieve these important results for our County and the State.

However, the severity and duration of the current economic recession and the consequent reduction in revenues leave us no responsible choice except to temporarily reduce the County's local contribution. The Montgomery County Board of Education leadership, working collaboratively with the County Executive and County Council, is aware of this waiver application, and will recommend support for the waiver provided that the funds for educational programs recommended by the Montgomery County Board of Education are not reduced. We urge the State Board of Education to approve this request with all deliberate speed in view of the County's fast-approaching budget deadlines. Thank you for your consideration.

Sincerely,



Isiah Leggett  
Montgomery County Executive



Phil Andrews, President  
Montgomery County Council

IL/PA:jb

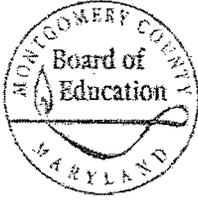
- c: Anthony South, Executive Director, Maryland State Board of Education  
Montgomery County Council
- Shirley Brandman, President, Montgomery County Board of Education
- Jerry D. Weast, Ed.D, Superintendent, Montgomery County Public Schools
- Richard S. Madaleno, Jr., Senator, District 18
- Brian J. Feldman, Delegate, District 15

Attachments:

- Tax Supported Current Revenue FY09-FY10<sup>1</sup>
- March Revenue Update FY08-10 Reflecting County Executive Recommended Budget
- Revenues: Excerpt from County Executive's Recommended FY10 Operating Budget
- Section 305 of the Montgomery County Charter: Approval of the Budget; Tax Levies
- Comprehensive Annual Financial Reports (Audited) FYs 2006-2008
- County Executive's Recommended FY10 Operating Budget
- Approved Montgomery County Operating Budget FY2009
- Supplemental Information on County Fiscal Condition for FY09 and FY10:
  - Presentation of Economic Indicators: Montgomery County Economic Indicators (Montgomery County Department of Finance, prepared March 2009)
  - FY09 Operating Budget Issues, Memo from County Executive Isiah Leggett to Council President Michael J. Knapp, September 4, 2008
  - FY09 Savings Plan, Memo from County Executive Isiah Leggett to Council President Michael J. Knapp, November 13, 2008
  - County Council Approval of FY09 Savings Plan, November 25, 2008
  - Fiscal Plan Update, Memo from County Executive Isiah Leggett to Council President Michael J. Knapp, December 1, 2008
  - FY09 and FY10 Required Budget Actions, Memo from County Executive Isiah Leggett to County Government Department Heads, December 17, 2008

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<sup>1</sup> Additional information on County Revenue Streams can be found in the County Executive's Recommended FY10 Operating Budget pages 5-1 to 5-22 and 72-1 to 72-20.



## MONTGOMERY COUNTY BOARD OF EDUCATION

850 Hungerford Drive ♦ Rockville, Maryland 20850

April 7, 2009

Mr. James H. DeGraffenreidt, Jr., President  
Maryland State Board of Education  
200 West Baltimore Street  
Baltimore, Maryland 21201

Dear Mr. DeGraffenreidt:

This letter is the Montgomery County Board of Education's response to the Maintenance of Effort (MOE) waiver request that was submitted to you on March 31, 2009. Pursuant to Section 5-202(d)(7) of the Annotated Code of Maryland, Education Article, Montgomery County Executive Isiah Leggett and Montgomery County Council President Phil Andrews have requested a waiver from the State's MOE requirement, as defined under Section 5-202(d)(1)-(6). The basis for their request is that the county's fiscal condition prevents it from funding the MOE requirement without seriously impairing other county services. The Board has not taken a formal position because it will not have had an opportunity to meet prior to the April 10, 2009, deadline for submitting a response. However, we recognize that the unprecedented economic difficulties faced by the county, state, and nation have required the county to request this waiver.

The *American Recovery and Reinvestment Act of 2009* (ARRA) has provided the state with \$26.2 million that otherwise would have been reduced from the state aid due to Montgomery County. Compared to FY 2009, Montgomery County Public Schools (MCPS) expects to receive in FY 2010 approximately \$71 million in additional state aid. This is \$27 million more than was anticipated when the Board of Education adopted its FY 2010 budget request. MCPS also expects to receive \$24.2 million in state aid it was shortchanged by error in FY 2009. These additional revenues allow the Board's requested budget to be funded even if the MOE waiver is approved. However, if final action on the budget by the General Assembly reduces the amount of state aid for MCPS, the requested waiver amount must be reduced by a similar amount.

Montgomery County has informed the Board of Education that because of the serious economic downturn, it faces a budget shortfall of almost \$600 million. MCPS staff has received information about the county economy and revenue projections, as outlined in the county's waiver request, and has worked closely with county staff to review economic and revenue data.

Discussions were held by MCPS staff, county executive staff, and the County Council prior to March 31, 2009, regarding the need for the waiver and the content of the letter requesting the waiver. Although the Board of Education was not able to take a formal position on this waiver

request, we are recommending support of this request as long as a number of important conditions are met. This conditional support was communicated to Mr. Leggett and Mr. Andrews. The following conditions were shared with them, and it was made clear that our support is contingent on these conditions being agreed to by the Maryland State Board of Education:

1. With the possible exception of pre-funding of retirees health insurance, as explained below, the budget recommended by the County Executive on March 17, 2009, is supported and fully funded by the County Council. This total amount of \$2,128,410,168, including \$1,975,499,903 in the tax-supported Current Fund, preserves our budget and avoids the waiver causing any further cuts to an already reduced budget.
2. The Board receives support and full funding for the plan submitted to the county executive and County Council for use of the additional Title I and *Individuals with Disabilities Education Act* (IDEA) funds that we have been allocated as part of the federal stimulus funding. There will be no attempt to use these funds to supplant local funds that have been used to support these programs this year.
3. This is a one-year waiver. For FY 2011, the required level of appropriation by the county shall be based on the local appropriation for FY 2009.

The Board of Education's budget request for next year, FY 2010, contains an increase of only \$64 million over FY 2009, excluding the additional federal stimulus funds for Title I and IDEA. In the county executive's recommendations for the MCPS FY 2010 Operating Budget, this amount was reduced by \$24 million. We believe this reduction can be made because this action would reduce our contribution to health and retiree trust funds that were requested in anticipation of increases that will be needed in FY 2011, including the increase in the contributions to the Other Post-Employment Benefits (OPEB) Fund for health coverage for our retirees. This is not an easy decision to make. We have made progress over the past two years in complying with GASB 45 and beginning to phase-in contributions to pre-fund retirees' health insurance, but these are unusual times and difficult decisions have to be made. These reductions will not impact our educational programs. Therefore, our tax-supported budget increase would be only 2 percent, despite the fact that we will have 2,800 more students.

We were able to accomplish this because of the extraordinary commitment and contributions of our employees. Our unions agreed to renegotiate their agreements with the Board of Education, and our employees have agreed to forego their cost-of-living increases, which will save the school system \$89 million in FY 2010. In addition to these reductions, we made \$30 million of budget reductions and savings in next year's budget. Also, we saved \$20 million this year as a result of a position freeze and comprehensive expenditure restrictions. These savings from FY 2009 will be available to fund next year's budget. These extraordinary contributions to

address the current fiscal crisis are in addition to more than \$50 million of reductions in the FY 2009 Operating Budget that had to be made last spring.

Having made all of these significant reductions in our operating budget, it is not possible to make further cuts to our educational programs or to our employees next year. If the county executive and County Council decide to make further reductions of close to \$20 million, as has been suggested in their increase in the waiver amount to \$94 million, these additional reductions must only come from contributions to pre-fund OPEB for our retirees. Any further reductions cannot impact educational programs or our employees because of the serious effect such reductions would have on the children in our schools.

The Montgomery Board of Education took swift action to approve a plan for use of the federal stimulus funds for Title I and IDEA. Within a week of President Obama's signing into law the ARRA, we approved the use of these additional funds to address the needs of some of our students who are most impacted by poverty and our special education population. Included in this action was the restoration of \$5 million of reductions that previously had been proposed for FY 2010. It is essential that these additional federal funds be used to help those students that ARRA was intended to support. This is a critical condition for our support of the waiver. This is an opportunity that we cannot lose because the county may want to use these funds for other purposes.

Finally, it is critical that this waiver be for one year only and that the base budget for the purposes of calculating maintenance of effort for FY 2011 is not the FY 2010 amount. MCPS, like other school systems in Maryland, has made tremendous progress during the past six years as a result of the additional state aid provided through Bridge to Excellence funding. Although we are fully aware of the difficult financial situation we face as a result of the economic downturn in the country, we cannot agree to lose the progress that has been made. Seven years ago, the debate was not whether the Thornton recommendations were the right thing to do for the students in Maryland, but rather what amount of funding was needed to help our schools succeed. This is why our support is contingent on this waiver being for one year only and the level of appropriation by the county for 2011 must be based on the local FY 2009 appropriation.

