

March 6, 2017

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2017 Legislative Committee Calendar

- March 6, 2017
Bill Review & Decisions
- March 20, 2017
Bill Review & Decisions
- April 3, 2017
Bill Review & Decisions
- May 1, 2017
Session Summary

MABE's Legislative Committee meetings are held in the MABE office on Monday mornings, 10:00 to 12:00, unless otherwise indicated. Meeting agendas and materials are posted on the [MABE website](#).

Legislative Committee Update

MABE's [Legislative Committee](#), including representatives appointed by all twenty-four boards, holds monthly meetings to guide the association's lobbying activities in Annapolis, and often invites policy and legislative leaders as guest speakers to exchange ideas. The Committee is chaired by Stacy Korbela (Anne Arundel County) and the vice chair is Warner Sumpter (Somerset County). The Committee met on Monday, March 6 to discuss and take positions on pending bills.

- **HB 1082/SB 1060 - Heroin & Opioid Health Education & Outreach** - MABE's Legislative Committee voted to support this bill if enacted with several major amendments to the sections of the bill proposing curriculum mandates, policies on school nurse training, the provision of Naloxone in all schools, and the mandate to employ community action officials. The amendments would address the scope and specific provisions of these requirements as well as the assurance of annual state funding. (MABE Position: Support with Amendments)
- **HB1145 - Whistleblower Protection Act** – The Legislative Committee voted to oppose this proposal to identify school employees as a distinct category of employees for purposes of a separate whistleblower law. The committee discussed at length the absence of similar statute covering county or municipal employees. In addition, the committee discussed the provision of the state employees' whistleblower protection law which requires exhaustion of administrative remedies before resorting to litigation. (MABE Position: Oppose)
- **HB 1603 - Board Removal of Superintendents for Cause** – The Legislative Committee voted to oppose this bill, and to support the longstanding framework of local board and superintendent employment relations. (MABE Position: Oppose)

For more information on MABE's Legislative Committee, including meeting agendas and materials, and MABE's testimony on pending legislation, go to MABE's website at www.mabe.org under Advocacy and the Annapolis Advocacy Center.

BILL HIGHLIGHTS

Accountability & Assessments

2% Cap on Testing & Assessment Committees

HB 461/SB 452 - Education - Accountability Program - Assessments (Less Testing, More Learning Act of 2017) (Del. Luedtke/Sen. Manno)

This bill would require the State Board of Education to adopt regulations limiting the amount of time in the aggregate that may be devoted to federal, State, and locally mandated assessments for each grade to 2% of the specified minimum required annual instructional hours; prohibiting time devoted to teacher-selected classroom quizzes and exams, portfolio reviews, or performance assessments. The bill also addresses the longstanding but never implemented mandated to have statewide social studies assessments in middle school, and the role of performance-based social studies assessments at the middle and high school levels. In addition, the bill would mandate that each local board establish a District Committee on Assessments to monitor and evaluate the county's assessment program and advise the local board. The House has passed HB 461, and MABE is working with the Senate Education Committee and subcommittee on further amending the bill.

Every Student Succeeds Act (ESSA) State Plan Constraints

HB 978/SB 871 - Education - Accountability - Consolidated State Plan and Support and Improvement Plans (Protect Our Schools Act of 2017) (Del. Luedtke/Sen. Zucker)

This bill requires that the State's consolidated state plan to improve student outcomes, which the Maryland State Department of Education (MSDE) must submit to the U.S. Department of Education (ED) under the federal Every Student Succeeds Act (ESSA), comply with the requirements detailed in the bill. Specifically, the bill stipulates a list of school quality indicators from which the State Board could choose; defines the relatively equal weight and percentage value of the academic and nonacademic factors, with academic indicators not accounting for more than 51%.

MABE requested that the bill not include these prescriptive provisions. The Ways and Means Committee amended the list of school quality indicators, removed the reference to the weight, and amended the percentage of academic factors to no more than 55%.

