

Maintenance of Effort: Repairing Maryland's School Funding Safeguard



What is maintenance of effort?

Maintenance of effort is a state law designed to protect the quality of our children's education by discouraging local governments from shortchanging our schools and students.

Slashed education funding and increased enrollment. Stagnant salaries and hiring freezes. Furloughs and cuts to professional development. A strong maintenance of effort (MOE) law for public school funding is intended to prevent such dangerous trends and ensure that all Maryland students have access to a high quality public school education. However, a now-broken MOE law is putting the state's historic investment at risk by opening the door to \$2.6 billion in local education cuts.

Experts agree that Maryland's standing as the number one public school system in the nation is a result of the foresight and commitment of the 2002 General Assembly in enacting the Bridge to Excellence in Public Schools Act (also known as the Thornton Plan). Thanks to the historic levels of funding provided by the Thornton Plan, all 24 of Maryland's school systems have raised achievement levels for all groups of students, making the state attractive for economic development, homebuyers, and families.

But similarly important to the success of Maryland's public school system is the funding provided by local governments, which averages 46 percent of total education costs (figures vary per county, with wealthier counties paying a higher percentage). Maryland's maintenance of effort law has acted as a safeguard for the Thornton Plan—

protecting the state's investment and student achievement by making certain counties honor the state/local funding partnership. Until recently, MOE acted as an essential part of education funding, helping to create the successful funding balance between state and local governments that served schools, students, parents, and communities well.

Yet in the past several years, weaknesses in how the law was written have been abused. Counties have dodged the waiver process, reduced funding through a process called rebasing, and used recent legislative changes to the law to make huge cuts to student programs and services. How did the law intended to safeguard the investment in our schools become nearly ineffective and unenforceable? How can it be repaired? And what are the consequences on students and communities of allowing MOE to remain broken?

A Broken MOE Law Affects Students and Schools

Across Maryland, the negative impacts of a broken MOE law, combined with attempts to roll back state education funding, are widespread and troubling. In 2011, Maryland was threatened by a nearly \$100 million cut to state education aid, but public school advocates like MSEA pushed back and \$77 million was restored, protecting education jobs and resources. Nonetheless, nearly every county in the state made sacrifices due to funding shortages.

Twelve of 24 local jurisdictions will receive less state aid to education in fiscal year 2012 than in fiscal year 2011; 11 of the 24 school boards received less local aid to education from their local governments. Tough realities face many county councils, educators, communities, and parents—including educator layoffs, hiring freezes, furloughs, and increased class sizes, as well as scaled back professional development, school programs, technology updates, and transportation.

In St. Mary's County, two full-time positions are now being staffed by one person, employees are facing another year without step increases or raises, and newly mandated hikes in pension contributions and insurance premiums mean a further reduction in dwindling paychecks. Many secondary students will have to walk nearly a mile to get to school because of cuts to the county's transportation budget—a serious issue of safety and supervision.

On the Eastern Shore, Queen Anne's County educators and students are feeling the effects of funding losses with six furlough days—meaning less time for classroom prep and less professional development time throughout the year. The county's pre-k program has been cut, families are being asked to subsidize sports and band through fees, and after school activity buses have been discontinued.

In Anne Arundel County, teachers will not be getting a raise or step increase this year, and new teachers with experience in other systems will start at three steps below their experience credit calculation. And although enrollment increased by 2,000 students in 2010, no additional teachers have been hired in the past two years, leading to larger class sizes.

This pattern of cuts to programs and services, furloughs, and hiring freezes, taken on top of the threat of shifting pension costs to the counties (see sidebar), is a serious danger to the stability of school funding and the flow of resources to our classrooms and students—exactly what MOE was intended to prevent. What went wrong?

Cracks in MOE Start to Appear

Public school funding is a partnership between the state and local county governments. In 1984, the General Assembly enacted a maintenance of effort law to discourage local governments from reducing their annual per pupil funding by requiring them to “maintain their effort” by meeting or exceeding their contribution of the year before.

Under MOE, if the county government does not maintain its effort in education funding, it loses the scheduled increase in state education aid it would receive—and pass on to the local board of education—the following year.

Shifting the Cost of Pensions to the Counties

Further complicating the funding issue in Maryland is discussion by some legislators in the General Assembly to shift teacher pension costs to local school boards. Irresponsible shifts would be a threat to school funding in good economic times, but are an even greater one today when county governments are already decreasing local aid to education and struggling to meet their MOE obligations.

There is no doubt that irresponsibly shifting pension costs to the counties would result in a huge cut in the ability of local governments to adequately fund education or meet their required MOE.

Twenty years ago, the General Assembly authorized a one-time statewide waiver from the MOE requirement due to the recession of the early 1990s. In 1996, legislators established a permanent waiver process from MOE. Waivers, when approved by the State Board of Education, allow financially stressed counties a one-year reprieve from MOE with the expectation that the following year's funding would be restored to the previous year's level. If not, the county must request another waiver.