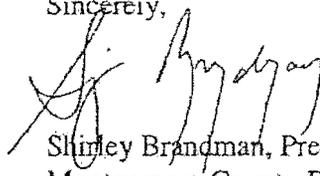
The one unanswered question remaining to be addressed has to do with the amount of the waiver being requested and the assurance that we will not lose any funds for our educational programs or our employees. We need to make certain that we all have the same understanding when the State Board of Education makes its decision.

It should be emphasized that our agreement with the MOE waiver request for this year should not be viewed as a precedent for future waivers. The current economic crisis and the resulting federal stimulus funds represent a unique combination of events that are unlikely to recur. The Board of Education believes that the MOE requirement is an important foundation for local

support for education. We are pleased that county leaders have reaffirmed the high priority of education for Montgomery County.

Understanding that our Board of Education has not had time to discuss and take a position on this request, we would recommend support of the county's request for the MOE waiver so long as the conditions described above are included in the action of the Maryland State Board of Education. On behalf of the Board of Education of Montgomery County, we reserve the right to supplement these comments following any additional consideration by the local Board. Please let us know if you have questions or need additional information.

Sincerely,



Shirley Brandman, President  
Montgomery County Board of Education



Patricia O'Neill, Vice President  
Montgomery County Board of Education



Jerry D. Weast, Ed.D., Superintendent of Schools  
Secretary, Montgomery County Board of Education

SB:vnb

Copy to:

Mr. Leggett

Mr. Andrews

Members of the Montgomery County Council

Members of the Board of Education

Members of the Montgomery County Legislative Delegation

IN RE WAIVER REQUEST OF  
MONTGOMERY COUNTY

BEFORE THE  
MARYLAND  
STATE BOARD

Fiscal Year 2010  
Maintenance of Effort

Waiver Request No. 2009-1

OPINION

INTRODUCTION

Montgomery County has requested a waiver of its maintenance of effort (“MOE”) requirement. To obtain a waiver of its MOE, Montgomery County must show that the county’s fiscal condition significantly impedes its ability to fund the MOE requirement. Md. Educ. Code Ann. §5-202(d)(7).

PROCEDURAL BACKGROUND

On March 23, 2009, the State Board established a process and procedure to the MOE waiver requests that the State Board received on April 1, 2009. As to any requested waiver of the MOE filed on April 1, 2009, the public, including the local board of education, could file a response by April 10, 2009. The county’s Reply was due on April 15, 2009. The State Board of Education scheduled a hearing for April 27, 2009 to give the county government, the local school system and a parents’ representative the opportunity to make an oral argument.

On April 1, 2009, eight counties requested waivers of their MOE funding obligations. The eight counties were: Anne Arundel, Calvert, Charles, Frederick, Montgomery, Prince George’s, Wicomico, and Worcester. As required by COMAR 13A.02.05.04, and by request of the State Board, each county submitted the following information: a narrative statement, the amount requested to be waived, the county’s projected fiscal condition, the county’s revenue stream, any prohibition against raising revenue, three prior year audited financial statements, projected expenditure plan, additional information, a statement whether the school board supports or opposes the request, and the amount of funding anticipated through the Federal Fiscal Stabilization Act and the American Recovery and Reinvestment Act of 2009 and the positive or negative effect of such funding on local maintenance of effort for schools.

Prior to the April 27, 2009 public hearing, Anne Arundel, Calvert, Charles, Frederick, and Worcester counties withdrew their MOE waiver requests. Anne Arundel County determined that it could fund the Board of Education at the MOE level, even though "this was a very difficult exercise in fiscal management." Calvert County found a way to meet the Board of Education's MOE funding and manage the FY 2010 budget through the "use of available monies in other funds and additional expenditure reductions." Similarly, Charles County has "found a way to fully fund the maintenance of effort." Frederick County spent many hours "working on our budget" before deciding to withdraw its MOE waiver request. Worcester County withdrew its MOE waiver request after staff worked "tirelessly to determine every possible cost saving measure available to reduce expenditures."

Montgomery, Prince George's, and Wicomico counties maintained their waiver requests and presented oral argument on April 27, 2009. Isiah Leggett, County Executive, presented on behalf of Montgomery County. The President of the Board of Education, Shirley Brandman, also presented, conditionally supporting the counties' waiver request. No parent representative submitted a position or argument.

#### FACTUAL BACKGROUND

##### **Amount Requested To Be Waived**

Initially, Montgomery County requested a waiver of \$94,852,285 from its MOE of \$1,529,554,447. At the April 27, 2009, public hearing Montgomery County reduced its waiver request to \$79,537,322. With the waiver, the county proposes an appropriation to the local board of education of \$1,450,017,125.

##### **Projected Fiscal Condition – FY 2010**

According to the information and documents that Montgomery County filed, total revenue for fiscal year 2010 is projected to be \$3,795,300,000, an increase of \$18.9 million from fiscal year 2009. Total expenses are projected to be \$4,424,900,000 causing an estimated budget shortfall for FY 2010 of over \$600 million dollars. During the public hearing the county asserted that with the current estimated shortfall of \$600 million, it was experiencing a \$1.2 billion cumulative deficit in its budget, including a \$400 million deficit for FY2009 and a \$200 million dollar deficit for FY2008.

For fiscal 2010, Montgomery County estimates increased property tax revenue of \$1,438,700,000, an increase over fiscal year 2009. Montgomery County also estimates increased revenue from recordation tax with premium for fiscal year 2010 of \$51.9 million, an increase from fiscal year 2009. It anticipates an increase of revenue from fines and fees, energy, telephone, and hotel taxes.

Transfer tax revenue for FY 2010 is estimated to be \$65 million, a reduction from the fiscal year 2009 estimated revenue. Income tax revenue is expected to decrease to \$1,214,800,000 by FY 2010. Montgomery County also anticipates reduced revenue in fiscal year 2010 from highway user fees and investments. Moreover, the Federal Reserve rate cuts have reduced projected investment income by nearly 60 percent.

Since May 2008 the county revised its fiscal year 2009 and 2010 revenue projections down \$340 million because of reductions in income tax, transfer tax, investment income, and state highway user aid. It estimates a reduction of 10% tax revenue. The county estimates a revenue stabilization fund ("Rainy Day" fund) of \$119,600,000 by the end of fiscal year 2009.

County employers added 1,800 jobs in 2008, a .4% increase. Unemployment increased to 4.6% in January 2009, the highest level since 1990; however the county unemployment rate remains low compared to the State and the nation. Resident employment is stagnant. The county anticipates that an average of 4,350 new jobs to be added between 2008 and 2015. The public sector provides a stable foundation against "significant labor market volatility" nationwide. The large presence of the federal government, in terms of employment, procurement, and federal retirees, generally insulates Montgomery County's economy, from the volatility that is experienced nationally.

Home sales declined 17.8% in 2008, 23.4% in 2007, 20.5% in 2006. During the public hearing, the county stated that it has seen a 25% decrease on the sales of homes, a decline in the price of homes, and an increase in foreclosures. Residential construction declined 8.3% from 2007-08.

### **Prohibition against Raising Revenue**

Montgomery County has two constraints to raising revenue. Section 305 of the Montgomery County Charter requires a unanimous vote of the county council to raise property taxes beyond the rate of inflation. The county does not support seeking a property tax increase. The income tax rate is at the State allowed maximum rate of 3.2%.

### **Projected Expenditure Plan -- Fiscal Year 2009 and Fiscal Year 2010**

The county projects mid-year reductions of \$48.8 million in fiscal year 2009. For fiscal year 2010, the county projects reductions of \$130.4 million. It would abolish 400 county government positions, eliminate general wage adjustments, eliminate a \$25 million increase in pre-funding of retiree health insurance, and it plans to reduce county reserve by \$40 million.

## **School Board Conditionally Supports the Waiver Request**

The Montgomery County Board of Education conditionally supports the county's waiver request. The Montgomery County Board of Education stated that it could agree with the waiver request if: 1. No further cuts were made to the MCPS budget; 2. MCPS gets federal stimulus funds per the plan submitted to the county; and 3. The fiscal year 2011 MOE is based on fiscal year 2009 local appropriation. During the April 27, 2009 hearing, the representative of the board of education stated that they had assurances from the County Executive and the County Council that the conditions would be met.

The FY 2010 education budget is \$64 million over fiscal year 2009, without the federal stimulus funds. In the County Executive's recommendation for the MCPS FY 2010 Operating Budget, this amount was reduced by \$24 million. The County stated, however, that the County Executive's recommended budget for FY 2010 would fund nearly 99% of the BOE request. Both the county and the local board of education agree that reductions do not impact education programs.

