

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 44
Ways and Means

(Delegate Jones, *et al.*)

Education - Waiver from Maintenance of Effort Requirement - Process and
Factors

This emergency bill specifies factors that the State Board of Education must consider when determining whether to issue a waiver of the county maintenance of effort (MOE) requirement for public schools and requires the State Superintendent of Schools to provide the State board with a preliminary analysis of waiver applications. In addition, the local share of the foundation program is excluded from the amount that may be waived by the State board. The bill also clarifies that the State board must hold a public hearing before acting on a waiver application and alters the deadlines for submission of waiver applications and State board decisions.

The bill applies to waiver applications for fiscal 2012 and future years.

Fiscal Summary

State Effect: Beginning in FY 2012, MOE waivers may be more frequent due to the expanded conditions that the State board must consider when deciding on waivers. Thus, general fund expenditure reductions due to MOE penalties may be less frequent; however, the State has never imposed a penalty for failure to meet MOE so any impact on State expenditures is unlikely. The Maryland State Department of Education (MSDE) can report on the implementation of the bill with existing personnel and resources.

Local Effect: Beginning in FY 2012, county (and Baltimore City) governments may receive MOE waivers more frequently, reducing county funding for local school systems but potentially avoiding reductions in State education aid due to MOE noncompliance penalties. Excluding the local share of the foundation program from an MOE waiver effectively caps the amount of funds that can be waived by the State board and establishes a floor on county funding for local school systems.

Small Business Effect: None.

Analysis

Bill Summary: When determining whether to grant an MOE waiver, the State Board of Education must consider the following factors:

- external environmental factors such as a loss of a major employer or industry affecting the county or a broad economic downturn affecting more than one county;
- the county's tax bases;
- the rate of inflation relative to enrollment growth in the county;
- the MOE requirement relative to the county's statutory ability to raise revenues;
- the county governing body's history of exceeding the MOE requirement;
- the existence of an agreement between the local governing body and the local board of education that a waiver should be granted; and
- significant reductions in State aid to the county and municipalities of the county for the fiscal year for which a waiver is applied.

A county governing body must apply to the State Board of Education for a waiver from the MOE requirement by the earlier of the seventh day following the end of the legislative regular session or May 1. The State board must then inform the governing body whether the waiver application has been granted or denied no later than 30 days after receipt of an application or by May 20, whichever is earlier.

MSDE must report on the implementation of the bill by December 1, 2013.

Current Law: According to regulation, the State Board of Education's decision on whether to approve or deny in whole or in part a waiver request must be based on a determination that the county's fiscal condition significantly impedes the county's ability to fund the MOE requirement. The State board may consider the following factors when making this determination:

- external environmental factors such as a loss of a major business or industry;
- the county's tax bases;
- the rate of inflation relative to growth of student population; and
- the MOE requirement relative to the county's statutory ability to raise revenues.

To receive a waiver from the MOE requirement, a county must apply to the State Board of Education by April 1, and the State board must make a determination by May 15. The State board may grant a waiver after a public hearing.

Counties that do not receive waivers from the State board and fail to make MOE are penalized by withholding increases in State education aid programs established under Section 5-202 of the Education Article: the State share of the foundation program, the geographic cost of education index, and the supplemental grant.

Background: To be eligible for increases in State education aid under Section 5-202 of the Education Article, a local jurisdiction must provide at least the greater of: (1) the amount of per pupil funding that was provided to the local school system in the previous fiscal year; and (2) the local share of the foundation program. Chapter 175 of 1996 established a waiver provision that allows counties to request from the State Board of Education a partial or temporary waiver from the MOE requirement. Until fiscal 2010, the waiver option had never been used, but in spring 2009, three counties (Montgomery, Prince George's, and Wicomico) applied for waivers for fiscal 2010. All three applications were denied by the State Board of Education.

The waiver denials drew the attention of the Joint Legislative Work Group to Study State, County, and Municipal Fiscal Relationships, a group that was appointed by legislative leadership in July 2009. In its December 2009 interim report, the workgroup recommended that adjustments be made to the MOE waiver process, including changing the county application and State Board of Education decision deadlines, codifying the four factors that the State board currently uses in deciding whether to grant a waiver, and adding several more factors to be considered by the State board. Legislation to codify the recommendations (SB 310/HB 304 of 2010) was considered by both houses but did not gain final approval on the last day of session.

Meanwhile, following the denial of their waiver requests, it was determined that Montgomery and Prince George's counties had not met their required fiscal 2010 MOE levels. Because of the way the State board calculated the penalty, Prince George's County was not subject to a reduction in State aid. Chapters 73 and 74 of 2010 then prohibited the imposition of MOE penalties for fiscal 2010, relieving Montgomery County of a \$24.3 million reduction in State aid.

