Earned Sick Leave Mandate

Maryland Healthy Working Families Act (HB 1, 2017)

- This bill would require an employer with 15 or more employees to have a sick and safe leave policy under which an employee earns at least 1 hour of paid sick and safe leave, at the same rate as the employee normally earns, for every 30 hours an employee work.
- In addition, an employer that fails to keep accurate records or refuses to allow the commissioner to inspect a record creates a rebuttable presumption that the employer violated the law.
- Fiscal Note: "Local government expenditures increase significantly for certain local jurisdictions to allow temporary or part-time employees to earn sick and safe leave."

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Earned Sick Leave Mandate

MABE's Position in 2017 (HB 1, 2017)

MABE opposed the bill based on:

- The potential costs to local school systems and the impact on the efficient administration of the public schools in Maryland; and
- The effect of the mandate would be to divert scarce resources to enhance benefits for employees who are already compensated in accordance with employment policies concerning their agreement to serve as substitute teachers, coaches, or in other part-time capacities.
Earned Sick Leave Mandate

Legislative History (HB 1, 2017)
- The bill passed at the close of the 2017 session, receiving "veto proof" majorities in both the House and Senate.
- The bill was vetoed by the Governor on May 25, 2017.
- A three-fifths vote of the elected membership of both chambers is necessary to override a veto.
- In the House, the bill received 88 of the 85 votes needed to override a veto (two-thirds of 141).
- In the Senate, the bill received 29 of the 29 votes needed to override a veto (two-thirds of 47).
- If the Governor vetoes a bill presented after the session, the veto message must be considered immediately at the next regular or special session of the legislature.

Earned Sick Leave Mandate

Legislative Forecast (HB 1, 2017)
- The first day of the 2018 session is January 10, 2018.
- In recent sessions, vetoes presented on the opening day of session have been "special ordered" for a week.
- *Any Bill enacted over the veto of the Governor... shall take effect 30 days after the Governor's veto is over-ridden, or on the date specified in the Bill, whichever is later.*
  - *Maryland Constitution, Art. II, Sec. 17(d)*
- HB 1 passed with an effective date of Jan. 1, 2018.
- Presuming a veto override between January 10-17, 2018, the bill would take effect between February 10-17, 2018.
Earned Sick Leave Mandate

Employer/Employee Definitions & Exclusions (HB 1, 2017)

- An "employer" includes the State or local governments and a person who acts directly or indirectly in the interest of another employer with an employee.
- The bill does not apply to employees who regularly work less than 12 hours a week, specified independent contractors, specified associate real estate brokers and real estate salespersons, individuals younger than age 18 before the beginning of the year, workers in a specified agricultural sector, construction workers (not including specified employees) covered in a collective bargaining agreement, specified employees who work on an as-needed basis in a health or human services industry, or specified employees of a temporary services or employment agency.

Employee Exclusion Bill Language (HB 1, 2017)

3-1303. (A) THIS SUBTITLE DOES NOT APPLY TO AN EMPLOYEE WHO:

(3) (I) IS CALLED TO WORK BY THE EMPLOYER ON AN AS-NEEDED BASIS IN A HEALTH OR HUMAN SERVICES INDUSTRY;

(II) CAN REJECT OR ACCEPT THE SHIFT OFFERED BY THE EMPLOYER;

(III) IS NOT GUARANTEED TO BE CALLED ON TO WORK BY THE EMPLOYER; AND

(IV) IS NOT EMPLOYED BY A TEMPORARY STAFFING AGENCY.

Note: (A)(1) and (2) omitted.
The Maryland Association of Boards of Education (MABE), representing all of the state’s twenty-four local boards of education, opposes Senate Bill 760.

MABE opposes this bill because it would remove the authority to discipline employees from the local board of education and transfer it to an arbitrator if requested by the employee. Such a transfer would adversely impact the ability of local boards to respond to employee misconduct consistent with the best interests of the students, the school system, and community. Instead, Senate Bill 760 would transfer the board responsibility to an arbitrator, an independent third party who is not required to balance the employee’s interests and the school system’s on behalf of all students.

Local boards of education, which approve the hiring of all certificated employees, should retain the authority to terminate or suspend their employment for one of the five reasons stated in the law (immorality, misconduct, incompetency, willful neglect of duty, insubordination). Outside arbitrators, who by definition have no connection to the school system, should not be empowered to determine who should remain employed by the school system. Local boards represent the interests of the entire community – students, teachers, parents, businesses, government leaders – and must be able to decide when any specific individual’s actions should disqualify that person from teaching the students in that community, either temporarily or permanently.

The board of education is first and foremost a board, meaning it is made up of five or more individuals who can hear termination and suspension cases and who can debate and deliberate on those cases. Senate Bill 760 would place these decisions in the hands of a single individual without any option to for the local board to consider and deliberate on the appropriate response to the employee actions at issue.

Employee discipline cases may involve incompetency, misconduct, and immorality. These are matters of the utmost concern to local boards of education. Each local board is the holder of the public trust to do what is best for school children. MABE firmly believes that the public should continue to be able to trust in the governance responsibility of their local board of education to adjudicate appeals regarding employee conduct.

A determination of incompetency is based in part on the expertise of the school system administrators and in part on the local board of education which sets the standards for its educators. Such cases should not be entrusted to an individual arbitrator who may have no knowledge or familiarity with the teaching and learning standards in a given school system.
A determination of misconduct is based on whether the local board as the employer believes the act is sufficiently egregious as to affect the individual’s ability to effectively teach in that local school system. That question cannot be answered without knowing the schools, the students, and the specific expectations of the community, and again is not based on a simply statewide list of behaviors that call for a specific punishment. The local board is clearly in a better position than an arbitrator who might not even have any connection to Maryland, much less the specific school system and locality.