The local board of education has reduced fiscal year 2010 expenses by \$89 million in cost of living allowance (COLA) payments. The Montgomery County Board of Education will further reduce its budget by \$30 million for fiscal year 2010 in addition to \$20 million in position freezes and expenditure restrictions in fiscal year 2009.

### **Amount of Anticipated Federal ARRA and Stabilization Funds.**

The county stated that the local board of education will receive \$6.1 million in ARRA funds for Title I programs and \$15.3 million for the Individuals with Disabilities Education Act (IDEA). They assert that the stimulus funds will not have any effect on meeting the State MOE requirement. In addition, there are federal Stabilization Funds that the Governor has appropriated for funding schools in Maryland. The local board of education is expected to receive \$36 million in ARRA Stabilization Funds.

## **LEGAL ANALYSIS**

### **A. Maintenance of Effort History**

Before addressing the relevance and materiality of the facts presented in this case, we address the law governing our decision. For the first time since the passage of the MOE waiver statute and the waiver regulations, we are called on to interpret that statute and regulations and to explain, not only the evidence we will consider in our decision making, but also the weight we will attach to that evidence. We are guided in our interpretation by the underlying premise for the maintenance of effort requirement. By law, in order to "be eligible" to receive State

“foundation program” funding for education, a county government must levy taxes sufficient to provide “the local share of the foundation program” funds. Md. Educ. Code Ann. § 5-202(d). In other words, the State and local governments are to share the cost of providing an education to public school students in each county.

The local governments’ MOE requirement has long been a component of the total public school funding law in Maryland. It was added to the public school funding law by the General Assembly in 1984. Chapter 85, Laws of Maryland 1984. *Letter to Ecker*, 76 Md. Op. Atty. Gen. 153 (Mar. 6, 1991). To meet the MOE requirement, the county governing body must appropriate local funds to the school operating budget in an amount no less than the product of the county's full-time equivalent enrollment for the current fiscal year and the local appropriation on a per pupil basis for the prior fiscal year. Md. Educ. Code Ann. §5-202(d)(1)(ii). The local appropriation for the prior fiscal year for a county is calculated on a per pupil basis by dividing the county's highest local appropriation to its school operating budget for the prior fiscal year by the county's full-time equivalent enrollment for the prior fiscal year. Md. Educ. Code Ann. §5-202(d)(2).

The Bridge to Excellence Act, which sets forth the education funding formula, recognizes that the local share will vary depending on the wealth of the county. *See, e.g.*, Md. Educ. Code Ann. §§ 5-502(a)(7) & (8); 5-210. But, State/local sharing of the costs of education is the cornerstone of education funding in Maryland. Indeed, in 2002 when the Commission on Education Finance, Equity and Excellence published its comprehensive report (“a/k/a, Thornton Commission Report”) on how to achieve a level of constitutionally adequate funding for education in Maryland, it stated:

Although meeting the adequacy goals adopted by the Commission will require a significant increase in State aid over the next five years, funding the public schools remains a shared responsibility between State and local governments. Reaching adequate funding, therefore, will require additional local funding for the schools.

Thornton Commission Report at 73.

The Commission addressed the important role of local funding in achieving adequate funding:

The Commission believes that the current maintenance of effort requirement has generally worked well to ensure a minimum level of funding for the public schools and recommends no change to the requirement. In recent years, aggregate county support for education

has substantially exceeded the maintenance of effort requirement. Meeting adequacy goals by fiscal 2007 will require that counties continue to exceed maintenance of effort. The Commission estimates that if counties provide increases in education funding comparable to the increases provided from fiscal 1997 to 2000, most school systems would meet or exceed adequacy goals by fiscal 2007. . . . [T]he Commission believes strongly that maintenance of effort only establishes the minimum funding level. Achieving adequate funding will demand that counties continue to display the level of commitment to public education that the majority of counties have repeatedly demonstrated in the past.

*Id.*

Thus, when a county government requests a waiver from paying its maintenance of effort in full, we must consider carefully the full implications of that request, not only at the local level, but statewide as well, because any crumbling in the cornerstone of the State/local share formula for funding education can affect the structural soundness of the education funding formula going forward.

With those guiding principles in mind, we have reviewed the law and regulations that govern the waiver of maintenance of effort. The law establishes that the county may obtain a waiver of MOE if the State Board determines "that the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement." Md. Educ. Code Ann. § 5-202(d)(7). After that law passed, the State Board promulgated regulations that explained the factors the State Board would consider in making its decision. They are:

- (a) External environmental factors such as a loss of major industry or business;
- (b) Tax bases;
- (c) Rate of inflation to growth of student population;
- (d) The maintenance of effort requirement relative to the county's statutory ability to raise revenues.

COMAR 13A.02.05.04(C)(2).

#### **B. Burden of Proof**

In presenting evidence of the factors to the State Board that a county's fiscal condition significantly impedes its ability to fund MOE, the county has the burden of proof by a preponderance of the evidence. COMAR 13A.02.05.04C(3).

The standard of proof by a preponderance of the evidence is defined in the Maryland Pattern Jury Instructions as follows:

To prove by a preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true.

If you believe that the evidence is evenly balanced on an issue, then your finding on that issue must be against the party who has the burden of proving it. (MPJI-Cv 1:7)

See also *Coleman v. Anne Arundel County Police Dept.*, 369 Md 108, 127n.16 (2002).

Thus, for the county to prevail in its request for a waiver, we must be convinced that it is more likely than not that events in the county have affected the county's fiscal condition such that it "significantly impedes the county's ability to fund the maintenance of effort requirement" for fiscal year 2010.

### C. Factors for Granting a Waiver

As stated previously, for the first time since COMAR 13A.02.05.04C was promulgated in 1997, we are called on to define the parameters of each of the factors that the Board will consider.

#### (1) External Environmental Factors

The term "external environmental factors" can be read two ways - - broadly to include a general, severe economic downturn, or narrowly to include only extraordinary economic events unique to the county requesting the waiver. The regulation itself provides some guidance on how to interpret the term "external environmental factors." The regulation qualifies that term with the phrase "such as a loss of major business or industry." That qualification provides an example of the type of external environmental factor that we should consider in deciding the waiver request. That qualification limits the expansiveness of the term "external environmental factor."

Turning to the rules of statutory construction, we are guided by the principle of *ejusdem generis*. Under that rule, when general words in a statute follow the designation of particular things or subjects, the general words will usually be construed to include only those things or subjects in the same class as those specifically mentioned. *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 637 (2003). Thus, because the regulation defines the class as including events like a major loss of business or industry, we will interpret the term external environmental factor in the narrow way because a loss of major business or industry is an extraordinary event unique to a county.

(2) Tax Bases

The regulation provides no internal guidance on the parameters for consideration under the "Tax Base" factor. The statutory requirement that a county show that its fiscal condition "*significantly*" impedes its ability to fund MOE in full provides guidance to us, however. Because the county must establish that significant impediments exist, we will look for evidence of significant impacts on the county's tax bases. Thus, within the Tax Bases factor we will look for evidence of the complete loss of one tax base or significant losses across all or most of a county's tax bases because such losses could "significantly impede" a county's ability to fund MOE in full.

(3) Rate of Inflation Relative to Growth of the Student Population

For the purposes of the cases before us, this factor does not come into play at all because inflation is not an issue nor is growth in student population.

(4) Maintenance of Effort Relative to Statutory Ability to Raise Revenue

In considering the relationship between the MOE requirement and the county's statutory ability to raise revenue, we note that a separate section of the regulation directs the county to explain "statutory prohibitions for raising revenue." COMAR 13A.02.05.04A(3)(c). The regulation does not establish, however, whether a prohibition on raising revenue should be weighed as a positive or negative factor in favor granting a waiver. In considering this issue, we return to the underlying premise of education funding in Maryland -- that to receive the State share of education funding, the county government must levy sufficient taxes to cover its minimum local share, *i.e.*, the MOE amount.

In some counties in Maryland there are locally imposed caps on taxes and/or other significant locally imposed impediments to increasing taxes. We do not opine on the propriety of those locally imposed prohibitions or impediments. We do opine, however, that based on our understanding of the State/local share requirements contained in Maryland's education funding

formula, when we consider a county's ability to raise revenue we will give locally imposed prohibitions little weight in the balance.

We adopt this position because each county and its voters are free to restrict tax increases, but in our view, each is not free to abdicate its responsibility to fund its minimum local share of education costs. If we gave locally imposed prohibitions great weight in our analysis, we envision legal and public policy consequences that could destroy the cornerstone of the education funding formula because any county in Maryland can, by referendum or otherwise, cap its property or other tax bases at a level that would ultimately preclude the county from raising sufficient taxes to fund MOE in full. That is not an outcome this Board could sanction by interpretation of our regulation.

