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# **Maintenance of Effort: Waivers and Penalty Process, Local Effort, and Escalator**

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**Presentation to The Blueprint for Maryland's Future Funding  
Formula Workgroup**

**Department of Legislative Services  
Office of Policy Analysis  
Annapolis, Maryland**

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# Presentation Overview

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- Statewide Maintenance of Effort (MOE) Requirement
- History Leading to Chapter 6 of 2012
- Chapter 6 Provisions
  - Waiver Process
  - Penalty
  - Calculation of MOE Amounts and Escalators

# Primary and Secondary Education MOE Requirement

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- Under the MOE requirement, each county government (including Baltimore City) must provide at least:
  - The local share of the foundation program;  
*and*
  - On a per pupil basis, as much funding for the local school board as was provided in the prior fiscal year

# Waiver History Before 2012 Law

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- Chapter 175 of 1996 established a process by which counties could apply to the State Board of Education for a one-year waiver of the MOE requirement if the county's fiscal condition significantly impeded its ability to fund the full MOE requirement
- In anticipation of the first-ever waiver requests, in the Budget Reconciliation and Financing Act of 2009, the General Assembly altered the waiver process by specifying that the appropriation for the year following a year for which a waiver is granted must be calculated using the greatest per pupil appropriation of the two prior years
- The waiver provision was first tested in spring 2009 when three counties (Montgomery, Prince George's, and Wicomico) applied for waivers from the fiscal 2010 MOE requirement. All three waiver requests were denied by the State board
- For fiscal 2011, Montgomery and Wicomico counties received waivers from their MOE amounts

# Waiver History (Cont.)

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- For fiscal 2012, several counties (Anne Arundel, Dorchester, Kent, Montgomery, Queen Anne's, Talbot, and Wicomico) expressed intent to file MOE waiver requests
- At the time, the law did not contemplate what would happen if a county did not ask for or did not receive a waiver and then failed to meet the MOE requirement
- The penalty for not meeting MOE at the time was to withhold any increase in State education aid to the local school board
  - However, due to fiscal constraints, many counties did not receive an increase in State funds; therefore, there was no penalty for reducing funding below the locally required amount
- Many counties decided to bypass the waiver process and did not meet MOE in fiscal 2012, catching the attention of legislators

# Chapter 6 of 2012

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- A county may not request or receive a waiver from the local share of the foundation program, ensuring the local share is the absolute floor for local education funding
- A county governing body must 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
- The State Superintendent 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

# Expanded MOE Waiver Process

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- Four MOE Waiver Options
  - One-year MOE Waiver
  - MOE Rebasing Waiver
  - MOE Waiver for Agreed Upon Reductions in Recurring Costs
  - MOE Waiver for Lease Payments (Chapter 14 of 2018)



# Expanded MOE Waiver Process (Cont.)

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- One-year MOE Waiver
  - If a county shows that its fiscal condition significantly impedes the county's ability to fund the MOE requirement, the State board may grant a one-year waiver (does not reduce MOE for future years)
  - Factors included considerations that were previously enumerated in COMAR and others. Additional factors require State board to make a broader analysis so it would be less difficult to obtain a waiver
- MOE Rebasing Waiver
  - If a county obtains a one-year MOE waiver and provides above-average support to the local school board (relative to its local wealth), then the county may also request a rebasing waiver
  - County must demonstrate that its ability to meet MOE is permanently impeded through an additional set of factors that the State board must consider. The State board may grant a multi-year rebasing waiver (up to three years)

# Expanded MOE Waiver Process (Cont.)

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- MOE Waiver for Agreed Upon Reductions in Recurring Costs
  - County and local school board must identify the specific reductions to recurring costs (to encourage efficiencies)
  - State board is required to grant the waiver to the county's annual MOE amount when the county and local school board have agreed to the reductions and to the amount of the waiver (which cannot exceed the total amount of savings)
- Lease Payments Waiver (Chapter 14 of 2018)
  - Lease payments made by a local school board to a county or private entity for property used as a public school are eligible for a waiver from MOE requirements
  - State Board must grant the waiver. The amount of the waiver cannot exceed the entire amount of the lease payment

# Altered MOE Penalty

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- Before Chapter 6, the penalty for not meeting MOE was to withhold any increase in State education aid to the *local school board*
- **Chapter 6 MOE Penalty:** A county that does not receive a waiver from the MOE requirement is required to 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 directly to the local school board
  - This ensures annual MOE funding as the floor on a county's appropriation to the local school board, except in years when the State board grants a waiver
- **Local Share Penalty:** A county that appropriates less than the local share of the foundation program is penalized by withholding and redirecting county income tax revenues to the local school board in an amount necessary to pay the State share of the foundation program *plus* the amount by which the county missed the required local share of the foundation

# Chapter 6 Provisions on Fiscal 2013 MOE

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- Chapter 6 prohibited a penalty from being applied to any county that did not meet MOE in fiscal 2012
- For a county that did not meet MOE in fiscal 2012, Chapter 6 required the fiscal 2013 per pupil MOE appropriation to be the per pupil amount that the county was *required* to provide in fiscal 2012
- A county that had the maximum local income tax rate (3.2%) (Montgomery and Queen Anne's in 2012) was exempt from this provision and was instead required to provide the local school board with at least as much per pupil funding in fiscal 2013 as the county *actually* appropriated in fiscal 2012