The bill also provides for local board governance of intervention strategies to address the persistent low performance of schools on a comprehensive basis and groups of students within schools on a targeted basis. MABE's requested that the school approval should not be required, but this amendment was not adopted. Instead, comprehensive interventions would require the approval of the state, local board, and the school.

Lastly, the bill includes clear prohibitions on the State's authority to dictate to a local board certain intervention strategies. MABE supports this aspect of the bill, because these types of state-mandated interventions run counter to the intent of ESSA to respect local decision-making in approving school-wide or group-specific intervention strategies. MABE agrees that the State Department and Board of Education may not adopt and impose on a local school system intervention strategies which include: creating a state-run school district; converting a public school to a charter school; issuing scholarships to public school students to attend nonpublic schools through direct vouchers, tax credit programs, or education savings accounts; and contracting with a for-profit company.

In addition, MABE requests an amendment to add to this list of prohibited interventions, the following: creating a local education agency in addition to those established as of January 1, 2017; and creating a public school without local board approval. These additional scenarios of state interventions were adopted by amendment.

Again, the House Ways and Means Committee has passed HB 978, with the amendments described above, and the Senate Education Committee and subcommittee will begin work on the bill in the very near future.

Kindergarten Readiness Assessment (KRA)

HB 654/SB 145 - Education – Statewide Kindergarten Assessment – Completion (Del. Kaiser/Sen. Pinsky)

This bill extends from October 1 to October 10 the date by which the Kindergarten Readiness Assessment (KRA) must be completed when a local board of education or a principal and teacher who are in mutual agreement decide to assess all students entering kindergarten in a school year. MABE supports this bill in order to address the time constraints under an October 1 deadline. On August 31, 2016 Governor Hogan signed an Executive Order mandating a post-Labor Day start for all of Maryland's public schools beginning in 2017. However, when the KRA legislation passed in 2016, almost all school systems began the school year prior to Labor Day, and the KRA deadline of October 1 was premised on this fact. In this context, the extension of the deadline from October 1 to October 10 is much needed.

Early Learning Assessment (ELA)

HB 548/SB 667 - Education - Prekindergarten Student Assessment – Moratorium (Del. Shoemaker/ Sen. Jennings)

This bill would place a moratorium on the administration of the Early Learning Assessment (ELA) for enrolled prekindergarten students until (1) a complete audit of the 2016-2017 pilot year of the ELA is conducted and (2) the audit results in a determination that the ELA is valid and reliable and is consistent with the purpose of informing instruction and targeting interventions and supports.

MABE opposes this bill because policy considerations regarding student assessments should remain within the purview and decision-making authority of local boards of education and superintendents; and based on the professional judgments of student assessment and early education experts at the local and state levels.

Charter School Bill

HB 878/SB 704 – Public Charter School Act of 2017 (Administration)

The Charter School Act of 2017 would create a new Charter School Authority with statewide powers to open new schools and convert existing schools without any role for the local board of education or local community. This bill would allow a low performing school in any of the 24 school systems to leave that school system, in pursuit of higher per pupil funding and avoidance of all regulations applicable to other public schools. A “persistently” low performing school need only be low performing once to become eligible to convert to a charter school; and could be allowed to operate under different academic standards adopted by the Charter Authority. Charter school employees would not be public school employees, and charter school teachers and principals would not have to be certified educators or participate in the same professional development as other public school educators. And yet, charter school employees would qualify for all of the same state and local retirement and health benefits as public school employees.

MABE opposes this legislation based on the association’s support for the establishment of high quality public charter schools. MABE opposed similar legislation in 2015; and opposes this bill for the same reasons, but also because it would go much further to disrupt public school funding and operations.

