

IN RE: MOE NON-COMPLIANCE APPEAL
ANNE ARUNDEL COUNTY

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 12-37

OPINION

INTRODUCTION

On July 9, 2012, the State Superintendent issued a Notice of Non-Compliance With Maintenance of Effort (MOE) to the Anne Arundel County Chief Executive. The County Chief Executive appealed the decision to the State Board. The local school system filed a Response to the appeal. The County Council filed a letter in support of the Chief Executive's appeal. The local school system filed a response to that letter.

FACTUAL BACKGROUND

On June 21, 2012, Anne Arundel County Public Schools (AACPS) filed the Maintenance of Effort Certification Form for FY 2013. It certified that the MOE target for FY 2013 was \$584,579,612 but that the County appropriation was \$5,005,412 less than the MOE target. Based on that MOE Certification, the State Superintendent of Schools issued the Notice of Non-Compliance With Maintenance of Effort to the County Executive. This appeal ensued asserting that the County met the MOE requirement.

STANDARD OF REVIEW

When the State Board explains the true intent and meaning of State education law and State Board rules and regulations, we exercise our independent judgment on the law's meaning and effect. COMAR 13A.01.05.05(E)

ANALYSIS

The central issue in this case is whether the amount of pension costs from FY 13 through FY 16 is to be included in the maintenance of effort calculation.¹ The County argues that MOE and pension costs are two separate funding requirements. It states that its MOE amount is

¹ The County appears to agree that pension costs become part of the MOE target in FY 2017.

\$573,070,503 and that it appropriated that amount in the County budget. It further states that it funded the pension cost of \$11,493,684, as required by Senate Bill 1301 §18. The County explains that it funded the total pension costs by appropriating \$6,493,697 in the county budget and using “\$5 million from the un-appropriated Board of Education fund balance” to cover the remaining pension costs. It argues that a dichotomy between MOE and pensions costs exists in the various statutes passed in the FY 2012 Sessions, thus, allowing the County to treat the MOE funding obligation and pension funding obligation in two different ways.

The local school system argues that the pension cost must be added to the base FY 13 MOE amount and become part of the final MOE calculation. They explain:

Any monies that have accrued in the “unliquidated surplus” account due to our sound fiscal stewardship of the school system has been previously appropriated and counted toward MOE in prior years. To now use these funds toward both satisfying the County’s pension obligations and its adjusted MOE calculation is to engage in double-counting. Moreover, by allocating these funds in a manner that removes it from our local school board’s control for future needs of the school system effectively undoes the decision of this State Board in MSBE Op. No. 12-13 to require Anne Arundel County to fully include the \$11.9 million in our budget, enabling the County to give with one hand and take with the other.

To determine whether or not pension costs are part of the total MOE calculation, we turn to the statutory scheme that was passed in the 2012 Sessions.

Under Senate Bill 1301 (The BRFA), the local board is required to pay the local share of the pension costs. *See* BRFA, State Pers. & Pen., §21-125(b)(4). For FY 2013-2016, the BRFA sets forth the exact amount the local board shall pay to the Pension Board of Trustees each year. BRFA, §18. For 2017 and thereafter, the BRFA defines how to calculate the pension amount. BRFA, State Pers. & Pen., §21-309.1, §21-125(b) and §19. If the local board fails to pay the pension amount, the State Comptroller:

- (I) Shall withhold the delinquent amounts including interest on the delinquent amounts at a rate of 7.75% a year, from any installment due [the local school system] from the general state school fund; and
- (II) Shall pay to the Board of Trustees the delinquent amounts, including interest, withheld under this paragraph.

Id. §21-309.1

The BRFA pension cost requirements do not fall solely on the local board, however. The law requires that “in addition to the required [MOE] amount calculated under §5-202(d) of the

Education Article each county shall appropriate to the county board of education” the dollar amounts set forth in the statute for pension costs in FY 2013-2016. BRFA, §18. For FY 2017 and beyond, the statute states that the MOE amount “calculated under §5-202(d) of the Education Article shall be based on the total per pupil appropriation for fiscal year 2016 including the amount each county was required to appropriate to the county board of education in FY 2016 under Section 18 of this Act.” BRFA, §19.

To determine whether the pension amounts are to be included in the MOE calculation, we must ascertain the intent of the legislature when it passed the statutes(s) at issue.

In construing a statute, we begin with its plain language to determine legislative intent. *Waltzer v. Osborne*, 395 Md. 563, 572 (2006). “If there is no ambiguity in the language either inherently or by reference to other relevant laws or circumstances, the inquiry as to legislative intent ends.” *Chow v. State*, 393 Md. 431, 443-44 (2006). An ambiguity exists, however, if there are two or more reasonable alternative interpretations of the statute. *Id.* at 444.

In our view, the parties here present two reasonable interpretations of the statutes at issue. One separates the pension cost requirements from the MOE appropriation; one links them as part of one whole statutory scheme. Thus, to resolve the ambiguity we look to other indices of legislative intent including the legislative history and “comments and explanations regarding it by authoritative sources during the legislative process.” *Witte v. Azarian*, 369 Md. 518, 526 (2002).

