

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 486 (The Speaker, *et al.*) (By Request - Administration)
 Ways and Means

Public Charter School Expansion and Improvement Act of 2015

This Administration bill alters State law regarding the establishment and operation of public charter schools. The bill specifies the calculation of local school system allocations to public charter schools and also makes charter schools in public and private buildings eligible to participate in the Public School Construction Program. It also alters State collective bargaining laws by allowing a public charter school, or its operator, to act as its own bargaining unit; and by exempting those employed by a charter school operator from the requirement to be members of an existing bargaining unit or to be bound by the provisions of an existing collective bargaining agreement. The role of the Maryland State Board of Education as a chartering authority is clarified.

Fiscal Summary

State Effect: The Maryland State Department of Education (MSDE) will require two new employees beginning in FY 2016 and an additional employee beginning in FY 2017 to carry out provisions of the bill. General fund expenditures therefore increase by \$157,300 in FY 2016, increasing to \$338,100 in FY 2020 due to inflation and varying start dates for new positions. The State Retirement Agency (SRA) may also incur one-time expenditures to accommodate new classes of employees and employers in the State retirement systems.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	157,300	271,000	308,900	323,200	338,100
Net Effect	(\$157,300)	(\$271,000)	(\$308,900)	(\$323,200)	(\$338,100)

Local Effect: Local school systems, particularly Baltimore City Public Schools, may incur significant one-time expenditures to reconfigure human resources systems. Local school systems may receive less capital funding and/or fewer funded projects in a given year.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary:

Local Allocations to Public Charter Schools

The bill repeals the requirement that a county board must disburse to a 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 local schools in the county. Instead, the bill establishes a public charter school per pupil allocation (PCSPPA). The PCSPPA for a county is 98% of: the sum of the State, county, and federal funds (excluding debt service and adult education) appropriated to a county for current expense categories for the current fiscal year, divided by the full-time equivalent enrollment of the county in the prior fiscal year. The bill also establishes a Title I per pupil allocation (Title I PPA) to be determined by the local school system using a generally accepted calculation.

Generally, a county board must disburse to a public charter school *twice* in each fiscal year an amount equal to the number of students enrolled in the charter school on September 30 of the prior school year multiplied by the difference between the PCSPPA and the Title I PPA.

However, for public charter schools classified as Title I schools, a county board must disburse to the charter school in each fiscal year an amount equal to the sum of:

- the number of students enrolled in the public charter school on September 30 of the prior school year who are eligible for free and reduced-price meals (FRPM) multiplied by the PCSPPA; and
- the number of students enrolled in the public charter school on September 30 of the prior school year who are *not* eligible for FRPM multiplied by the difference between the PCSPPA and the Title I PPA.

For the first fiscal year in which a public charter school operates, however, the amount disbursed to the public charter school by the county must be based on projected student enrollment for the public charter school. A funding adjustment must be made after actual enrollment in the public charter school can be determined.

The public charter school must reimburse the local school system for regular and special services that the public charter school requests of the local school system, and for the salary, local retirement, and other fringe benefit costs for the public school employees of the charter school.

Personnel and Collective Bargaining

The bill creates an alternative type of collective bargaining unit that consists solely of public charter school employees who are employed by a public charter school operator and who decide to form an employee organization, and exempts these bargaining units from existing limitations on the number of collective bargaining units that may exist in a county.

Each public charter school applicant must indicate in its application whether their employees will be employed by the public school employer (the local school system) or by the charter school operator. Those employed by a charter school operator may not be required to be members of an existing bargaining unit or to be bound by the provisions of an existing collective bargaining agreement.

Public Charter School Establishment and Operations

An application to establish a public charter school must include:

- a plan to provide a rigorous program of instruction, including an equivalent method for satisfying any requirements from which the charter school operator intends to seek a waiver;
- a description of how a weighted admissions lottery will be implemented if a public charter school opts to give greater weight to specified students' lottery status as authorized by the bill; and
- a plan to ensure that the professional staff of the charter school will be well-qualified and credentialed, including assurances that the plan does not violate the federal Elementary and Secondary Education Act (ESEA).

The bill specifies that a public charter school is established in accordance with the public chartering authority policy. The bill also reduces, from 120 to 90, the number of days within which the State board must render an appeal decision, if a county board of education denies an application to establish a charter school. A public chartering authority cannot withhold approval of an application until a facility is secured.

A public charter school may apply to the State board for a comprehensive waiver from all provisions of law and regulation governing other public schools, except those provisions relating to (1) audit requirements; (2) measurement of student academic achievement; or (3) the health, safety, or civil rights of students and employees of the public charter school.

The requirement that a member of the professional staff of a public charter school must hold the appropriate Maryland certification is repealed. Instead, the professional staff must be qualified and credentialed in accordance with the plan submitted by the operator as part of the application to establish a public charter school.

Public School Construction

Public charter schools in both public and privately owned buildings are made eligible to participate in the Public School Construction Program. MSDE must act as the administering agency that prepares a school construction program for charter schools. Public charter schools are subject to the State and local cost-share formula applicable to the county in which the public charter school is located. A combination of general obligation bonds and pay-as-you-go funds may be used, as appropriate, for construction or renovation of public charter schools.

