

**Department of Legislative Services**  
 Maryland General Assembly  
 2012 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 848

(Senator King)

Budget and Taxation

Ways and Means and Appropriations

**Education - Maintenance of Effort**

This emergency bill requires a county governing body to apply to the State Board of Education for a waiver from the State’s public school maintenance of effort (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. Factors that the State board must consider in reviewing waiver requests are specified. Counties that receive waivers and are making above-average education effort will be able to request “rebasement waivers” that allow limited decreases to their annual MOE amounts if they can demonstrate ongoing problems with meeting MOE. Counties are given the authority to exceed local tax limitations to fund education, and counties with below-average effort will have to increase their MOE appropriations beginning in fiscal 2015.

Penalties for noncompliance with MOE in fiscal 2012 are waived, and per pupil required fiscal 2013 MOE amounts for counties that did not meet MOE in fiscal 2012 return to the required fiscal 2012 amounts except in counties with 3.2% local income tax rates.

**Fiscal Summary**

**State Effect:** The bill eliminates at least \$26.7 million in general fund expenditure reductions for FY 2013 due to the waiver of MOE penalties. General fund expenditures increase by an estimated \$4.6 million in FY 2014 due to additional State education aid under the guaranteed tax base (GTB) program. Future years reflect the calculation of GTB aid with higher required local appropriations. The State Board of Education may need additional resources during April through July each year to handle the additional administrative responsibilities. Revenues are not affected.

(\$ in millions)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	4.6	5.2	5.6	5.9
Net Effect	\$0	(\$4.6)	(\$5.2)	(\$5.6)	(\$5.9)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** FY 2013 MOE penalties for Montgomery, Queen Anne’s, and possibly Anne Arundel counties are eliminated. Beginning in FY 2013, county governments will be required to fund MOE amounts unless they get waivers from the State Board of Education. FY 2013 required MOE amounts will return to the required FY 2012 amounts for four or five counties, increasing minimum school appropriations. State aid for Dorchester and Wicomico counties may increase by a combined \$4.6 million in FY 2014. Counties are authorized to exceed tax limitations to provide support for local school boards and may qualify to have MOE amounts reduced. Beginning in FY 2015, MOE amounts for some counties will increase. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** None.

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## Analysis

### Bill Summary:

#### *Maintenance of Effort Waiver Process*

When determining whether to issue a waiver of MOE, the State Board of Education must consider the following factors:

- external environmental factors affecting the county or a broad economic downturn affecting more than one county;
- the county’s tax base;
- the rate of inflation relative to growth in student enrollment in the county;
- the MOE requirement in relation to the county’s statutory ability to raise revenues;
- the county’s history of exceeding its required MOE amount;
- agreement between the county and its local school board that a waiver should be granted;
- significant reductions in State aid to the county and its municipalities;
- the number of waivers the county has received in the last five years; and
- the history of compensation adjustments for school board employees and county employees.

A county must apply for a waiver no later than the seventh day following the end of the legislative session or by April 20, whichever is earlier. The State Superintendent of Schools must provide a preliminary assessment of the waiver request, and the State board must hold a public hearing before acting on a request. The State board must inform a county of its decision within 30 days after receipt of the application or by May 20, whichever is earlier.

### *Rebasing Waivers*

A county that receives an MOE waiver and that has a sufficiently high level of “education effort” (*i.e.*, a county’s appropriation to the local school board divided by its local wealth) may request a rebasing waiver from the State board that will allow it to reduce its required MOE level. The State board may grant multi-year rebasing waivers that encompass up to three years.

To qualify for a rebasing waiver, a county’s required MOE amount must be above the five-year moving average of statewide education effort times the county’s wealth. In deciding whether to grant a rebasing waiver, the State board must consider:

- whether the factors used to grant the MOE waiver will affect the county’s ongoing ability to meet MOE;
- whether the county is at its maximum taxing authority;
- whether the county’s education appropriation is commensurate with its wealth;
- whether the county’s history of exceeding MOE has resulted in an unsustainable level of funding; and
- whether the county has received a rebasing waiver in the last five years.