The MOE law was overhauled in the 2012 Legislative Session to address the flaws that became apparent over-time in the existing MOE statute. When the MOE statute was overhauled, the General Assembly was also considering the BRFA. As we know, the BRFA did not pass in the General Session. A Special Session was necessary to consider bills affecting the state budget. When the Governor introduced the BRFA, his staff presented written testimony. That testimony addressed the relationship between pension costs and MOE. It said:

The BRFA implements the conference committee plan to share teachers’ retirement costs with the local jurisdictions. Under current law, the State pays the entire costs of teacher pensions. These costs total \$946 million in FY 2013. The plan adopted by the conference committee shares the normal costs of teacher pensions with the local school boards over a four-year period, with the local boards responsible for 50% of normal costs in FY 2013, 65% in FY 2014, 85% in FY 2015, and 100% in FY 2016.

Concurrent with the phase in of costs to the local boards is an offsetting increase in county maintenance of effort payments, with required county MOE increasing each year by the additional pension costs borne by the school boards. Pension costs absorbed by the locals are offset by relief from federal fund reimbursement for local boards, new county revenues, and increased local aid to counties and school boards.

(Testimony by Matt Gallagher, Chief of Staff, Joe Bryce, Senior Policy and Legislative Advisor, T. Eloise Foster, Secretary at p. 5, attached hereto).

The testimony refers to the chart on p. 14 of the testimony. (Attached as Exhibit 1). That chart describes a four-year phase-in plan and is entitled “Conference Committee/Special Session Plan: Shift of Retirement Costs to School Boards with Offsets/Maintenance of Effort Increase.” It includes three line items relevant to our inquiry. The first two are:

	FY 2013	FY 2014	FY 2015	FY 2016
Counties Increase in MOE Due to Shift	\$136.6	\$173.2	\$183.7	\$216.5
Annual Increase in MOE Due to Shift		\$36.6	\$10.5	\$32.5

The third is:

	FY 2013	FY 2014	FY 2015	FY 2016
Net Impact of Shift on School Boards	\$0	\$0	\$0	\$0

Those line items graphically describe the intended fiscal impact of the shift of pension costs.

Finally, in summarizing all of the changes to be effected by the BRFA, the testimony concludes:

- Maintenance of Effort (MOE) – Sets MOE amounts for each local jurisdiction during phase in of teacher pension cost sharing; clarifies MOE calculation for FY 2017 and beyond; clarifies FY 2013 MOE calculation for Baltimore City.

Id. at 13.

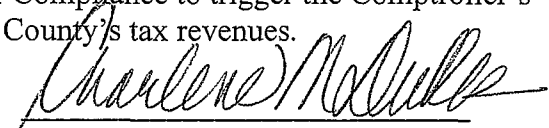
The written testimony quoted above comes not only from the Governor’s Office staff most involved in introducing and moving the BRFA forward to passage, but also from the Secretary of the Department of Budget and Management. They are “authoritative sources” about the meaning and intent of the statutory scheme. Their testimony links MOE with pension costs. Moreover, the chart included in their testimony comes from the Conference Committee - - certainly an authoritative source on the intent of the legislation. It too links pension costs with MOE.

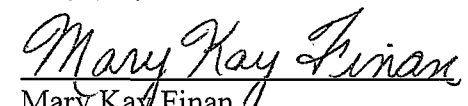
It is our view that that link represents the legislative intent. The BRFA establishes that the local board must pay the pension costs, but also establishes that the County must appropriate the funds for that payment. The statute does not specifically exclude pension costs from the MOE calculation. Nor does the statute specifically state that the County may appropriate part, but not all, of the pension costs that the local board is required to pay. Nor does the statute include a provision that the local board will pay pension costs out of its budgeted funds or fund

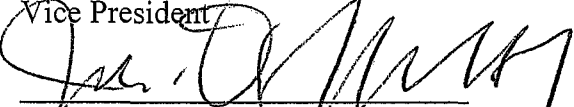
balance. Indeed, the chart attached here indicates that the impact of the pension cost shift on local boards is to be zero. In order to effectuate that intent, pension costs must be linked to the County's MOE obligation. We conclude, therefore, that it was the intent of the legislature to link the full appropriation of pension costs to the County's obligation to fully fund MOE.

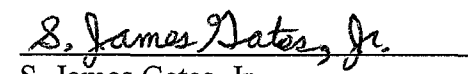
CONCLUSION

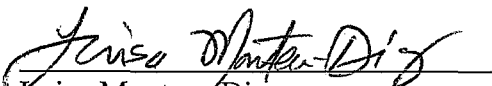
For all these reasons, we find that Anne Arundel County has not met the FY 2013 MOE target. The shortfall is \$5,005,412. If Anne Arundel County fails to appropriate the full MOE amount within 60 days of the date of the Opinion, the local board is directed to so notify this Board. At that time, we will issue a Notice of Non-Compliance to trigger the Comptroller's payment of \$5,005,412 to the local board from the County's tax revenues.


Charlene M. Dukes
President

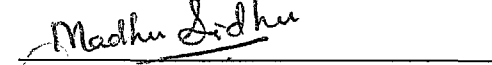

Mary Kay Finan
Vice President


James H. DeGraffenreidt, Jr.

