

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 878 (The Speaker, *et al.*) (By Request - Administration)
 Ways and Means

Public Charter School Act of 2017

This Administration bill establishes a Maryland Public Charter School Authority (MPCSA) that 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. 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 2018 budget be included for MPCSA.

Fiscal Summary

State Effect: General fund expenditures increase by \$577,100 in FY 2018 and by \$733,500 by FY 2022 for MPCSA and Maryland State Department of Education (MSDE) operating costs. 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 2019. Federal charter school grant revenues may increase.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	577,100	661,400	684,600	708,600	733,500
Net Effect	(\$577,100)	(\$661,400)	(\$684,600)	(\$708,600)	(\$733,500)

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

Local Effect: Beginning as soon as FY 2019, revenues and expenditures for local school systems decrease, offset by commensurate increases in revenues and expenditures for MPCSA charter schools. The effect will vary considerably by county and will likely be particularly substantial in both Baltimore City and Prince George's County.

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

Analysis

Bill Summary: The bill adds to the stated purpose of the Maryland Public Charter School Program such that it includes 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 the State Board of Education. 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 the State Board of Education.

A public charter school authorized by MPCSA (1) serves as the local educational agency (LEA), 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 a public charter school facility grant that is no less than \$1,000 multiplied by the total enrollment of all the public charter schools

authorized by MPCSA. The 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 expire as follows: two members in 2020; two in 2021; and three in 2022.

Employees of Schools Authorized by the Maryland Public Charter School Authority

The following applies 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 multiyear 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 Department of 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.

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. 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.

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 sole public chartering authority for a public charter school in a county. 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, and home schools, as well as a school that operates fully online, 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. The professional staff of a public charter school must be subject to the same certification provisions for professional staff as other public schools. A public charter school may seek a waiver of these requirements through an appeal to the local board or the State board, as applicable. 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.

Chapter 311 of 2015 provided expanded operating flexibility to a public charter school that has been in existence for at least five years and demonstrates to the county board a history of sound fiscal management and student achievement that exceeds the average in the local jurisdiction on statewide assessments and other measures developed by the State board.

Public charter school employees are public school employees and are employees of the public school employer in the county in which the charter school is located. These employees have collective bargaining rights under State law.

Student Lotteries and Placement in Public Charter Schools

A public charter school must be nonsectarian and is generally open to all students on a space-available basis, but must admit students on a lottery basis if more students apply than can be accommodated. A public charter school may give greater weight to a student in a lottery if the student is (1) eligible for free and reduced-price meals; (2) a student with disabilities; (3) a student with limited English proficiency; (4) homeless, as defined under federal law; or (5) a sibling of a currently enrolled student in the public charter school for which the sibling is applying. A sibling of a currently enrolled student or of a student admitted through the lottery process may be given priority to any spaces that become available. With chartering authority approval, a public charter school may designate a geographic attendance area, within which the median income is equal to or less than the median income of the county and from which student placement in the school is guaranteed, to up to 35% of its available space.

A board of education 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 county board. To be eligible, a school must be (1) low performing; (2) above the county average percentage of students who are eligible for free and reduced-price meals; and (3) meet a strategic need of the local school system that must include one of the following: serving a high-need population; increasing student performance; increasing enrollment; or increasing student diversity.

With chartering authority approval, a public charter school may provide placement to up to 35% of the students who attended a public charter school during the previous school year operated by the same operator. To qualify for such authorization, the operator must operate two or more public charter schools in the *county* and, when combined, the public charter schools must form an integrated multiyear academic program.

Finally, if a waiver is granted by the State board, a public charter school on a federal military base may admit students of parents not assigned to the base to at least 35% of its total available space as part of the initial cohort of students in a grade. The public charter school must take reasonable steps to maintain the 35% to 65% ratio, and must admit all students on a lottery basis.

Surplus School Site or Building and School Construction Funding

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.

Maryland does not provide facilities funding for charter schools. However, charter schools located in public school buildings are eligible to receive State school construction funds if the project is requested by the school board and the local share of costs for the project is

funded by the county government. In addition, Chapter 96 of 2011 first authorized the use of interest-free Qualified Zone Academy Bonds (QZABs) for public charter schools, and each successive authorization has also included charter schools. The proposed fiscal 2018 capital budget includes \$4,823,000 in new QZAB authorizations for the renovation, repair, and capital improvements of qualified zone academies, including public charter schools.

Background: Public charter schools are public schools that typically have more autonomy over their mission, program, and type of students served than traditional public schools. Chapter 358 of 2003 requires that the funding provided to public charter schools be “commensurate” with the amount of funds disbursed to a traditional public school in the local school system in which the public charter school operates. At the time, after accounting for centralized expenses, about 86% of local school system revenues were distributed to public schools. In 2005, the State Board of Education established a statewide funding model for charter schools by which “commensurate” is interpreted to mean that each public charter school receives, per student, funding equal to the total annual school system operating budget divided by the total number of students in the school system, less 2% for central office administrative functions. However, due to the use of restricted federal funds and the provision of in-kind services and other contractual considerations, this funding model has not been implemented consistently across jurisdictions, nor has it been implemented without controversy.