We are guided here again by the Thornton Commission Report and the concerns the Commission expressed on the issue of locally imposed impediments to tax levies.

The Commission is concerned, however, that some local property tax policies may impede the ability of counties to sufficiently fund education during the five-year phase-in of the Commission's funding proposal. . . . [F]ive charter counties (Anne Arundel, Montgomery, Prince George's, Talbot, and Wicomico) have amended their charters to limit property tax rates or revenue growth. With the exception of Montgomery County, the limits can only be adjusted through a charter amendment. . . . County governments have three basic strategies for enhancing funding: (1) utilize annual increases in revenues from the county's existing tax structure; (2) raise tax rates or levy a new tax; and (3) reorder budget priorities to provide a larger budget share to education. The existence of a property tax rate or revenue limitation may constrain the use of the first two strategies, thereby impeding a county's ability to sufficiently increase education funding to meet adequacy goals.

*Id.* at 73-75.

With all those considerations in mind, we will give little weight to locally imposed prohibitions and impediments to tax levies. We will give great weight, however, to evidence of taxing limitations that the General Assembly imposes on a county by statute. For example, county income taxes are capped by State statute at 3.2%.

(5) Other Factors

As explained above, the regulation lists four factors that the State Board may consider in deciding the waiver request. We do not here exclude the possibility that other factors may be relevant and material. One dominant "other factor" in the cases before us is the recession and its impact on local revenues. When we consider this factor, however, we note that the recession impacts all counties in Maryland and that 21 of the 24 counties have not requested a waiver of MOE. Although three counties have requested a waiver for FY 2010, if the fiscal pressures on all of the counties and Baltimore City become so severe and wide-spread there may be a "tipping point" when a legislative solution rather than a State Board solution may be required.

Thus, to the extent that the recession is a factor, we will look for evidence that the county requesting the waiver has experienced a serious, significant economic impact that is different from the generalized economic impact experienced by other counties in Maryland. For example, evidence that the housing market has collapsed in the county may be given great weight in our deliberations, but downturns in housing market may be given little or no weight.

Again, we take this view of the evidence because, in our opinion, a waiver of MOE requires a showing that extraordinary events in the county have led to the need for such a waiver.

Another factor that this Board weighs in the balances is whether reduction in the minimum local share of education funding comports with the American Recovery and Reinvestment Act (a/k/a "the stimulus package;" "ARRA"). Under that recent piece of federal legislation, Maryland schools will receive over \$1.2 billion additional federal dollars. To receive those funds, the local school system and the State must meet specific mathematical MOE requirements set by the federal government. It is too early to tell whether the local school systems will be able to meet those federal MOE requirements if the county reduces its MOE.

It is not too early to consider the other implications of a reduction of the county's MOE. Under the ARRA, to receive federal funds, States are required to make assurances directed at improving education, student achievement, teacher effectiveness, and closing the achievement gap and supporting struggling schools. Reducing the county's financial contribution to its school system could send the unintended message that the county is not on board with the State's assurances.

In addition, Maryland will be one of the States competing for a "Race to the Top" federal grant. In FY 2010, the Department will award \$4.35 billion in grants to States in a national competition. The Race to the Top grants will support States that are making significant progress in meeting the four assurance goals and effectively using ARRA funds. The State's meeting its

MOE requirements will be a factor in that competition. A reduction in a county's MOE may cast a shadow on Maryland's competitive position.

#### D. Montgomery County's Evidence

##### 1. External Environmental Factors such as loss of Major Business or Industry

The loss of a major business or industry is an extraordinary event unique to the county. Montgomery County did not identify any major loss of business or industry that is unique to the county. It alleges that the current national economic crisis and international crises in credit markets caused its financial difficulty. The county states that it has seen a decline in the residential home sales over the past three years. Home sales in the county have declined 17.8% in 2008, 23.4% in 2007, 20.5% in 2006. In addition, residential construction declined 8.3% from 2007-08. The county points us to a generalized downturn in the housing market that all counties are experiencing. It did not allege or demonstrate that the housing market in the county had collapsed.

The county also points to a decline in retail sales. Retail sales decreased 12.2% in 2008. This also is not unique to the county. We recognize that retail sales have decreased generally in the State, and the nation. This is not comparable to the loss of a major industry or business to warrant the waiver of a portion of the county's share of public school funding.

##### 2. Tax Bases

Montgomery County did not offer evidence of a complete loss of a tax base or significant loss across all tax bases. Instead, the documentation that the county provided demonstrates that its tax bases are more stable than most counties. The county has a low unemployment rate compared to the State and the nation. The large presence of the federal government, in terms of employment, procurement, and federal retirees provides a buffer so that Montgomery County's economy generally does not experience the volatility experienced nationally.

In addition, Montgomery County has a low unemployment rate compared to the State and nation. The public sector industry provides a stable foundation against significant labor volatility nationwide. The county predicts an average of 4,350 new jobs to be added each year between 2008 and 2015. County employers added 1,800 jobs in 2008. The county did identify reductions in tax revenue. While we recognize that the county needs to address these issues, they have not provided evidence of a loss of tax bases sufficient to tip the balance in toward the granting of a waiver from the MOE.

### 3. Rate of Inflation Relative to Growth of Student Population

Montgomery County's student population increased 1,424 students between September 30, 2007 and September 30, 2008 to 135,970 students. The county did not offer any evidence that the rate of inflation relative to growth in student population was a reason for granting the waiver. As we stated above, the rate of inflation relative to the growth of student population was not an issue regarding the request for a waiver.

### 4. MOE Requirement Relative to County's Statutory Ability to Raise Revenue

The county identified two constraints to raising revenue. One, Section 305 of the Montgomery County Charter requires unanimous vote of the county council to raise property tax beyond inflation. Two, the income tax rate is at the State allowed maximum rate of 3.2%.

In that regard, we give great weight to the fact that the county is prohibited by State law from increasing the income tax rate. We give little weight to the need for a unanimous vote to raise property taxes.

### 5. Montgomery County Board of Education Conditionally Supports the MOE Waiver.

The Montgomery County Board of Education and the county sought a collaborative approach to the MOE waiver request. The school board's support was conditional to preserving its priorities for no additional cuts to its budget, federal stimulus funding is provided consistent with the plan submitted to the county, and that the MOE for fiscal year 2011 is based on the fiscal year 2009 local appropriation. At the hearing, the county government affirmed that it was committed to meeting the board of education's conditions. In addition, Educ. Art. §5-202(d)(7) was amended to require a county's MOE for the next fiscal year to be based on the per pupil local appropriation of the greater of the prior fiscal year or the second prior fiscal year. Educ. Art. §5-202(d)(7)(v); Ch. \_\_\_\_, 2009 Laws of Md.

We commend the county and the board of education for working collaboratively to achieve a unified position. A unified position is meaningful, but is not a determinative factor for us to grant the MOE waiver. State law requires the local government to levy sufficient taxes to cover the minimum local share to receive the State share of the foundation program funds. In our view, absent exceptional circumstances, the county government must provide this minimum funding to the local board of education to maintain the structural soundness of the education funding formula.

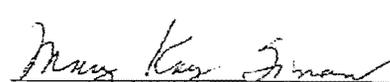
CONCLUSION

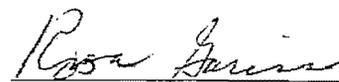
Despite the agreement between the two governmental entities, the evidence and argument presented do not demonstrate by a preponderance of evidence that extraordinary events occurred in the county that significantly impede the county's ability to fund its MOE requirement. When we balance the weight of the evidence under each of the factors, no one factor, nor combination of factors, tips the balance in favor of granting this waiver request. We conclude that the county has not met its burden of proof. Therefore, we deny the request for a waiver of the maintenance of effort.

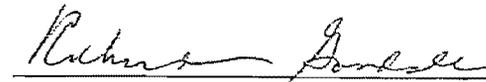
 <sup>Em K</sup>  
James H. DeGraffenreid, Jr.  
President

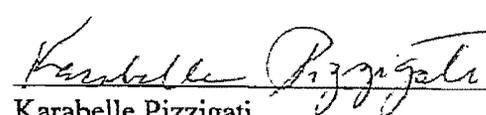
 <sup>Em K</sup>  
Dunbar Brooks

 <sup>Em K</sup>  
Charlene M. Dukes

 <sup>Em K</sup>  
Mary Kay Finan

 <sup>Em K</sup>  
Rosa M. Garcia

 <sup>Em K</sup>  
Richard L. Goodall

 <sup>Em K</sup>  
Karabelle Pizzigati

*IWS*  
Ivan C.A. Walks  
Ivan C.A. Walks

Absent  
Kate Walsh

*EWK*  
Derek Wu  
D. Derek Wu

Dissent:

The Montgomery County case is a unique one. The initial problem was that there was adequate money to fund the schools, but not adequate money to fund both the schools and the county government operations. The local school board, the county executive and the county council have now all agreed on adequate funding for both the schools and the county government operations, but need the waiver they have requested to make the agreement effective. This is an example of good government at work. It ought to be encouraged and supported. The waiver should be granted.