After the statewide waiver of 1991, the process went unused until 2009, when eight county governments requested waivers from MOE for fiscal year 2010. Some of the eight waiver requests were withdrawn, and the State Board of Education denied the others and assessed a penalty. Instead of upholding the law and the promise of the Thornton Plan, the General Assembly passed legislation waiving the penalties, and the counties who underfunded education were held harmless.

This was the start of the undermining of the MOE law and local education funding. It continued this year when the General Assembly adopted legislation further weakening the position of MOE as the enforcement tool for establishing a steady level of per pupil funding for counties.

Rebasing Further Weakens MOE

Until now, MOE funding levels had been based on the previous year's per pupil amount. But the actions of the General Assembly, combined with recent interpretations by local governments and rulings by the State Board of Education, showcase the law's loopholes.

When the General Assembly cut expected education aid to the counties this year, counties no longer felt obliged to meet MOE or to even request a waiver protecting them from what would be a much-reduced penalty (since state increases would be minimal or non-existent).

Importantly, the MOE law does not address, nor has the General Assembly considered, how to calculate maintenance of effort if a waiver is not requested or granted. This increasingly troublesome omission, left to interpretation by the counties, further diminishes the intent of the original law to protect school funding.

How Loopholes in MOE Allow Counties to Rebase Education Funding

- The MOE law does not require a county to apply for a waiver and there is no incentive to do so if state aid is being reduced.
- The penalty for not meeting MOE without a waiver is the loss of increase in state aid to education.
- Being granted a waiver eliminates the penalty and also establishes the minimum for local education aid in subsequent years. The new minimum established is the higher of the past two years.
- There is no incentive to seek a waiver because without a penalty the counties can effectively reset their local aid to education to the reduced funding level. That new level becomes the new funding minimum for MOE for subsequent years. This is called rebasing and it is the biggest problem with the current MOE law.

The counties determined that by not requesting a waiver, which would release them from the penalty and preserve the required MOE for the next year, the new, reduced funding would become the new MOE on which future years would be based. This loophole shortchanges students and schools by allowing local governments to establish new minimum funding levels, an effect called rebasing. See Figure 1.

THE CONSEQUENCES OF REBASING A STATEWIDE AVERAGE				
Required MOE	Local Foundation Share*	Funding at Risk	Potential Per Pupil loss	Potential Per School Loss
\$223,103,980	\$114,023,385	\$109,080,600	\$3,086	\$1,806,718

*Minimum rebasing level

Figure 1

With no law requiring that a county seek a waiver from funding MOE, the six counties that requested and withdrew their waiver for 2012—and a seventh that never requested one at all—found significant advantage in MOE's loopholes and will be underfunding education for the next fiscal year by rebasing.

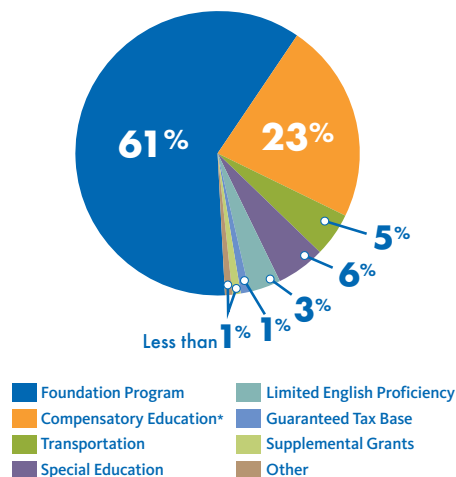
The reduced MOE is now the new funding floor for these counties and the basis for future years' maintenance of effort. In those seven counties alone, students and schools are left with \$160 million less in funding. Even more counties are expected to rebase next year.

“Unworkable [and] Subject to Manipulation”

The outlook for the future got worse when the General Assembly shifted MOE funding from being considered the county's total appropriation to education to the local share of the local foundation program, a considerable reduction in obligation—and another striking shift from the intent and interpretation of the original law.

Most states distribute education funds to school districts through a funding formula like Maryland's Thornton Plan that is set forth in state law. Formulas have two distinct parts—“foundation” (or base) and “categorical” funding. In most states, the foundation amount is designed to cover the basic cost of education while categorical funding programs finance specific tasks such as special education, reduced class size, and summer school programs. In Maryland, MOE has traditionally been considered the total aid to education, including both foundation and categorical funding. See Figure 2 on the following page.

STATE AID TO EDUCATION FOR FISCAL YEAR 2012 IN MARYLAND



* The compensatory aid formula distributes aid to local school boards based on the number of students from economically disadvantaged environments.

Figure 2 County breakdowns are similar—each with a different mix of grants and needs—but in general, foundation funding accounts for about half of the total local aid to education.

