

# SENATE BILL 53

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EMERGENCY BILL

11r0737

CF 11r0736

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By: **Senators Kasemeyer, Currie, DeGrange, Garagiola, Kittleman, Madaleno, McFadden, and Middleton**

Introduced and read first time: January 18, 2011

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of altering the date by which a county governing body must make a  
5 request to the State Board of Education for a waiver from the maintenance of  
6 effort requirement; clarifying the maintenance of effort requirement for which a  
7 county may apply for a waiver; requiring the State Superintendent of Schools to  
8 provide a certain preliminary assessment to the State Board; requiring the  
9 State Board to consider certain factors when making a decision whether to  
10 grant a waiver; altering the date by which the State Board must inform the  
11 county governing body whether the waiver application has been granted or  
12 denied; requiring the State Department of Education to report to the General  
13 Assembly on or before a certain date; making stylistic changes; providing for the  
14 application of this Act; making this Act an emergency measure; providing for  
15 the termination of this Act; and generally relating to the maintenance of effort  
16 requirement for elementary and secondary public education.

17 BY repealing and reenacting, with amendments,  
18 Article – Education  
19 Section 5–202(d)  
20 Annotated Code of Maryland  
21 (2008 Replacement Volume and 2009 Supplement)

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

24 **Article – Education**

25 5–202.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

34 (i) Computer laboratories;

35 (ii) Technology enhancement;

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

1 (iv) Books other than classroom textbooks.

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

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

10 (iii)] In order to qualify for the waiver under this paragraph for a  
11 fiscal year, a county shall make a request for a waiver to the State Board [of  
12 Education] by [April 1] **THE EARLIER OF THE SEVENTH DAY FOLLOWING THE END**  
13 **OF THE LEGISLATIVE REGULAR SESSION OR APRIL 20** of the prior fiscal year.

14 **(III) THE STATE SUPERINTENDENT SHALL PROVIDE A**  
15 **PRELIMINARY ASSESSMENT OF A WAIVER APPLICATION TO THE STATE BOARD**  
16 **PRIOR TO ANY PUBLIC HEARING UNDER SUBPARAGRAPH (IV) OF THIS**  
17 **PARAGRAPH.**

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

21 **(V) WHEN CONSIDERING WHETHER TO MAKE A**  
22 **DETERMINATION THAT A COUNTY'S FISCAL CONDITION SIGNIFICANTLY**  
23 **IMPEDES THE COUNTY'S ABILITY TO FUND THE MAINTENANCE OF EFFORT**  
24 **REQUIREMENT, THE STATE BOARD SHALL CONSIDER THE FOLLOWING**  
25 **FACTORS:**

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

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

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

32 **4. THE MAINTENANCE OF EFFORT REQUIREMENT**  
33 **RELATIVE TO A COUNTY'S STATUTORY ABILITY TO RAISE REVENUES;**

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

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

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

10                   [(iv)] **(VI)** The State Board [of Education] shall inform the  
11 county whether the waiver for a fiscal year is approved or denied in whole or in part  
12 [by May 15 of the prior fiscal year] **NO LATER THAN 30 DAYS AFTER RECEIPT OF**  
13 **AN APPLICATION OR MAY 20 OF THE PRIOR FISCAL YEAR, WHICHEVER IS**  
14 **EARLIER.**

15                   [(v)] **(VII)** If the State Board [of Education] grants a county a  
16 temporary waiver or partial waiver from the provisions of this subsection for any fiscal  
17 year, the minimum appropriation of local funds required under this subsection for the  
18 county to be eligible to receive the State share of the foundation program for the next  
19 fiscal year shall be calculated based on the per pupil local appropriation for the prior  
20 fiscal year or the second prior fiscal year, whichever is greater.

21                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all  
22 waiver applications beginning with applications for waivers for fiscal year 2012.

23                   SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December 1,  
24 2013, the State Department of Education shall report to the House Ways and Means  
25 Committee and the Senate Budget and Taxation Committee, in accordance with  
26 § 2-1246 of the State Government Article, on the implementation of this Act.

27                   SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency  
28 measure, is necessary for the immediate preservation of the public health or safety,  
29 has been passed by a yea and nay vote supported by three-fifths of all the members  
30 elected to each of the two Houses of the General Assembly, and shall take effect from  
31 the date it is enacted. It shall remain effective through June 30, 2014, and, at the end  
32 of June 30, 2014, with no further action required by the General Assembly, this Act  
33 shall be abrogated and of no further force and effect.