A determination of immoral behavior is based on community standards, i.e., what actions violate the standards of decency expected of our teachers by our students, parents, and other community members. The General Assembly included the term “immorality” and did not reduce that to a specific list of behaviors; this is because the law recognizes that local boards are to make these determinations, not outside decision-makers.

Currently, when a teacher dismissal case is heard before the local board of education, the decision may be appealed to the Maryland State Department of Education (MSDE) which refers the case to the Office of Administrative hearings (OAH) for a hearing. The case can thereafter be appealed to the Circuit Court for judicial review. Under the proposed bill, if an appellant employee requests arbitration, the appeal would go directly to the Circuit Court. If enacted, Senate Bill 760 would eliminate the OAH and State Board of Education roles and responsibilities of fact finding and appellate review.

Again, MABE firmly believes that the employee discipline process envisioned by this bill would inappropriately strengthen the employee’s interests and weaken the ability of a local school superintendent, local board, and state board of education to decide, review, and enforce employee discipline cases.

For these reasons, MABE urges an unfavorable report on Senate Bill 760.
**Grounds for Employee Discipline**


- This bill would have altered the procedures for suspending or dismissing a teacher, principal, supervisor, assistant superintendent, or other professional assistant by authorizing such an individual to request a hearing before an arbitrator instead of the local board of education.
- Under the bill, the local board of education would have been required to pay the full cost and expenses of the arbitration. The school system share of the cost was reduced to 75% in the Senate by amendment to SB 760.
- HB 497 was not acted on in the House. SB 760 passed the Senate 32-15, but was not acted on in the House.

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**Grounds for Employee Discipline**

**Grounds for School Employee Discipline (SB 760/HB 497)**

- MABE opposed this bill in 2016 and 2017 because it would remove the authority to discipline employees from the local board of education and transfer it to an arbitrator if requested by the employee.
- MABE, PSSAM & MNS representatives have argued that such a transfer would adversely impact the ability of local boards to respond to employee misconduct consistent with the best interests of the students, the school system, and community.
- Reintroduction of this legislation, which is a top MSEA priority, is expected in 2018.
Education - Grounds for Discipline

This bill alters the procedures for suspending or dismissing a teacher, principal, supervisor, assistant superintendent, or other professional assistant by authorizing such an individual to request a hearing before an arbitrator instead of the local board of education. The bill specifies the procedures for such an arbitration. Except as otherwise specified, the local board of education must pay the full cost and expenses of the arbitration including specified costs. However, the local superintendent and the individual must pay their own respective costs and expenses associated with any witness or evidence produced by them. An arbitrator must be selected as specified. The award by the arbitrator is final and binding; however, an individual may request judicial review by a circuit court, which must be governed by the Maryland Uniform Arbitration Act.

Fiscal Summary

State Effect: The number of cases that the State Board of Education refers to the Office of Administrative Hearings (OAH) may decrease slightly; however, the bill is not expected to materially affect the operations or finances of OAH or the State board.

Local Effect: Local school system expenditures for arbitrators increase, potentially significantly. Any fiscal or operational impact on the circuit courts is anticipated to be minimal. This bill imposes a mandate on a unit of local government.

Small Business Effect: None.
Analysis

Current Law/Background: On the recommendation of the local superintendent of schools, a local board of education may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for immorality; misconduct in office, including knowingly failing to report suspected child abuse; insubordination; incompetency; or willful neglect of duty.

Before removing an individual, the local board must send the individual a copy of the charges and give the individual an opportunity to request a hearing. If the individual requests a hearing, the individual must have an opportunity to be heard before the local board, in person or by counsel, and to bring witnesses to the hearing. The individual may appeal the decision of the local board to the State Board of Education.

In Baltimore City, the suspension and removal of an assistant superintendent and higher level employees must be as provided by the personnel system established by the Baltimore City Board of School Commissioners.

For all proceedings before a local board of education, the local board may have the proceedings heard first by a hearing examiner. The hearing examiner must submit to the local board and the appellant a record of the proceeding and exhibits and the hearing examiner’s findings of fact, conclusions of law, and recommendations. Parties to the proceeding before the hearing examiner may make arguments before the local board. After it reviews the record and the recommendation of the hearing examiner, the local board must make a decision. The decision may be appealed to the State Board of Education. Each local board must adopt reasonable rules and regulations to regulate the proceedings before the hearing examiner.

According to the Code of Maryland Regulations (COMAR), if a local board of education’s decision to suspend or dismiss a teacher or administrator is appealed to the State Board of Education, then the State board must exercise its independent judgment on the record before determining whether to sustain the suspension or dismissal of a certificated employee. The standard of review must be de novo. The local board has the burden of proof by a preponderance of the evidence. The State board, in its discretion, may modify a penalty.

Under COMAR, a State board decision may be appealed to the circuit court in which the appellant resides within 30 days of the decision.

However, COMAR also requires that the State Board of Education transfer an appeal of a suspension or dismissal of a certificated employee (e.g., classroom teachers, principals) to OAH for review by an administrative law judge. The State board must also transfer an
appeal in which the State board finds that there exists a genuine dispute of material fact to
OAH for review by an administrative law judge.

Local Expenditures: Local school system expenditures for arbitrators increase, potentially significantly. Actual costs will be determined by the number of specified education professionals who request arbitration during the suspension or dismissal processes. Under the bill, the local board of education is responsible for the full costs and expenses of arbitration except for the costs associated with any witness or evidence produced by them. In 2012, one local school system reported that hiring an arbitrator costs approximately $2,000 per day.