*EWK*  
Blair G. Ewing  
Blair G. Ewing  
Vice President

Dissent:

I also dissent in this opinion.

*AS*  
Donna Hill Staton  
Donna Hill Staton

May 15, 2009

Resolution No.: 16-971  
Introduced: May 21, 2009  
Adopted: May 21, 2009

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: County Council

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**SUBJECT:** Approval of and Appropriation for the FY10 Operating Budget of the  
Montgomery County Public School System

**Background**

1. As required by the Education Article, Sections 5-101 and 5-102, of the Maryland Code, the Board of Education sent to the County Executive and the County Council the FY10 Operating Budget for the Montgomery County Public School (MCPS) system as shown below.
2. The Executive sent to the Council his recommendations regarding this budget.
3. As required by Section 304 of the County Charter, the Council held public hearings on the Operating Budget and the Executive's recommendations on April 13, 14, 15, and 16, 2009.
4. The appropriation in this resolution is based on the following projected revenues for FY10:

State:	\$440,089,248
Federal:	\$115,609,261
Other:	\$ 14,980,651
Enterprise:	\$ 56,143,393
5. This appropriation requires a local contribution of \$1,529,554,447 to Montgomery County Public Schools.
6. This resolution reappropriates \$20,000,000 of projected FY09 MCPS Current Fund balance. This resolution also appropriates State funds received in FY09 totaling \$24,200,000.

7. Federal grant revenue totaling \$27,845,773 to be received in FY10 through the State from the State Fiscal Stabilization Fund of the American Recovery and Reinvestment Act is unrestricted in use but is considered as restricted revenue in this appropriation as required by the United States Department of Education for the purpose of financial reporting.
8. The Superintendent submitted to the Council proposed reductions by State category to meet the approved expenditure level as reflected in this appropriation.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

1. The Council approves the FY10 Operating Budget for the Montgomery County Public School system and appropriates the funds as shown below.

Resolution No.

## FY 2010 OPERATING BUDGET FOR MONTGOMERY COUNTY PUBLIC SCHOOLS

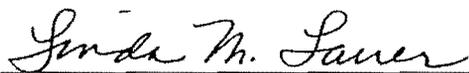
The Council approves and appropriates the following amounts.

I. Current Fund Category	BOE Request March, 2009	Council (Reduction)/ Addition	Council Approved Budget
1 Administration	41,809,677	64,426	41,874,103
2 Mid-level Administration	135,542,318	329,102	135,871,420
3 Instructional Salaries	856,035,209	(258,495)	855,776,714
4 Textbooks and Instructional Supplies	31,905,545	(1,783)	31,903,762
5 Other Instructional Costs	15,070,581	23,120	15,093,701
6 Special Education	280,339,274		280,339,274
7 Student Personnel Services	11,153,748	21,630	11,175,378
8 Health Services	41,002		41,002
9 Student Transportation	92,765,998		92,765,998
10 Operation of Plant and Equipment	118,589,104		118,589,104
11 Maintenance of Plant	34,961,236	(1,023,000)	33,938,236
12 Fixed Charges	477,537,658	(30,218,560)	447,319,098
14 Community Services	208,495		208,495
Non-Categorized Expenditures			
Debt Service		79,537,322	79,537,322
Subtotal, including specific grants	2,095,959,845	48,473,762	2,144,433,607
Less specific grants	96,719,382	27,635,962	124,355,344
Subtotal, spending affordability	1,999,240,463	20,837,800	<b>2,020,078,263</b>
II. Enterprise Funds			
37 Instructional Television Fund	1,581,608	(98)	1,581,510
51 Real Estate Fund	2,651,095		2,651,095
61 Food Services Fund	47,821,972		47,821,972
71 Field Trip Fund	2,314,716		2,314,716
81 Entrepreneurial Activities Fund	1,774,100		1,774,100
Subtotal, Enterprise Funds	56,143,491	(98)	56,143,393
Total Budget for MCPS	2,152,103,336	48,473,664	<b>2,200,577,000</b>

2. This resolution appropriates \$8,991,083 for the account titled "Provision for Future Supported Projects", which provides funds for specific programs designated in a grant, contribution, reimbursement, or other non-county funding source received in FY10. When MCPS receives funds for a program from one of these sources, MCPS may transfer funds from this appropriation to the program. The following conditions are established on the use of this transfer authority:
  - a) The program must not require any present or future County funds.
  - b) Subject to the balance in the account, any amount can be transferred in FY10 for any program which meets at least one of the following four conditions: (1) the amount is \$200,000 or less; (2) the program was funded in FY 2009; (3) the program was included in the FY10 budget; (4) the program was funded by the Council in a supplemental or special appropriation in FY10. Any program that does not meet one of these four conditions must be funded by a supplemental or special appropriation.
  - c) MCPS must notify the Executive and the Council within 30 days after each transfer.
3. Any appropriation authorized in this resolution for any expenditure funded by non-County funds is contingent on the receipt of the non-County funds.
4. This resolution reappropriates or appropriates revenue received from non-County sources for programs funded in whole or in part from those non-County funds:
  - a) together with matching County funds, if any; and
  - b) to the extent that the program period approved by the non-County source encompasses more than one fiscal year, in order to complete the grant program under the terms of receipt of the non-County revenues.
5. This resolution reappropriates the fund balance of the Warehouse account.
6. The Council continues the procedure for transfers adopted in Resolution 12-889. This procedure applies only to the non-County portion of grant programs, and therefore only applies to those grant programs for which MCPS keeps separate accounts for County and non-County funds.
  - a) The Council will not take action on these transfers, so the transfers will be automatically approved after 30 days, as provided by State law.
  - b) MCPS staff must report each transfer to the Executive and the Council within 30 days after the transfer.

7. The following provision applies when MCPS receives more non-County funds than were budgeted for a project that also receives some County funds:
  - a) Council approval is not required to substitute non-County funds for County funds. In this case, there is no change in the appropriation.
  - b) Council approval is required to increase the appropriation. The Council may decide to substitute non-County funds for the County funds instead of increasing the appropriation.
8. This resolution reappropriates encumbered appropriations, permitting them to be spent in FY10. Unencumbered appropriations lapse at the end of FY10 except as reappropriated elsewhere in this resolution.
9. This resolution appropriates \$12,000,000 for pre-funding retiree health insurance consistent with Resolution No. 16-555, which the Council adopted on May 14, 2008. These funds must not be placed in trust before June 30, 2010. Before June 30, 2010, these funds may be transferred, with Council approval, to address any unanticipated revenue shortfall.
10. This resolution appropriates \$79,537,322 for the payment of debt service due in FY10 for the construction of Montgomery County Public Schools facilities.
  - a) Montgomery County Public Schools must make payment for the debt service through the Montgomery County Government as provided in subparagraph 10(c). These funds must not be spent for any other purpose.
  - b) The inclusion of this amount for debt service will be part of the County's Local Appropriation and part of the calculation of the FY11 Local Appropriation required to comply with the State maintenance of effort requirement.
  - c) Reimbursement must occur no less than five days before each applicable debt service payment.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

DOUGLAS E. GANSLER  
ATTORNEY GENERAL

KATHERINE WINFREE  
Chief Deputy Attorney General

JOHN B. HOWARD, JR.  
Deputy Attorney General



DAN FRIEDMAN  
Counsel to the General Assembly

SANDRA BENSON BRANTLEY  
BONNIE A. KIRKLAND  
KATHRYN M. ROWE  
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

May 20, 2009

The Honorable Richard S. Madaleno, Jr.  
Maryland State Senate  
203 James Senate Office Building  
Annapolis, Maryland 21401

Dear Senator Madaleno:

You have requested advice concerning State financial assistance for public education and a county's maintenance of effort requirement. Your specific questions and my answers appear below.

**1. Is the withholding of payment to a county that fails to meet its maintenance of effort requirement limited to the increase in the State's share of the foundation program or does it include the increase in all State financial assistance for public education?**

ED § 5-213(b) provides, in part:

(3) Upon receipt of certification of noncompliance by the Superintendent or the State Board, as the case may be, the Comptroller shall suspend, until notification of compliance is received, payment of any funds due the county for the current fiscal year, as provided under § 5-202 of this subtitle which are appropriated in the General State School Fund, to the extent that the State's aid due the county in the current fiscal year under that section in the Fund exceeds the amount which the county received in the prior fiscal year.