If the State board grants a rebasing waiver, the rebased amount in any year may not be less than the greater of (1) the five-year statewide moving average of education effort times the county’s wealth; and (2) a percentage of the required MOE amount (97%, 98%, or 99%) that is based on the county’s five-year moving average education effort in relation to the statewide average over the same five-year span. For example, a county with a five-year average education effort that exceeds 120% of the statewide average may reduce its required school appropriation by up to 3% with the approval of the State board.

### *Waivers for County and School Board Reductions in Recurring Costs*

The State board is required to grant an MOE waiver when a county and the local school board have agreed to reduce recurring costs and have agreed on the amount of the waiver. The agreed upon waiver amount may be less than the total amount of savings generated through the reduction in recurring costs but may not exceed the savings. The waiver reduces the county's required MOE amount for the following fiscal year.

A county seeking a waiver for reduced recurring costs must apply for a waiver through the normal process, including an initial review by the State Superintendent and a public hearing before the State board, but the review is not subject to consideration of the factors required for a normal MOE waiver.

### *Local Share of the Foundation Amount*

The bill makes clear that a county cannot request or receive a waiver from the local share of the foundation program. A county that does not fund the local share of the foundation program is not eligible to receive the State share of the foundation program. Instead, county income tax revenues will be intercepted in an amount necessary to pay the full MOE amount *and* the State share of the foundation amount, and the funds will be distributed directly to the county's school board.

### *Annual Maintenance of Effort Calculations*

Unless a county receives a rebasing waiver or a waiver for reductions in recurring costs, the county's MOE amount for the following year returns to the per pupil MOE amount the county provided in the most recent year in which it met MOE. For counties that did not meet MOE in fiscal 2012, required per pupil MOE amounts for fiscal 2013 equal required fiscal 2012 per pupil amounts; however, counties with 3.2% local income tax rates are allowed to rebase their MOE amounts at the amounts that were actually provided in fiscal 2012. In addition, debt service is specifically excluded from the annual MOE calculation.

Beginning in fiscal 2015, counties that are below the statewide five-year moving average education effort level must increase their annual per pupil MOE amounts by the lesser of (1) the increase in local wealth per pupil; (2) the statewide average increase in local wealth per pupil; or (3) 2.5%.

No later than seven days after the approval of its budget or by June 30 of each year, whichever is earlier, each county must submit its budget to the State Superintendent. The State Superintendent must certify whether a county has met the MOE requirement within 15 days after receiving the county budget and must notify the county and school board of the certification.

The Maryland State Department of Education (MSDE) must consult with the Department of Legislative Services (DLS) and the Department of Budget and Management (DBM) in making all MOE calculations. By December 31 of each year, MSDE must report on all waiver requests, MOE calculations, MOE certifications, and any other information relating to county waiver requests and MOE decisions.

#### *Authority to Exceed Tax Limitations*

The bill gives counties the authority to exceed county charter limitations on local property taxes for the purpose of funding the approved budget of the local school board, beginning in fiscal 2013. If a local property tax rate is set above the limit, the county governing body may not reduce funding provided to the school board from any other local source and must appropriate to the school board all of the revenues generated from any increase beyond the existing limit. Any use of this authority must be reported annually to the Governor and the General Assembly.

**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 board as was provided in the prior fiscal year. A county may apply to the State board 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 MOE requirement. The Maryland Code of Regulations (COMAR 13A.02.05.04) specifies four factors that the State board may consider in making this determination:

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

The State board issued a decision in May 2011 that a county is not required to request a waiver if it is not planning to meet MOE. The decision also noted that, although MOE is required, a county governing body has the authority to reduce funding for education below the full MOE amount. A county's failure to provide the full MOE amount is subject to penalty unless the county has received a waiver from the State board. The penalty is assessed by withholding any increase in State funding for the local school board under Section 5-202 of the Education Article (the foundation program, the geographic cost of education index, and the supplemental grants) in the second following year. A county may not reduce funding for public schools below the local share of the foundation program.