The bill does not affect the suspension or dismissal process for assistant superintendents or higher in Baltimore City as they are governed by the school system’s personnel system.

According to the U.S. Department of Education, National Center for Education Statistics, Schools and Staffing Survey, there was an average of 21 teachers in each local school system who were dismissed or did not have their contracts renewed during the 2010-2011 school year.

Additional Information

Prior Introductions: None.


Information Source(s): Maryland State Department of Education; U.S. Department of Education; Caroline, Montgomery, and Prince George’s counties; Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2017
md/rhh

Analysis by: Caroline L. Boice

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(410) 946-5510
(301) 970-5510
Maryland’s Fiscal Outlook

Presentation to the Commission on Innovation and Excellence in Education

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

November 30, 2017
Fiscal 2018 State Budget = $43.5 Billion

($ in Millions)

- General Funds: $17,149, 39%
- Dedicated Revenues: $13,408, 31%
- Federal Funds: $12,977, 30%
Fiscal 2018 General Fund Revenues

($ in Millions)

- Personal Income Tax: $9,381, 56%
- Sales and Use Tax: $4,662, 27%
- State Lottery: $519, 3%
- Corporate Income Tax: $827, 5%
- Other: $1,751, 10%
Fiscal 2018 General Fund Budget = $17.1 Billion

($ in Millions)

- State Agencies: $5,390, 32%
- Education Aid: $5,657, 34%
- Higher Education: $1,440, 8%
- Debt Service: $260, 2%
- Other Local Aid: $719, 4%
- Equipment: $3,483, 20%
Fiscal 2019 Baseline Budget
Forecast Assumptions

Baseline Budget Concepts

- The baseline budget is an estimate of the cost of government services in the next budget year based on a set of assumptions.
- Assumptions include that current laws, policies, and practices are continued; federal mandates and multi-year commitments are observed; legislation adopted at the prior session is funded; and full-year costs of programs, rate increases, and any other enhancements started during the previous year are included.
- Employee compensation costs include:
  - a general salary increase of 1.0% effective July 2018, and funding for employee increments;
  - employee and retiree health insurance savings as a result of high fiscal 2017 ending fund balances and a new pharmacy contract inflation (-5.7%); and
  - employee retirement costs (0.3%).
- The higher education grant is calculated assuming a 3.0% tuition increase.

Caseload Assumptions

<table>
<thead>
<tr>
<th></th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>FY 2019</th>
<th>% Change FY 2018-2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pupil Enrollment*</td>
<td>845,861</td>
<td>852,520</td>
<td>857,885</td>
<td>0.6%</td>
</tr>
<tr>
<td>Medicaid</td>
<td>895,389</td>
<td>920,251</td>
<td>938,880</td>
<td>2.0%</td>
</tr>
<tr>
<td>Children’s Health</td>
<td>144,294</td>
<td>147,180</td>
<td>150,123</td>
<td>2.0%</td>
</tr>
<tr>
<td>Expansion under Affordable Care Act</td>
<td>290,718</td>
<td>313,976</td>
<td>329,674</td>
<td>5.0%</td>
</tr>
<tr>
<td>Temporary Cash Assistance</td>
<td>50,901</td>
<td>46,699</td>
<td>44,298</td>
<td>-5.1%</td>
</tr>
</tbody>
</table>

# General Fund: Recent History and Outlook

**Fiscal 2017-2019**

<table>
<thead>
<tr>
<th>($ in Millions)</th>
<th>2017 Actual</th>
<th>2018 Working</th>
<th>2019 Baseline</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Funds Available</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ongoing Revenues</td>
<td>$16,664</td>
<td>$17,139</td>
<td>$17,639</td>
</tr>
<tr>
<td>Balances and Transfers</td>
<td>630</td>
<td>259</td>
<td>303</td>
</tr>
<tr>
<td>Short-term Revenues</td>
<td>66</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Funds Available</strong></td>
<td>$17,361</td>
<td>$17,413</td>
<td>$17,942</td>
</tr>
<tr>
<td><strong>Appropriations, Deficiencies, and Cost Containment</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Ongoing Operating Costs and Deficiencies</td>
<td>$16,934</td>
<td>$17,394</td>
<td>$17,980</td>
</tr>
<tr>
<td>One-time Spending/Reductions</td>
<td>-49</td>
<td>-112</td>
<td>-61</td>
</tr>
<tr>
<td>Pay-as-you-go Capital</td>
<td>62</td>
<td>10</td>
<td>78</td>
</tr>
<tr>
<td>Appropriations to Reserve Fund</td>
<td>155</td>
<td>10</td>
<td>196</td>
</tr>
<tr>
<td><strong>Total Spending</strong></td>
<td>$17,102</td>
<td>$17,302</td>
<td>$18,193</td>
</tr>
</tbody>
</table>

| **Cash Balance/Shortfall** | $259 | $111 | -$251 |

| **Structural** |             |              |               |
| Balance (Ongoing Revenues Less Operating Costs) | -$269 | -$255 | -$340 |
| Ratio (Ongoing Revenues/Operating Costs) | 98.4% | 98.5% | 98.1% |

**Estimated Rainy Day Fund Balance – June 30**

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Rainy Day Fund Balance</td>
<td>$832</td>
<td>$858</td>
<td>$882</td>
</tr>
</tbody>
</table>
Drivers of General Fund Operating Budget Growth