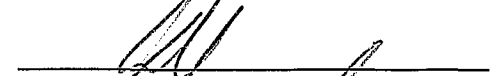

S. James Gates, Jr.

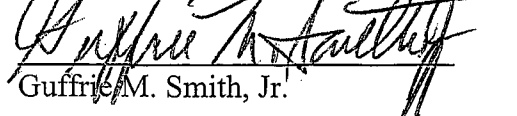

Luisa Montero-Diaz

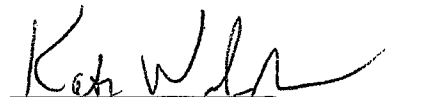
Sayed M. Naved


Madhu Sidhu


Donna Hill Staton


Ivan C.A. Walks


Guffrie M. Smith, Jr.


Kate Walsh

August 28, 2012

APPENDIX II

Conference Committee/Special Session Plan
 Shift of Retirement Costs to School Boards with Offsets/Maintenance of Effort Increase
 "Normal Cost" of Teachers Retirement Shifted to Locals with Four-year Phase-in
 Fiscal 2013-2016
 (\$ in Millions)

	FY 2013	FY 2014	FY 2015	FY 2016
Normal Cost Shifted (School Boards) – 50/65/85/100%	-\$136.6	-\$173.2	-\$221.6	-\$254.8
Offset by:				
Relieve Reimbursement for Federally Funded Teachers ⁽⁴⁾	0.0	0.0	37.8	38.2
Net Pension Costs Shifted to School Boards	-\$136.6	-\$173.2	-\$183.7	-\$216.5
Counties Increase in MOE Due to Shift ⁽³⁾	\$136.6	\$173.2	\$183.7	\$216.5
Annual Increase in MOE Due to Shift		\$36.6	\$10.5	\$32.8
Offset by:				
Additional Local Income Tax Revenues	\$31.5	\$21.6	\$21.8	\$22.1
Teachers' Retirement Supplemental Grant ⁽¹⁾	27.6	27.6	27.6	27.6
Recordation Tax Indemnity Mortgages	35.7	35.7	35.7	35.7
Local Income Tax Reserve Relief	36.7	36.7	36.7	36.7
Restore Local Police Aid	0.0	22.1	22.8	23.5
Health Department Grants	0.0	2.2	3.0	4.0
Total County Offsets	\$131.5	\$145.9	\$147.6	\$149.6
Net Impact of Shift on Counties	-\$5.2	-\$27.3	-\$36.1	-\$67.0
Net Impact on State General Fund (Savings)/Cost ⁽²⁾	-\$109.0	-\$120.8	-\$126.5	-\$154.0
Remaining State-paid Pension Costs (Non-normal)	\$768.4	\$866.5	\$870.0	\$870.8
Net Impact of Shift on School Boards	\$0.0	\$0.0	\$0.0	\$0.0
State Direct Aid Increase Current Law ⁽²⁾	113.2	88.4	113.6	184.4

MOE: maintenance of effort

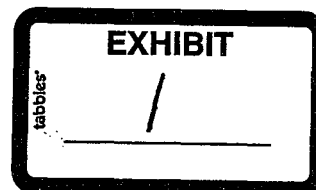
⁽¹⁾ Includes Miscellaneous Grant for Baltimore City.

⁽²⁾ Includes increase in Guaranteed Tax Base program due to increased MOE.

⁽³⁾ Fiscal 2016 county MOE increase will be included in per pupil MOE amount for fiscal 2017.

⁽⁴⁾ Requirement to reimburse the State for federally funded teachers is repealed beginning in fiscal 2015.

Prepared by Department of Legislative Services



SPECIAL SESSION 2012

Budget Reconciliation and Financing Act of 2012

State and Local Revenue and Financing Act of 2012

Testimony

by

Matt Gallagher, Chief of Staff

Joe Bryce, Senior Policy and Legislative Advisor

Office of the Governor

T. Eloise Foster, Secretary

Department of Budget and Management

Senate Budget and Taxation Committee

House Appropriations Committee

House Ways and Means Committee

May 14, 2012

INTRODUCTION

Last week, Governor O'Malley called a Special Session of the General Assembly to finalize a fiscally responsible budget plan for FY 2013 and to undo devastating reductions to critical State programs and services. The operating Budget Bill that passed the General Assembly on the final day of the 2012 Session requires over \$500 million in budget reductions to important Maryland priorities, including \$121 million of unspecified cuts that the Governor must propose at the next Board of Public Works meeting. While conferees from the House and Senate had reached agreement on legislation that would have averted these reductions, that legislation did not pass prior to sine die.

What are the doomsday cuts?

"Doomsday" Budget Reductions

	<u>\$ in Millions</u>
Disparity Grant	12
Supplemental Disparity Grant	19.6
Local Law Enforcement Grants	20.8
Geographic Cost of Education Index	128.8
Teacher Quality Incentives and National Board Certification Fees	5.2
Sustainable Communities Tax Credit	7
Mental Hygiene Administration - Provider increases	3.1
RICAs - Reduced capacity	6.5
Developmental Disabilities Administration - Provider increases	8.6
Foster Care - Provider increases	1.4
Non-public placements - Provider increases	2.1
Sellinger Program - Non-public higher education	3.8
Community Colleges	19.9
Delegate and Senatorial Scholarships	11.8
Public Higher Education	38.5
Biotechnology Tax Credit	8
Stem Cell Research Fund	10.4
State Employee Share of Health Insurance Costs	15
Funding to Support 500 Positions	30
Agency Operating Expenses	50
State Employee Cost of Living Adjustment	33.8
TOTAL	436.3

As Governor O'Malley made clear in the Executive Order convening the special session, failure to adopt the plan agreed to by the conferees and to restore the "Doomsday" budget cuts will have dire consequences for our citizens. In addition to the \$436 million in "Doomsday" cuts, we will need to make \$71 million in additional reductions simply to bring the budget into balance, and other cuts to provide a sufficient fund balance.

