



March 12, 2012

The Honorable Anne Kaiser
MD House of Delegates
151 Lowe House Office Building
Annapolis, MD 21401

RE: HB 1412 – Education – Maintenance of Effort

Dear Delegate Kaiser:

Please receive these comments from the Maryland Association of Counties on HB 1412 – Education – Maintenance of Effort - the expansive legislation dealing with school funding and maintenance of effort currently being studied before your subcommittee. While MACo has opposed the bill, we remain ready to aid the subcommittee's work in any way that we can, and hasten to point out a number of bill provisions that we believe would serve to frustrate, rather than support, a vibrant educational funding law.

Overall, counties are gravely concerned that this bill will create such a strict and harsh funding requirement for eternal guaranteed funding increases that it will “chill” county officials' willingness to fund schools at levels greater than the legal minimum. To put this in context, from FY 2004 through FY 2012 (the data range made available by DLS), counties invested more than \$7 billion of local revenue in excess of their state law requirements. We believe HB 1412 would end this practice.

Counties willingly made this noble commitment, believing that the law provided reasonable flexibility via a waiver process in the event of an economic downturn. Recent years' waiver decisions from the State Board of Education, and the ominous state takeover envisioned in HB 1412, send a clear and contrary message that no such flexibility will again exist. Counties would recognize it to be imprudent to support schools any more than is absolutely necessary, for fear of finding no respite during economic difficulties. If the state desires flourishing schools and robust county support for them – the only way to ensure that the next decade looks like the last decade is to maintain these proper incentives.

To that end, we submit comments and amendment language where appropriate, on a number of matters within the bill. The order does not necessarily reflect a priority, but rather are presented to coincide as clearly as possible with the flow of the bill text and the discussions of the subcommittee to date.

Disallow “Artificial” Debt Service Movement
One-Time Employee Payments Excluded from MOE Base
Fairer Waiver Process
Cost Savings Waiver Allocation
Modify MOE “Assurance” Provisions
No Automatic Escalator

Fix Nonrecurring Costs Approval Process
Definition of Qualifying Effort County
Eliminate Punitive Replay of FY2012

Disallow “Artificial” Debt Service Movement

One section of HB 1412 (*page 8, lines 16-17*) seeks to remedy a concern about the potential to unfairly satisfy the funding requirement by moving debt service funds from the county budget to the school budget. Counties do not dispute the need to eliminate truly artificial means – but believes that the bill language leaves counties no flexibility in accounting for these funding commitments. Alternative language would specify that either approach (in the school budget or in the county budget), when used consistently, is acceptable – consistent with the current policy in place for all other similar functions (school health facilities, crossing guards, etc.) whose budget placement is at local discretion.

(III) IN A COUNTY WHERE DEBT SERVICE FOR SCHOOL CONSTRUCTION PROJECTS WAS APPROPRIATED IN THE COUNTY BUDGET RATHER THAN THE COUNTY BOARD BUDGET IN THE YEAR PRIOR, THE COST OF DEBT SERVICE INCURRED FOR SCHOOL CONSTRUCTION PROJECTS.

One-Time Employee Payments Excluded from MOE Base

Among the list of items that should be explicitly excluded from the MOE base (*page 8, after line 17*) are one-time payments made using county funds to support school board employees. If limited economic circumstances allow such one-time measure, denying this exclusion would render them impossible in many cases.

(IV) ONE TIME PAYMENTS MADE BY THE COUNTY TO EMPLOYEES OF THE COUNTY BOARD.

Fairer Waiver Processes

With the greatly heightened stakes of the waiver process, counties believe it essential to ensure that the waiver system is fair, and reflects a more balanced fiscal and economic view than the State Board of Education is capable of providing (simply as a function of its pre-existing charge).

GRANT A RIGHT TO APPEAL THE STATE BOARD OF EDUCATION DECISION TO THE BOARD OF PUBLIC WORKS, FOR AN EXPEDITED ON THE RECORD REVIEW

Further, the access to the “rebasement waiver process” (which becomes the only meaningful flexibility afforded under the rewritten state requirements) should not be restricted to only a limited list of counties. Create a fair process, determine a reasonable list of guidelines and considerations, and empower an appropriate and knowledgeable body to make the determinations. Creating a flat bar against half the counties from even receiving their “day in court” denies any outlet whatsoever for longer-term fiscal situations (which includes every single waiver request made thus far in the 15+ year history of MOE waiver laws).