Fiscal 2019
($ in Millions)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (in Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicaid</td>
<td>$206</td>
</tr>
<tr>
<td>Education/Library Aid</td>
<td>178</td>
</tr>
<tr>
<td>State Employee COLA and Merit Pay Increases</td>
<td>123</td>
</tr>
<tr>
<td>State Agency Expenses/Other</td>
<td>105</td>
</tr>
<tr>
<td>Local Aid</td>
<td>24</td>
</tr>
<tr>
<td><strong>Total Operating Spending Growth</strong></td>
<td><strong>$635</strong></td>
</tr>
<tr>
<td><strong>Ongoing General Fund Revenue Growth</strong></td>
<td><strong>$500</strong></td>
</tr>
</tbody>
</table>
# Maryland Revenue Forecast

<table>
<thead>
<tr>
<th>Source</th>
<th>FY 2017 Actual</th>
<th>FY 2018 Estimate</th>
<th>% Change over FY 2017</th>
<th>FY 2019 Estimate</th>
<th>% Change over FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Income Tax</td>
<td>$9,019.3</td>
<td>$9,380.7</td>
<td>4.0%</td>
<td>$9,764.9</td>
<td>4.1%</td>
</tr>
<tr>
<td>Sales and Use Tax</td>
<td>4,539.3</td>
<td>4,654.9</td>
<td>2.5%</td>
<td>4,787.4</td>
<td>2.8%</td>
</tr>
<tr>
<td>State Lottery</td>
<td>484.3</td>
<td>519.5</td>
<td>7.3%</td>
<td>522.8</td>
<td>0.6%</td>
</tr>
<tr>
<td>Corporate Income Tax</td>
<td>795.6</td>
<td>827.3</td>
<td>4.0%</td>
<td>873.5</td>
<td>5.6%</td>
</tr>
<tr>
<td>Business Franchise Taxes</td>
<td>228.4</td>
<td>232.2</td>
<td>1.6%</td>
<td>198.1</td>
<td>-14.7%</td>
</tr>
<tr>
<td>Insurance Premiums Tax</td>
<td>328.7</td>
<td>326.3</td>
<td>-0.7%</td>
<td>350.0</td>
<td>7.2%</td>
</tr>
<tr>
<td>Estate and Inheritance Taxes</td>
<td>227.9</td>
<td>198.5</td>
<td>-12.9%</td>
<td>184.1</td>
<td>-7.3%</td>
</tr>
<tr>
<td>Tobacco Tax</td>
<td>387.0</td>
<td>381.6</td>
<td>-1.4%</td>
<td>378.3</td>
<td>-0.8%</td>
</tr>
<tr>
<td>Alcohol Beverages Tax</td>
<td>32.5</td>
<td>32.9</td>
<td>1.2%</td>
<td>33.3</td>
<td>1.3%</td>
</tr>
<tr>
<td>Other (1)</td>
<td>545.4</td>
<td>516.8</td>
<td>-5.2%</td>
<td>521.5</td>
<td>0.9%</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>$16,588.5</strong></td>
<td><strong>$17,070.7</strong></td>
<td><strong>2.9%</strong></td>
<td><strong>$17,613.9</strong></td>
<td><strong>3.2%</strong></td>
</tr>
<tr>
<td>Transfer Tax</td>
<td>$62.8</td>
<td>$46.0</td>
<td>-26.7%</td>
<td>$0.0</td>
<td>n/a</td>
</tr>
<tr>
<td>GAAP Transfer</td>
<td>47.4</td>
<td>0.0</td>
<td>n/a</td>
<td>0.0</td>
<td>n/a</td>
</tr>
<tr>
<td>Extraordinary Revenues (2)</td>
<td>0.0</td>
<td>15.0</td>
<td>n/a</td>
<td>0.0</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>Total General Fund Revenues</strong></td>
<td><strong>$16,698.7</strong></td>
<td><strong>$17,131.7</strong></td>
<td><strong>2.6%</strong></td>
<td><strong>$17,613.9</strong></td>
<td><strong>2.8%</strong></td>
</tr>
<tr>
<td>Education Trust Fund</td>
<td>$451.2</td>
<td>$487.1</td>
<td>7.9%</td>
<td>$507.9</td>
<td>4.3%</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>$17,149.9</strong></td>
<td><strong>$17,618.7</strong></td>
<td><strong>2.7%</strong></td>
<td><strong>$18,121.8</strong></td>
<td><strong>2.9%</strong></td>
</tr>
</tbody>
</table>

GAAP: generally accepted accounting principals

1Includes revenues from the courts, hospital patient recoveries, interest earnings, and other miscellaneous revenues.

2The Budget Reconciliation and Financing Act of 2017 (Chapter 23) distributed casino revenues that would normally go to the Small, Minority, and Women-owned Businesses Account to the general fund in fiscal 2018 and to the Education Trust Fund in fiscal 2019.

Source: Board of Revenue Estimates
Structural Budget Gap Forecast to Grow

($ in Millions)

FY 2017: -$269
FY 2018: -$255
FY 2019: -$340
FY 2020: -$747
FY 2021: -$1,003
FY 2022: -$1,159
FY 2023: -$1,330

Legend:
- Structural Gap
- Ratio of Ongoing Revenues to Spending
# General Fund Spending Growth by Component

<table>
<thead>
<tr>
<th></th>
<th>FY 2019 Forecast</th>
<th>FY 2023 Forecast</th>
<th>$ Growth</th>
<th>Avg. Annual % Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing Revenues</td>
<td>$17,639</td>
<td>$20,316</td>
<td>$2,677</td>
<td>3.6%</td>
</tr>
<tr>
<td>Ongoing Spending</td>
<td>17,980</td>
<td>21,646</td>
<td>3,666</td>
<td>4.7%</td>
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<tr>
<td>Structural Gap</td>
<td>-$341</td>
<td>-$1,330</td>
<td>-$989</td>
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</tbody>
</table>