This provision was enacted, in its current form, in 1984 (Chapter 85 of the Laws of 1984). While the phrase "any funds" and "appropriated in the General State School Fund"<sup>1</sup> are broad enough to encompass all State aid for public education, the suspension of payment to a county not in compliance with its maintenance of effort requirement is limited by the reference to ED § 5-202. In 1985, § 5-202 set

<sup>1</sup> "[A]ll money appropriated by the General Assembly to aid in support of public schools constitutes the General State School Fund." ED § 5-201(a).

out the education funding formula known then as the "basic current expenses." This formula was amended by the Bridge to Excellence in Public Schools Act (Chapter 288 of the Laws of 2002) and is now known as the "foundation program." The Geographic Cost of Education Index (GCEI) was also added as § 5-202(f) as part of the 2002 legislation. During the 2007 Special Legislative Session, § 5-202(e) was amended to provide a supplemental grant for certain fiscal years. Thus, it is my view that the withholding under ED § 5-213(b)(3) applies to these three components of education funding under § 5-202 – the foundation program, the GCEI and the supplemental grant – and not to other components of the State's primary funding formulae.<sup>2</sup>

**2. Is an increase in education aid due to federal funding increases for education actually an increase in the State's aid to education for the purposes of withholding under ED § 5-213(b)? In other words, if there is no increase in State funds, may any withholding be made under this section?**

The education formula requires distribution of the State share of the foundation program to each county board. ED § 5-202(b). There is no requirement that the State share be made up entirely of State general funds, as opposed to a combination of general and federal funds. Thus, in my view, if there is an increase in the State's aid, regardless of the source of those funds, the withholding required under ED § 5-213(b)(3) would apply.

**3. Does the withholding required under ED § 5-213(b) apply to all State aid to the county or just to the increase in aid over the prior fiscal year?**

It is my view that the statutory language of ED § 5-213(b)(3) ("to the extent that the State's aid due the county in the current fiscal year under that section in the Fund exceeds the amount which the County received in the prior fiscal year") is clear and unambiguous. The withholding applies only to the increase. *76 Opinions of the Attorney General* 153, 161-62 (1991).

**4. If a county fails to meet its maintenance of effort requirement for fiscal year 2010, how is the county's maintenance of effort requirement for fiscal**

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<sup>2</sup> There may be some risk that if the penalty under ED § 5-213 was imposed on the Montgomery County School System, that school system may not be able to demonstrate maintenance of effort for receipt of federal IDEA funds.

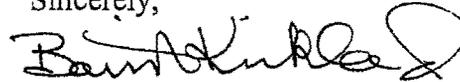
The Honorable Richard S. Madaleno, Jr.  
May 20, 2009  
Page 2

**year 2011 determined? In other words, on what figure would the county's 2011 maintenance of effort requirement be based?**

In the Budget Reconciliation and Financing Act of 2009 (HB 101), ED § 5-202(d)(7)(v) was added to provide that if the State Board of Education grants a temporary or partial waiver of a county's maintenance of effort requirement, the minimum appropriation of local funds required for the next fiscal year shall be calculated based on the appropriation for the prior fiscal year or the second prior fiscal year, whichever is greater. That provision, however, is based on a waiver having been granted. If no waiver has been granted, the provisions of current ED § 5-202(d)(2) would apply and require use of the "highest local appropriation" for the prior fiscal year.

I hope this is responsive to your request.

Sincerely,



Bonnie A. Kirkland  
Assistant Attorney General

BAK/mlb

## Discussion of MOE Penalty Calculation Elements

- The Assistant Attorney General's letter of advice concludes that the amount of State Aid that can be withheld for not meeting MOE is the increase in Foundation Aid, GCEI, and Supplemental Grant aid. For Montgomery County in FY10, the difference in State Aid from FY09 in each category is as follows:
  - **Foundation Aid:** MCPS received an increase of \$33,357,050 over the *corrected* FY09 aid amount. The Montgomery County Foundation Aid allocation was initially \$24.2 million lower than it should have been in FY09 due to the State's wealth calculation error. The State rectified this error with a \$24.2 million repayment in FY09.
  - **GCEI:** MCPS received total GCEI funding of \$30.9 million, which is an increase of \$12,574,007 over FY09. However, the State's portion of FY10 GCEI funding was only \$9.3 million since the State used Federal stimulus dollars to maintain the GCEI funding allocations. Thus the State Aid in this category *decreased* by \$9.0 million.
  - **Supplemental Grant:** The County received a supplemental grant in FY09 that it did not receive in FY10. This is a *decrease* in State Aid of \$10.4 million.
- The penalty would be **\$33.4 million** assuming that State Aid in GCEI did not increase.
- The penalty would be **\$45.9 million** if the GCEI calculation did not exclude Federal stimulus dollars used in the allocation. The letter of advice concludes that any increase of State Aid could be withheld, regardless of the source of funds for that aid. However, this issue remains open for final judicial interpretation.
- The penalty would only be **\$14.4 million** if the Foundation Aid increase was offset by the \$19 million decreases in GCEI and the Supplemental Grant. However, since the law states that funds can be withheld "to the extent that the State's aid due the county...exceeds the amount which the county received in the prior year", this interpretation seems unlikely.
- All of these scenarios assume that the FY09 Foundation Aid is the *corrected* amount. This is a reasonable assumption since the \$24.2 million repayment has been awarded and recognized as additional FY09 aid by both the State and MCPS. However, if the initial State Aid allocation was used as the base, the increase in Foundation Aid (and thus the penalty) would be **\$57.6 million**.



**MONTGOMERY COUNTY PUBLIC SCHOOLS**  
MARYLAND

www.montgomeryschoolsmd.org

June 4, 2009

Dr. Nancy S. Grasmick  
State Superintendent of Schools  
Maryland State Department of Education  
200 West Baltimore Street  
Baltimore, Maryland 21201

Dear Dr. Grasmick:

On May 21, 2009, the Montgomery County Council adopted its Fiscal Year 2010 operating budget, adding \$79.5 million to the Board of Education's operating budget to meet its maintenance of effort requirements. However, the council resolution states that these funds are to be returned to the county as reimbursement for debt service for public school facilities. I am writing to ask whether the council's action with respect to these funds meets the maintenance of local effort requirements of Section 5-202 of the Education Article, Annotated Code of Maryland. We find ourselves in uncharted waters and seek your guidance on this issue because the penalty that can be imposed on communities that don't meet local funding requirements can be severe and result in the loss of millions in state education aid for schools. The situation could be further compounded by the fact that any such penalty may be imposed at the end of the fiscal year when there is little time to address the matter. As a result, it is important to resolve this issue as soon as possible so that all of the school districts across our state have clear guidance.

This year's budget situation presented us with an unusual scenario; yet, one that all parties in Montgomery County worked collaboratively to solve. Our priority as a community has been to ensure that we continue to have the funding necessary to maintain our exceptional school system and to guard against any unintended consequences. As you know, earlier this spring, the County Executive and the County Council requested from the State Board of Education a one time waiver of maintenance of effort. In a spirit of collaboration, the Board of Education supported the request, with limitations, because of the county's dire financial circumstances and the direct infusion of additional state and federal education aid. The Board cooperated on this request believing it was fiscally responsible and would create greater budget sustainability in Fiscal Year 2011.

The waiver denial required the county to find another approach to meeting the needs of the school system and the county as a whole. We proposed that the \$79.5 million be appropriated and incorporated into our budget. As in past years, we said we would aim to reserve resources to ensure the sustainability of future budgets. In fact, we anticipated that a fund balance would have been available in Fiscal Year 2011 for the county to use to more easily meet the maintenance of effort requirements.

The County Executive proffered a different solution whereby the reserve would be used to pay, for one year only, \$79.5 million of the county's debt service. With the one year limitation, we believed that the intent was not to transfer the responsibility in the future. The council did not concur with the Executive's recommendation and instead passed the attached resolution which is silent on whether the debt service payments would be made by Montgomery County Public Schools (MCPS) for one

Office of the Superintendent of Schools

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850 Hungerford Drive, Room 122 ♦ Rockville, Maryland 20850 ♦ 301-279-3381

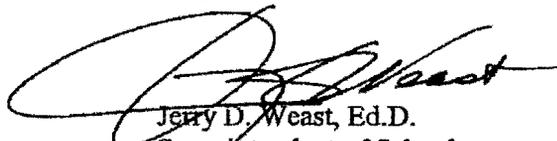
year or whether the council intended for this to become an ongoing component of our budget. This now leaves the possibility of an open ended shifting of this responsibility to the school system which is completely unacceptable. In fact, the council action requiring the school system to reimburse the county for debt service calls into question whether such a directive is consistent with maintenance of effort statutory requirements or whether it might be inconsistent with the spirit of the law.