Special Education

Studying and Shifting the Burden of Proof

HB 1240 – Individualized Education Programs - Burden of Proof in Due Process Hearings and Studies (Del. Kaiser)

This bill would specify which party has the burden of proof under specified circumstances in a due process hearing that is held to resolve disputes about the identification, evaluation, or educational placements of children with disabilities or the provision of a free appropriate public education. Generally, the moving party would have the burden of proof, including petitions for unilateral placement of students in nonpublic facilities. However, the school system would have the burden of proof if a parent or guardian files a due process complaint concerning a dispute over the delivery of services under the child’s current IEP. Under the bill, this shift would not take effect until 2020, following the completion of the studies described below.

By December 31, 2017, MSDE must contract with an outside entity to conduct a study of the individualized education program (IEP) process in the State. In addition, MSDE must review and assess staff allocations and resources that are available to assist the parents and guardians of children with disabilities to participate in IEP process, as well as current population densities of children with IEPs. By December 31, 2018, MSDE must report on the findings and recommendations from the required outside study, as well as from its review and assessment, to the General Assembly.

Parental Consent

HB 174/SB 710 – Education - Children With Disabilities - Individualized Education Program Process - Parental Consent (Del. Luedtke/Sen. Conway)

This bill would require the individualized education program (IEP) team to obtain written consent from a parent if the team proposes to (1) enroll the child in an alternative education program that does not issue or provide credits toward a high school diploma; (2) identify the child for the alternate assessment aligned with the State's alternate curriculum; (3) include restraint or seclusion in the IEP to address the child's behavior; or (4) initiate a change in the child's education placement. (This fourth decision was inadvertently omitted from the House version, and is supported by both House and Senate sponsors).

MABE opposes this bill because while parents are members of IEP teams, the federal law neither requires nor envisions them as having a unilateral decision making role as a team member. IDEA and state regulations provide parents the full protections of a state regulated complaint and enforcement process, and access to due process. MABE is further concerned that in instances when the IEP team determines the parent's unilateral decision is not in the student's best interests, the litigious dispute resolution process is triggered. This is likely to have the unintended consequence of dramatically increasing the rate of such disputes and therefore result in many more time consuming and costly mediations and due process proceedings. Local boards oppose this bill not only because it would result in increased costs, but also because the duration of IEP challenges could result in delays in students receiving the services they need until the completion of the dispute. These outcomes are not in the best interests of students, families, and the educators involved in the collaborative and intensive process mandated under the current law. The bills have not been acted on in either the House or Senate.

Seclusion & Restraint

HB 331/SB 786 - Education - Behavior Intervention Plans - Physical Restraint and Seclusion
(Del. Luedtke/Sen. Zucker)

This bill would prohibit the use of physical restraint and seclusion in disciplining a public or nonpublic school student except under specified conditions, including a new requirement for a risk assessment by a licensed professional prior to the use of seclusion. The bill adds trauma-informed interventions to the definition of behavioral intervention plans and requires the Maryland State Department of Education (MSDE) to make sufficient behavior intervention training available and coordinate with public and nonpublic schools to ensure that all school personnel who directly work with students on a daily or routine basis receive specified professional development training.

MABE opposes this bill, but also recommends the consideration of a statutory standard that reflects longstanding regulations developed through a legislative task force. The regulations provide a general prohibition on the use of restraint and seclusion, with exceptions.

Under Maryland regulations, the use of physical restraint and seclusion is prohibited in public and nonpublic schools, unless: (i) There is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate; (ii) The student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint may be used; or (iii) The parents of a nondisabled student have otherwise provided written consent to the use of physical restraints while a behavior intervention plan is being developed.

Early Intervention Services

SB 1/HB 286 - Education – Specialized Intervention Services – Reports (Sen. Conway/Del. Korman)

This bill would require that, beginning with the 2018-2019 school year, each local board submit a report on specialized intervention services to MSDE by December 1 of each year. The report must include information on the number of students receiving the services, the grades in which the services were provided, and the annual budget (including federal, State, and local funds) for the services. The bill defines “specialized intervention services” as services provided to kindergarten through grade 3 students who: • are not currently identified as needing special education or related services; • need additional academic and behavioral supports to succeed in a core curriculum and differentiated instruction general education environment; and • receive additional academic and behavioral support in specified settings for at least three times each week for at least 90 minutes each week for a period of at least 10 weeks during a school year.