## Spending Detail

### Mandates/Entitlements

<table>
<thead>
<tr>
<th></th>
<th>FY 2019</th>
<th>FY 2023</th>
<th>$ Growth</th>
<th>Avg. Annual % Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education Aid</td>
<td>$6,032</td>
<td>$6,936</td>
<td>$904</td>
<td>3.6%</td>
</tr>
<tr>
<td>Entitlements</td>
<td>3,775</td>
<td>5,044</td>
<td>1,269</td>
<td>7.5%</td>
</tr>
<tr>
<td>Employee Retirement</td>
<td>438</td>
<td>542</td>
<td>104</td>
<td>5.5%</td>
</tr>
<tr>
<td>Debt Service</td>
<td>221</td>
<td>537</td>
<td>316</td>
<td>24.9%</td>
</tr>
<tr>
<td>Other Mandates</td>
<td>907</td>
<td>1,138</td>
<td>231</td>
<td>5.8%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$11,373</strong></td>
<td><strong>$14,197</strong></td>
<td><strong>$2,824</strong></td>
<td><strong>5.7%</strong></td>
</tr>
</tbody>
</table>

### State Agencies & Higher Education

<table>
<thead>
<tr>
<th></th>
<th>FY 2019</th>
<th>FY 2023</th>
<th>$ Growth</th>
<th>Avg. Annual % Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$6,607</td>
<td>$7,449</td>
<td>$842</td>
<td>3.0%</td>
</tr>
</tbody>
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Dec 16, 2017 5:24 PM
Deborah Rigsby

Good afternoon,

Yesterday evening the House-Senate Conference Committee report for H.R. 1, the proposed Tax Cuts and Jobs Act (TCJA), was filed. Both chambers are expected to vote on the legislation next week, with the House poised to vote on Tuesday, December 19.

The Joint Committee on Taxation’s preliminary budget estimate of the Conference Committee bill for H.R. 1 indicates that the measure would add $1.456 trillion to the federal deficit over Fiscal Years 2018-2027. As we have reported, H.R. 1 would expand education savings accounts to accommodate tax credits for private elementary and secondary education tuition payments up to $10,000. The legislation would limit deductibility up to $10,000 for state and local tax payments (property, income and sales taxes). H.R. 1 would retain the current teacher tax deduction; and, would limit the ability of school districts and other units of state and local government to finance capital improvements and other operations through changes to municipal bond programs.

NSBA and other groups representing public education and state and local governments have expressed opposition to the legislation because of its impact on our public school districts and related governmental services. As noted by The Washington Post, the “measure curtails the federal deduction for state and local taxes. Advocates worry that states, counties and cities will have a tougher time raising money for schools - which get nearly all of their money from state and local tax revenues - because those taxes will no longer be fully deductible.” Along with NSBA, the Association of School Business Officials International has dissented to the bill’s provision to end cost-effective, tax-free "advance refund bonds" that allow districts to refinance school bond debt at lower interest rates.

NSBA appreciates your advocacy efforts to champion the interests of our students and public school districts. Many thanks to those who have utilized the talking points and action alerts regarding H.R. 1. We will keep you apprised of new developments.

The following excerpts from the Conference Committee Report on H.R. 1 are applicable to the priorities NSBA has outlined.

**Tuition Tax Credits for Non-Public Schools**

Consolidation and modification of education savings rules - The conference agreement follows the Senate amendment.
The Senate amendment modifies section 529 plans to allow such plans to distribute not more than $10,000 in expenses for tuition incurred during the taxable year in connection with the enrollment or attendance of the designated beneficiary at a public, private or religious elementary or secondary school. This limitation applies on a per-student basis, rather than a per-account basis. Thus, under the provision, although an individual may be the designated beneficiary of multiple accounts, that individual may receive a maximum of $10,000 in distributions free of tax, regardless of whether the funds are distributed from multiple accounts. Any excess distributions received by the individual would be treated as a distribution subject to tax under the general rules of section 529.

The provision also modifies the definition of higher education expenses to include certain expenses incurred in connection with a homeschool. Those expenses are (1) curriculum and curricular materials; (2) books or other instructional materials; (3) online educational materials; (4) tuition for tutoring or educational classes outside of the home (but only if the tutor or instructor is not related to the student); (5) dual enrollment in an institution of higher education; and (6) educational therapies for students with disabilities. Effective date.—The provision applies to distributions made after December 31, 2017.

State and Local Tax Deductibility (SALT)

Modification of deduction for taxes not paid or accrued in a trade or business – Conference Agreement.

Present Law Individuals are permitted a deduction for certain taxes paid or accrued, whether or not incurred in a taxpayer’s trade or business. These taxes are: ... property taxes; (ii) State and local personal property taxes; ... At the election of the taxpayer, an itemized deduction may be taken for State and local general sales taxes in lieu of the itemized deduction for State and local income taxes.

Under the provision a taxpayer may claim an itemized deduction of up to $10,000 ($5,000 for married taxpayer filing a separate return) for the aggregate of (i) State and local property taxes not paid or accrued in carrying on a trade or business, or an activity described in section 212, and (ii) State and local income, war profits, and excess profits taxes (or sales taxes in lieu of income, etc. taxes) paid or accrued in the taxable year. Foreign real property taxes may not be deducted under this exception. The above rules apply to taxable years beginning after December 31, 2017, and beginning before January 1, 2026. ... Thus, under the provision, an individual may not claim an itemized deduction in 2017 on a pre-payment of income tax for a future taxable year in order to avoid the dollar limitation applicable for taxable years beginning after 2017. Effective date.—The provision is effective for taxable years beginning after December 31, 2016.