According to the Maryland Association of Boards of Education, the maintenance of effort amounts due the 24 school systems in 2012 total \$5.3 billion compared to the local share of the foundation program amount of only \$2.7 billion. With \$2.6 billion—nearly 50 percent of intended local support for students and schools—at risk, the General Assembly has opened a Pandora’s box for future school funding. If counties drop their funding to this new floor, Maryland could face an unprecedented, and dangerous, wave of education cuts that would result in more than \$3,000 less per student for the programs, assistance, and services that they need for a high-quality education. The fear that counties will make deep cuts to education through inadequacies in the MOE law is becoming a reality. Not fixing the maintenance of effort law will do swift damage to Maryland’s ability to meet its constitutional requirement to provide adequate funding and great public schools for students.

The actions of the 2011 General Assembly have considerably weakened the intention of the law and threaten the resources available to students and schools by lowering the bar on funding by billions of dollars. Under this scenario, Maryland’s constitutional responsibility to provide all students with a “thorough and efficient public education” is compromised.

Shortly after the legislative session ended, the State Board of Education issued a ruling affirming the flaws in the maintenance of effort law, describing it as “not only unworkable, but subject to manipulation” and calling on the legislature to address the issue or deal with increasing abuse.

The Problem with the Maintenance of Effort Law as It Currently Stands

- The law does not require a county to request a waiver if it is unable to meet MOE.
- The county government has the authority to reduce the proposed education budget.
- The penalty for not meeting MOE without a waiver is assessed to the county school board, not the county government (the entity that underfunded).
- The school board (and so schools, students, and educators) are penalized twice—once when the county government underfunds the system and again when the state withholds the planned increase as punishment.
- In the past, the State Board of Education has denied waivers, but the General Assembly passed legislation the same year to protect the school system from paying a penalty.

Maryland Needs a Consistently Enforced and Reliable Maintenance of Effort Law

MSEA believes that repairing the maintenance of effort law is essential to protecting Maryland’s historic investment in public education and maintaining the impressive student progress of the last several years.

As counties struggle to preserve county services with shrinking budgets, the law’s weaknesses become ripe for further exploitation. The General Assembly must address the shortcomings of the MOE law this year to prevent further abuse. Finding the resources to fund the required maintenance of effort through new local taxing authority and a better maintenance of effort law is critical to maintaining Maryland’s gains in student achievement. The state must mandate a waiver when county governments fund education below maintenance of effort. When that decision is made, the county council must be held

accountable, not the school board. As it stands, local school boards bear the brunt of the funding decision twice, once through the council's reduction in local aid and again through the loss of the scheduled state aid.

The maintenance of effort law must be amended to provide:

- Full funding of the county's required maintenance of effort
- A reliable penalty, consistently imposed on the county—not the board of education—for failing to meet its MOE obligation
- A required waiver application whenever a local county government submits a budget that reduces local aid to education
- A review of the taxing effort of a local government requesting a waiver so that a promise of reduced local property taxes is not at the expense of public education

Local governments must have additional taxing capacity.

Some counties would do the right thing in meeting their local obligations if they had the ability to raise additional revenues. MSEA suggests:

- Expanding the local income tax add-on, requiring local governments to fund at a certain level, or providing some additional revenue options so that all essential local programs and services are protected and maintained

Education funding must be protected by requiring counties with inhibiting tax caps to meet maintenance of effort.

In 1983 and 1994, the Maryland attorney general issued opinions that affirm the responsibility of county government to fully fund public education regardless of any tax limits.

- Voter-imposed tax caps cannot override the constitutional obligation to provide a “thorough and efficient public education”
- Counties must have the authority to override tax caps to meet this moral and constitutional requirement

It's Time to Repair Maryland's Maintenance of Effort Law

The success of Maryland's public schools depends on investing in resources for our classrooms and students. The state's maintenance of effort law was designed to protect this investment by maintaining steady local levels of per pupil funding and ensuring that the state and local partnership that has so successfully funded our schools in the past continues.

The consequences of moving forward with a broken MOE law are troubling; it is at the heart of state legislation that has helped our public schools thrive and our students achieve. If MOE is not fixed, Maryland could face unprecedented education cuts that will, without doubt, lead to increased class sizes, discontinued programs and services, and layoffs. The original intention of the law was to protect students and schools and prevent cuts on such a precipitous scale. We must repair Maryland's maintenance of effort law to ensure that the investment we've made in our schools is protected—and that Maryland continues to be a national leader in the quality and success of our public schools.



Maintenance of Effort: Repairing Maryland's School Funding Safeguard is presented by the Maryland State Education Association as a resource to educators, policymakers, and the public.

MSEA is the 71,000-member Maryland affiliate of the National Education Association (NEA), which represents over 3.2 million education employees across the country. MSEA is the state's largest professional employee organization. Members include elementary and secondary teachers, education support professionals, certificated specialists, school administrators, retired educators, higher education faculty, and students preparing to become teachers. MSEA supports 39 local affiliated associations throughout Maryland.