

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1217
Ways and Means

(Delegates Ivey and Rosenberg)

Public Charter Schools - Chartering Authorities, Application Requirements, and Funding

This bill authorizes the State Board of Education to be the primary public chartering authority for State schools designed to address an unmet need and to serve all qualifying local school systems. A local board of education or the State Board of Education must take specified actions when reviewing, evaluating, and making a decision on a charter school application. Within 30 days of the approval of a charter application, the local board of education or the State Board of Education must negotiate and execute a legally binding performance contract that includes specified elements.

Except as otherwise stated, a public charter school may not be subject to the State's education statutes or any State or local rule, regulation, policy, or procedure relating to noncharter public schools within an applicable local school system. The State Board of Education and each local board of education must establish charter school offices. Employees of a public charter school may establish an independent bargaining unit and develop a collective bargaining agreement.

A local board of education must disburse a specified amount of funds, including transportation funds, to each public charter school by July 1 of each year.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: General fund expenditures increase by \$113,100 for the Maryland State Department of Education (MSDE) to hire two full-time staff to operate the charter school office in FY 2013. Federal funds from a federal charter school grant may increase due to aligning Maryland charter school law to meet the requirements of the federal grant. Future years reflect annualization and inflation.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	113,100	141,700	151,300	158,500	165,900
Net Effect	(\$113,100)	(\$141,700)	(\$151,300)	(\$158,500)	(\$165,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local school system disbursements to public charter schools increase by approximately \$1,013 per student (\$245 to reach 100% of per student funding and \$768 to include transportation) beginning in FY 2013 or approximately \$12.8 million for six jurisdictions. Future year estimates will increase based on education spending and enrollment. Local school system expenditures increase to establish a charter school office. Local school system revenues from leasing or selling surplus school sites or buildings to public charter schools may decrease. **This bill establishes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary:

Expanding the Purpose of the Maryland Public Charter School Program

The general purpose of the Maryland Public Charter School Program is specified to include:

- improving student learning by creating high-quality schools with high standards for student performance;
- closing achievement gaps between high-performing and low-performing groups of public school students;
- increasing high-quality educational opportunities within the public education system for all students;
- creating new professional opportunities for teachers, school administrators, and other school personnel that allow them to have a direct voice in the operation of their school;
- encouraging the use of different, high-quality models of teaching, governing, scheduling, or other aspects of education that meet a variety of student needs;
- allowing public schools freedom and flexibility in budgetary and operational decisions in exchange for exceptional levels of results-driven accountability;
- providing students, parents, community members, and local entities with expanded opportunities for involvement in the public education system;

- encouraging the replication of successful public charter schools; and
- using public charter schools and the best practices from public charter schools to help improve low-performing schools in local school systems.

A public charter school may be a State school designed to address a local school system's inability to provide special services for its students; be a school that supports a full, blended, or hybrid online charter school model; and serve other levels of students, such as prekindergarten students or postsecondary students.

Public Charter School Rules

Except as stated otherwise, a public charter school is *exempt* from significant State and local rules that inhibit the flexible operation and management of public schools. However, a public charter school must be created in accordance with statute and the appropriate local board of education policy, and comply with the same federal and State audit requirements as other public elementary and secondary schools. A public charter school is governed by an independent governing board.

Enrollment Preferences

A public charter school may give an enrollment preference to children of a public charter school's foundation and governing board members as long as they are no more than 10% of the school's total enrollment. A public charter school may also give enrollment preferences to full-time employees of the school.

Charter Applications and Approval

An application to establish a public charter school may be submitted to the State Board of Education or as allowed under current law, to the local board of education of the jurisdiction in which the charter school will be located.

In reviewing and evaluating a charter application, the local board of education or the State Board of Education must (1) employ procedures, practices, and criteria consistent with nationally recognized *Principles and Standards for Quality Charter School Authorizing*; (2) conduct a thorough evaluation of each written charter application; (3) conduct an in-person interview with each applicant; and (4) provide an opportunity in a public forum for local residents to learn about and provide input on each public charter school application.