This will result in reductions to expanded services and programs supported in the FY 2013 budget, funding many State programs below FY 2012 levels, and eliminating many of the items included in the Governor's supplemental budget.

If allowed to go into effect, these cuts will:

- *Impede our ability to maintain the #1 public school system in the country (four years in a row).*
 - If cuts to K-12 education were absorbed by reducing classroom teacher positions, 1,300 teaching jobs could be eliminated resulting in larger class sizes.
- *Imperil access to higher education for economically distressed families.*
 - 14,600 fewer scholarships would be awarded to Maryland students.
 - Cuts would result in double digit tuition increases at our public universities and near double digit increases at our community colleges.
 - 10% tuition increase in tuition at UMCP equates to more than \$700 of additional costs for in-state students.
- *Threaten our ability to compete in the knowledge economy by eliminating the successful biotechnology research and development tax credit and our stem cell research program.*
 - Need for additional reductions at BPW will impact funding for tourism, the arts, and financing programs that offer grants/loans to support business development.
 - These cuts will undermine the State's ongoing job creation efforts and chip away at our progress in recovering 80% of the jobs we lost in the recession – compared to only 64% recovered in Virginia, and 41% recovered nationally.
- *Hurt our efforts to care for the most needy and vulnerable of our citizens*
 - No rate increases for community based providers serving developmentally disabled, mentally ill, foster children in group homes, and special education students in non-public settings.
 - No Medicaid rate increase for physicians and nursing homes will impact access to care and quality of care for one million Marylanders who receive their health care through Medicaid.
 - Planned expansion of crisis prevention services to 70 developmentally disabled individuals will be scaled back or eliminated.
 - Plan to serve 480 additional elderly and disabled adults in their homes/communities rather than in nursing homes will be scaled back or eliminated.
 - Substance abuse treatment services could be reduced by up to 10%, eliminating treatment slots for more than 4,000 people.
 - Two state hospitals for children with mental illness will be downsized or closed, impacting care for 200 children.

- *Weaken our crime prevention efforts.*
 - \$21 million of law enforcement grants targeted to high crime areas eliminated - threatening to reverse the gains Maryland has made in reducing violent crime.
 - Additional reductions required to balance budget will reduce number of troopers and natural resource police in the field.
- *Adversely impact our State employees* – burdening them with additional health care costs, eliminating a scheduled cost of living increase, and forcing the elimination of 500 positions, most of them filled.

Acting now to adopt a responsible budget plan, you will avert these devastating consequences, maintain Maryland's record of fiscal responsibility, and protect our coveted AAA bond rating.

OVERVIEW OF SPECIAL SESSION BUDGET PLAN

The Administration legislation proposed for the 2012 Special Session offers a fiscally responsible plan that balances the FY 2013 budget, provides significant budget savings, and restores funding for vital State programs and services. Building on the conference committee agreement(s) reached in April, the Special Session budget plan:

- *Maintains a balanced approach of spending cuts and revenue measures*, with reductions accounting for 55% of budget balancing actions.
- *Improves the structural budget outlook* for FY 2013 by about \$560 million.
- *Meets Spending Affordability guidelines* for the 6th year in a row – proposed actions reduce structural deficit by about 50.4% exceeding target of 50%.
- *Limits budget growth* to only 2.7% over FY 12 – the third lowest growth rate in two decades.
- *Leaves a fund balance of more than \$200 million* to help balance the FY 2014 budget, significantly larger than the balances provided under the “Doomsday” budget and the conference committee compromise.
- *Preserves \$928 million of cash resources* between fund balance and Rainy Day Fund.
- *Brings cumulative reductions made during the O'Malley-Brown Administration to \$8 billion*, including \$1.3 Billion in total fund reductions in FY 2013.
- *Brings the number of positions abolished during the O'Malley-Brown Administration to more than 5,600*, including 274 eliminated in the FY 2013 budget.
- *Maintains fiscal responsibility and protects our Triple AAA bond rating.*

BUDGET RECONCILIATION AND FINANCING ACT OF 2012

Using the April 2012 Conference Committee budget agreement as a starting point, the Budget Reconciliation and Financing Act of 2012 (BRFA) implements measures to balance the FY 2013 budget. The bill before you:

- Restores funding for the “Doomsday” budget cuts enacted in April.
- Makes \$268 million of reductions to spending.
- Shares teacher pension costs with local school boards.
- Transfers \$157 million to provide budget relief.
- Eliminates 100 vacant positions from State government.

The bill incorporates measures that were part of the conference committee agreement on SB 152 of the 2012 regular session, and includes some additional items proposed by the Administration. A summary of BRFA provisions is provided in Appendix I on pages 10-13.

BUDGET RESTORATION FUND

The BRFA of 2012 creates a Budget Restoration Fund as the mechanism to restore the “Doomsday” cuts. Specified revenues will be distributed to the Fund in FY 2013 and then appropriated to backfill for the “Doomsday” reductions. Any unspent funds left in the Budget Restoration Fund at the end of the fiscal year revert to the General Fund.