If the State board grants a waiver from the MOE requirement, the per pupil MOE amount in the year after the waiver is the higher of the per pupil appropriation in the waiver year or the per pupil appropriation in the year before the county received the waiver. If a county funds the local school board below the required MOE amount and does not request or does not receive a waiver, the county's MOE amount for the subsequent year is based on the reduced funding level being provided in the current year.

The county charters in Anne Arundel, Montgomery, Prince George's, Talbot, and Wicomico counties place limits on county property tax rates or revenues. Montgomery County's charter limitation can be overridden by a unanimous vote of the county council; the other four counties with property tax caps do not have this express authority.

### **Background:**

#### *Maintenance of Effort Waiver Process*

Chapter 175 of 1996 established an MOE waiver process that allows a county to request from the State Board of Education a partial or temporary waiver from the MOE requirement. The waiver provision was first used 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 downturn experienced by the other 21 counties. In the subsequent year, Montgomery and Wicomico counties again requested waivers, this time from their fiscal 2011 MOE amounts; the fiscal 2011 waiver requests were granted.

In December 2011, MSDE notified seven counties (Anne Arundel, Dorchester, Kent, Montgomery, Queen Anne's, Talbot, and Wicomico) of their noncompliance with MOE for fiscal 2012. For the seven counties that did not meet MOE in MSDE's preliminary evaluation, **Exhibit 1** shows the difference between required fiscal 2012 county school appropriations and the actual amounts appropriated. Anne Arundel County formally disputed the finding and requested an appeal hearing before the State Board of Education.

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**Exhibit 1**  
**Counties That Did Not Fully Fund MOE in Fiscal 2012**  
**(\$ in Millions)**

<b><u>County</u></b>	<b><u>Required MOE Amount</u></b>	<b><u>Preliminary Certification of Appropriation</u></b>	<b><u>Difference</u></b>	<b><u>Penalty</u></b>
Anne Arundel*	\$568.1	\$556.1	(\$12.0)	\$3.9
Dorchester	17.2	16.5	(0.8)	0.0
Kent	16.9	16.1	(0.8)	0.0
Montgomery	1,497.3	1,370.1	(127.2)	26.2
Queen Anne's	48.0	43.5	(4.5)	0.5
Talbot	34.2	32.4	(1.8)	0.0
Wicomico	50.1	36.2	(13.9)	0.0

\*Anne Arundel County has challenged the initial finding of noncompliance.

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Among the counties that have acknowledged that they missed MOE in fiscal 2012, only Montgomery and Queen Anne's counties received increases under Section 5-202 aid programs for fiscal 2012. These two counties, therefore, are subject to MOE penalties of \$26.2 million and \$456,000, respectively, in fiscal 2013. If the State board finds that Anne Arundel County's fiscal 2012 school appropriation is not in compliance with the MOE law, the county will be subject to a penalty of \$3.9 million. The State has never actually imposed an MOE penalty.

By not applying for MOE waivers, counties that do not meet MOE "rebase" their required MOE amounts at lower levels for the subsequent fiscal year. 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 immediate 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 board below the MOE amount without seeking a waiver. Under current law, the minimum required fiscal 2013 MOE appropriations for the six (or seven) counties that did not meet MOE in fiscal 2012 have been reduced to equal the per pupil amounts the counties actually provided in fiscal 2012.

### *Local Education Effort*

Local education effort measures the extent to which counties use their local tax bases to support education. The metric is used in the bill to differentiate MOE processes and outcomes. Counties with greater education effort levels have more flexibility to reduce future MOE amounts, and counties with lower effort levels will be required to increase MOE appropriations in future years.