In deciding whether to approve a charter application, the local board of education or the State Board of Education must (1) grant a charter only to an applicant that has demonstrated competence in each element of the local board's or the State board's

published approval criteria and is likely to open and operate a successful public charter school; (2) base decisions on documented evidence collected through the application review process; and (3) follow charter-granting policies and practices that are transparent, are based on merit, and that avoid conflicts of interest or any appearance of a conflict of interest.

The decision of a local board of education or the State Board of Education to approve or deny a charter application must be made in an open meeting of the local board or the State board and adopted by a resolution of the local board or the State board. If a local board of education or the State Board of Education denies a charter application, the reason for the denial must be stated clearly and provided in writing to the applicant within five business days after the decision.

The State Board of Education, like a local board of education is required under current law, must review an application and render a decision within 120 days of receipt of an application. Likewise, for a restructured school, the State board must review an application and render a decision within 30 days of receipt of an application.

Revoking a Charter

If a local board of education revokes a charter, the charter school operator may appeal the decision to the State Board of Education, in accordance with statute. The State board must render a decision within 120 days of filing of an appeal. If the local board revokes a charter and the State board reverses the decision, the State board has the authority to direct the local board to grant a charter and must mediate with the local board and the applicant to implement the charter.

Charter

A local board of education or the State Board of Education may grant an initial charter for a term of five operating years. An approved public charter school may delay opening for one school year in order to plan and prepare for the school's opening. If a public charter school cannot open within one school year (1) the school may request an extension; and (2) the local board or the State board may grant or deny the extension depending on the particular circumstances of the school. If the school requires an opening delay of one year or more, the school must notify the local board or the State board prior to the recruitment of students for the school.

Performance Contract

Within 30 days of the approval of a charter application, the local board of education or the State Board of Education and the governing board of the approved public charter

school must negotiate and execute a legally binding performance contract. The approved charter application must be an attachment to the contract. The contract must clearly set the academic and operational performance expectations and measures by which the public charter school will be judged, and clearly set the administrative relationship between the local board or the State board and the public charter school, including each party's rights and responsibilities. The contract must also set forth performance expectations and measures, which may include applicable federal and State accountability requirements. The accountability process the school will use to conduct annual, timely, and independent audits of the school's financial statements that are filed with the local board or the State board; and the process of intervention the school will use if the school does not meet accountability standards and expectations must be included in the contract. Finally, the contract must include the criteria that the local board or the State board will use to renew or revoke a school's charter, including data on student academic achievement for all groups of students at the school.

Responsibilities of the Public Chartering Authority

A public chartering authority must ensure that the authorizing process for a public charter school and the charter application address the roles and responsibilities of the local board of education and the applicants and operators of the public charter school with respect to all matters pertaining to the successful implementation of a high-quality charter school, including provision of services to children with disabilities and English language learners. The public chartering authority must ensure that, prior to opening a public charter school, the operators of the school are informed of the human, fiscal, and organizational capacity needed to fulfill the school's responsibilities regarding compliance with federal and State laws, including the provision of services related to children with disabilities and English language learners.

Responsibilities of the Public Charter School

The public charter school must ensure that student records for enrolled students are transferred to the charter school prior to the first day of school.

Charter School Offices

The State Board of Education must provide technical assistance to the operators of a public charter school to ensure the development and implementation of high-quality charter schools.

The State Board of Education must establish an office that will ensure compliance with State charter school law and will provide technical assistance and professional

development to local boards of education and the State board to improve the capacity in the State to authorize, monitor, and hold charter schools accountable.

MSDE must designate a staff person, who in addition to functioning as the contact person for the Maryland Public Charter School Program, must implement the State responsibilities identified in statute including technical assistance and professional development to local boards of education; and serve as the State's designee in providing leadership for the application, approval, and oversight of State-initiated public charter schools.