Revenues to the Budget Restoration Fund

The BRFA allocates \$276.5 million in revenue to the Budget Restoration Fund in FY 2013.

- \$247.3 million from the State individual income tax;
- \$8.8 million of State lottery revenues;
- \$8 million in diverted from the Chesapeake Bay 2010 Trust Fund;
- \$7.4 million from the corporate income tax; and
- \$5 million from the tobacco tax.

Transfers to the Budget Restoration Fund

In addition, consistent with the Conference Committee agreement, the BRFA authorizes transfers totaling \$2.8 million in FY 2012 and \$154.2 million in FY 2013. As part of the Special Session balancing plan, these fund transfers are directed to the Budget Restoration Fund.

FY 2012 - \$2.8 million

- \$1.8 million – Baltimore City Community College
- \$1 million – State Police – Helicopter Replacement Fund

FY 2013 - \$154.2 million

- \$5 million – University System of Maryland fund balance
- \$250,000 – Morgan State University fund balance
- \$351,000 – Racing Impact Aid
- \$50 million – Injured Workers Insurance Fund
- \$500,000 – MD Correctional Enterprises Revolving Fund
- \$500,000 – Spinal Cord Injury Research Trust Fund
- \$426,530 – DHMH Boards and Commissions balances
- \$206,000 – State Insurance Trust Fund
- \$50,000 – Secretary of State Division of State Documents
- \$96.9 million – Transfer Tax Capital Appropriations

TEACHER RETIREMENT COST SHARING

The BRFA implements the conference committee plan to share teachers' retirement costs with the local jurisdictions. Under current law, the State pays the entire cost of teacher pensions. These costs total \$946 million in FY 2013. The plan adopted by the conference committee shares the normal costs of teacher pensions with the local school boards over a four-year period, with the local boards responsible for 50% of normal costs in FY 2013, 65% in FY 2014, 85% in FY 2015, and 100% in FY 2016.

Concurrent with the phase in of costs to the local boards is an offsetting increase in county maintenance of effort payments, with required county MOE increasing each year by the additional pension costs borne by the school boards. Pension costs absorbed by the locals are offset by relief from federal fund reimbursement for local boards, new county revenues, and increased local aid to counties and school boards.

The chart on page 14 displays the phase in of teacher pension costs and offsetting measures.

BUDGET REDUCTIONS PREVIOUSLY ADOPTED BY CONFERENCE COMMITTEE

Consistent with the Conference Committee agreement, the BRFA implements \$165.2 million in General Fund budget reductions to help balance the budget:

- Teacher's Retirement Local Cost Share - \$136.6 million
- Level Fund Non Public Institutions of Higher Education – \$1.3 million
- Increased Higher Education Investment Fund Revenue - \$246,160
- Reduced Funding for Nursing Facilities (Bed-Hold Days) - \$1.3 million
- Fund Kidney Disease Program/Medicaid with Non Profit Health Plan/Senior Prescription Drug Assistance Program Revenues - \$6.2 million
- Increase Nursing Home Assessment/Rates and Achieve Medicaid Savings - \$6.9 million
- Speed Camera Revenue/State Police fund swap - \$4.2 million
- Increased Education Trust Fund revenue/Education Aid fund swap - \$1.9 million
- Non Profit Health Plan Revenue for Mental Health Community Services - \$6.2 million

Special Fund reductions adopted by the Conference Committee are also implemented. These include:

- Program Open Space - \$49.2 million
- Agricultural Land Preservation Program - \$16.3 million
- Waterway Improvement Program - \$8 million

ADDITIONAL BALANCING ACTIONS PROPOSED BY ADMINISTRATION

The Administration proposes an additional \$103 million of general fund reductions, which are included in the BRFA:

- Favorable Medicaid Trends FY 2012/2013 - \$80 million
- Additional Cigarette Restitution Funds FY 2012/2013 - \$10 million
- IT project cash flow adjustment - \$5 million
- Education Trust Fund – FY 2012 VLT revenue overattainment - \$4 million
- Education Trust Fund Rocky Gap VLT licensing fees - \$2.1 million
- DBED IT project excess funds FY 2012/2013 - \$1.1 million
- Psych Rehab Services – Bayview Medical Center - \$750,000

ADDITIONAL BRFA ITEMS PROPOSED BY ADMINISTRATION

In addition to the provisions necessary to effect the restoration of the “doomsday” budget reductions, the BRFA includes several new items proposed by the Administration.

- Requires the abolition of 100 vacant positions as of January 2, 2013, inclusive of the 64 position eliminations included in the budget bill.
- Provides a technical clarification to ensure the budget reflects the correct salary for the State Superintendent of Schools.
- Sunsets the annual report on uses of the Mortgage Loan Servicing Practices Settlement Fund after five years.
- Authorizes the Governor to process a budget amendment transferring \$383,840 from the Higher Education Investment Fund to St. Mary’s College of Maryland to offset a tuition increase for in-state students. This action is consistent with the legislative intent expressed in the budget bill.

PROVISIONS REMOVED FROM CONFERENCE COMMITTEE BRFA PLAN

The Administration's proposal removes certain provisions that were included in the conference committee plan because they do not address the immediate need to balance the operating budget for FY 2013 and protect our shared priorities.