School (Municipal) Bonds

Repeal of advance refunding bonds (that allow districts to refinance debt service payments for school buildings and other purposes at a lower interest rates) – A refunding bond is defined as any bond used to pay principal, interest, or redemption price on a prior bond issue (the refunded
bond). Generally, governmental bonds and qualified 501(c)(3) bonds may be advance refunded one time (under current law).

**Repeal of tax credit bonds** – Present Law In general Tax-credit bonds provide tax credits to investors to replace a prescribed portion of the interest cost. The borrowing subsidy generally is measured by reference to the credit rate set by the Treasury Department. Current tax-credit bonds include qualified tax credit bonds, which have certain common general requirements, and include new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds (that have been used for school repairs and modernization as well as professional and curriculum development), and qualified school construction bonds (that were authorized for calendar years 2009 and 2010).

**Teacher Tax Deduction**

Modification of deduction for educator expenses – The conference agreement ... retains the present-law above-the-line ($250) deduction and limit for certain expenses of eligible educators.

Present Law In general, unreimbursed business expenses incurred by an employee are deductible, but only as an itemized deduction and only to the extent the expenses exceed two percent of adjusted gross income. However, in the case of certain employees and certain expenses, a deduction may be taken in determining adjusted gross income (referred to as an "above-the-line" deduction), including expenses of ... eligible educators. Eligible educators are elementary or secondary school teachers, instructors, counselors, principals, or aides in a school for at least 900 hours during a school year. An eligible educator may take an "above-the-line" deduction for ordinary and necessary expenses incurred 1) by reason of participation in professional development courses related to the curriculum or students the educator teaches, or 2) in connection with books, supplies, computer and other equipment, and supplementary materials to be used in the classroom. The deduction may not exceed $250 (for 2017) in expenses, and is indexed for inflation. ... Effective date.—The provision is effective for taxable years beginning after December 31, 2017. Conference Agreement
After a high-drama vote, here’s what the Senate tax bill means for schools, parents and students

By Moriah Balingit and Nick Anderson  December 2

The Senate tax bill that passed in the wee hours of Saturday morning could have massive implications for schools and universities, students and parents. Public education advocates warned that certain provisions could put pressure on state and local spending for public schools while giving parents incentives to send children to private schools.

The bill passed 51 to 49 after senators worked through the night on last-minute revisions and amendments — including some scribbled in the bill’s margins. The legislation has to be reconciled with a version passed by the House before being sent to President Trump, but many of the provisions affecting education are likely to stay.

Public education advocates hammered the bill for offering incentives to private school parents through tax-free school savings accounts while curtailing the deduction for state and local taxes that fund public schools.

“It’s crazy that we’re eliminating the ability of people to deduct their state and local taxes that go directly to local services, including schools . . . while at the same time providing a $10,000 incentive for folks to send their kids to private schools,” said Sasha Pudelski, assistant director for policy and advocacy at the American Association of School Administrators, which represents public school superintendents across the country.

Here’s a round-up of what the bill could mean for education.

1. It’s good for Hillsdale College (and others, too)
Much of the high-drama wrangling over the bill centered on Hillsdale College, a tiny conservative Christian institution in Michigan whose benefactors include Education Secretary Betsy DeVos and whose graduates include her brother, Erik Prince, founder of the troubled security contractor Blackwater. Late Friday, after Sen. Pat Toomey (R-Pa.) authored an amendment that would exempt the college from a tax on endowments, Democrats slammed the GOP for protecting an institution with connections to the administration.
But it turned out, the version passed by the Senate wound up sparing some other schools that feared their endowments would face a levy.

The Senate measure would impose a 1.4 percent excise tax on investment income at an estimated 25 to 30 private colleges and universities with large endowments. The House version would tax about 65 to 70 schools with endowments worth at least $250,000 per student. The Senate threshold is higher — $500,000 per student.

That change would mean about 40 schools that had thought their endowments would be taxed — including Hillsdale College — were removed from the list. The difference is one of the points that must be reconciled before a final bill clears Congress.

2. It’s good for private school parents

Hours before the bill was passed, Sen. Ted Cruz (R-Tex.) introduced an amendment that would allow parents to use a special tax-free college savings account to pay tuition for private K-12 schools, a provision that would largely benefit wealthier families who can already afford private schools.

“This change will have real and significant effects. Your vote will expand options for parents and children spending their own money, and will prioritize the education of the next generation of Americans,” Cruz said Friday night on the Senate floor.

The amendment passed by a hair, facing opposition from all Democrats and from two GOP senators — Susan Collins of Maine and Lisa Murkowski of Alaska. Ultimately, Vice President Pence had to be summoned after midnight to cast a tie-breaking vote, much like he had when the Senate confirmed DeVos as education secretary.

The amendment is virtually identical to a provision in the House version. DeVos praised the House legislation: “This is a good step forward, reflecting that education should be an investment in individual students, not systems,” she said last month.

For school choice advocates, the expansion of tax-free college savings accounts is viewed as giving more parents the opportunity to send their child to private school. Parents could spend up to $10,000 a year from those accounts.

“It’s a good first step,” said Sister Dale McDonald of the National Catholic Educational Association.

Public school advocates assailed the move, saying it undermines public schools by providing financial incentives for parents to move their children into private schools.

Senate Republicans are “doing what they can to decrease the popularity and success of our public schools,” Pudelski said.