# MOE Results Since Fiscal 2008

## Percent of Certified Local Appropriation Above MOE/MOE Escalator

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Allegany	5%	1%	2%	0%	2%	0%	0%	0%	0%	0%*	0%*	0%*
Anne Arundel	5%	7%	0%	0%	-2%+	0%	0%	0%	1%	1%	2%	2%
Baltimore City	3%	4%	0%	0%	4%	1%	0%	1%	0%	4%*	4%*	2%*
Baltimore	2%	6%	5%	0%	0%	0%	0%	2%	0%	0%	3%	3%
Calvert	4%	6%	5%	2%	5%	0%	3%	2%	0%	0%	6%	5%
Caroline	3%	0%	0%	0%	0%	0%	0%	0%	0%	1%*	0%	0%*
Carroll	5%	9%	7%	0%	0%	2%	1%	1%	6%	5%	4%	3%
Cecil	1%	8%	0%	0%	0%	1%	5%	3%	6%	0%	2%	3%
Charles	8%	7%	0%	0%	0%	3%	2%	3%	2%	2%	3%	1%
Dorchester	1%	5%	0%	0%	-4%+	0%	0%	0%	0%	0%*	0%	0%*
Frederick	2%	5%	0%	0%	0%	0%	0%	0%	2%	4%	4%	3%
Garrett	12%	8%	2%	3%	10%	6%	1%	6%	1%	0%*	0%*	0%*
Harford	7%	7%	1%	1%	0%	0%	1%	1%	2%	3%	2%	2%
Howard	7%	6%	0%	0%	0%	0%	2%	5%	1%	1%	0%	4%
Kent	11%	10%	4%	0%	-5%+	0%	0%	0%	0%	1%*	0%*	2%*
Montgomery	6%	5%	-5%	-4%	-8%+	0%	0%	0%	0%	6%	1%	1%
Prince George's	1%	3%	-2%	0%	0%	4%	0%	0%	2%	3%	5%	3%
Queen Anne's	9%	7%	1%	0%	-9%+	0%	7%	7%	3%	3%	0%*	0%*
St. Mary's	5%	4%	0%	0%	1%	3%	4%	3%	5%	4%	1%	1%
Somerset	0%	1%	0%	0%	0%	1%	0%	0%	0%	0%*	0%	1%*
Talbot	7%	7%	0%	0%	-5%+	0%	0%	0%	0%	1%	0%*	6%*
Washington	0%	2%	2%	0%	0%	0%	0%	0%	0%	0%	0%*	0%*
Wicomico	2%	1%	0%	-15%	-28%+	2%	2%	0%	0%	0%*	0%*	1%*
Worcester	7%	11%	0%	0%	0%	2%	2%	3%	1%	2%*	0%*	2%*
<b>Statewide</b>	<b>4%</b>	<b>5%</b>	<b>-1%</b>	<b>-1%</b>	<b>-3%</b>	<b>1%</b>	<b>1%</b>	<b>1%</b>	<b>1%</b>	<b>3%</b>	<b>2%</b>	<b>2%</b>

MOE: Maintenance of Effort

\*Indicates that the county was subject to the MOE escalator.

+Received a waiver under Chapter 6 of 2012 for fiscal 2013 required MOE amounts.

Note: The MOE escalator took effect in fiscal 2015, but no county was required to increase its effort until fiscal 2017.

Source: Maryland State Department of Education; Department of Legislative Services

# Calculation of Annual MOE Amounts and Escalators

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- Beginning in fiscal 2015, Chapter 6 requires a county that has an education effort below the statewide five-year moving average education effort to increase its per pupil MOE payment amounts to the local school board in years when its local wealth base is increasing
- The required increase is the lesser of:
  - The increase in a county's wealth per pupil;
  - The statewide average increase in local wealth per pupil; or
  - 2.5%
- For fiscal 2015 and 2016, there were no statewide average increases in local wealth per pupil, so this provision did not affect any counties

