

**Department of Legislative Services**  
Maryland General Assembly  
2022 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1258 (Delegate Kipke)  
Ways and Means and Appropriations

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**Primary and Secondary Education – Educational Options – Established**

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This bill codifies the Broadening Options and Opportunities for Students Today Program (BOOST) within the Maryland State Department of Education (MSDE) and requires the Governor to include a \$20.0 million appropriation in the annual budget bill for BOOST. The bill establishes a Maryland Public Charter School Authority (MPCSA). It is the intent of the General Assembly that the Governor include a \$500,000 appropriation in the annual budget bill for MPCSA beginning in fiscal 2024. The State must provide \$1,000 per student enrolled in specified charter schools for a charter school facility grant program. The bill creates an income tax credit for home instruction program costs. **The bill takes effect July 1, 2022.**

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**Fiscal Summary**

**State Effect:** General fund revenues decrease by as much as \$234.2 million annually beginning in FY 2023 due to tax credits claimed against the personal income tax; out-year revenue losses may be less. General fund expenditures for Medicaid increase by \$10.0 million annually, beginning in FY 2023 to offset the diversion of \$10.0 million in Cigarette Restitution Fund (CRF) revenues to BOOST. To the extent the bill reduces public school enrollment, general fund expenditures for public schools decrease as early as FY 2024; the net impact on annual State expenditures cannot be reliably estimated. General fund expenditures increase by \$40,000 in FY 2023 due to one-time implementation costs at the Comptroller's Office. General fund expenditures increase by \$497,700 in FY 2023 for MPCSA operating costs; out-year costs reflect annualization and inflation. To the extent that public charter schools are authorized by MPCSA, general fund expenditures increase by \$1.0 million annually for every 1,000 students enrolled in those schools for charter school facility grants beginning as soon as FY 2024. Federal charter school grant revenues may increase. **This bill establishes a mandated appropriation beginning in FY 2024.**

**Local Effect:** Beginning as soon as FY 2024, local school system revenues and local government expenditures for public schools decrease, due both to reduced public school enrollment and diversion of funds from public school systems, with commensurate increases in revenues and expenditures for MPCSA charter schools. The effect will vary considerably by county.

**Small Business Effect:** None.

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## Analysis

### Bill Summary:

#### *Broadening Options and Opportunities for Students Today*

The purpose of the BOOST Program is to provide scholarships for students who are eligible for the U.S. Department of Agriculture's free and reduced-price lunch program to attend an eligible nonpublic school. The bill specifies BOOST Advisory Board membership and responsibilities, conditions for nonpublic schools to participate in the program, and penalties for nonpublic schools that do not comply with those requirements. MSDE awards scholarships to eligible applicants in rank order by family income; scholarships must not exceed the lesser of (1) the statewide average per pupil expenditure or (2) the nonpublic school's tuition.

#### *Public Charter Schools*

The bill establishes MPCSA, which may authorize the establishment of public charter schools in any jurisdiction in the State, making it an alternative to the local boards of education as a public chartering authority. MPCSA consists of seven members appointed by the Governor, with the advice and consent of the Senate. MPCSA may exempt a public charter school that it authorizes from any policy or requirement established by a county board and from specified State policies or regulations and any other State policy or regulation expressly waived by the State Board of Education (SBE). Employees of a public charter school authorized by MPCSA are not public school employees in the county in which the public charter school is located.

The bill specifies funding mechanisms for public charter schools. Funding for MPCSA administrative costs is as provided in the State budget; the bill expresses the intent that at least \$500,000 of the fiscal 2024 budget be included for MPCSA.

The bill expands the stated purposes of the Maryland Public Charter School Program to include closing achievement gaps between groups of students, increasing high-quality educational opportunities within the public school system for all students, and allowing public schools freedom and flexibility in exchange for exceptional levels of results-driven accountability. Each public chartering authority, which includes local boards of education and MPCSA, must develop a public charter school policy and provide it to SBE. A public charter school may apply to establish a new charter contract with a public chartering authority other than the one that originally authorized the public charter school's establishment. If MPCSA denies a charter school application, the applicant may appeal the decision to SBE.

A public charter school authorized by MPCSA (1) serves as the local educational agency, as defined by the federal Individuals with Disabilities Education Act, for the purpose of providing special education and related services for children with disabilities enrolled at the public charter school and (2) must make a free appropriate public education available to each child with a disability, in accordance with Title 8, Subtitle 4 of the Education Article.