I am concerned that these circumstances may have exposed MCPS to consequences that could substantially harm our system. As you know, any county's failure to maintain local effort can result in directly penalizing the school system by the denial of state education funds. Such a penalty would adversely affect the education of the public school children of Montgomery County by greatly reducing education funds available to MCPS. It hardly seems fair to penalize the children when they are in no way responsible for a funding body's failure to meet its statutory obligations. While this may be what the statutes require, I believe that our state leaders did not intend for children to bear the brunt of the punishment. This certainly is an issue that I believe our elected state leaders need to take up in the Maryland General Assembly. While MCPS is facing this issue today, other jurisdictions could suffer similar consequences. Clear enforcement mechanisms and strong language are needed to protect the priority of education funding in every county, but that is not the current state of affairs. I am willing to work with you and our elected leaders to achieve a legislative fix to ensure that no school district is penalized by any county's failure to meet maintenance of effort requirements.

That said, our legal experts believe that even if you find that Montgomery County has not met its maintenance of effort requirements, you have the discretion to lessen the punitive impact of the county's noncompliance on our school district this year. I am requesting that you not ask the comptroller to impose a financial penalty on our school district because it would be unjust to do so, especially if we are able to achieve a solution in the Maryland General Assembly.

I appreciate your serious consideration of my requests and look forward to your responses as promptly as you are able to provide them. Thank you for your unwavering support for public education in Maryland and I know you will do whatever you can to support our educational system.

Respectfully,



Jerry D. Weast, Ed.D.  
Superintendent of Schools

JDW:spm

Attachments

Copy to:

Ms. Brandman and Members of the Board of Education

Mr. Andrews

Mr. Berliner

Ms. Ervin

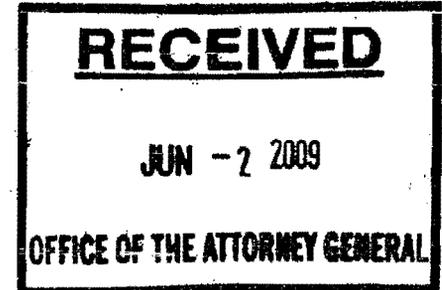
Mr. Leggett

Carney, Kelehan  
Bresler, Bennett  
& Scherr LLP  
ATTORNEYS AT LAW

COPY

David A. Carney  
Daniel H. Scherr  
P. Tyson Bennett  
Kevin J. Kelehan  
Thomas M. Meachum  
Judith S. Bresler  
Michael S. Molinaro  
Eric C. Broussides  
Micheile DiDonato  
B. Darren Burns  
Manisha S. Kavadi  
Heather S. Swan  
Renee I. Madden  
Andrew H. Robinson  
Karen S. Ellsworth

June 1, 2009



The Honorable Douglas F. Gansler  
The Attorney General of Maryland  
Office of Counsel to the General Assembly  
104 Legislative Services Building  
90 State Circle  
Annapolis, MD 21401-1991

Dear Attorney General Gansler:

OF COUNSEL:  
Fulton P. Jeffers  
August W. Steinhilber  
Lara L. Hjortsberg

IN MEMORIAM:  
Laurence B. Raber

I am writing this letter as attorney for the Wicomico County Board of Education and on behalf of its President, Mrs. Robin Holloway. We request your advice as to whether the hereinafter described process and procedure for enabling Wicomico County, Maryland to fully fund the Wicomico County Board of Education operating budget to 2009-2010 at the Maintenance Of Effort level required by law is legally sufficient and proper such that the full benefit of Maintenance Of Effort will be vested upon the Wicomico County Board of Education, including all ancillary funding from other state and federal entities.

The Wicomico County government requested a waiver of Maintenance Of Effort from the Maryland State Board of Education. In an Opinion, dated May 15, the Maryland State Board of Education denied the Maintenance Of Effort waiver request. Subsequently, the County Executive advised the Wicomico County Board of Education that it could not fully fund its budget at the required Maintenance Of Effort level unless it received \$2,000,000 in financial assistance from the Wicomico County Board of Education.

The Wicomico County Board of Education and the Wicomico County Council had jointly established a school construction savings plan by which surplus budget proceeds from prior operating years were rolled over into the School Construction Savings Plan. That fund currently has in excess of \$2,000,000 in it. The School Construction Savings Plan which was adopted in June of 2007 is going to be amended to allow funds from the SCSP for fiscal year 2010, only, to be used for payment on debt service on school construction projects through the Wicomico

212 West Main Street, Suite 102  
Salisbury, Maryland 21801  
410-860-1888 Fax: 410-860-1109

10715 Charter Drive, Suite 200  
Columbia, Maryland 21044  
410-740-4600

Washington: 301-621-5255  
Washington Fax: 301-621-5273  
Baltimore Fax: 410-730-7729

170 Jennifer Road, Suite 245  
Annapolis, Maryland 21401  
410-573-2001 Fax: 410-573-1171

June 1, 2009  
Page 2

County government in the amount of \$2,000,000. With this financial assistance from the SCSP, the Wicomico County Council will then fully fund Maintenance Of Effort in the 2010 Wicomico County Board of Education appropriation.

The Wicomico County Council has asked that the Board obtain an Attorney General's opinion which concurs with the legality and practicality of the above described methodology whereby the County can meet the Maintenance of Effort requirement of Maryland law.

Thank you for your assistance and prompt response to this question.

Sincerely yours,

/s/

Fulton P. Jeffers  
Attorney for Wicomico County  
Board of Education

FPJ:psg

Enclosures:

Maryland State Board of Education Waiver Decision  
Original School Construction Savings Plan Resolution  
Proposed Amending Resolution to the School Construction  
Savings Plan

cc: ✓ Elizabeth Kameen, Esquire  
Richard M. Pollitt, County Executive  
John T. Cannon, President  
John E. Fredericksen, Ph.D.  
Robin H. Holloway, President  
Edgar A. Baker, Jr., Esquire

MY DOCUMENTS/50601-3030  
50601-3030.B



**THE PRINCE GEORGE'S COUNTY GOVERNMENT  
OFFICE OF THE COUNTY EXECUTIVE**

**For Immediate Release:** June 12, 2009

**Contact:** James P. Keary, 301-952-4670, cell, 240-882-1004

**COUNTY TO APPEAL DENIAL OF MAINTENANCE OF EFFORT WAIVER  
REQUEST**

**UPPER MARLBORO, MD** – Prince George's County today appealed a ruling by the Maryland State Board of Education to deny the county's waiver request of \$23.6 million for Maintenance of Effort funding to the county Board of Education.

On May 15, 2009, the Maryland State Board of Education issued its opinion denying the County's request for a waiver of the maintenance of effort funding requirement for Prince George's County Public schools.

The County Council and the County Executive both recognized the need to fully fund the school system's core and major functions. As a result, the County's Fiscal Year 2010 Budget has appropriated sufficient funds to meet the maintenance of effort requirement.

The county, however, has made a decision to seek judicial review of the State Board of Education's decision denying the request for a waiver. In pursuing judicial review of the State Board's decision, the county is in no way seeking to reduce the funding of the Prince George's County Public Schools as reflected in the adopted Fiscal Year 2010 Budget.

The downturn in the economy, which has been characterized by President Obama as a national crisis, presented fiscal conditions that significantly impeded the county's ability to fully fund the maintenance of effort requirement, thereby justifying a waiver. The county believes that the State Board did not properly apply the criteria for considering a waiver request, and as a result failed to appreciate the unique circumstances faced by Prince George's County in the current economic crisis.

The Prince George's County Board of Education and Prince George's County Public Schools officials have been notified of the county's intent to appeal the ruling.

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June 25, 2009

The Honorable Ulysses Currie  
Chairman  
Senate Budget and Taxation Committee  
3 West Miller Senate Building  
11 Bladen Street  
Annapolis, MD 21401-1991

Dear Chairman Currie:

As MACo President, I certainly appreciated the opportunity to testify before the Budget and Taxation Committee this past Session and I thank you for the courtesy extended to me and my MACo colleagues. Unfortunately a previously scheduled MACo Board of Directors Retreat conflicts with the Committee's June 25 briefing on education issues. While I am unable to personally attend the briefing, I want to raise county concerns regarding the State Board of Education's perplexing denial of three county maintenance of effort (MoE) waiver requests.

It is apparent these denials render the waiver process superfluous insofar as the fiscal challenges now confronting counties. The State Board's refusal to rely on the magnitude of these fiscal challenges in considering the waivers is contrary to the vision of the General Assembly in authorizing the waivers in 1996. It is noteworthy that prior to the authorization for the waivers the General Assembly had provided for MoE waivers statutorily when justified by fiscal challenges in the recessionary period of the 1990s. This year, there was much discussion that comparable legislative action was not necessary, as a waiver process had been established.