Teacher Retirement

Teachers and similar employees of charter school operators are included in the Teachers' Retirement System (TRS) and Teachers' Pension System (TPS). For purposes of retirement system participation, charter school operators are included as employers. The charter school operators are required to pay the local share of retirement cost for their employees in the TRS/TPS.

Current Law: 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.

Chartering Authority and Establishing a Public Charter School

The local board of education is the primary public chartering authority for public charter schools; 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. An application to establish a public charter school in a county must be submitted to the local board of education. 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 and Local Board of Education Charter School Policy

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 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 of students and employees of the public charter school.

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.

Each local board of education must develop a public charter school policy and submit it to the State Board of Education. The policy must include guidelines and procedures 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.

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 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.

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. A public charter school that occupies or uses a school site or building under this provision of the law may not sell, dispose of, or otherwise transfer the school site or building.

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. Charter schools located in public school buildings are eligible to receive State school construction funds if the project is requested by the school board.

Title I of ESEA

Title I of ESEA provides financial assistance to local educational agencies and schools with high numbers or high percentages of children from low-income families to help ensure that all children meet challenging state academic standards. Schools enrolling at least 40% of children from low-income families are eligible to use Title I funds for schoolwide programs designed to upgrade their entire educational programs to improve achievement for all students, particularly the lowest-achieving students.

Background: The Maryland Public Charter School Program has grown from serving 3,363 students during the 2005-2006 school year, the first year in which charter schools were operational in accordance with the law, to serving 17,839 students during the 2013-2014 school year. Further, despite some closures along the way, the number of charter schools has grown from 15 charter schools during the 2005-2006 school year to 47 charter schools during the 2014-2015 school year. However, it is worth noting that despite the continued growth in enrollment, the net number of charter schools (47) has not changed since the 2012-2013 school year. **Exhibit 1** shows the number of charter schools in the State and the number of students served by charter schools over the course of the past 10 years.

Although nine different counties have had at least one charter school at some point over the last 10 years, the vast majority of charter schools have been located in Baltimore City.

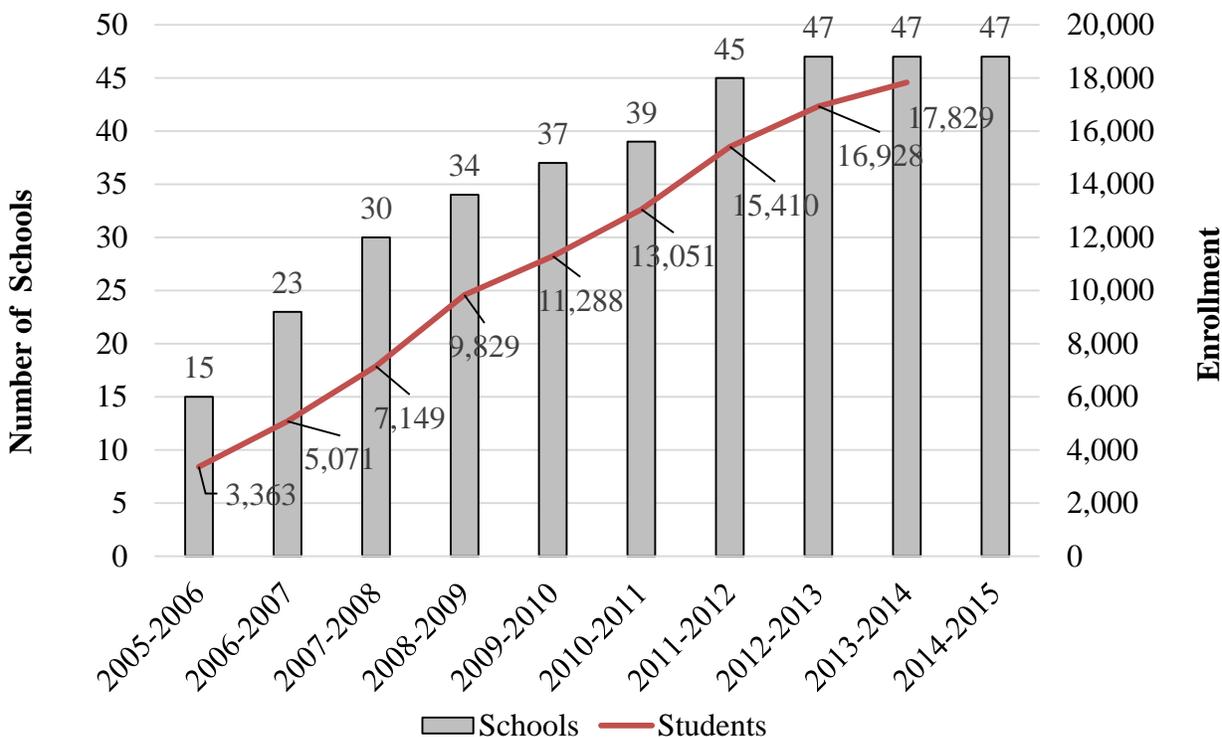
For the 2014-2015 school year, charter schools are located in: Baltimore City (31); Anne Arundel County (2); Frederick County (3); Prince George's County (10); and St. Mary's County (1).