The local contribution rate, which is used to calculate the local share of the foundation program, represents a minimum allowable local education effort for all the counties. The fiscal 2012 local contribution rate is 0.66% of local wealth, and the school appropriations from all counties exceed this minimum. However, the extent to which the minimum level of funding has been exceeded varies considerably. **Exhibit 2** shows local education effort levels for the counties from fiscal 2007 to 2012. In fiscal 2012, local education effort levels range from 0.68% in Talbot County to 1.71% in Howard County.

**Exhibit 2**  
**Fiscal 2007 to 2012 Local Education Effort**

<b>County</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>Five-year Averages</b>	
							<b>FY 07-11</b>	<b>FY 08-12</b>
Allegany	1.48%	1.47%	1.36%	1.27%	1.19%	1.14%	1.35%	1.29%
Anne Arundel	1.51%	1.41%	1.35%	1.21%	1.19%	1.20%	1.33%	1.27%
Baltimore City	1.34%	1.25%	1.11%	0.99%	1.05%	1.06%	1.15%	1.09%
Baltimore	1.61%	1.50%	1.42%	1.32%	1.27%	1.30%	1.42%	1.36%
Calvert	1.71%	1.62%	1.51%	1.44%	1.39%	1.42%	1.54%	1.48%
Caroline	1.09%	1.00%	0.88%	0.76%	0.73%	0.73%	0.89%	0.82%
Carroll	1.69%	1.56%	1.52%	1.41%	1.33%	1.38%	1.50%	1.44%
Cecil	1.55%	1.37%	1.32%	1.15%	1.12%	1.11%	1.30%	1.22%
Charles	1.79%	1.73%	1.61%	1.43%	1.36%	1.41%	1.58%	1.51%
Dorchester	1.30%	1.23%	1.13%	0.97%	0.95%	0.91%	1.12%	1.04%
Frederick	1.71%	1.69%	1.53%	1.33%	1.24%	1.32%	1.50%	1.42%
Garrett	1.32%	1.28%	1.19%	1.07%	1.02%	1.04%	1.18%	1.12%
Harford	1.66%	1.58%	1.50%	1.35%	1.30%	1.31%	1.48%	1.41%
Howard	2.00%	1.94%	1.84%	1.66%	1.65%	1.71%	1.82%	1.76%
Kent	1.41%	1.37%	1.26%	1.12%	1.06%	1.01%	1.24%	1.16%
Montgomery	1.84%	1.72%	1.60%	1.40%	1.38%	1.40%	1.59%	1.50%
Prince George's	1.81%	1.68%	1.47%	1.24%	1.15%	1.18%	1.47%	1.34%
Queen Anne's	1.33%	1.27%	1.19%	1.09%	1.04%	0.98%	1.19%	1.12%
St. Mary's	1.53%	1.52%	1.40%	1.21%	1.07%	1.05%	1.35%	1.25%
Somerset	1.55%	1.31%	1.15%	0.99%	0.95%	0.96%	1.19%	1.07%
Talbot	0.94%	0.89%	0.84%	0.74%	0.70%	0.68%	0.82%	0.77%
Washington	1.49%	1.38%	1.24%	1.13%	1.08%	1.15%	1.27%	1.20%
Wicomico	1.48%	1.38%	1.27%	1.17%	0.98%	0.84%	1.26%	1.13%
Worcester	1.08%	0.98%	0.92%	0.79%	0.83%	0.89%	0.92%	0.88%
<b>Simple State Avg</b>	<b>1.51%</b>	<b>1.42%</b>	<b>1.32%</b>	<b>1.18%</b>	<b>1.13%</b>	<b>1.13%</b>	<b>1.31%</b>	<b>1.24%</b>

## **State Fiscal Effect:**

### *Maintenance of Effort Penalties*

The bill eliminates fiscal 2013 penalties for MOE noncompliance for Montgomery and Queen Anne's counties. Imposing the penalties would reduce fiscal 2013 general fund expenditures for education aid, so the elimination of the penalty essentially removes a potential reduction in spending of \$26.7 million. (If Anne Arundel County is eventually found to be out of compliance with the MOE requirements, the bill will add another \$3.9 million in foregone general fund savings.) The elimination of the penalty, however, will not require the appropriation of additional State funds since full funding for State education aid has been included in the proposed fiscal 2013 State budget.

