

Education

State Board of Education Denies Requests for Maintenance of Effort Waivers

A 1996 law that allows counties to apply to the State Board of Education for temporary waivers from their local school system funding responsibilities was tested for the first time in spring 2009. Three counties requested partial waivers that would have reduced local funding for education by more than \$100 million, but the State board denied all three requests. The denials could mean reductions in fiscal 2010 State aid to Montgomery and Prince George's counties, the two largest school systems in the State.

Maintenance of Effort History

The maintenance of effort (MOE) requirement was established in 1984 to ensure that the cost of education was shared by the State and the counties and to ensure predictability and stability of funding for local boards of education. The Governor and the General Assembly have provided waivers for the counties and Baltimore City two times since the MOE requirement was established – in 1992 and 1993 – in recognition of the severe economic downturn that occurred in the early 1990s. Chapter 72 of 1996 then waived the requirement for just Wicomico County in fiscal 1996. Also in 1996, the process for requesting a waiver from MOE was established in law by Chapter 175. Regulations governing the waiver process were adopted in 1997, but no waivers were requested until 2009.

The MOE requirement has benefitted local school systems. Since fiscal 2003, even while State support for education has increased significantly, nearly every county has exceeded its MOE requirement each year, with cumulative increases over mandated MOE levels amounting to \$1.3 billion from fiscal 2003 to 2009.

Maintenance of Effort Waiver Process

Maryland law requires a county to appropriate local funds for the local school system operating budget in an amount that is not less than the per pupil amount provided in the prior year adjusted for enrollment. Counties must satisfy this requirement to receive any increase in the State share of the foundation funding, including the geographic cost of education index and supplemental grants. However, a county may request that the State Board of Education grant a temporary waiver from this requirement if the “county’s fiscal condition significantly impedes the county’s ability to fund” MOE. In spring 2009, eight counties requested a waiver of the MOE requirement for the fiscal 2010 operating budget in spring 2009. However, prior to the required public hearing, all but three counties – Montgomery, Prince George’s, and Wicomico – withdrew their requests.

The regulations established by the State board for MOE waivers require applicants to provide information regarding the financial situation of the county including the county's required appropriation under MOE and the proposed appropriation for the school operating budget; the county's projected fiscal condition, including revenue from taxes and a projected expenditure plan; and whether the county has statutory prohibitions against raising revenues. After a public hearing, the State board determines whether to grant the waiver request. In order to get a waiver, a county must show by a preponderance of evidence that the "county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement." Regulations allow the board to consider the following factors when 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 the MOE requirement relative to the county's statutory ability to raise revenues. A county may appeal the State board's decision to the circuit court.

Fiscal 2010 Waiver Requests Denied by State Board

The three counties that proceeded with the waiver process requested waivers of about 4% to 5% of the MOE requirement. The following table provides the details.

<u>County</u>	<u>MOE Requirement</u>	<u>Waiver Amount Requested</u>	<u>% of MOE</u>
Montgomery	\$1.5 billion	\$79.5 million	5.20%
Prince George's	\$538.2 million	\$23.6 million	4.39%
Wicomico	\$50.8 million	\$2.0 million	3.94%

The State board determined that, for all three counties, the burden of proof was not met and denied the requests for waivers. The State board interpreted "external environmental factors" to mean an extraordinary event that is unique to the county and not a broad economic downturn. The board found that none of the counties showed evidence of this, but rather only showed a generalized downturn in the economy that was experienced by all counties. The State board also determined that, although the counties may be generating less revenue, they had not experienced complete or significant losses of their tax bases. The State board gave little weight to any locally imposed prohibitions on raising revenues but did acknowledge that the counties were limited by State law to an income tax rate of 3.2%, a rate each of the counties was either at or near. Finally, the State board noted that the conditional support of the Montgomery County Board of Education for the county's waiver request was not a determinative factor because State law requires the local government to levy taxes to support the minimum requirement for school funding.

Status of Fiscal 2010 Maintenance of Effort

Prince George's County filed an appeal with the Circuit Court for Prince George's County to overturn the State board's decision. The county's board of education has filed a motion to dismiss, which will be ruled on by December 18. If the motion to dismiss is denied, then oral

arguments on the case will take place June 30, 2010, with the court's decision expected one month later.

The Maryland State Department of Education (MSDE) must certify that a county has met its MOE requirements before the county receives the final payment of State funds in the later part of the fiscal year. Typically, the certification process begins in January. After the State board denied the MOE requests, each county formulated its budget hoping to meet the MOE requirement and avoid reductions in State education aid. Montgomery and Prince George's counties planned to meet MOE by restricting portions of the funds provided to the local school systems and requiring the restricted funds to be used to repay the county for debt service on school facilities. Wicomico County's plan was to pay for debt service from the local school board's school construction fund, which had accumulated surplus funds from prior years. An opinion of the Attorney General was requested to evaluate whether these plans were consistent with law. The Attorney General determined that Wicomico County's plan was permissible but the plans from Montgomery and Prince George's counties were not. The rejection of the method used by Montgomery and Prince George's counties was based on the provision of State law that prohibits the shifting of funds between the school system and the county to "artificially satisfy" the MOE requirement. As a result of the opinion, MSDE may be required to reduce State aid to the local school boards for Montgomery and Prince George's counties unless other remedies are approved by either the county governments or the Governor and the General Assembly before the end of the fiscal year.

Options for Future Waivers

Now that the waiver process has been tested, further refinement of the law and regulations for the process may be needed to ensure that the process established more than 10 years ago works as intended. During the fiscal crisis of the early 1990s, before a waiver process was authorized, the General Assembly provided waivers to all counties in response to significant reductions in local aid. A similar approach could be used as needed in the years ahead by tying local MOE relief to State budget decisions about local aid. If desired, some level of required MOE could be retained to ensure that school systems are not forced to absorb excessive reductions. This could be implemented by allowing counties to reduce their MOE requirements by a set percentage of the total requirement or by permitting counties to return to the required MOE levels from a selected prior fiscal year. The General Assembly could also alter the MOE waiver law to further clarify what factors should be considered, and when waivers should be granted, by the State board. For example, county funding above the required MOE level for one or more years may be a factor that should be considered. Another change could limit the exposure of the local school systems by penalizing counties, rather than school systems, when counties are unable to meet MOE. Currently, a local school system loses local and State funding when the county government does not meet MOE. With the potential for continuing State and local fiscal stress in the coming years, there will likely be some pressure to review the current MOE requirement and the process for obtaining MOE waivers.