A local board must be accountable to the State board for the effective implementation of State charter school law in relation to the schools to which the local board issues a charter. Each local board must establish an office within the local school system to ensure compliance and implementation of State charter school law and to serve as the State board's liaison for authorizing responsibilities.

Collective Bargaining

With regards to collective bargaining, the employee organization must recognize the unique nature of public charter schools and must demonstrate a good-faith effort to support the need for public charter school flexibility in implementing each school's design. In a State-established public charter school, employees may choose to establish an independent bargaining unit and may develop a collective bargaining agreement. Public charter school representatives must be actively engaged in the negotiation process of new collective bargaining agreements to ensure that the unique needs of public charter schools are met.

Funding

By July 1 of each year, a local board of education must disburse to a public charter school an amount of county, State, and federal money for elementary, middle, and secondary students that is commensurate with the amount disbursed to other public schools in the local jurisdiction, which must be equal to 100% of the amount disbursed per student to other public schools in the local jurisdiction.

MSDE is authorized to retain up to 2% of the money allotted to public charter schools that were granted a charter by the State Board of Education to fund the work required by statute including, providing technical assistance and professional development. The amount of money retained by MSDE must be calculated using the same formula that is used when the local board is acting as a primary chartering authority.

Funding for transportation must be *included* in the per pupil amount that a local board must provide to the public charter school under the commensurate funding formula. Each public charter school must report to MSDE annually about how the school will use the transportation funds to support the transportation needs of the school's students.

Surplus School Site or Building

The terms that a local board of education must offer a surplus school site or building for occupation and use by a public charter school must include the option for a public charter school to purchase or lease the school site or building at or below fair market value.

Current Law:

Purpose of the Maryland Public Charter School Program

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.

Chartering Authority

The primary public chartering authority for charter schools is the local board of education; the State Board of Education is a secondary public chartering authority when acting in its appeal review capacity or as the public chartering authority for a restructured school.

Establishing a Public Charter School

An application to establish a public charter school must be submitted to the local board of education in the jurisdiction in which the charter school will be located. If the local board of education denies the application, the applicant can appeal the decision to the State Board of Education.

Public school staff, parents or guardians of public school students, nonsectarian nonprofit entities, or nonsectarian institutions of higher education in the State can apply to establish a public charter school. Private, parochial, or home schools are not eligible to become a public charter school.

Public Charter School Rules

In general, a public charter school must comply with all the provisions of law and regulation governing other public schools. A public charter school must comply with all applicable health and safety laws. A public charter school must comply with the provisions of law and regulation governing other public schools. A public charter school may seek a waiver of these requirements through an appeal to the State board. A waiver may not be granted relating to audit requirements; student assessments; or health, safety, and civil rights.

A public chartering authority may not grant a charter to a public charter school whose operation would be inconsistent with any public policy initiative, court order, or federal improvement plan governing special education that is applicable to the State. The State board must provide technical assistance to the operators of a public charter school to help the school meet the requirements of federal and State laws.

Student Enrollment

Public charter schools must be nonsectarian and open to all students on a space-available basis. Public charter schools cannot discriminate in their enrollment policies or charge tuition to students. However, the State Board of Education may grant a waiver from the requirement that a public charter school be open to all students on a space-available basis to a charter school that is located on a federal military base. The public charter school must admit students with parents who are not assigned to the base to at least 35% of its total available space and must admit all students on a lottery basis.

Public Charter School Employees

Professional staff members of a public charter school must hold the appropriate Maryland certification. Public charter school employees remain public school employees. If a collective bargaining agreement is already in existence in the county where a public charter school is located, the employee organization and the public charter school may mutually agree to negotiate amendments to the existing agreement to address the needs of the particular public charter school.

Local boards of education must develop and submit a public charter school policy to State Board of Education. This policy must include guidelines and procedures regarding: evaluation of public charter schools; revocation of a charter; reporting requirements; and financial, programmatic, or compliance audits of public charter schools.

Funding

A local board 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.