#### *Funding of Public Charter Schools*

The State must distribute directly to a public charter school authorized by MPCSA an amount equal to the total enrollment of the public charter school multiplied by all federal, State, and county operating funds for elementary, middle, and secondary students the county board receives from all sources, per full-time equivalent student. An equal amount of funding is deducted from the State share of the foundation program. A public charter school authorized by MPCSA directly receives federal, State, and county funds designated for the costs of educating children with disabilities.

The State must also distribute annually to the MPCSA funding for a public charter school facility grant program that is at least \$1,000 multiplied by the total enrollment of all the public charter schools authorized by MPCSA. MPCSA must disburse this additional distribution as facilities grants to public charter schools authorized by the authority, in amounts determined by MPCSA, which may be used for operating or capital costs related to a public charter school facility.

A local board of education must disburse to a public charter school that is authorized by the county board an amount of county, State, and federal money for elementary, middle, and high school students that is equivalent to, based on enrollment, the amount disbursed to other public schools in the local jurisdiction.

### *Authority Membership and Structure*

In appointing the seven members to MPCSA, the Governor must consider representatives from all parts of the State. The State Superintendent of Schools serves as a nonvoting *ex officio* member of the authority. MPCSA members are not compensated but are entitled to reimbursement of travel expenses. The Governor may remove a member for specified reasons. The terms of the initial seven members of MPCSA are staggered as specified.

### *Employees of Schools Authorized by the Maryland Public Charter School Authority*

This section applies only to employees of a public charter school authorized by MPCSA. These charter school employees are not public school employees in the county in which the public charter school is located. Members of the professional staff of these public charter schools are exempt from State teacher certification requirements. MPCSA must adopt policies for teacher induction, preparation, and development that support high-quality instruction and academic standards.

Employees in these public charter schools have the same rights and privileges as public school employees and are eligible for the State retirement, health, welfare, and other benefits programs available to public school employees. Criminal history records checks and fingerprinting requirements applicable to other public schools are mandatory for these public charter school personnel, governing board members, and other individuals who regularly come into contact with students. These public charter school employees may join or refuse to join in the activities of any employee organization.

### *Student Lotteries and Placement in Public Charter Schools*

A public charter school may give greater weight to a student's lottery status (when more students apply to attend a public charter school than can be accommodated) if the student lives in a geographical attendance area served by a "persistently failing school" (defined as a school that is ranked in the bottom 5% of its county public school system, based on statewide assessments). The bill specifies that once a student is enrolled in a public charter school, the student remains enrolled until the student is withdrawn by the student's parent or expelled.

Subject to chartering authority approval, a public charter school may provide placement to up to 35% of the students who attended another public charter school in the State during the previous school year operated by the same operator; when combined, the public charter schools must form an integrated multi-year academic program. The public chartering authority may waive the lottery requirements for a public school that has been converted to a public charter school and wants to provide guaranteed placement to students who live within the geographic attendance area established by the chartering authority –

among other criteria, the school must be a “persistently failing school” (as opposed to a low-performing school, as specified by current law). MPCSA, instead of the State board, may grant specified waivers to certain public charter schools located on property within a federal military base.

### *Disposition of Buildings*

If the Secretary of the General Services determines that a State building is no longer needed by the State, the Secretary must inform all public chartering authorities that the building is available for occupation and use by a public charter school on the terms determined by the Secretary.

### *Home Instruction Income Tax Credit*

The bill creates, beginning in tax year 2022, a State income tax credit for certain home instruction expenses incurred by a parent or guardian. The amount of the credit cannot exceed \$5,760 or the income tax liability imposed in the year. Eligible home instruction expenses include (1) correspondence courses or distance learning programs; (2) instruction-related materials; (3) textbooks; or (4) workbooks. The home instruction program must be operated in compliance with specified regulations and be approved by MSDE. The Comptroller, in consultation with MSDE, must adopt regulations to implement the tax credit.

### **Current Law:**

#### *Broadening Options and Opportunities for Students Today*

BOOST has been authorized annually since fiscal 2017 through the budget bill and budget bill language. Special funds for this program are provided through CRF, but annual funding is not mandated. According to the annual authorizing language, scholarship amounts and distribution of scholarships are determined by the BOOST Advisory Board, while the program is administered by MSDE.

The fiscal 2022 operating budget, as enacted, details the criteria for nonpublic schools that have students who are eligible for a BOOST scholarship and would like to participate in BOOST. These criteria include:

- participation in the Aid to Non-Public Schools Program for textbooks and computer hardware and software in the prior school year;
- providing more grades than only prekindergarten and kindergarten;
- administering standardized assessments approved by the National Blue Ribbon program in English, math, and science at specified grade levels; and

- compliance with Title VI of the Civil Rights Act of 1964 as amended; Title 20, Subtitle 6 of the State Government Article (related to employment nondiscrimination) and not discriminate in student admissions, retention, or expulsion based on race, color, national origin, sexual orientation, or gender identity or expression.