- Facilities Maintenance and Repair Fund – Mandates \$20 million annually for facility renewal, capital maintenance, and related expenses. **The Office of the Attorney General has raised concern that including this provision in the BRFA violates the single subject rule.** The provision establishes a new funding mandate and is therefore inconsistent with the purposes of the BRFA. The Administration has agreed to provide funds in future budgets to address facilities maintenance and repair needs. Mandating the additional funding is unnecessary as the General Assembly already has the authority to add funds to the capital budget for this purpose.
- Motor vehicle surcharge – Imposes a \$2 increase in the surcharge on vehicle registration directed to the Emergency Medical System Operations Fund.
- Farebox Recovery – Requires the Maryland Transit Administration to adjust fares based on increases to the Consumer Price Index.

STATE AND LOCAL REVENUE FINANCING ACT OF 2012

The State and Local Revenue Financing Act of 2012 implements the revenue plan agreed upon by the conference committee on SB 523 *sine die*. The plan adds greater progressivity to our income tax structure, by adjusting rates and phasing out exemptions for higher earners. These changes impact only 13% of taxpayers – those individuals earning over \$100,000 and those joint filers earning over \$150,000. In addition, the bill closes tax loopholes for businesses, raises the tax rate on other tobacco products, and increases certain fees.

Provisions of the bill are summarized below.

Income Tax Rate Changes - \$195.6 million in FY 2013

<i>Single Taxpayers</i>			<i>Joint Taxpayers</i>		
Lower	Upper	<i>Current/Proposed</i>	Lower	Upper	<i>Current/Proposed</i>
1	1,000	2.00%	1	1,000	2.00%
1,001	2,000	3.00%	1,001	2,000	3.00%
2,001	3,000	4.00%	2,001	3,000	4.00%
3,001	100,000	4.75%	3,001	150,000	4.75%
100,001	125,000	4.75%/5.00%	150,001	175,000	4.75%/5.00%
125,001	150,000	4.75%/5.25%	175,001	225,000	4.75%/5.00%/5.25%
150,001	250,000	5.00%/5.50%	225,001	300,000	5.00%/5.50%
250,001	500,000	5.00%/5.25%/5.75%	300,001	500,000	5.00%/5.25%/5.75%
500,001	99,999,999	5.50%/5.75%	500,001	99,999,999	5.50%/5.75%

Income Personal Exemption Changes - \$51.7 million State/\$31.4 million Local in FY 2013

<i>Federal Adjusted Gross Income</i>			<i>Amount Per Exemption</i>	
Lower	Upper	Filing	Proposed	Current
1	100,000	Single	3,200	3,200
100,001	125,000	Single	1,600	2,400
125,001	150,000	Single	800	1,800
150,001	200,000	Single	0	1,200
200,001	99,999,999	Single	0	600
1	150,000	Joint	3,200	3,200
150,001	175,000	Joint	1,600	2,400
175,001	200,000	Joint	800	1,800
200,001	250,000	Joint	0	1,200
250,001	99,999,999	Joint	0	600

The Act also:

- Increases the other tobacco tax rate on moist snuff and smokeless tobacco from 15% to 30% of the wholesale price, and increases the rate on non-premium cigars to 70% of the wholesale price - \$5 million in FY 2013.
- Closes the indemnity mortgage tax loophole which allows entities to avoid paying taxes on real estate transactions; applies only to loans greater than \$1 million - \$35.7 million local revenue in FY 2013; requires a study of the impact of the indemnity mortgage change on businesses.
- Increases the fee for the first copy of a death certificate, from \$12 to \$24 – \$667,000 in FY 2013.
- Increases from \$125 to \$150 the Office of Administrative Hearings fee for appeals of a driver's license suspension or revocation - \$497,500 in FY 2013.
- Repeals the corporate tax credit for property taxes claimed by telecommunications utilities - \$7.5 million in FY 2013.
- Repeals the sales tax exemption on penalty charges assessed on the late return of gas cylinders - \$700,000 in FY 2013.
- Includes certain income of an Electing Small Business Trust in the calculation of Maryland taxable income, conforming to federal tax law - effective Tax Year 2013.

PROVISIONS REMOVED FROM CONFERENCE COMMITTEE REVENUE PLAN

The Administration's proposal removes certain provisions that were included in the conference committee plan because they do not address the need to solve our operating budget challenge in FY 2013.

- ♦ Local Transit - Provides an additional \$5 million in operating and \$5 million in capital grants annually to Montgomery County for local transit services.
- ♦ Net Taxable Income (NTI) adjustment – Phases in changes to the date on which net taxable income is calculated for State education formulas.
- ♦ Bonding Authority for Baltimore City Public Schools – Increases from \$100 million to \$200 million the allowable amount of outstanding bonds.