Local Board of Education Charter School Policy

Each local board must develop a public charter school policy and submit it to the State Board of Education. The policy must include guidelines and procedure regarding: (1) evaluation of public charter schools; (2) revocation of a charter; (3) reporting requirements; and (4) financial, programmatic, or compliance audits of public charter schools.

Contact Person at MSDE

MSDE must designate a staff person to function as a contact person for the Maryland Public Charter School Program.

Surplus School Site or Building

If, with the approval of the State Superintendent of Schools, a local board of education determines that a school site or building no longer is needed for school purposes and after the county commissioners or county council have provided the required notice, the local board must inform the public charter schools in the jurisdiction that the school site or building is available for occupation and use by a public charter school on the terms determined by the local board.

Each local board of education must establish a procedure to determine which public charter school may occupy and use an available school site or building if more than one public charter school notifies the local board of an interest in occupying and using a school site or building.

Any portion of a building or property occupied and used by a public charter school must be exempt from property taxes for the duration of the occupation and use of the building or property as a public charter school.

Background: Since 1991, 40 states and the District of Columbia have enacted laws that authorize public charter schools. Maryland passed its public charter school law in 2003. There are 50 charter schools in the State: 38 in Baltimore City; 7 in Prince George's County; 2 in Anne Arundel County; and 1 each in Baltimore, Frederick, and St. Mary's

counties. MSDE reports that an additional 7 charter schools are planning to opening in fall 2012.

Charter School Funding

During the spring of 2005, three charter school applicants challenged the level of operating funding offered by their local boards of education through their right of appeal to the State board. Some of the local boards had interpreted State law to mean that a charter school would be provided a per pupil allocation consisting of a combination of cash for discretionary use and in-kind services, such as special education and security. The charter schools believed that the funding methodology used by the local boards violates the requirement for funding to be *commensurate* with that disbursed to other public schools.

In a 7-2 ruling, the Maryland Court of Appeals upheld the State Board of Education's funding model for charter schools, thereby rejecting separate funding models developed by the Baltimore City Board of School Commissioners (city board) and the Prince George's County Board of Education (PGCBE). The State board's funding model requires that, for each student they enroll, charter schools receive funding equal to the total annual school system operating budget (including all federal, State, and local funds) divided by the total number of students in the school system. It allows local school boards to deduct up to 2% from that amount for central office administrative functions and only requires local school boards to distribute federal funds to charter schools when they qualify for the funds under federal rules. The city board and PGCBE had each proposed alternative models that provided reduced funding levels to charter schools, but also provided specific in-kind services to charter schools in their jurisdictions (including, for example, special education and meal services).

Although the ruling specifically relates to charter school funding formulas in the two affected school districts, it also upheld the State board's status as the arbiter of the "true intent and meaning" of State education law. The State board indicates that it intends to apply the State board's charter school funding model to all charter schools in the State, but only when disputes between charter schools and local boards of education are brought before it. It has not issued new guidance to local school boards in response to the Court of Appeals ruling. Instead, the State board hopes that local school boards and their charter schools can reach agreement on appropriate funding levels. The State board will get involved only in instances where agreement between a local board and a charter school cannot be reached and the charter school appeals to the State board for a ruling.

In 2006, the funding formula that was used by the State board to determine if the Frederick County Board of Education was distributing commensurate funding to

Monocacy Montessori Communities, Inc. calculated a per pupil amount and then deducted 2% for administrative costs and transportation costs.

Regarding accountability, charter schools are subject to the federal No Child Left Behind Act and must participate in the State's accountability program.

Principles and Standards for Quality Charter School Authorizing

Principles and Standards for Quality Charter School Authorizing is a publication of the National Association of Charter School Authorizers. The publication reflects the lessons learned by experienced authorizers and identify core authorizer responsibilities and describe how the principles are upheld within each core responsibility.