The Governor's proposed fiscal 2023 budget includes \$10 million in CRF funds for BOOST and also incorporates substantial changes to the above criteria. The proposed language (1) requires participation in the Aid to Non-Public Schools Program but not in the prior school year; (2) requires that assessments comply with all State and federal law; and (3) limits language relating to discrimination in admissions and removes reference to discrimination regarding gender identity or expression.

### *Public Charter Schools*

The general purpose of the Maryland Public Charter School Program is to establish an alternative means within the existing public school system in order to provide innovative learning opportunities and creative educational approaches to improve the education of students. A local board of education must disburse to a public charter school an amount of county, State, and federal money for elementary, middle, and high school students that is commensurate with the amount disbursed to other public schools in the local jurisdiction.

The local board of education is the public chartering authority within a county. Public charter schools must be nonsectarian and, with exceptions, open to all students on a space-available basis and admit students on a lottery basis if more students apply than can be accommodated. If granted a waiver, a public charter school located within a federal military base may designate as much as 65% of its enrollment for students whose parents are assigned to the base.

Public charter schools cannot discriminate in their enrollment policies or charge tuition to students. A local school system must serve students with disabilities attending charter schools in the same manner as the public agency serves students with disabilities in its other schools, in accordance with applicable federal and State law. A public charter school must require students to be physically present on school premises for a period of time substantially similar to that which other public school students spend on school premises.

An application to establish a public charter school may be submitted to a county board by the staff of a public school, a parent of a student who attends a public school in the county, a nonsectarian nonprofit entity, a nonsectarian institution of higher education in the State, or any combination of these. A public chartering authority may not grant a charter to a private school, a parochial school, a home school, or a school that operates fully online.

### *Home Instruction*

According to regulations, a parent or guardian who chooses to provide a home instruction program for his or her child must initially sign a statement on a form prescribed by MSDE, which indicates consent to the home instruction and materials requirements. The form must be submitted to the local superintendent of schools at least 15 days before the beginning of a home instruction program. The home instruction program must (1) provide regular, thorough instruction in the studies usually taught in the public schools to children the same age; (2) include instruction in English, mathematics, science, social studies, art, music, health, and physical education; and (3) take place on a regular basis during the school year and be of sufficient duration to implement the instruction program. The home instruction program may include enrollment on a part-time or full-time basis in courses offered by accredited or unaccredited colleges.

A parent or guardian who chooses home instruction for his or her child must maintain a portfolio of materials as specified. However, a transcript from a college may be used in lieu of a portfolio. A parent or guardian must agree to allow a local school system to review the program of instruction as specified. A local school system may not impose additional requirements other than those in regulation.

**State Revenues:** Tax credits may be claimed beginning in tax year 2022. As a result, general fund revenues will decrease significantly beginning in fiscal 2023. Based on data on the number of home-schooled children in the State, the Comptroller's Office estimates that general fund revenues decrease by up to \$234.2 million annually beginning in fiscal 2023. This estimate assumes that a similar number of children continue to be home-schooled and the maximum credit is claimed in each year. Revenue decreases may be less than estimated to the extent that fewer children are home-schooled in each year and the maximum credit is not claimed in each year. As the number of home-schooled students in the State nearly doubled during the COVID-19 pandemic (it had been relatively stable for many years), it is likely that the number of families claiming the credit is less in future years as the number of home-schooled students reverts to prior levels.

### *Federal Funds*

To the extent that the bill's provisions enable Maryland to successfully compete for federal Charter School Program funds, federal revenues to MSDE increase. Most of these funds pass through to charter schools, but some may be retained by MSDE for administration, which may offset in part the additional MSDE costs of administering the bill discussed above. Revenues and expenditures for MPCSA and public charter schools also increase.

## **State Expenditures:**

### *Broadening Options and Opportunities for Students Today*

The proposed fiscal 2023 State budget for BOOST includes \$10.0 million in CRF funds. Grant awards in fiscal 2022, making use of a prior-year fund balance, amount to \$10.2 million. Absent the bill, this analysis assumes funding for BOOST would continue at \$10.0 million a year with CRF monies; CRF has been used to fund BOOST since its inception.