MABE opposes the scope and cost of the reporting requirements and is requesting that this legislation be amended to establish an interim study. SB 1 has passed the Senate with a technical amendment, and the House Ways and Means Committee is working on amendments to HB 286.

Local Inspectors General

HB 1341 - Maryland Public School Transparency and Accountability Act (Del. A. Washington)

As introduced, this bill would require that if a local school system receives 10 or more repeat findings in an audit conducted by the Office of Legislative Audits (OLA), the county’s governing body must establish an Office of the Inspector General (IG) that is independent of the local school board or superintendent. MACo is supporting this bill, and requesting that the bill be amended to enable, rather than mandate, a county to establish an office of the inspector general; and to remove the threshold of 10 or more repeat findings by the OLA. MABE opposes the bill as introduced, and certainly opposes the amendments proposed by MACo.

Student Discipline

Early Grades Ban on Suspension/Expulsions

HB 425/SB 671 - Public Schools - Suspensions and Expulsions (Del. Lierman/Sen. Smith)

This bill would prohibit a child from being suspended or expelled from a public prekindergarten program, as defined by the bill. The bill provides a very limited exception to allow a student enrolled in kindergarten or first or second grade to be suspended or expelled if the student knowingly (1) brings a firearm to school or (2) possesses a firearm at school. MABE is requesting amendments to limit the scope of the bill to grades prekindergarten and kindergarten, and to authorize the use of suspension in very limited circumstances. Amendments would remove the bill provisions pertaining to students in the first and second grades; and limit the authorized use of suspensions for prekindergarten and kindergarten students to cases in which the student’s behavior has been determined to have caused, or poses an imminent threat of causing, serious physical harm to a student or staff member. The bill is awaiting action at the subcommittee level in both the House and Senate.

Pregnant & Parenting Student Absences

HB 616/SB 232 – Education - Pregnant and Parenting Students - Attendance Policy (Del. Atterbeary/Sen. Manno)

MABE supports this legislation, in so far as it would reasonably require that each school board adopt a policy governing the attendance of pregnant and parenting students. The amendment requested by MABE would retain the policy mandate but remove the prescriptive policy components stipulated in the bill. The Senate adopted this amendment; the House is poised to adopt the bill largely as introduced.

Lead Testing of School Drinking Water

HB 270 - Environment - Testing for Lead in Drinking Water - Public and Nonpublic Schools (Del. Lafferty)

This bill would require the Maryland Department of the Environment (MDE), in consultation with MSDE, to adopt regulations by October 1, 2017, to require periodic testing for the presence of lead in each “drinking water outlet” located in an occupied public or nonpublic school building. The regulations must require initial testing to be conducted by January 1, 2018, and establish specific follow-up actions for positive test results. The bill does allow for waivers from the required testing based on specified conditions. MABE opposes this bill based on the testing already required and/or being conducted and the appropriate responses being taken to ensure that all school children have access to clean, safe drinking water. The fiscal note finds that under this bill “local expenditures increase, potentially significantly, to the extent that public schools are responsible for paying for the required sampling and testing. Additionally, costs likely increase for any public schools that test positive for an elevated level of lead to conduct required follow-up actions.”

This bill will be the subject of work sessions led by the bill sponsor with the participation of environmental advocacy organizations. MABE will participate in these discussions toward the goal of addressing the testing, remediation, and significant cost issues raised by this legislation.