APPENDIX I
Summary of BRFA Provisions

- ◆ Miscellaneous Grant to Baltimore City - Permanently repeals \$3.1 million grant.
- ◆ Teacher Retirement Supplemental Grants - Allocates \$27.7 million in grants to specified counties to offset impact of teacher retirement cost sharing; includes \$3.1 million to Baltimore City to offset repeal of miscellaneous grant; authorizes transfer of \$5 million from the Rainy Day Fund to fund these grants.
- ◆ Moving Violation Surcharge Revenue - Allocates \$200,000 to the Maryland State Fireman's Association and clarifies that once the balance in Volunteer Company Assistance Fund reaches \$20 million, the remainder of surcharge revenues will be allocated to the Emergency Medical Services Operations Fund.
- ◆ MARBIDCO - Sets funding at \$2.875 million in FY 2013 and FY 2014, returning to mandated level of \$4 million beginning in FY 2015.
- ◆ Local Boards of Education - Clarifies board responsibility to pay court judgments related to its own contracts and precludes a local government from reducing the amount requested by a school board to pay these judgments. Also clarifies that, should a court order the State to pay a judgment on behalf of a local board of education, the State can deduct that amount from the local board's State aid payments.
- ◆ Education Aid - Ensures that direct education aid in FY 2013 does not decrease more than 5% compared to FY 2012.
- ◆ Aging Schools - Sets the allocation among jurisdictions at the FY 2011 level.
- ◆ Higher Education Investment Fund - Expands eligible uses to include St. Mary's College of Maryland; authorizes an appropriation of \$383,840 from the Fund to St. Mary's College to offset a 2% increase in tuition.
- ◆ Community Colleges - Sets FY 2013 funding at \$199.2 million and allocates by college; for FY 2014 through FY 2017, provides that funding will be the greater of \$1,839.47 per student or specified percentages of per student funding at the public four-year institutions; current mandate of 29% of public four year per student funding reached in FY 2023.
- ◆ Baltimore City Community College - Sets FY 2013 funding at \$39.9 million; for FY 2014 through FY 2017, provides that funding will be the greater of \$5,695.63 per student or specified percentages of per student funding at the public four-year institutions; current mandate of 29% of public four year per student funding reached in FY 2023.
- ◆ Sellinger Program for Non Public Higher Education Institutions - Sets FY 2013 funding at \$38.1 million; for FY 2014 through FY 2017, provides that funding will be the greater of \$875.53 per student or specified percentages of per student funding at the public four-year institutions; current mandate of 15.5% of public four year per student funding reached in FY 2021.

- ♦ Community Right-to-Know Fund - Expands uses to include emergency response activities of the Maryland Department of Environment (MDE).
- ♦ State Recycling Fund – Expands uses to include all activities of the MDE Land Management Administration, which includes the Office of Recycling.
- ♦ D.C. Hospitals – Establishes new 6% claims processing charge which is offset by a rate increase.
- ♦ Nursing Home Bed-Hold – Eliminates requirement for Medicaid to reimburse a nursing home for a patient’s absent days due to hospitalization.
- ♦ Uncompensated Care - Authorizes the Health Services Cost Review Commission to increase the pooling of hospital uncompensated care costs.
- ♦ Nursing Facility Quality Assessment - Increases assessment from 5.5% to 6%.
- ♦ Community Services Trust Fund – Authorizes transfer of the proceeds and investment earnings from the Fund to the Mental Hygiene Community-Based Services Fund.
- ♦ Premium Tax Exemption Funds – Expands uses of funds to include support for mental health services for the uninsured.
- ♦ Maryland Health Insurance Plan Fund – Expands uses to include support for mental health services for the uninsured.
- ♦ Settlement, Judgment, or Consent Decree Funds – Requires that such funds be appropriated in the budget and that the official negotiating the payment request the funds be used for any public purpose.
- ♦ Mortgage Loan Servicing Practices Settlement Fund – Establishes fund to hold proceeds of national mortgage settlement and requires fund to be used for housing and foreclosure-relief and related purposes; sunsets required annual report after five years.
- ♦ Sets Lottery Agent Sales Commission at 5% in FY 2013.
- ♦ Teacher Pension Cost Sharing - Shifts the normal costs of teacher pensions to the local school boards over a four year period – 50%/65%/85%/100%. The State will be responsible for the remainder of teacher pension costs.
- ♦ Repeals Repayment to Local Income Tax Reserve account - Repeals requirement that counties repay \$367 million to the Reserve account over a ten year period, beginning in FY 2013.
- ♦ Chesapeake Bay 2010 Trust Fund – Redirects \$8 million to the Budget Restoration Fund in FY 2013; leaves \$25 million for the 2010 Trust Fund in FY 2013.