The State Board's decisions for the three county waiver applications follow largely the same rationale, each rejecting the county's claims of substantial financial hardship in reaching the statutory goal. The necessity for these waiver requests is quite clear – the national economy is in the grips of a severe recession with government revenues in dramatic decline. While each county faces its own budget challenges due to declines in local revenues, each also must assume a share of some \$300 million in State cutbacks, primarily in direct county aid. This confluence creates the exact scenario envisioned by the General Assembly in establishing the waiver process in 1996. However, the State Board rejected the current economic climate as qualifying among the "External Environmental Factors" that may explicitly merit a waiver.

Another element of the State Board's own regulations governing the waiver process is "Tax Bases." (COMAR 13A.02.05.04C) In the current recessionary environment where many county tax bases are facing unparalleled declines, the State Board opted to overlook these simple facts, and adopt a position that "we will look for evidence that the county requesting the waiver has experienced a serious, significant economic impact that is different from the generalized economic impact experienced by other counties in Maryland." (*In Re: Waiver Request of Wicomico County, Waiver Request 2009-3, June 2009, p. 9*)

By establishing this standard of "extraordinary events in the county" (*ibid*) as the only means of approving an economy-driven waiver approval, the State Board has created an absurd standard. In a downturn of a magnitude not seen for generations, where every Maryland county faces grave fiscal challenges, no county's perils are likely to be so unique and separable from another county's so as to meet this arbitrary and unsupported standard. To qualify, the situation need not be simply fiscally perilous, but uniquely perilous.

Further, the State Board's rejection of the three waiver requests also renders another portion of the relevant regulations meaningless. Each of the three counties seeking a FY 2010 waiver is subject to a voter-imposed charter limitation on revenue raising authority, and raised this fact as part of its waiver request, as explicitly directed by COMAR. In response, the State Board opined "...we will give little weight to locally imposed prohibitions and impediments to tax levies." (*ibid, p. 11*) By virtually casting aside the most powerful reins placed upon county officials in raising revenues – the charter tax limitation – the State Board again ignores an inescapable reality, contrary to its own regulations and guidance.

Finally, there is a glaring inconsistency in the opinions regarding collaboration. In the Wicomico County opinion, the State Board writes "We encourage Wicomico County, the school system, and the local board to work collaboratively to resolve the budgetary issues." (*ibid*) However, in the waiver request from Montgomery County, just such a collaborative effort was present, as the County and its school leaders presented a joint plan to fully fund the essential goals of the system, while agreeing to a reduction in county appropriations below the statutory maintenance of effort level. Yet, despite this proactive collaboration, the State Board also rejected the Montgomery County request.

The State Board has demonstrated that its standard for approving MoE waivers is so high, and requires such specific demonstrations, that it is rendered ineffective in times of broad economic crisis. This leaves counties with a legitimate argument for a waiver but without the administrative recourse envisioned by the General Assembly. This void raises the untenable quandary where counties must either breach MoE, thereby losing State funding, or compromise other already stressed critical county services, such as public health and public safety, to meet an unrealistic MoE requirement.

In retrospect, vesting waiver approval authority solely with the State Board, whose entire purpose of being is to advocate for education, was not a wise choice. It also places the State Board in an untenable position as an education advocate – it would go against the State Board’s basic principles to ever grant a waiver. It is also questionable whether the State Board has the fiscal expertise necessary to evaluate county budget and economic conditions.

As both a former county and State Board of Education member, I share my county colleagues’ disappointment in the State Board’s decisions. MACo is hopeful a productive and equitable recourse can be secured through a dialogue with the General Assembly.

Respectfully yours,

A handwritten signature in black ink that reads "Wilson Parran". The signature is written in a cursive style with a large, looping initial "W" and a long horizontal stroke at the end.

Wilson H. Parran  
President



Agenda Item .5  
July 21, 2009

OFFICE OF INTERGOVERNMENTAL RELATIONS

Isiah Leggett  
County Executive

Melanie L. Wenger  
Director

MEMORANDUM

July 21, 2009

TO: Montgomery County Council

FROM: Melanie L. Wenger, Director  
Office of Intergovernmental Relations

SUBJECT: Summary of Departmental Legislative Proposals for Inclusion in the 2010 Legislative Package

Brief descriptions of the local and Statewide legislative proposals submitted by County agencies follow.

**LOCAL LEGISLATIVE PROPOSALS**

**Montgomery County Revenue Authority – Local Government Tort Claims Act (Revenue Authority).** This proposal would clarify that the Montgomery County Revenue Authority is covered by the Local Government Tort Claims Act (LGTCAs) by explicitly including them in the list of agencies under the Act. The LGTCAs includes procedural and other provisions that protect County taxpayers from unlimited liability in some tort cases. Local legislation introduced in 2008 and 2009 passed the County's House and Senate delegations. In 2008 the bill passed the full House too late, and in 2009 the bill was voted down by the Judicial Proceedings Committee (JPR).

**Montgomery County – Transfer Tax – Deeds of Trust (County Attorney).** This proposal would authorize Montgomery County to impose the transfer tax on deeds of trust, the same authority that Prince George's County currently has had since 1976. This would help offset the revenue loss of about \$40 million per year due to the indemnity deed of trust loophole in the State Recordation Tax (see Statewide proposal below). This proposal has not been introduced before.

**Real Property - Mobile Home Parks - Plans for Dislocated Residents (Housing and Community Affairs).** The owner of a mobile home park must notify residents and prepare a plan for alternative arrangements when the owner decides to close the park. St. Mary's County has authority to require owners to notify the County and provide the County with a copy of the plan for alternative arrangements. St. Mary's County also has the ability to enforce the requirements. This proposal would give Montgomery County the same authority as St. Mary's

County. Statewide bills were introduced in 2009, passing the Senate but not getting votes in the House Environmental Matters Committee. Senator Robey intends to reintroduce a Statewide bill in 2010.

## **STATEWIDE LEGISLATIVE PROPOSALS**

**Montgomery County – Licensed Health Professionals (Health and Human Services).** The Department of Health and Human Services, along with local health departments across Maryland, lack a simple, fast, direct mechanism to communicate with all licensed health professionals in our community. This is particularly troublesome for staff and public health professionals working to manage a public health emergency — to provide advice about treatment, and direction about how best to prevent further spread of the disease. During such emergencies, timely updates are critical given the rapidity with which conditions can change as more data and information are obtained over the course of an incident. The goal of the legislative proposal is to give health departments electronic access to emergency contact information for all licensed health professionals (specifically physicians). Health professionals submit cell phone and e-mail information with their biennial license renewal to their respective state boards, such as the Maryland Board of Physicians. With access to such contact information, Health Officers (Dr. Ulder Tillman in Montgomery County) could issue timely important information directly to health professionals working on the front lines with patients during a public health emergency. The need for this communication tool became apparent during the two most recent incidents in Montgomery County, H1N1 flu virus and measles. During the early stages of the H1N1 outbreak, Maryland physicians licensed in Virginia received real time updates from the Virginia Secretary of Health via email, while the only source of information from the Department of Health and Human Services or the Department of Health and Mental Hygiene was through the public media. Direct communication with local health professionals will enhance the Health Officers' ability to meet their mission — protect the public's health — by quickly and easily providing their local practitioners directly with valuable timely information regarding a public health incident/emergency *as events unfold*.

**Transfer and Recordation Tax – Exemptions – Transfer to an LLC from a Predecessor Entity (County Attorney).** When a business entity converts to a limited liability company (LLC), it can transfer property from the predecessor entity to the LLC without incurring transfer and recordation taxes. A recent Court of Appeals decision, *Wildwood Med. Ctr., LLC v. Montgomery County*, expanded the exemption to allow any property passing to the LLC to be exempt, even if the predecessor entity did not have title to the property. This bill would reverse the Court decision, and require that the predecessor entity have title to the property before transfer to the LLC in order to be eligible for the exemption. The Court decision was released in 2008, and no bills to reverse the opinion were introduced in 2009.

**Juvenile Warrants and Extradition (Police).** Maryland law does not provide a warrant application process for juveniles; the existing process applies only to adults. In addition, there is no statute that provides for extradition of juveniles to Maryland who are wanted for recent crimes that began in Maryland but end in another state during a “fresh pursuit.” This is a particular problem for the Montgomery and Prince George's police departments who are often engaged in fresh pursuit of juveniles into the District of Columbia for violent crimes.

Additionally, officers have no authority to have a juvenile taken into custody who lives outside Montgomery County, continues to commit crimes, and refuses to return to Montgomery County.

The bill would create an emergency protocol for a warrant application process that would involve the Department of Juvenile Services (DJS). Under this plan, the police department would forward a statement of charges to DJS. DJS would determine whether to schedule a hearing and forward the charging document to juvenile court. The court judge would decide whether to issue a warrant for the juvenile to appear.

A somewhat similar bill was introduced in 2009 and received an unfavorable vote in the House Judiciary Committee.

MLW/wtw