Education Funding in the State Budget

State Budget Bill

The State Budget Bill (HB 150/SB 170) includes the state education aid for FY 2018 to fund public schools for the 2017-2018 school year. Under current law, public schools are expected to receive approximately \$5.6 billion in FY 2018, representing a \$79.9 million (1.4%) increase over the prior fiscal year. Major funding categories and programs include: Foundation, Compensatory, Limited English Proficient, Special Education, Transportation, Geographic Cost of Education Index, Guaranteed Tax Base, Net Taxable Income, Supplemental Grants, and many others.

State payments to the pension system for retired teachers totals \$770 million. The budget does proposed reductions in education aid and retirement contributions, with the majority of the reductions coming from a \$35.6 reduction in State costs for pension contributions for teachers,

and the rest coming from repealing mandates that are funding programs for the first time in FY 2018. These education program cuts are addressed in the Budget Reconciliation and Financing Act (BRFA).

The FY 2018 budget also includes a deficiency appropriation of \$19.7 million for grants to local jurisdictions (including libraries and community colleges) to fully offset their FY 2017 administrative fee payments to the State Retirement Agency. This temporary relief from retirement agency administrative fees totals \$16.9 million for local school systems. This proposal is also the subject of separate legislation (HB 1109/SB 1007).

The Budget Reconciliation and Financing Act (BRFA)

The BRFA (HB 152/SB 172) represents the legislative changes proposed by the Governor to achieve the balanced budget outcome in the State Budget Bill. The BRFA proposes to eliminate several education programs, and MABE has requested that these programs be restored.

The BRFA proposes to:

- Repeal the mandate that the Public School Opportunities Enhancement Program be funded at \$7.5 million annually in fiscal 2018 through 2021.
- Repeal the mandate that the Teacher Induction, Retention, and Advancement Pilot Program be funded at \$5.0 million annually.
- Repeal the mandate that the Next Generation Scholars of Maryland Program be funded at \$5.0 million annually through fiscal 2023.
- Repeal the mandate that the State match county teacher stipends for teachers who hold National Board Certification (NBC).
- Reduce the maximum State match for stipends for teachers who hold NBC and work in a comprehensive needs school from \$4,000 to \$2,000.

MABE urges the General Assembly to restore funding for these and other educational programs to support the highest quality teaching and learning opportunities for all of Maryland's public school students.

Retirement Costs Gap Funding Bill

HB 1109/SB 1001 - Teachers' Retirement and Pension Systems - County Boards of Education Payments (Del. B. Barnes/Sen. Guzzone)

This bill would eliminate \$19.6 million in school system payments to the State Retirement Agency for FY 2017. The bill also addresses the Governor's budget proposal to eliminate the administrative fees school systems would otherwise owe the State Retirement Agency in FY 2017. In 2012, the General Assembly shifted 100% of teachers' retirement costs for current employees, known as "normal" costs, to local boards of education. From 2013 to 2016 school board funding obligations were matched entirely by mandated local government payments to local school boards. Beginning in 2016, any future growth in the retirement costs must be paid by local boards. This gap would be substantially filled by the \$19.6 provided in this bill. Similarly, MABE also supports efforts to reduce or eliminate administrative fees and will continue to support the efforts of the legislature and Governor to address retirement system cost burdens on local school systems.

BOOST Voucher Program Funding

The FY 2017 budget bill authorized \$5 million for the BOOST program including \$4.85 million to provide BOOST program scholarships for low-income students to attend nonpublic schools and

required that determinations about scholarship amounts and recipients be made by a BOOST Program Advisory Board. The Governor has announced that he intends to double funding for the BOOST program over three years to \$10 million by FY 2020. The FY 2018 budget proposes to increase BOOST program funding to \$6.85 million. MABE supports repealing the BOOST program, which is included in the Funding for Educational Organizations section of the budget for the Maryland State Department of Education (MSDE).

Capital Budget Highlights & School Facilities

State Capital Budget

The State Capital Budget Bill (HB 150/SB 170) includes the State's FY 2018 appropriation for school construction and renovation projects. : The Governor's FY 2018 capital budget includes \$280 million for the traditional school construction program, which is the same amount authorized in FY 2017. In addition, the budget provides \$40 million for local school systems with significant enrollment growth and relocatable classrooms. This \$320 million total State investment in public school facilities is further supplemented by the \$6.1 Million Aging Schools Program and \$4.8 million Qualified Zone Academy Bond (QZAB) program. Each year, the General Assembly passes separate QZAB legislation (HB 153/SB 197) to authorize the Board of Public Works to issue bonds and grant the proceeds to the Interagency Committee on School Construction for facilities projects.

MABE supports the Capital Budget Bill, with an amendment to repeal the \$3.5 million Nonpublic Aging Schools Program. In FY 2017 this program was funded, whereas the \$6.1 million Aging Schools Program for public schools was not.

Stadium Authority School Construction Program

SB 994 - School Overcrowding Reduction Act (Sen. Rosapepe)

This bill would replace existing statute regarding alternative financing of school construction projects, and place the review and approval of school projects using alternative financing under the authority of the Maryland Stadium Authority, which would be renamed the Maryland Construction Authority. MABE appreciates the bill's intent to facilitate alternative financing of projects to address school capacity needs, but opposes the bill's reconstitution of the Interagency Committee on School Construction, setting of per pupil cost thresholds on school construction projects, and other provisions. MABE recommends that the issues raised in this bill be the subject of deliberations by the Knott Commission on 21st Century School Facilities. This Commission, on which MABE is represented, will reconvene in April to make legislative and funding recommendations for the 2018 legislative session.

MABE's Legislative Positions & Priorities

MABE has adopted a comprehensive set of [2017 Legislative Positions](#) on the following issues: Local Board of Education Governance, Education Funding, School Facilities Funding, Local Funding & Maintenance of Effort, Unfunded Mandates, Special Education, Charter Schools, Vouchers & Public Funding for Nonpublic Schools, Testing and Curriculum, School Safety & Security, Student Discipline, Student Health, Nutrition & Fitness, Employee Relations & Collective Bargaining, Federal Education Policy and Funding, and Elected, Appointed & Hybrid Boards of Education.

MABE's Advocacy Centers

MABE strives to be the primary voice for public education in Annapolis. The unity of 24 local school boards lends strength to our increasing importance in the legislative process, ensuring that the Governor, General Assembly, and State Board of Education turn to MABE to help determine what is best for school children.

Annapolis Advocacy Center

MABE's [Legislative Committee](#) holds monthly meetings to guide the Association's lobbying activities in Annapolis, and invites policy and legislative leaders to exchange ideas. The Director of Governmental Relations, in coordination with MABE leadership, conducts direct lobbying activities including [testimony](#) before the General Assembly. MABE adopts and publishes an annual [Legislative Positions](#) publication and a Session Summary. MABE coordinates the Green Street Coalition, which is comprised of legislative liaisons from school systems and the superintendents association, and MABE staff pens the weekly GreenSheet update on legislative activity. Link to [MABE's Annapolis Advocacy Center](#).

State Board Advocacy Center

MABE staff and members of the Board of Directors attend each meeting of the State Board of Education, and staff pens [The Monitor](#), which provides a comprehensive summary of each meeting. MABE frequently informs the State Board of the Association's positions on priority issues through testimony, correspondence, and meetings. Link to [MABE's State Board Advocacy Center](#).

Federal Advocacy Center

MABE encourages all boards of education to engage in advocacy at the federal level to ensure that our federal officials are well informed on the priorities and perspectives of local school systems and the fiscal and policy issues arising under the myriad federal programs impacting public education. MABE's Federal Relations Network (FRN) Committee is comprised of board members appointed to represent the association in communicating NSBA and MABE positions to Maryland's federal delegation, including our two U.S. Senators and eight members of the U.S. House of Representatives. Link to [MABE's Federal Advocacy Center](#).

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