In spring 2010, Montgomery and Wicomico counties applied for fiscal 2011 MOE waivers. Before the State Board of Education hearings on the waiver requests, the House and Senate chairs of the Joint Legislative Work Group to Study State, County, and Municipal Fiscal Relationships wrote a letter to the State board asking that its members consider the additional factors suggested by the workgroup in making their decisions on

waivers. The State board granted the waiver requests for both counties. The decisions allowed Montgomery County to waive \$138.8 million (8.9%) of its required appropriation and allowed Wicomico County to waive \$7.4 million (15.0%). MSDE advises that the other 22 jurisdictions have made MOE for fiscal 2011.

The Joint Legislative Work Group to Study State, County, and Municipal Fiscal Relationships met in December 2010 to review its 2009 recommendations. This bill represents the workgroup's decision to reintroduce an amended version of the MOE legislation that failed last year based on the final version of the bill agreed to in conference committee on Sine Die 2010.

Local Fiscal Effect: With the addition of factors that the State Board of Education must consider when deciding whether to waive MOE for applying jurisdictions, the bill is likely to make waivers from the MOE requirement more frequent. This may result in reductions to *county* (and Baltimore City) funding for public education, but it may also reduce the number of counties that are penalized through reductions in *State* funding for education.

The bill also establishes a floor for local appropriations to boards of education. In effect, counties would not be able to seek a waiver from the local share of the foundation program and could only pursue waivers from MOE amounts above the local share of the foundation. In practice, this provision, while setting an absolute floor on county education funding levels, is unlikely to have an operational effect since most counties are well above the required local share of the foundation. As an example, fiscal 2010 MOE appropriations are compared to the required local share of the foundation in **Exhibit 1**. As shown in the exhibit, county MOE appropriations collectively surpassed the local share of the foundation by \$2.5 billion. Under the bill, the local share of the foundation, which was \$2.7 billion in fiscal 2010, could not be waived by the State Board of Education.

Additional Information

Prior Introductions: SB 310/HB 304 of 2010 were very similar. A conference committee met to reconcile the differences between the two chambers' versions of the bills. The Senate voted favorably on the conference committee's amended version of SB 310, but the amended version of the bills never received a final vote in the House.

Cross File: SB 53 (Senator Kasemeyer, *et al.*) - Budget and Taxation.

Information Source(s): Baltimore City; Caroline, Calvert, and Montgomery counties; Maryland State Department of Education; Department of Legislative Services

Fiscal Note History: First Reader - January 31, 2011

ncs/rhh

Analysis by: Mark W. Collins

Direct Inquiries to:

(410) 946-5510

(301) 970-5510

Exhibit 1
Maintenance of Effort Requirements and Local Share of the Foundation Formula
Fiscal 2010

County	MOE Appropriations	Local Share of Foundation	Amount that Could Be Waived
Allegany	\$27,702,592	\$14,678,295	\$13,024,297
Anne Arundel	553,103,842	302,674,357	250,429,485
Baltimore City	199,427,631	139,971,125	59,456,506
Baltimore	629,418,307	335,127,718	294,290,589
Calvert	98,287,497	47,411,248	50,876,249
Caroline	12,145,724	10,626,441	1,519,283
Carroll	155,271,417	78,572,664	76,698,753
Cecil	68,368,269	39,270,445	29,097,824
Charles	145,091,628	67,333,294	77,758,334
Dorchester	17,034,817	11,557,179	5,477,638
Frederick	228,631,147	113,901,370	114,729,777
Garrett	22,610,922	14,276,274	8,334,648
Harford	208,250,169	103,553,483	104,696,686
Howard	450,473,111	181,904,427	268,568,684
Kent	16,648,957	10,195,946	6,453,011
Montgomery	1,529,565,696	686,579,502	842,986,194
Prince George's	538,104,085	318,101,897	220,002,188
Queen Anne's	47,595,619	29,201,053	18,394,566
St. Mary's	74,139,685	43,650,872	30,488,813
Somerset	8,589,510	5,852,321	2,737,189
Talbot	34,211,041	30,718,267	3,492,774
Washington	86,213,678	52,240,418	33,973,260
Wicomico	50,781,711	28,584,437	22,197,274
Worcester	71,954,064	60,510,680	11,443,384
Total	\$5,273,621,120	\$2,726,493,713	\$2,547,127,407

Source: Department of Legislative Services