ELIMINATE THE REQUIREMENT THAT ONLY UPPER EFFORT COUNTIES MAY EVEN PURSUE THE REBASING WAIVER, LET THE WAIVER PROCESS MAKE THE EVALUATION OF WORTHINESS

For counties facing extraordinary economic hardship, a comparable rebasing waiver process should be available on a non-discretionary basis. For this situation, counties suggest a three-pronged test.

A REBASING WAIVER OF NOT LESS THAN 2% OF REQUIRED APPROPRIATIONS SHALL BE GRANTED TO ANY COUNTY THAT APPLIES FOR SUCH A WAIVER, AND THAT HAS AT LEAST TWO OF THE FOLLOWING CONDITIONS:

- (1) THE COUNTY'S UNEMPLOYMENT RATE IS EITHER 1.2% GREATER THAN THE STATEWIDE UNEMPLOYMENT RATE; OR 1.2% GREATER THAN THE COUNTY'S UNEMPLOYMENT RATE ONE YEAR PRIOR; OR**
- (2) THE COUNTY'S LATEST ANNUAL REASSESSMENT YIELDED A NET DECLINE IN PROPERTY VALUES FOR THE AREA ASSESSED; OR**
- (3) THE COUNTY'S INCOME TAX RATE IS AT THE MAXIMUM RATE AUTHORIZED BY SECTION 10-106 OF THE TAX-GENERAL ARTICLE.**

Cost Savings Waiver Allocation

Counties agree with the general notion of the cost savings waiver and simply seek clarity on its application and the best incentives for earnest evaluation of such cost saving opportunities:

(9) THIS PARAGRAPH APPLIES TO A COUNTY THAT REQUESTS A WAIVER UNDER PARAGRAPH (8)(I)2 OF THIS SUBSECTION.

(II) A COUNTY SHALL ANNUALLY REVIEW RECURRING COSTS IN CONSULTATION WITH THE COUNTY BOARD, AND THE STATE BOARD SHALL GRANT A WAIVER REQUEST IN THE AMOUNT THAT HAS BEEN SUBMITTED BY THE COUNTY FOR REVIEW AND CERTIFICATION BY THE DEPARTMENT OF LEGISLATIVE SERVICES.

(III) THE AMOUNT OF THE WAIVER MAY BE LESS THAN THE ENTIRE AMOUNT OF THE REDUCTION IN RECURRING COSTS, AND AT MOST SHALL BE TWO-THIRDS OF RECURRING COSTS.

Modify MOE "Assurance" Provisions

HB 1412, as introduced, essentially assures that MOE will be funded, with the State intercepting county income taxes as the backup measure to enforce that new requirement (*pages 14-15*). Counties strongly object to this provision and believe it to be an unwarranted intrusion into autonomous functions of elected local officials.

Counties are also gravely concerned that these revenues will be deemed dramatically less secure by bond rating agencies once they are opened to state redirection. The federal budget and debt situation has already placed many counties on credit watch because of their reliance on federal dollars. Losing control over both revenues and expenditures will surely further affect the bond ratings of every county.

Counties urge the General Assembly to seek an alternative method (other than diverting income taxes) to accomplish the same policy goal – to legally compel counties to meet the new state funding requirements:

REPLACE INCOME TAX INTERCEPT, REPLACE WITH:

(3) (I) ON RECEIPT OF CERTIFICATION OF NONCOMPLIANCE 5 BY THE SUPERINTENDENT OR THE STATE BOARD AND SUBJECT TO 6 SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE SUPERINTENDENT SHALL DIRECT THE COUNTY TO REMEDY THE SHORTFALL WITH ADDITIONAL APPROPRIATIONS.