- ♦ Intercounty Connector Repayment – Delays remaining repayment to the Maryland Transportation Authority until FY 2014.
- ♦ BWI Ambulance Transport Fee – Requires BWI Fire and Rescue Service to charge a fee for ambulance transport services.
- ♦ Speed Camera Revenue – Permanently dedicates revenue (after program costs) to the Maryland State Police to support roadside enforcement activities.
- ♦ Medical Loss Ratio – Prohibits retrospective changes to medical loss ratio payments.
- ♦ Medicaid Value-Based Purchasing – Permits an increase in the MCO cap on disincentive payments in CY 2012.
- ♦ Geographic Cost of Education Index Report – Alters requirement so that a single report is due in September 2016 rather than every three years.
- ♦ Transfer to the Kidney Disease Program – Increases allowable transfer from the Senior Prescription Drug Assistance Program (SPDAP) to \$5 million in FY 2013.
- ♦ Merit Increases for Operationally Critical Staff – Permits such increases in FY 2013.
- ♦ Local School Board Budget – Permits a local board to spend funds received from the State Comptroller in the event the county fails to meet maintenance of effort requirements. ✓
- ♦ Retirement Payments for Federally Funded Positions - Repeals requirement that local school boards reimburse the State for these costs, effective FY 2015.
- ♦ Injured Worker's Insurance Fund – Authorizes a transfer of at least \$50 million from IWIF to the Budget Restoration Fund; requires a valuation study and authorizes the transfer of an additional amount to the General Fund to reflect the appropriate value of the benefits IWIF has realized from its association with the State; renounces any future State interest in IWIF.
- ♦ Small, Minority, and Women-Owned Business Investment Account – Authorizes transfer of \$1.9 million from the Account to the Education Trust Fund in FY 2012.
- ♦ Fair Campaign Finance Fund – Requires a transfer of \$2 million in FY 2014 to the Major Information Technology Development Project Fund for the purchase of a new optical scan voting system.
- ♦ Problem Gambling Fund – Authorizes the transfer of \$950,000 in FY 2012 and \$209,000 in FY 2013 from the Problem Gambling Fund to the Education Trust Fund.
- ♦ Group Home and Non-Public Placement Providers – Authorizes rate increases of up to 1% for these providers in FY 2013.

- ◆ Developmental Disabilities Administration – Authorizes the carry forward of up to \$5 million in unspent FY 2012 General Funds to be used in FY 2013 for DDA community services and provider activities.
- ◆ Strategic Energy Investment Fund – Authorizes the transfer of up to \$2 million to the Department of Human Resources to provide low-income energy assistance.
- ◆ Senior Prescription Drug Assistance Program – Authorizes transfer of \$4.5 million to Medicaid in FY 2013.
- ◆ Exelon-Constellation Merger Settlement – Requires settlement funds to be appropriated through the budget bill or, for FY 2013 only, by budget amendment.
- ◆ Maintenance of Effort (MOE) – Sets MOE amounts for each local jurisdiction during phase in of teacher pension cost sharing; clarifies MOE calculation for FY 2017 and beyond; clarifies FY 2013 MOE calculation for Baltimore City. ✓
- ◆ Maryland Institute for Emergency Medical Services Systems (MIEMSS) – Expresses legislative intent that funds be provided in the annual budget to upgrade the MIEMSS communications system.
- ◆ Video Lottery Operation License – Clarifies that certain statutory provisions do not apply to a ground lease agreement between the State and the Allegany County video lottery licensee.
- ◆ Budget Restoration Fund – Establishes special fund as a mechanism to undo the “Doomsday” budget reductions; specifies revenues to the fund and authorizes appropriations from the fund.
- ◆ Position Eliminations – Requires the abolition of 100 vacant positions as of January 2, 2013, inclusive of the 64 position eliminations included in the budget bill.
- ◆ State Superintendent of Schools – Technical item to reflect correct salary in budget bill. ✓

APPENDIX II

Conference Committee/Special Session Plan
Shift of Retirement Costs to School Boards with Offsets/Maintenance of Effort Increase
"Normal Cost" of Teachers Retirement Shifted to Locals with Four-year Phase-in
Fiscal 2013-2016
(\$ in Millions)

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Normal Cost Shifted (School Boards) – 50/65/85/100%	-\$136.6	-\$173.2	-\$221.6	-\$254.8
Offset by:				
Relieve Reimbursement for Federally Funded Teachers ⁽⁴⁾	0.0	0.0	37.8	38.2
Net Pension Costs Shifted to School Boards	-\$136.6	-\$173.2	-\$183.7	-\$216.5
Counties Increase in MOE Due to Shift ⁽³⁾	\$136.6	\$173.2	\$183.7	\$216.5
Annual Increase in MOE Due to Shift		\$36.6	\$10.5	\$32.8
Offset by:				
Additional Local Income Tax Revenues	\$31.5	\$21.6	\$21.8	\$22.1
Teachers' Retirement Supplemental Grant ⁽¹⁾	27.6	27.6	27.6	27.6
Recordation Tax Indemnity Mortgages	35.7	35.7	35.7	35.7
Local Income Tax Reserve Relief	36.7	36.7	36.7	36.7
Restore Local Police Aid	0.0	22.1	22.8	23.5
Health Department Grants	0.0	2.2	3.0	4.0
Total County Offsets	\$131.5	\$145.9	\$147.6	\$149.6
Net Impact of Shift on Counties	-\$5.2	-\$27.3	-\$36.1	-\$67.0
Net Impact on State General Fund (Savings)/Cost ⁽²⁾	-\$109.0	-\$120.8	-\$126.5	-\$154.0
Remaining State-paid Pension Costs (Non-normal)	\$768.4	\$866.5	\$870.0	\$870.8
Net Impact of Shift on School Boards	\$0.0	\$0.0	\$0.0	\$0.0
State Direct Aid Increase Current Law ⁽²⁾	113.2	88.4	113.6	184.4

MOE: maintenance of effort

⁽¹⁾ Includes Miscellaneous Grant for Baltimore City.

⁽²⁾ Includes increase in Guaranteed Tax Base program due to increased MOE.

⁽³⁾ Fiscal 2016 county MOE increase will be included in per pupil MOE amount for fiscal 2017.

⁽⁴⁾ Requirement to reimburse the State for federally funded teachers is repealed beginning in fiscal 2015.

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