The bill's changes to the MOE penalty may also have an impact on future State spending. Under current law, any penalty imposed on a county for MOE noncompliance results in a decrease in general fund expenditures (State education aid is withheld). The bill eliminates this potential benefit to the State in the future except in extreme cases where a county does not fund the local share of the foundation and is forced to pay the State *and* local shares through an intercept of its income tax revenues. Regardless, an MOE penalty has never been assessed, so the change is not expected to impact State finances.

### *Guaranteed Tax Base State Aid*

The bill sets higher required MOE amounts for fiscal 2013 for some of the counties that did not meet MOE in fiscal 2012. The State's guaranteed tax base (GTB) program provides additional State education aid to school systems in low-wealth jurisdictions based in part on their local school appropriations. Of the counties that did not meet MOE in fiscal 2012, only Dorchester and Wicomico counties qualify for State aid through the GTB program. Assuming both counties meet the higher fiscal 2013 funding levels set by the bill, State aid through the GTB program will increase by \$4.6 million, including \$9,000 for Dorchester County and \$4.6 million for Wicomico County. The anticipated increases, assuming the counties continue to meet the minimum funding levels, grow to an estimated \$5.9 million by fiscal 2017.

### *Additional Administrative Costs*

The bill adds significant complexity to the MOE process and is likely to result in many more waiver requests, especially in difficult economic times. As such, the State board will need additional contractual personnel to help review materials, interpret the new law, calculate any applicable rebasing amounts, write State board decisions, and review county budgets for MOE compliance. The bill requires DLS and DBM to be involved in these processes, which should help make the additional workload more manageable.

Still, additional general fund contractual costs are expected for MSDE and the State board in years when one or more counties apply for MOE waivers.

**Local Fiscal Effect:** The bill's main fiscal components, all of which impact county governments and local school boards, are summarized below.

- Counties must meet the MOE requirement unless they get waivers from the State board. If a county does not fully fund MOE and has not received a waiver, the county's income tax revenues will be intercepted in an amount necessary to meet MOE and sent to the school board.
- Low-effort counties will be able to request one-year MOE waivers but will not be able to rebase their required MOE levels (except through waivers for reductions to recurring costs).
- With the approval of the State board, high-effort counties will be able to reduce their required MOE levels through the use of rebasing waivers.
- When a county qualifies for a rebasing waiver, there is a floor on the rebased amount. No county may rebase at a level that is below the average State effort level for the previous five years multiplied by the county's wealth.
- For a county where the rebasing floor would represent a significant decrease from the required amount, a backstop is also established to limit annual decreases from required amounts to 3% for a very high effort county, 2% for a high effort county, or 1% for a moderately high effort county.
- Counties will have an incentive to work with local school boards to find efficiencies that will reduce recurring costs. Counties will benefit from the ability to reduce their required MOE amounts by some portion of the savings, an option that is not available under current law.
- Beginning in fiscal 2015, a county with below-average effort will be required to increase its per pupil MOE amount in accordance with increases in local or State wealth per pupil. Annual increases will be capped at 2.5%.
- Counties will have the ability to exceed charter property tax caps to fund education.

The combined impact of these provisions on county decisions about annual school appropriations is difficult to assess. Counties may be more apt to exceed required MOE amounts in good economic times if they know they will have an opportunity to reduce these amounts in more challenging times. Alternatively, counties may see the possibility of local income tax revenues being withheld as an incentive to keep MOE amounts at levels that are easily sustainable, resulting in very limited county funding increases beyond the minimum required levels.