(4) WITHIN 45 DAYS OF THE RECEIPT OF THE DIRECTION SPECIFIED UNDER THIS SECTION, THE OFFICIALS OF THE COUNTY GOVERNMENT SHALL HAVE AN AFFIRMATIVE DUTY TO EITHER:

- (I) PROVIDE THE ADDED APPROPRIATIONS SPECIFIED UNDER THIS SECTION TO THE COUNTY BOARD, OR**
- (II) SELECT ONE OR MORE SOURCES OF STATE DISTRIBUTIONS TO THE COUNTY TO BE REDIRECTED TO THE COUNTY BOARD ON A SCHEDULE TO BE DETERMINED BY THE STATE BOARD.**

No Automatic Escalator

The debate over school funding requirements ultimately pits two reasonable objectives against one another: predictability versus accountability. Every bill provision that nominally adds stronger “teeth” to the MOE requirement and its enforcement has an offsetting reaction in reducing the degree to which school budgets receive any public scrutiny for efficiencies. The bill’s automatic escalator (*page 16*) affects half of counties in any given year. This provision is not a temporary or catch-up provision – it by definition will always subject half the counties to this punishment, and those currently above the state average effort will eventually be caught up in the constant funding escalation. Such a massive wave of guaranteed funding increases tilts the entire funding system toward further unsustainability (including pension costs, currently the subject of criticism due to local over-funding decisions).

ELIMINATE THE NEW 5-202(D)(2) FROM THE BILL

Definition of Qualifying Effort County

In two segments of the bill, references to “education effort” are used (*pages 11 and 16*). MACo disagrees with this general delineation as unwise and clumsy. The term “education effort” is simply a county’s education effort divided by the county’s wealth. The county wealth calculation is heavily weighted to the property tax assessable base, which is under state law the least easy convertible into ability-to-pay measures of any possible basis for this measure. This flawed ratio is then being compared to the State’s education to determine whether certain provisions take effect, such as the automatic escalator funding provision.

However, should the committee elect to create a tiered system of treating counties, MACo believes that this definition as the all-encompassing definition of county educational support is insufficient. Counties recommend any delineation of counties into effort tiers employ at least a

reasonable series of tests that would accomplish similar policy goals, but better recognize local situations:

IN THIS SECTION, “QUALIFIED EFFORT COUNTY” INCLUDES A COUNTY IN WHICH:

- (1) THE COUNTY’S EDUCATION EFFORT IS ABOVE 100% OF THE STATEWIDE 5–YEAR MOVING AVERAGE OF EDUCATION EFFORT; OR**
- (2) THE COUNTY’S APPROPRIATION PER PUPIL IS AT LEAST 10% GREATER THAN THE STATEWIDE AVERAGE APPROPRIATION PER PUPIL; OR**
- (3) (I) THE COUNTY’S PER CAPITA INCOME TAX REVENUES ARE LESS THAN 75.0% OF THE STATEWIDE AVERAGE,
(II) THE COUNTY’S COMBINED TAX EFFORT IS IN THE TOP QUARTER OF JURISDICTIONS FOR THE PREVIOUS FISCAL YEAR, AND
(III) THE COUNTY MET ITS PREVIOUS FISCAL YEAR REQUIRED MAINTENANCE OF EFFORT AMOUNT**

Eliminate Punitive Replay of FY2012

Uncodified sections of HB 1412 essentially take the “new rules” for MOE and waivers, and apply them retroactively onto decisions already made by jurisdictions during their budget deliberations nearly a full year ago (*pages 16-17*). This is thoroughly unfair, and would result in confiscation of income taxes (or equivalent punishment) for jurisdictions who were operating within the law at the time that the county tax rates and budget priorities were established. Counties would not have any practical ability to “claw back” into their own budgets, and to make cutbacks via layoffs, furloughs, or other personnel actions for FY 2012, which is already in its waning months. Extracting this penalty during FY 2013 only adds to the massive burdens counties stand to face due to a shift of state pension costs, and the new funding mandates established under the rest of this bill.

ELIMINATE UNCODIFIED SECTIONS 5, 6, AND 7 FROM THE BILL

Respectfully yours,



Michael Sanderson
Executive Director

cc: Members, Ways and Means Committee
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