3. It’s not so good for public school budgets

Like the House bill, the Senate measure curtails the federal deduction for state and local taxes. Advocates worry that states, counties and cities will have a tougher time raising money for schools — which get nearly all of their money from state and local tax revenues — because those taxes will no longer be fully deductible.
Separately, the bill would bar school districts from using cost-effective, tax-free “advance refund bonds” to refinance school bond debt, a prohibition that could prove costly for districts looking to refinance to save money, according to John Musso, executive director of the Association of School Business Officials International.

Advance refund bonds “are a cost-effective way for districts to refinance high-interest debt at lower-interest rates, potentially saving hundreds of thousands of taxpayers’ dollars in lower debt payments,” Musso wrote in a blog post on the website of the American Association of School Administrators.

4. It saves the school supply deductions
The House bill eliminates a $250 tax deduction for teachers who spend their own money on classroom supplies, a move that enraged many teachers, who spend an average of $500 annually, according to one survey.

The Senate bill not only saves the deduction, it doubles it, to $500. It is unclear what will happen to the provision as the bills move to reconciliation.

5. It’s better for college students
When it comes to student loan interest deduction and tuition waivers, the Senate tax legislation is a better deal for college students and college graduates than the House version.

The House bill would repeal the tax deduction for student loan interest, which allows people repaying student loans to cut their tax burden by as much as $2,500 annually. The House version also taxes tuition waivers — which allow many graduate students to attend school tuition-free — as income, raising the ire of students who said such a levy would make their education unaffordable.

But the Senate leaves those provisions intact. The Senate plan also excludes a House proposal to roll three higher-education tax credits into one benefit.

A previous version of this article did not fully describe how the Senate bill would change the state and local tax deduction. It will curtail it, not eliminate it. The story has been updated.

478 Comments

Moriah Balingit writes about education for the Post. Follow @ByMoriah
Nick Anderson covers higher education for The Washington Post. He has been a writer and editor at The Post since 2005. Follow @wpnick
Updated

After extensive negotiations, a congressional conference committee has agreed to a final tax reform bill that could impact state and local funding and teachers' pocketbooks, as well as school choice. The legislation still needs to be passed by both the House and Senate and be signed into law by President Donald Trump, who wants a tax bill to sign before Christmas. Here are a few key details we know about it:

State and Local Tax Deductions

The final legislation allow taxpayers to deduct up to $10,000 in either a combination of property and income taxes, or property and sales taxes. (See page 81 of the bill's joint explanatory statement at the link above.) Both the bills previously passed by the House and Senate would have allowed people to deduct up to $10,000 in property taxes, but not income or sales taxes.

Reducing the amount of state and local taxes people can deduct could exert significant pressure on some states and communities to reduce their own taxes, and therefore reduce revenue available for funding for schools. We discussed this on a recent episode of Education Writers Association radio.

"We lost a policy fight. Our schools and students lose more," said Noelle Ellerson Ng, the associate executive director of AASA, the School Superintendents Association, which along with other state and local groups sought to keep the current deductibility of state and local taxes.

Teacher Tax Deduction

The final bill also maintains the current $250 deduction teachers and principals can take for spending their own money on buying supplies for their classrooms. (See page 106 of the explanatory statement.) The legislation previously passed by the House would have eliminated the deduction entirely, while the Senate bill would have doubled it to $500.

The $250 deduction doesn't necessarily have a huge impact on educators' federal tax burden. But they see it as at least a symbolic recognition from Washington that, unlike many employees, they have to spend their own money to support their work. More on the teacher tax deduction is here. And more broadly, a joint congressional report on the bill also details the impact of new income tax brackets.

"Notwithstanding all the other terrible provisions in this bill there's a little comfort in the fact that Congress did hear the outcry from educators and others when the House tried to eliminate this very small deduction that educators have been allowed to claim on their taxes," said Marc Egan, the director of government relations for the National Education Association.

Otherwise, Egan called the bill "rotten to the core" and said the entire process behind the tax bill "pretty much a sham."

More Savings for School Choice
Final Tax Bill Keeps Teacher Deduction at $250, Cuts State and Local Deductions - Politics K-12 - Education Week

The final GOP tax bill also allows current 529 college savings plans to be used for up to $10,000 in annual K-12 expenses, including private school tuition. (See page 63 of the explanatory statement.)

The proposal represents the first step by Congress to expand school choice since President Donald Trump and U.S. Secretary of Education Betsy DeVos—both big backers of parental choice—took office. It’s not a new school choice program per se, and some are concerned that it only helps wealthier people who can afford to use 529 savings plans, many of whom might already be sending their children to private schools.

"Is this a giant school choice plan? I think this is good policy," said Jonathan Butcher, a senior policy analyst at the Heritage Foundation, which backs private school choice. "So long as we have an extremely complicated tax code, if the choice is to do nothing, or give families more options—then I would opt for that."

Other Details

The legislation would also put an end to qualified school construction bonds and Qualified Zone Academy Bonds.

The latter is important to the charter school community, which says the zone academy bonds help charter schools find facilities and amenities.

"The issue with charter school facilities is one of the biggest issues to charter school growth. They don’t have access to the same financing that traditional schools do," said Christy Wolfe, a senior policy advisor for the National Alliance for Public Charter Schools.

Assistant Editor Lianna Heilbrun Loewus and Staff Writer Arianna Prothero contributed to this story.