*Fiscal 2013 Required Maintenance of Effort Appropriations*

Two of the six (or seven) counties that did not meet MOE in fiscal 2012, Montgomery and Queen Anne’s, are allowed to rebase their fiscal 2013 school appropriations at the amounts they actually provided in fiscal 2012 because they have 3.2% local income tax rates. The other four (or five) counties that did not meet MOE in fiscal 2012 will have their required fiscal 2013 per pupil MOE amounts return to the *required* fiscal 2012 levels. The new calculations will result in higher required appropriations for these five counties. Furthermore, four of the counties will not be eligible to apply for rebasing waivers in fiscal 2013 due to below-average local effort. It is anticipated that Anne Arundel County will be eligible for a rebasing waiver of up to 1% in fiscal 2013, which would still result in a required school appropriation that is \$6.3 million higher than the amount that would be required under current law.

Estimated increases in the required fiscal 2013 MOE amounts for the four (or five) counties that did not meet MOE in fiscal 2012 and have less than 3.2% local income tax rates are shown in **Exhibit 3**. Assuming a 1% rebasing waiver is granted to Anne Arundel County, the increases above the current law requirements sum to \$23.7 million in additional county funding for local school boards.

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**Exhibit 3**  
**Estimated Increases in Required Fiscal 2013 MOE Appropriations**  
**For Counties that Did Not Fully Fund MOE in Fiscal 2012**  
**(\$ in Thousands)**

<u>County</u>	<u>Current Law</u>	<u>Bill</u>	<u>With Applicable Waivers</u>	<u>Difference Assuming Waivers</u>
Anne Arundel*	\$561,017	\$573,086	\$567,355	\$6,338
Dorchester	16,554	17,307	17,307	753
Kent	16,176	16,997	16,997	821
Talbot	32,525	34,332	34,332	1,807
Wicomico	36,403	50,412	50,412	14,009
<b>State Total</b>				<b>\$23,729</b>

\*Anne Arundel County has challenged the initial finding of MOE noncompliance.

Note: MSDE will make the actual calculations of required MOE amounts. The amounts shown in the chart are estimates. The table assumes that, based on its education effort, Anne Arundel County will qualify for a 1% waiver in fiscal 2013. Due to low local education effort levels, the other counties do not qualify for rebasing waivers.

Like under current law, all counties, including those that did not meet MOE in fiscal 2012, will be eligible to apply for waivers of their required fiscal 2013 MOE amounts, and the State board will have to consider the expanded list of factors established in the bill in determining whether to grant MOE waivers. Additionally, an estimated nine counties (Anne Arundel as described above and Baltimore, Calvert, Carroll, Charles, Frederick, Harford, Howard, and Montgomery counties) may be eligible for rebasing waivers in fiscal 2013 that will allow the counties to reduce their minimum required school appropriations by 1% to 3%, based on the local education effort level in each county.

### *State Education Aid*

The bill ensures that local school systems in Montgomery and Queen Anne's (and maybe Anne Arundel) counties will not be subject to reductions in fiscal 2013 State education aid due to MOE noncompliance in fiscal 2012.

In addition, the bill will impact future State aid provided through the GTB program. With higher required school appropriations for Dorchester and Wicomico counties in fiscal 2013, the State will provide additional GTB aid to the local school systems in fiscal 2014 and future years. Because of the large increase in county funding required for Wicomico County, its fiscal 2014 GTB aid will increase by an estimated \$4.6 million. In Dorchester County, the additional fiscal 2014 aid will be approximately \$9,000. Assuming Dorchester and Wicomico counties continue to meet the higher MOE amounts set by the bill in future years, State aid from the GTB program will likewise continue at higher levels.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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Analysis by: Mark W. Collins

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510