MSDE Charter School Office

MSDE reports that the Office of School Innovations is charged with the implementation of charter school law and the charter school program. The office is currently staffed by one permanent State employee, the Director of School Innovations. An office secretary is a contractual employee supported by a federal grant, which will no longer be funded after June 30, 2012. A contractual education specialist provides support to the Race to the Top charter school initiative.

State Revenues: Federal funds from a federal charter school grant may increase due to aligning Maryland charter school law to meet the requirements of the federal charter school program. MSDE reports that Maryland was not approved to receive the federal grant in 2011, because State law is not aligned to the federal program's requirements. However, Department of Legislative Services advises that the federal Charter School Program grant is very competitive and only two states Florida (\$21.4 million) and New York (\$28.3 million) were awarded grants in 2011.

State Expenditures: General fund expenditures increase by \$113,111 for MSDE to hire one full-time education program specialist and one full-time administrative specialist to provide technical assistance to the operators of public charter schools to ensure the development and implementation of high-quality charter schools, to provide technical assistance and professional development to local boards of education and the State Board of Education, and to support State Board of Education's new responsibilities associated with the authority to grant charters, including negotiating with public charter school employees. The estimate reflects a 90-day start-up delay from the bill's July 1, 2012 effective date and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Salaries and Benefits	\$104,161	\$140,568	\$150,222
Operating Expenses	825	1,111	1,122
Start-up Costs	<u>8,125</u>	<u>0</u>	<u>0</u>
Total	\$113,111	\$141,679	\$151,344

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

Local Revenues: Local school system revenues from leasing or selling surplus school sites or buildings to public charter schools may decrease minimally due to requiring a local board to include the option for a public charter school to purchase or lease the school site or building at or below fair market value. Under current law, a local board of education may set the terms for occupation and use.

Local Expenditures: Requiring local school systems to disburse 100% of per student funding to charter schools, rather than 98% under current State board practice, increases local school system disbursements to public charter schools by approximately \$245 per student beginning in fiscal 2013. **Exhibit 1** shows the additional fund disbursement per charter school student by local school system. Actual local school disbursements will depend on the total per pupil spending of the local school system, and the charter school enrollment in its jurisdiction.

Currently there are public charter schools operating in six local school systems, Anne Arundel, Baltimore, Frederick, Prince George's, and St. Mary's counties and Baltimore City. The estimated total additional disbursement of funds to public charter schools is shown in **Exhibit 2**. The estimate uses the approximate public charter school enrollment for the 2010-2011 academic year, and the per pupil funding for fiscal 2012. In total, local school systems will have to disburse an additional \$4.1 million to existing charter schools. The majority, \$3.2 million, of the additional local funds will be from Baltimore City due to the majority of charter school students enrolled in Baltimore City. Due to disbursing additional funding to charter schools, local school systems may have less funding to oversee charter schools, and fund central office duties related to charter schools.

Exhibit 1
Required Additional Fund Disbursement per Charter School Student
Fiscal 2012

<u>County</u>	<u>State Direct Aid*</u>	<u>Local Appropriations</u>	<u>Total (100%)</u>	<u>98%</u>	<u>Difference</u>
Allegany	\$8,953	\$3,316	\$12,269	\$12,024	\$245
Anne Arundel	3,967	7,550	11,518	11,287	231
Baltimore City	10,769	3,080	13,848	13,571	277
Baltimore	5,153	6,663	11,816	11,580	236
Calvert	4,947	6,660	11,608	11,375	233
Caroline	8,036	2,377	10,414	10,206	208
Carroll	5,030	6,040	11,071	10,849	222
Cecil	6,185	4,376	10,561	10,350	211
Charles	5,893	5,611	11,504	11,274	230
Dorchester	7,078	3,770	10,848	10,631	217
Frederick	5,476	5,638	11,113	10,891	222
Garrett	5,389	6,087	11,476	11,247	229
Harford	5,399	5,701	11,100	10,878	222
Howard	4,213	9,362	13,576	13,304	272
Kent	4,410	7,925	12,335	12,089	246
Montgomery	3,905	9,758	13,663	13,390	273
Prince George's	7,037	5,154	12,191	11,947	244
Queen Anne's	4,127	5,812	9,940	9,741	199
St. Mary's	5,528	4,686	10,214	10,010	204
Somerset	8,654	3,234	11,888	11,651	237
Talbot	2,564	7,611	10,175	9,972	203
Washington	6,947	4,136	11,083	10,861	222
Wicomico	8,204	2,617	10,821	10,605	216
Worcester	2,821	11,389	14,210	13,925	285
Average	\$5,794	\$6,454	\$12,248	\$12,003	\$245