In a 7-2 ruling, 400 Md. 324, 929 A.2d 113 (2007), 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. Specifically, the State board established the following formula to derive an adjusted per pupil amount for funding charter schools:

- (1) The total school system operating budget (excluding debt service and adult education dollars, but including all other State, local, and federal funding) is divided by the September 30 enrollment count for the previous year. This equals the average per pupil amount.
- (2) To reach the adjusted per pupil amount from the average per pupil amount, subtract:
 - 2% (representing a reduction in average per pupil amount for administrative costs borne by the school system);
 - any restricted State or federal funding per pupil for which the charter school or its students are not eligible; and
 - the per pupil cost of any "buy backs" of services from the school system.

Local school boards are required to distribute federal funds to charter schools when they qualify for the funds under federal rules.

Exhibit 1
Public Charter Schools in Maryland
2005-2006 School Year to 2014-2015 School Year



Note: Data does not include transformation schools in Baltimore City Public Schools. Enrollment figures for the 2014-2015 school year are not available.

Source: Maryland State Department of Education

The bill provides 2% for school system administrative expenditures. However, the Department of Legislative Services advises that financial data from MSDE for the 2012-2013 school year indicates that, though it varies by school system, on average 5% of school system expenditures occur at a level above the individual school level.

State Fiscal Effect: Under the bill, public charter schools have more autonomy from the policies, procedures, and oversight of the county boards of education, which generally have authority over public schools in each county and the additional autonomy may encourage more public school charter applicants. Conversely, though charter schools may seek comprehensive waivers under the bill from many State and local requirements for public schools, MSDE’s responsibilities regarding public charter schools are expanded. MSDE will be required to act on behalf of charter schools in the development of a capital program for charter schools while also being responsible for reviewing projects and making

recommendations for approval in its role with the Interagency Committee on School Construction.

MSDE will require one additional program specialist in the Office of School Innovations to provide technical assistance to charter schools and local school systems on the provisions of the new law, and to provide increased direct technical assistance to charter school operators on issues including food service, special education, and the State pension system. MSDE will, beginning in fiscal 2017, require an additional program specialist to assist charter schools in the development of a capital program for charter schools; to create and maintain an inventory of charter school facilities in the State, and to provide other technical assistance to charter schools. Also, the Public School Construction Program will require one database analyst to develop and maintain a database of information on public charter schools beginning July 1, 2015.

To cover the addition of these three positions, general fund expenditures increase by \$157,300 in fiscal 2016 increasing to \$338,100 by fiscal 2020. This estimate includes full-time salary, fringe benefits, one-time start-up costs, ongoing operating expenses, and accounts for inflation and varied start dates for the three new positions. SRA may also incur one-time expenditures to accommodate new classes of employees and employers in the State retirement systems.

The bill does not increase school construction funds (the fiscal 2016 *Capital Improvement Program* includes \$280.0 million in fiscal 2016 and \$250.0 million annually in 2017 through 2020) but likely decreases the amount each county receives and/or the number of projects that are funded in any year.

Local Fiscal Effect: Overall State and federal aid to local schools within a given county are not directly affected. Generally, the bill codifies existing guidance with respect to disbursement of funds to charter schools. Potentially, specifying local funding formulas for public charter schools in statute will alter current practice for disbursement of funds to the benefit of charter schools. Because the bill does not alter total revenues for public schools, any increase in direct funding to charter schools may come at the expense of decreased funding for other public schools in the county. Allowing charter schools to participate in the Public School Construction Program may also benefit charter schools. Traditional public schools and charter schools will also compete for capital funding and local school systems may receive less funding or fewer funded projects in a given year. Charter schools are required to pay the local match for any school construction funds so local school system expenditures are not affected by this provision of the bill.

Also, local school systems, particularly Baltimore City Public Schools, may incur significant one-time expenditures to reconfigure human resources systems to account for

schools and personnel in the county that will no longer be employed by the local school system.

Additional Comments: Despite the particular formulas established by the bill, it is assumed that restricted federal funds are disbursed in accordance with their restricted purposes. Also, the bill indicates that disbursement of funding to non-Title I charter schools is to be made twice annually. This analysis assumes that the intent is for *half* of the amount calculated to be disbursed *twice* annually.

Further, SRA indicates that the bill's particular language allowing employees of a private entity (*i.e.*, a charter school operator) to participate in a State retirement system will likely result in severe consequences to the State in the form of the loss of Internal Revenue Service tax-exempt status. It is assumed that technical changes to the bill's language can prevent this adverse effect.

Additional Information

Prior Introductions: None.

Cross File: SB 595 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs and Budget and Taxation.

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

Fiscal Note History: First Reader - February 25, 2015
md/rhh

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Public Charter School Expansion and Improvement Act of 2015

BILL NUMBER: SB595/HB486

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS