

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE

House Bill 65 (Delegate Vitale, *et al.*)  
Ways and Means

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Education - Maintenance of Effort - Lease Payment Exclusion

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This bill excludes lease payments made by a local board of education to a private entity holding title to school property from the State's public school maintenance of effort (MOE) requirement, beginning in fiscal 2016. The county government must identify a lease payment as being excluded from the MOE calculation at the time of the initial execution of the lease contract. The bill does not apply to any leases entered into before the effective date of the bill.

The bill takes effect July 1, 2015.

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Fiscal Summary

**State Effect:** None. State education aid expenditures are not affected.

**Local Effect:** County governments are relieved from the MOE requirement with respect to specified lease payments made by local school systems. To the extent local school systems engage in alternative financing methods for construction or renovation of public school buildings, county MOE payments may decrease minimally.

**Small Business Effect:** None.

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Analysis

**Current Law:** Chapters 306 and 307 of 2004, Public School Facilities Act, authorized a private entity to hold the title to property used for a particular public school or local school system if the private entity is contractually obligated to transfer the title to the appropriate local board of education on a specified date. The conveyance of title of school property to

a private entity for a specified term may not be construed to prohibit the allocation of construction funds to an approved school construction project under the Public School Construction Program. A local board of education may convey or dispose of surplus land in exchange for public school construction or development services.

### *Maintenance of Effort*

Under the MOE requirement, each county government (including Baltimore City) must provide on a per pupil basis at least as much funding for the local school board as was provided in the prior fiscal year. Statute exempts from the MOE calculation specified nonrecurring costs as approved by the Maryland State Department of Education (MSDE), the cost of any program that has been shifted from the local school board's operating budget to the county operating budget, and debt service payments for school construction. The Budget Reconciliation and Financing Acts of 2011 and 2012 (Chapter 397 of 2011 and Chapter 1 of the 2012 first special session) provided one-year exemptions from MOE for a county (including Baltimore City) that shifted recurring health care costs for current retirees to the local school board if those costs were reduced the following year. Chapter 647 of 2013 made this exemption permanent.

Chapter 6 of 2012 requires a county governing body to apply to the State Board of Education for a waiver from the State's MOE requirement if the county is unable to fund the full MOE amount. If a county does not receive a waiver from the State board, it must fund the full MOE amount or the State will intercept the county's local income tax revenues in the amount by which the county is below MOE and forward the funds to the local school board. Counties that receive waivers and are making above-average education effort may request "rebasement waivers" that allow limited decreases to their annual MOE amounts if they can demonstrate ongoing problems with meeting MOE.

**Local Fiscal Effect:** County governments are relieved from maintaining per pupil MOE funding from year to year with respect to lease payments for school facilities. This leasing arrangement is permitted under law to facilitate the use of alternative financing mechanisms to allow local school systems to contract with the private sector to construct or renovate public school buildings. About half of the counties provide more than the required MOE amount to their school systems; therefore, the bill will have a minimal impact on counties that are funding the required MOE amount to the extent local school systems enter into such lease agreements.

MSDE indicates that the lease payments excluded from MOE by the bill may be considered functionally equivalent to debt service (which is excluded under current law) in that such lease payments can serve as a financial instrument to obtain the construction of a school facility. MSDE advises that since fiscal 2006, all requested lease payment exclusions from MOE (which take the form of nonrecurring cost exclusions) have been approved by MSDE.

Assuming that this practice will continue under current law, the impact of the bill therefore may be limited to relief to counties from the procedural tasks of applying for such nonrecurring cost exclusions.

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### **Additional Information**

**Prior Introductions:** A similar bill, HB 349 of 2014, passed the House with amendments and received a hearing in the Senate Budget and Taxation Committee. Its cross file, SB 388, also received a hearing in the Senate Budget and Taxation Committee. No further action was taken on either bill.

**Cross File:** None.

**Information Source(s):** Carroll, Harford, and Montgomery counties; Maryland Association of Counties; Maryland State Department of Education; Department of Legislative Services

**Fiscal Note History:** First Reader - February 3, 2015  
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