*Direct education aid excluding student transportation.

Source: Department of Legislative Services

Exhibit 2
Estimated Required Additional Funding Disbursed to Public Charter Schools
Fiscal 2013

	<u>Estimated</u> <u>Enrollment</u>	<u>Per Pupil</u> <u>Additional</u> <u>Funding</u>	<u>Total</u> <u>Additional</u> <u>Funding</u>
Anne Arundel	693	\$231	\$159,747
Baltimore City	11,490	277	3,186,269
Baltimore	601	236	141,822
Frederick	299	222	66,484
Prince George's	1,864	244	455,016
St. Mary's	294	204	60,033
Total	15,241		\$4,069,371

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

Requiring funding for transportation to be included in the per pupil amount that a local board of education must disburse to charter schools will increase local school system disbursements to public charter schools by approximately \$768 per student beginning in fiscal 2013. Transportation funding per charter school student by local school system is shown in **Exhibit 3**. Actual local school system disbursements will depend on the total per pupil transportation spending of the local school system, and the charter school enrollment in its jurisdiction.

Exhibit 3
Required Transportation Funding per Charter School Student
Fiscal 2011

<u>County</u>	<u>Transportation State Aid</u>	<u>Local Transportation Expenditures</u>	<u>Total</u>
Allegany	\$503	\$224	\$727
Anne Arundel	283	290	573
Baltimore City	234	250	484
Baltimore	268	370	637
Calvert	327	484	811
Caroline	467	281	748
Carroll	342	381	723
Cecil	309	293	602
Charles	379	458	837
Dorchester	513	183	696
Frederick	292	278	570
Garrett	670	345	1015
Harford	311	517	828
Howard	304	361	665
Kent	721	346	1067
Montgomery	249	584	833
Prince George's	305	753	1058
Queen Anne's	419	428	847
St. Mary's	384	503	887
Somerset	645	381	1026
Talbot	345	381	727
Washington	306	275	581
Wicomico	351	244	595
Worcester	450	435	885
Average	\$391	\$377	\$768

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

The estimated disbursement of transportation funds to existing public charter schools using fiscal 2011 transportation aid is shown in **Exhibit 4**. In total, local school systems

will have to disburse \$8.7 million in transportation funds to existing public charter schools. The combined impact of the bill on local school systems with charter schools will likely decrease funding available to noncharter public schools in those jurisdictions, particularly in the first year.

Exhibit 4
Estimated Transportation Funding Disbursed to Public Charter Schools
Fiscal 2013

	<u>Estimated Enrollment</u>	<u>Per Pupil Transportation Aid</u>	<u>Total</u>
Anne Arundel	693	\$573	\$ 396,805
Baltimore City	11,490	484	5,562,171
Baltimore	601	637	383,046
Frederick	299	570	170,529
Prince George's	1,864	1,058	1,971,332
St. Mary's	294	887	260,838
Total	15,241		\$8,744,720

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

Local school system expenditures also may increase to establish a charter school office to ensure compliance and implementation of State charter school law and to serve as the State Board of Education's liaison for authorizing responsibilities. Actual expenditures will depend on the number of charter schools that the local board of education has approved, and the extent to which local school systems already have staff assigned to oversee charter schools in its jurisdiction.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Department of Education, Public School Construction Program, Department of Legislative Services

Fiscal Note History: First Reader - March 14, 2012
ncs/rhh

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