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TO: Members of the State Board of Education

FROM: Lillian M. Lowery, Ed.D. *mlowery*

DATE: December 16, 2014

SUBJECT: Maintenance of Effort – Overview of Local Requirements and Waiver Process

PURPOSE:

The purpose of this agenda item is to provide the State Board of Education a brief overview of the maintenance of effort (MOE) law, with particular attention to the changes made during the 2012 legislative session.

BACKGROUND/HISTORICAL PERSPECTIVE:

The MOE law was established in 1984 and requires each county (including Baltimore City) to provide, on a per pupil basis, at least as much funding as was provided in the prior fiscal year. In 1996 the MOE law was amended to allow local jurisdictions to apply to the State Board of Education for a one-year waiver from MOE. However, that process was not tested until 2009 when three counties applied for waivers from the fiscal year 2010 MOE requirement. The State Board denied all three waiver requests.

Two counties applied for a waiver in fiscal year 2011 and both were granted. The State Board did not receive any waiver requests for fiscal year 2012, yet seven counties were identified by MSDE as not complying with the MOE requirement. On May 25, 2011 the State Board issued an opinion stating that the MOE statute does not require a county government to request a waiver. As such, counties were able to rebase their MOE requirement at a lower level without State Board approval. As a result, the General Assembly decided to conduct a comprehensive review of the MOE law. Legislation was adopted during the 2012 session that requires counties to apply for a waiver, alters the MOE penalty, refines the entire MOE process, and sets procedures for counties that want to rebase the required MOE amounts.

SUMMARY:

MOE Basics and Timelines

Local jurisdictions are required to meet two funding thresholds according to State law. At an absolute minimum, each county is required to appropriate sufficient funding to the local school system (LSS) to meet the local share of the Foundation program. Each county is also required to appropriate, at minimum, the same amount, on a per pupil basis, as was provided the last year the county met the MOE requirement. A county must apply to the State Board of Education for a waiver if it will not meet the MOE requirement.



All MOE waivers must be submitted to the State Board by April 20th or the 7th day after the end of legislative session, whichever is earlier. The State Superintendent must provide a preliminary assessment of the waiver request to the State Board, and the State Board must hold a public hearing before acting on the request. The State Board must inform the county of its decision within 30 days of receipt of the request, or by May 20th, whichever is earlier.

There are three types of waivers that counties can request of the State Board:

1. Impeded Ability Waiver
2. Agreed Upon Waiver
3. Rebasing Waiver

Impeded Ability Waiver

A county is eligible for an impeded ability waiver if the county's fiscal condition significantly hinders the county's ability to fund the MOE requirement. The Board must consider the following factors in deciding whether to grant an impeded ability waiver:

- (1) External environmental factors such as a loss of a major employer or industry affecting a county or a broad economic downturn affecting more than one county;
- (2) A county's tax base;
- (3) Rate of inflation relative to growth of student population in a county;
- (4) MOE requirement relative to a county's statutory ability to raise revenue;
- (5) A county's history of exceeding the required MOE amount;
- (6) An agreement between a county and county board that a waiver should be granted;
- (7) Significant reductions in State aid to a county and municipalities of the county for the fiscal year for which the waiver is requested.
- (8) The number of waivers a county has requested in the past five years; and
- (9) The history of compensation adjustments for employees of the county board and county government.

Rebasing Waiver

A county is eligible for a rebasing waiver if the county has been granted an impeded ability waiver and the county's appropriation exceeds the product of the statewide five-year moving average education effort and the county's wealth. Education effort is defined as the county's education appropriation divided by the county's wealth, and is intended to show the percentage of the local wealth base that is appropriated to education. When considering whether to grant a county's rebasing waiver request, the State Board shall consider the following factors:

- (1) Whether a county has submitted sufficient evidence that the factors for meeting the Impeded Ability waiver affect a county's ongoing ability to meet the MOE requirement;
- (2) Whether a county is at its maximum taxing authority under the law;
- (3) Whether a county's education appropriation is commensurate with a county's wealth

- (4) Whether a county's history of exceeding the required MOE has made meeting the MOE requirement in future years unsustainable; and
- (5) Whether a county has received a rebasing waiver in the past five years.

The amount of any reduction to the annual per pupil amount that may be authorized under the rebasing waiver is tiered based on local education effort.

Mutually Agreed Upon Waiver

Statute mandates that the State Board approve a waiver request if the county and local school system agree on a reduction in recurring costs. However, the State Board can only approve this type of waiver if the requested waiver amount does not exceed the amount of the proposed reduction and the waiver amount does not reduce the local appropriation below the local share of the Foundation program. If the reduction in recurring costs includes reductions to personnel costs, the county must provide proof that the amount of the waiver request was mutually agreed on by the exclusive employee representative, as well as the county and the county board.