Assuming continued funding of the program via CRF, special fund expenditures for the BOOST Program increase by \$10.0 million annually, beginning as early as fiscal 2023. However, because CRF is used along with general funds to meet State Medicaid obligations (as well as for other purposes), an equivalent (\$10.0 million) increase in general fund expenditures for Medicaid is incurred annually.

Because MSDE has administered BOOST in a manner assumed to be similar to what the bill requires, with the assistance of the BOOST Advisory Board, it is assumed that MSDE can handle administering the bill with existing resources. However, to the extent that additional resources are necessary, it is assumed that some portion of the additional (and mandated) funding under the bill can be used to cover these costs, with an equivalent reduction in funds available for BOOST scholarships.

### *Public Charter School Facility Grants*

The bill requires the State to distribute annually to the MPCSA (for distribution by MPCSA) a public charter school facility grant that is at least \$1,000 multiplied by the total enrollment of all the public charter schools authorized by MPCSA. The cost of this provision depends on the number of students enrolled in MPCSA schools annually beginning as early as fiscal 2023. For illustrative purposes, this amounts to \$1.0 million annually for every 1,000 students enrolled in MPCSA schools.

### *The Maryland Public Charter School Authority and Maryland State Department of Education Costs*

General fund expenditures increase by \$497,691 in fiscal 2023, which reflects a 90-day start-up delay from the bill's July 1, 2022 effective date. This estimate includes the cost of hiring approximately eight staff, including a manager, assistant Attorney General, and other professional personnel to staff MPCSA. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.



Positions	8.0
Salaries and Fringe Benefits	\$438,947
Operating Expenses	<u>58,744</u>
<b>Total FY 2023 State Expenditures</b>	<b>\$497,691</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The bill expresses legislative intent that the annual operating budget include at least \$500,000 for this purpose beginning in fiscal 2024. As projected spending exceeds that amount beginning in fiscal 2024, the bill’s intent is satisfied.

*Education Aid*

To the extent that the bill encourages more students to attend private school than under current BOOST funding levels, and to the extent that tax credits incentivize increased levels of home schooling, State aid to public schools, which depends largely on student enrollment counts, will be reduced as early as fiscal 2024, after factoring in a one-year lag between measured enrollment declines in fiscal 2023 and adjustments to State aid in fiscal 2024. In fiscal 2021, State aid per student was approximately \$8,400; however, the amount of State per pupil aid varied by local school system from about \$4,400 for Worcester County to about \$14,700 for Somerset County. Annual per pupil State funding will increase significantly under the Blueprint for Maryland’s Future legislation (Chapters 36 and 55 of 2021). The impact on enrollment and, therefore, on State general fund expenditures for public schools cannot be reliably estimated.

*Home Instruction Income Tax Credit*

The Comptroller’s Office reports that it will incur a one-time general fund expenditure increase of \$40,000 in fiscal 2023 to add the tax credit to personal income tax forms. This includes data processing changes to the income tax return processing and imaging systems and systems testing.

**Local Fiscal Effect:** As discussed above, to the extent that the bill encourages more students to attend private school or to be home-schooled, local revenues from State aid to public schools will be reduced beginning in fiscal 2024. This reflects enrollment declining in fiscal 2023 due to the increase in BOOST funding that year, with adjustments to State aid following in fiscal 2024. Similarly, reduced public school enrollment reduces the required minimum local appropriations to public schools beginning in fiscal 2024.

Per pupil local appropriations for public schools averaged about \$8,000 in fiscal 2021, ranging from about \$2,900 in Caroline County to \$14,800 in Worcester County. Annual

per pupil local funding for some counties will increase significantly in the near future under the Blueprint for Maryland's Future legislation. To the extent local school system enrollment significantly decreases, local school system expenditures may also decrease; however, many local school system expenditures are fixed costs and cannot be quickly adjusted. Any such impact cannot be reliably estimated and could vary significantly by school system.

To the extent that MPCSA authorizes additional charter schools, or reauthorizes charter schools that have already been authorized by a local board of education, revenues and expenditures for existing local school systems decrease with commensurate per pupil increases in revenues and expenditures for MPCSA schools. Given the effective date of the bill, and the time necessary for MPCSA to begin operations and review and approve charter school applications, it is assumed that these effects begin no earlier than the budget for the 2024-2025 school year (fiscal 2025). The effect is expected to be particularly substantial in both Baltimore City and Prince George's County, given the current numbers of public charter school students in those two school systems.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Prince George's County Public Schools; Comptroller's Office; Maryland State Department of Education; Department of Budget and Management; Department of General Services; Department of Legislative Services

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