



BILL NO.: House Bill 304

TITLE: Education – Maintenance of Effort Requirement – Process and Factors

POSITION: **SUPPORT WITH AMENDMENTS**

DATE: February 24, 2010

COMMITTEE: Ways and Means

CONTACT: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **SUPPORTS** House Bill 304 **WITH AMENDMENTS**. The bill extends the deadline for when a county may request a maintenance of effort (MOE) waiver from April 1 to the earlier of the seventh day following the end of the legislative session or May 1 of the prior fiscal year. The bill also requires the State Board of Education to inform a county about its waiver decision no later than 45 days after receipt of an application or June 1 of the prior fiscal year, whichever is earlier. Finally, the bill requires the State Board consider certain factors when determining whether a county’s fiscal condition would significantly impede the county’s ability to fund its MOE requirement.

CURRENT MOE WAIVER PROCESS IS BROKEN AND NEEDS REFORM

When the MOE waiver process was enacted in 1996, the intent was to create a mechanism that counties could use to wholly or partially waive their MOE requirement during times of significant economic stress or when external factors, such as the loss of a major employer, make meeting MOE difficult.¹ Counties are committed to education, exceeding MOE requirements by \$1.2 billion from FY 2004-09. Yet when counties need help, they are now being penalized for their prior efforts.

For FY 2010, Montgomery, Prince George’s, and Wicomico Counties requested partial MOE waivers from the State Board – the first waiver requests since the waiver law was enacted. Despite their good faith efforts, the State Board summarily rejected all three counties using subjective and sometimes contradictory reasoning. In its opinion to Wicomico County, the State Board stressed the need for more collaboration with its local school board.² Yet in its opinion to Montgomery County, which exceeded MOE by \$408 million for FY 2004-09 and had agreement with its local school board, the State Board seemed to discount the County’s efforts.³

¹ HB 7 of 1996.

² *In Re Waiver Request of Wicomico County*, p. 11, Maryland State Board of Education (May 15, 2009).

³ *In Re Waiver Request of Montgomery County*, pp. 12-13, Maryland State Board of Education (May 15, 2009).

In those three opinions, the State Board held that a county did not qualify for a waiver unless it suffered an economic impact different from the generalized impact caused by the economic downturn. MACo believes that requiring such “significant” or “extraordinary” circumstances sets a much higher standard than originally envisioned by the General Assembly when it created the waiver process. Based on the State Board’s actions and the subsequent county concerns raised, including counties who did not seek a waiver, MACo adopted MOE reform a 2010 legislative initiative.

MACo’s proposed reforms fall into two general categories: (1) short term reforms to retroactively address the failure of the waiver process in FY 2010 and mitigate county MOE challenges for FY 2011; and (2) long-term process reforms designed to make the waiver process objective.

IMPLEMENTATION OF THE JOINT WORKGROUP RECOMMENDATIONS

MACo supports the recommendations of the Joint Workgroup to Study State, County, and Municipal Fiscal Relationships, as contained in this bill, regarding the MOE waiver process. Altering the application and decision deadlines and requiring the State Board to consider certain criteria, such as a county’s tax base, history of exceeding the required MOE amount, and reductions in State aid to local government, will clarify and add certainty to the process. However, these recommendations do not address the immediate concerns of FY 2010 and FY 2011 or make the waiver process objective.

RIGHT OF APPEAL

One way to create an equitable waiver process would be to establish a right of appeal to a neutral party. Under current law, the decision of the State Board is considered final. While a county may still file an appeal to the courts, in practice this is not feasible due to timing. By the time a court heard a case, a county would already have submitted its budget. The issue would be moot.

Therefore, MACo supports allowing such an appeal to the Chief Administrative Law Judge in the Office of Administrative Hearings (OAH), or the Judge’s designee, a decision of the State Board. Unlike the State Board, whose charge is that of an advocate for education, OAH is a neutral party that would fairly balance the needs of the county government versus the needs of education.

The appeal would have to be filed within 7 days after the complainant received the State Board’s decision. OAH would have to conduct a hearing within 14 days after receiving an appeal request and render a decision within 14 days after the hearing. The decision of OAH would be final and made on substantive grounds.

HONOR AGREEMENTS BETWEEN THE COUNTY GOVERNMENT AND COUNTY SCHOOL BOARD

MACo believes that a waiver of no more than 5% of the county's MOE requirement should automatically be granted if both the county government and the county school board agree on the waiver. This encourages collaboration between the two parties most in tune with local budget stresses and educational needs. The State Board encouraged cooperation in its denial opinions and should honor such local agreements.

ECONOMIC WAIVER PROCESS

Another means for creating an objective waiver process would be to automatically grant a waiver for no more than 5% of the county's MOE requirement if the county meets certain statutorily defined objective criteria showing a decline in State or county revenues. The county should be granted an economic waiver if:

- (1) Economy-sensitive revenues are actually in decline – as measured by the Board of Revenue Estimates, in its December or March report, projecting that revenue from the individual income tax and sales and use tax will be lower in the next fiscal year than was projected for the current fiscal year in the March estimate the prior year; or
- (2) The county's effective property tax base is in actual decline – as measured by the State Department of Assessments and Taxation determines the county's constant yield tax rate under § 2-205(c) of the Tax – Property Article being higher than the county's current property tax rate.

Even under these fairly unusual circumstances, a county would still have to request an economic waiver from the State Board and the State Board would still have to hold a hearing, ensuring an open and public process. Capping this economic waiver at 5% provides a level of certainty to promote planning by both county governments and local school boards.

WAIVER OF PENALTY PROVISION FOR FY 2010

MACo also supports the waiver of the penalty provision for FY 2010 as part of its reform package. After Montgomery, Prince George's and Wicomico Counties were denied waivers by the State Board, they attempted to meet MOE while still addressing their significant budget challenges. Nevertheless, a November 4, 2009 opinion by the Maryland Attorney General held that both Montgomery and Prince George's Counties failed to meet their MOE requirement.⁴ All three counties had reluctantly attempted to make use of the waiver process during difficult economic times, consistent with the intent of the waiver provisions, but all three were rejected. Ultimately, \$23.4 million in State MOE aid will be withheld from Montgomery County schools unless a retroactive waiver is granted.

⁴ 94 Att'y Gen. Op. 177 (2009).

MOE WAIVER FOR FY 2011

Just as the State has been struggling with budget deficits and the economic downturn, so does its' counties. But, unlike the State, whose fiscal situation may be past the worst of its revenue plight, county revenues will remain in decline over the next several years as falling property tax assessments are fully realized. The proposed FY 2011 budget, reflecting some \$400 million in cuts to local governments being carried over from FY 2010, provides \$600 million less in funding to county and municipal government than that of FY 2007, sending local government aid down to 1984 levels. As a result, counties and municipalities have laid off 400 employees, used furloughs and salary cuts, and dipped into "rainy day" funds and balances.

During the early 90s' fiscal crisis, the General Assembly granted counties a "blanket" waiver. Counties again need a "blanket" waiver for FY 2011 to address budgetary challenges that are at least as severe.

CONCLUSION

No single action will patch the inequities of the current MOE waiver process. Instead, a series of actions are needed. MACo believes these recommendations will mold the waiver process into what was originally envisioned by the General Assembly – an option to provide counties with needed, but equitable, relief in difficult economic times.⁵ Accordingly, MACo recommends the Committee issue a **FAVORABLE WITH AMENDMENTS** report on HB 304.

⁵ MACo has also taken positions on other bills dealing with the MOE penalty provisions, but does not believe changes to the penalty provision are needed or necessary.