Additional MOE requirement

Beginning in Fiscal Year 2015, counties with an education effort below the statewide five-year moving average education effort must increase the per pupil MOE amounts by the lesser of :

- (1) Increase in local wealth per pupil
- (2) Statewide average increase in local wealth per pupil
- (3) 2.5 percent

Penalty for Non-Compliance

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, the Comptroller will intercept local income tax revenue in the amount necessary to pay the State share of the Foundation program and redirect the revenue to the LSS. In addition, the Comptroller will intercept the amount necessary to meet the local share of the Foundation program and redirect the revenue to the LSS. If a county fails to meet the MOE requirement, the State Comptroller must withhold income tax revenue from the county in the amount that it failed to meet MOE and redirect the revenue to the LSS.

ACTION:

No action required, for discussion only.

Attachment

Maryland State Department of Education

Maintenance of Effort – Overview of Local
Requirements and the Waiver Process

MOE Basics

- Local Jurisdictions must meet two funding requirements:
 - The local share of the foundation program; and
 - The same amount, on a per pupil basis, as was provided to the local school system (LSS) the last year the county met the MOE requirement.
- A county must apply to the State Board of Education for a waiver if it will not meet MOE.

MOE Waiver Timeline

- A county must submit a waiver request to MSDE by April 20th or the 7th day after legislative session, whichever is earlier.
- The State Superintendent must provide a preliminary assessment of a waiver request to the State Board
- The State Board must hold a public hearing.

MOE Waiver Timeline

- The State Board must report a decision by May 20th or 30 days after receipt of the request, whichever is earlier.
- A county must submit an approved budget to MSDE by June 30th, or within 7 days of approval.
- MSDE must verify that each county meets minimum MOE requirement.

Three Types of MOE Waivers

- Impeded Ability Waiver
- Rebasing Waiver
- Mutually Agreed Upon Waiver

Impeded Ability Waiver

- Factors for the Board to Consider:
 - External environmental factors (i.e. loss of major employer)
 - County's tax base
 - Rate of inflation relative to enrollment growth
 - County's ability to raise taxes
 - County's history of meeting or exceeding MOE

Impeded Ability Waiver

- Factors for the Board to Consider:
 - Agreement between LSS and the County
 - Reductions in State Aid to the County
 - The number of previous waivers requested
 - History of compensation adjustments for county employees.

Rebasing Waiver

- A county eligible for a rebasing waiver if:
 - The county has been granted an impeded ability waiver; and
 - The county's appropriation exceeds the statewide 5-year moving average of education effort multiplied by the county's wealth.

Rebasing Waiver

- Factors for the Board to Consider:
 - Ongoing ability to meet MOE
 - County's taxing authority
 - Education effort compared to wealth
 - History of exceeding MOE and whether it has made meeting future MOE unsustainable.
 - History of previously granted rebasing waivers

Rebasing Waiver

- Waiver amount is tiered based on local education effort.
- Counties with high effort may be allowed to reduce up to 3% of the required MOE.
- Counties with lower effort levels are allowed reductions of 1% or 2% depending on effort.

Mutually Agreed Upon Waiver

- A county is eligible for a mutually agreed upon waiver if the county and LSS identify, and agree on, specific reductions to recurring costs.
- Statute mandates that the State Board must approve this type of waiver if:
 - Waiver does not exceed the amount of reduction.
 - Waiver does not reduce local appropriation below local share of Foundation funding.

Additional MOE Requirement in FY15

- Beginning in FY 2015, counties below the statewide 5-year moving average of education effort must increase per pupil MOE amounts by the lesser of:
 - Increase in local wealth per pupil
 - Statewide average increase in local wealth per pupil
 - 2.5%

Additional MOE Requirement in FY15

- 9 counties met the threshold for the additional MOE requirement in FY 2015.
- The Statewide average increase in local wealth per pupil was negative, so no county was required to increase MOE.

Penalty for Non-Compliance

- Penalty for not funding local share of Foundation Program:
 - Comptroller withholds State share of the Foundation program, intercepts local income tax revenue in the amount necessary to pay the full State share and the amount necessary to meet the local share, and redirects revenue to LSS

- Penalty for not meeting MOE:
 - Comptroller intercepts local income tax revenue and redirects the amount required to meet MOE to LSS.

Other MOE Provisions

- MSDE must consult with DBM and DLS in making all MOE calculations.
- Additional MOE is required in FY13-FY16 to offset the LSS share of teacher retirement payments.
- By December 31st each year, MSDE must report to the General Assembly all waiver requests, MOE calculations, MOE certifications, and other pertinent information.

Questions?
