

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 851 (Senator King, *et al.*)  
Budget and Taxation

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Education - Maintenance of Effort - Waiver of Penalty

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This bill waives the fiscal 2012 county maintenance of effort (MOE) penalty for public education, preventing imposition of the penalty in fiscal 2013.

The bill takes effect July 1, 2012.

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Fiscal Summary

**State Effect:** The bill eliminates a general fund expenditure reduction of \$30.5 million in FY 2013 by suspending the MOE penalty. Revenues are not affected.

**Local Effect:** Public school revenues from State aid in FY 2013 for Anne Arundel, Montgomery, and Queen Anne's counties are not reduced by \$3.9 million, \$26.2 million, and \$456,000 respectively, due to the waiver of the penalties for noncompliance with required FY 2012 MOE appropriation levels.

**Small Business Effect:** None.

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Analysis

**Current Law:** 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 system as was provided in the prior fiscal year. If a county does not comply with the MOE requirement in a given year, then any increase in State funding under Section 5-202 of the Education Article (the foundation program, the geographic cost of education index, and the supplemental grants) is withheld in the second following year.

A county may apply to the State Board of Education for a one-year waiver of the MOE requirement. A waiver is granted if the State board determines through the evaluation of several factors that the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement.

A county governing body has the authority to reduce funding for education below the full MOE amount but is prohibited from reducing county funding below the local share of the foundation program for public schools. A county's failure to provide at least the full MOE amount, however, is still subject to penalty (any increase in the foundation program) unless the county receives a waiver from the State Board of Education.

**Background:** Chapter 175 of 1996 added a waiver provision that allows counties to request from the State Board of Education a partial or temporary waiver from the MOE requirement. The waiver provision was first invoked in spring 2009, when three county governments (Montgomery, Prince George's, and Wicomico) requested a waiver from MOE for fiscal 2010. The State board denied all three requests primarily because it determined that the counties did not experience a fiscal downturn that was worse than the other 21 counties. In the subsequent year, Montgomery and Wicomico counties again requested waivers, this time from their fiscal 2011 MOE amounts; the waiver requests were granted for fiscal 2011.

In December 2011, the Maryland State Department of Education (MSDE) notified seven counties (Anne Arundel, Dorchester, Kent, Montgomery, Queen Anne's, Talbot, and Wicomico) of their noncompliance with MOE for fiscal 2012. **Exhibit 1** shows the variance between required county appropriations to local school boards and the MOE certified amounts for fiscal 2012 as determined by MSDE. Anne Arundel County formally disputes the finding and has requested an appeal hearing before the State Board of Education. This hearing has not yet been scheduled. Six of the seven counties (all but Dorchester County) initially either requested MOE waivers, or indicated their intention to do so; however, all waiver requests for fiscal 2012 were withdrawn. Among the counties that missed MOE, only Anne Arundel, Montgomery, and Queen Anne's received increases under the Section 5-202 aid programs for fiscal 2012; therefore, these three counties are subject to MOE penalties in fiscal 2013.

By not applying for MOE waivers (or withdrawing them), counties that do not meet MOE "rebase" their required MOE amounts at lower levels for future fiscal years. The MOE law states that when a county is granted a waiver by the State board, the following year's MOE amount is the higher of the two prior years, thus preventing rebasing. However, the law does not contemplate what happens when a county does not ask for or does not receive a waiver, and then fails to meet the MOE requirement. In such cases the county must provide at least as much per pupil funding as it provided in the previous year. This allows a county to lower its future MOE obligations by reducing

its support for the local school system below the MOE amount without seeking a waiver. The minimum required fiscal 2013 MOE appropriations for the seven counties that did not meet MOE in fiscal 2012, therefore, have been reduced to the per pupil amounts the counties actually provided in fiscal 2012.

**State Fiscal Effect:** For fiscal 2012, Anne Arundel County faces a \$3.9 million MOE penalty, Montgomery County faces a \$26.2 million penalty, and Queen Anne's County faces a \$456,000 penalty. The bill, therefore, eliminates \$30.5 million in fiscal 2013 general fund expenditure reductions. The proposed fiscal 2013 State budget includes full funding for all local school systems, so the bill does not require any spending beyond the amounts currently included in the State budget.

**Local Fiscal Effect:** MSDE has certified that Anne Arundel, Montgomery, and Queen Anne's counties have failed to meet MOE for fiscal 2012; thus, under current law, these counties are ineligible to receive their respective \$3.9 million, \$26.2 million, and \$456,000 increases in State aid from fiscal 2012. The bill prevents the assessment of the penalty in fiscal 2013.

**Exhibit 1**  
**Required and Certified MOE Amounts**  
**Fiscal 2012**

| <b>County</b>   | <b>Required<br/>Appropriation</b> | <b>MOE Certified<br/>Appropriation</b> | <b>Difference</b>      |
|-----------------|-----------------------------------|--|------------------------|
| Allegany        | \$27,665,707                      | \$28,240,000                           | \$574,293              |
| Anne Arundel    | 568,068,888                       | 556,105,600                            | (11,963,288)           |
| Baltimore City  | 233,023,752                       | 242,110,406                            | 9,086,654              |
| Baltimore       | 666,906,580                       | 666,948,360                            | 41,780                 |
| Calvert         | 103,423,190                       | 109,059,947                            | 5,636,757              |
| Caroline        | 12,295,857                        | 12,299,444                             | 3,587                  |
| Carroll         | 162,386,887                       | 162,654,400                            | 267,513                |
| Cecil           | 67,156,014                        | 67,156,014                             | -                      |
| Charles         | 145,620,613                       | 145,620,700                            | 87                     |
| Dorchester      | 17,231,888                        | 16,481,888                             | (750,000)              |
| Frederick       | 220,424,676                       | 220,790,370                            | 365,694                |
| Garrett         | 22,612,250                        | 24,859,000                             | 2,246,750              |
| Harford         | 213,437,223                       | 214,291,627                            | 854,404                |
| Howard          | 460,749,661                       | 460,749,661                            | -                      |
| Kent            | 16,946,646                        | 16,128,112                             | (818,534)              |
| Montgomery      | 1,497,275,718                     | 1,370,101,480                          | (127,174,238)          |
| Prince George's | 530,605,290                       | 530,605,290                            | -                      |
| Queen Anne's    | 48,028,032                        | 43,528,032                             | (4,500,000)            |
| St. Mary's      | 76,289,227                        | 77,045,860                             | 756,633                |
| Somerset        | 8,618,727                         | 8,624,324                              | 5,597                  |
| Talbot          | 34,203,006                        | 32,403,006                             | (1,800,000)            |
| Washington      | 89,505,898                        | 89,518,310                             | 12,412                 |
| Wicomico        | 50,126,691                        | 36,196,892                             | (13,929,799)           |
| Worcester       | 71,928,439                        | 71,939,828                             | 11,389                 |
| <b>Total</b>    | <b>\$5,344,530,860</b>            | <b>\$5,203,458,551</b>                 | <b>(\$141,072,309)</b> |

Source: Maryland State Department of Education

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Department of Education, Department of Legislative Services

**Fiscal Note History:** First Reader - February 20, 2012  
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