# Local Education Effort

## Fiscal 2013-2019

<u>County</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Allegany	1.17%	1.20%	1.19%	1.20%	1.20%	1.20%	1.20%
Anne Arundel	1.28%	1.32%	1.29%	1.32%	1.32%	1.32%	1.29%
Baltimore City	1.10%	1.15%	1.12%	1.11%	1.06%	1.07%	1.04%
Baltimore	1.32%	1.38%	1.39%	1.41%	1.39%	1.42%	1.44%
Calvert	1.47%	1.56%	1.58%	1.57%	1.54%	1.57%	1.61%
Caroline	0.82%	0.86%	0.89%	0.91%	0.92%	0.92%	0.92%
Carroll	1.45%	1.46%	1.46%	1.50%	1.51%	1.50%	1.51%
Cecil	1.17%	1.27%	1.32%	1.39%	1.37%	1.37%	1.35%
Charles	1.53%	1.62%	1.64%	1.68%	1.66%	1.66%	1.69%
Dorchester	1.05%	1.10%	1.13%	1.17%	1.17%	1.17%	1.17%
Frederick	1.40%	1.46%	1.43%	1.43%	1.42%	1.44%	1.45%
Garrett	1.08%	1.10%	1.12%	1.18%	1.20%	1.18%	1.18%
Harford	1.34%	1.35%	1.34%	1.36%	1.36%	1.34%	1.35%
Howard	1.75%	1.79%	1.83%	1.86%	1.82%	1.78%	1.81%
Kent	1.08%	1.10%	1.04%	1.09%	1.05%	1.06%	1.07%
Montgomery	1.40%	1.42%	1.39%	1.42%	1.45%	1.43%	1.43%
Prince George's	1.31%	1.35%	1.38%	1.45%	1.46%	1.46%	1.44%
Queen Anne's	1.00%	1.11%	1.19%	1.23%	1.24%	1.23%	1.21%
St. Mary's	1.18%	1.24%	1.28%	1.33%	1.37%	1.33%	1.33%
Somerset	1.03%	1.19%	1.20%	1.19%	1.21%	1.21%	1.22%
Talbot	0.72%	0.74%	0.76%	0.80%	0.81%	0.83%	0.90%
Washington	1.23%	1.26%	1.27%	1.26%	1.24%	1.24%	1.25%
Wicomico	0.94%	1.01%	1.02%	1.06%	1.06%	1.07%	1.06%
Worcester	0.93%	1.04%	1.12%	1.13%	1.15%	1.14%	1.16%
<b>Average</b>	<b>1.20%</b>	<b>1.25%</b>	<b>1.27%</b>	<b>1.29%</b>	<b>1.29%</b>	<b>1.29%</b>	<b>1.30%</b>

Note: Effort equals local appropriation divided by local wealth. Local wealth includes November Net Taxable Income.

Source: Maryland State Department of Education; Department of Legislative Services

# Estimated Fiscal 2020 MOE Escalator

<u>County</u>	<u>Fiscal 2019 Wealth</u>		<u>Required Increase</u>	<u>Increase Per Pupil</u>	<u>Increase (\$ in Thousands)</u>
	<u>Fiscal 2019 Effort</u>	<u>Per Pupil Change</u>			
Allegany	1.20%	3.4%	2.5%	\$93	\$750
Anne Arundel	1.29%	3.4%			
Baltimore City	1.04%	5.9%	2.5%	93	6,842
Baltimore	1.44%	3.8%			
Calvert	1.61%	-2.8%			
Caroline	0.92%	1.8%	1.8%	47	260
Carroll	1.51%	3.9%			
Cecil	1.35%	5.5%			
Charles	1.69%	3.0%			
Dorchester	1.17%	1.6%	1.6%	69	313
Frederick	1.45%	4.1%			
Garrett	1.18%	0.7%	0.7%	54	197
Harford	1.35%	3.4%			
Howard	1.81%	2.7%			
Kent	1.07%	6.3%	2.5%	231	414
Montgomery	1.43%	3.5%			
Prince George's	1.44%	5.1%			
Queen Anne's	1.21%	4.4%	2.5%	189	1,415
St. Mary's	1.33%	3.0%			
Somerset	1.22%	3.8%	2.5%	90	246
Talbot	0.90%	2.7%	2.5%	231	1,015
Washington	1.25%	2.7%	2.5%	112	2,451
Wicomico	1.06%	3.0%	2.5%	77	1,106
Worcester	1.16%	1.0%	1.0%	138	881
	<b><u>5-year Avg.</u></b>	<b><u>Avg.</u></b>			<b><u>Total</u></b>
	<b>1.29%</b>	<b>3.2%</b>			<b>\$15,889</b>

Note: Effort equals local appropriation divided by local wealth. Local wealth includes November Net Taxable Income.

Source: Maryland State Department of Education; Department of Legislative Services



# Impact of Escalator Provision on MOE Requirement

Fiscal 2017-2020  
(\$ in Thousands)

<u>County</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Allegany	\$504	\$626	\$0	\$750
Anne Arundel				
Baltimore City	5,733	6,292	4,035	6,842
Baltimore				
Calvert				
Caroline	28	0	14	260
Carroll				
Cecil				
Charles				
Dorchester	280	0	209	313
Frederick				
Garrett	607	640	55	197
Harford				
Howard				
Kent	378	84	167	414
Montgomery				
Prince George's				
Queen Anne's		1,301	841	1,415
St. Mary's				
Somerset	215	0	143	246
Talbot	0	864	0	1,015
Washington		1,339	1,262	2,451
Wicomico	84	843	645	1,106
Worcester	787	1,959	1,092	881
<b>Total</b>	<b>\$8,615</b>	<b>\$13,949</b>	<b>\$8,464</b>	<b>\$15,889</b>

Note: A result of "\$0" or "0" indicates that local effort was below the 5-year average, but local per pupil wealth did not increase.

Source: Maryland State Department of Education; Department of Legislative Services