Photo: President Donald Trump, flanked by Rep. Kevin Brady, R-Texas, left, and Sen. Orrin Hatch, R-Utah, right, speaks during a bicameral meeting with lawmakers working on the tax cuts in the Cabinet Room of the White House on Dec. 13. (Manuel Balce Ceneta/AP)

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Categories: Choice Congress Republicans Taxes

Tags: Congress school choice school funding tax policy taxes teachers
SENATE BILL 43

(PRE-FILED)

By: Chair, Finance Committee and Chair, Education, Health, and Environmental Affairs Committee (By Request – Departmental – Labor, Licensing and Regulation)
Requested: September 18, 2017
Introduced and read first time: January 10, 2018
Assigned to: Finance and Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 High School Diploma by Examination – Eligibility Requirements – Exemption

3 FOR the purpose of exempting certain individuals from certain eligibility requirements to obtain a high school diploma by examination if the individual participates in a certain program; and generally relating to the eligibility requirements to obtain a high school diploma by examination.

7 BY repealing and reenacting, with amendments,
8 Article – Labor and Employment
9 Section 11–808
10 Annotated Code of Maryland
11 (2016 Replacement Volume and 2017 Supplement)

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

14 Article – Labor and Employment

15 11–808.

16 (a) An individual may obtain a high school diploma by examination as provided in this section if the individual:

18 (1) has not obtained a high school diploma;

19 (2) resides in this State; AND

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
(3) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION:

(I) is not subject to compulsory school attendance under § 7–301 of the Education Article; and

[(4)] (II) has withdrawn from a regular full–time public or private school program.

(B) AN INDIVIDUAL IS NOT SUBJECT TO THE REQUIREMENTS OF SUBSECTION (A)(3) OF THIS SECTION IF THE INDIVIDUAL PARTICIPATES IN A GED OPTION PROGRAM ADMINISTERED BY THE STATE DEPARTMENT OF EDUCATION THAT CREATES A PATHWAY TO A HIGH SCHOOL DIPLOMA BY EXAMINATION FOR CURRENTLY ENROLLED HIGH SCHOOL ENGLISH LANGUAGE LEARNER STUDENTS UNDER THE AGE OF 21 YEARS WHO HAVE EXPERIENCED INTERRUPTED EDUCATION AND HAVE A LOWER LEVEL OF ENGLISH PROFICIENCY THAN THEIR PEERS.

[(b)] (C) The Department shall offer examinations to individuals who are pursuing a high school diploma under this subtitle at least twice each year at places throughout the State that are reasonably convenient for the applicants.

[(c)] (D) The examination shall:

(1) be offered in appropriate high school subject areas; and

(2) be of a comprehensive nature as determined by the State Board of Education.

[(d)] (E) An individual who fails an examination may repeat taking the examination.

[(e)] (F) A current member of the armed forces is exempt from the residency requirement in subsection (a)(2) of this section and may earn a Maryland high school diploma by achieving a passing score on the examination offered under subsection [(b)] (C) of this section.

[(f)] (G) The diploma shall be awarded in accordance with the regulations adopted by the Secretary and the State Board of Education.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2018.
SENATE BILL 103

(PRE–FILED)

By: Senators Benson and Smith
Requested: July 19, 2017
Introduced and read first time: January 10, 2018
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 Task Force to Study the Impact of Student Cell Phone Use in the Classroom

3 FOR the purpose of establishing the Task Force to Study the Impact of Student Cell Phone
4 Use in the Classroom; providing for the composition, chair, and staffing of the Task
5 Force; prohibiting a member of the Task Force from receiving certain compensation,
6 but authorizing the reimbursement of certain expenses; requiring the Task Force to
7 study certain matters; requiring the Task Force to report its findings to the Governor
8 and the General Assembly on or before a certain date; providing for the termination
9 of this Act; and generally relating to the Task Force to Study the Impact of Student
10 Cell Phone Use in the Classroom.

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
12 That:

13 (a) There is a Task Force to Study the Impact of Student Cell Phone Use in the
14 Classroom.

15 (b) The Task Force consists of the following members:

16 (1) one member of the Senate of Maryland, appointed by the President of
17 the Senate;

18 (2) one member of the House of Delegates, appointed by the Speaker of the
19 House;

20 (3) the State Superintendent of Schools or the State Superintendent's
21 designee;

22 (4) two parents of students enrolled in schools in the State, one of whom
23 shall be the parent of a public school student and one of whom shall be the parent of a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
private school student, who shall be appointed jointly by the Speaker of the House and the
President of the Senate; and

(5) one representative from each of the following organizations, appointed
by the organization:

(i) the Maryland State Education Association;

(ii) the Baltimore Teachers Union;

(iii) the Public School Superintendents Association of Maryland;

(iv) the Maryland Parent Teacher Association;

(v) the Maryland Association of Boards of Education; and

(vi) the Association of Independent Maryland and DC Schools.

(c) The Speaker of the House and the President of the Senate shall jointly
designate the chair of the Task Force.

(d) The State Department of Education shall provide staff for the Task Force.

(e) A member of the Task Force:

(1) may not receive compensation as a member of the Task Force; but

(2) is entitled to reimbursement for expenses under the Standard State
Travel Regulations, as provided in the State budget.

(f) The Task Force shall study:

(1) the impact of student cell phone use in the classroom on student
learning;

(2) the impact of student cell phone use in the classroom on teacher
instruction;

(3) whether there are any benefits associated with student cell phone use
in the classroom; and

(4) any other matters relating to student cell phone use in the classroom
that the Task Force deems relevant.

(g) On or before December 1, 2018, the Task Force shall report its findings to the
Governor and, in accordance with § 2–1246 of the State Government Article, the General
Assembly.
SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2018. It shall remain effective for a period of 1 year and 1 month and, at the end of June 30, 2019, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.