In addition to other policy changes made to the Maryland Public Charter School Program, Chapter 311 of 2015 required MSDE, in consultation with DLS, to contract for a study to calculate the average operating expenditures by each local school system for students enrolled in a traditional public school. The calculation is intended to serve as the baseline for determining commensurate funding based on school-level spending for *all* public schools. Specifically, the purpose of the study was to develop a comprehensive measure of operational spending by local school systems that reveals (1) spending on centralized services provided to schools by the central office; (2) site-specific spending for schools; and (3) spending supporting central office functions.

The American Institutes for Research (AIR), the consultant selected to conduct the study, produced its [final report](#) in December 2016. The report findings indicate that, overall, charter schools are receiving roughly the same amount of funds per pupil as traditional public schools. Specifically, charter schools received, on a per pupil basis, more funding than traditional schools in two systems (Anne Arundel and St. Mary’s counties), less funding in two systems (Frederick and Prince George’s counties), and about the same amount in Baltimore City.

AIR was also charged with looking at potential revenue sources for charter schools, including facilities funding. The report notes that Maryland has not been awarded federal Charter School Program (CSP) funds, which provide grants to states and award subgrants

to eligible charter school operators, since its second grant ended in 2011. CSP features a competitive preference for states where (1) entities other than districts have the authority to authorize charter schools and (2) charter schools are afforded “more autonomy over instructional and operational decisions.” CSP also includes two programs to support facilities financing for charter schools. Incentive grants are provided to share in the costs of facilities funding over five years. States must authorize per pupil facilities aid for charter schools in order to be eligible to apply for a grant. There is also a credit-enhancement program for charter school facilities. States, local governments, and private nonprofit entities may apply for the program.

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 20,385 students during the 2015-2016 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 49 public charter schools during the 2016-2017 school year, in five local school systems: Anne Arundel, Frederick, Prince George’s, and St. Mary’s counties and Baltimore City. As shown in **Exhibit 1**, according to 2015-2016 school year data, nearly 90% of charter school students are in Baltimore City (65%) and Prince George’s County (24%).

Exhibit 1
Charter School Enrollment
2015-2016 School Year

<u>LEA</u>	<u>Students</u>	<u>% of Total</u>
Anne Arundel	1,115	5%
Baltimore City	13,264	65%
Frederick	871	4%
Prince George’s	4,889	24%
St. Mary’s	246	1%
Total	20,385	100%

LEA: local educational agency

State Fiscal Effect:

State Education Formula Aid

The bill indicates that 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 then deducted from the *State* share of the foundation program, under the bill. The funding mechanisms proposed in the bill clearly alter the distribution of State education aid and may affect overall State funding levels. For the purposes of this analysis, it is assumed that the overall *amount* of State aid to public schools is not altered under the bill. The bill's distribution of restricted federal funding targeted to students with special needs may run counter to federal requirements.

In total, assuming that the bill does not alter *existing* State education formulas, the total cost for State education formula aid does not increase. However, the distribution of the State aid, as well as local and federal funds, is affected. The number of students enrolled in MPCSA charter schools each year, and the demographic makeup of those students, cannot be reliably estimated. As early as fiscal 2019, a portion of per student funding currently received by local school boards instead is directed to MPCSA charter schools. *For information purposes only*, **Exhibit 2** shows the federal, State, and local revenues by county on a per pupil basis, for fiscal 2017 according to local school board budgets.

Exhibit 2
Per Pupil Revenues for Public Schools in Fiscal 2017

County	Federal	State	Local	Misc.	Total	Ranking by Total Per Pupil Funding	
Allegany	\$1,053	\$10,617	\$3,674	\$71	\$15,415	1.	Worcester \$17,971
Anne Arundel	502	5,277	8,128	40	13,947	2.	Baltimore City 16,942
Baltimore City	1,369	12,091	3,400	83	16,942	3.	Somerset 16,603
Baltimore	714	6,668	6,989	91	14,462	4.	Montgomery 16,344
Calvert	524	6,278	7,375	22	14,199	5.	Howard 16,313
Caroline	905	10,467	2,595	86	14,054	6.	Kent 16,149
Carroll	464	6,261	7,313	96	14,134	7.	Prince George's 16,078
Cecil	600	8,014	5,382	31	14,027	8.	Allegany 15,415
Charles	624	7,440	6,684	56	14,804	9.	Garrett 15,386
Dorchester	883	9,763	4,149	233	15,028	10.	Dorchester 15,028
Frederick	482	6,651	6,159	117	13,409	11.	Charles 14,804
Garrett	866	6,965	7,538	16	15,386	12.	Baltimore 14,462
Harford	594	6,415	6,382	98	13,489	13.	Calvert 14,199
Howard	372	5,499	10,338	104	16,313	14.	Wicomico 14,159
Kent	873	6,150	9,040	86	16,149	15.	Carroll 14,134
Montgomery	484	5,334	10,457	68	16,344	16.	Caroline 14,054
Prince George's	771	9,622	5,578	107	16,078	17.	Cecil 14,027
Queen Anne's	718	5,438	7,233	147	13,535	18.	Anne Arundel 13,947
St. Mary's	1,087	6,664	5,995	43	13,789	19.	St. Mary's 13,789
Somerset	1,374	11,683	3,516	30	16,603	20.	Queen Anne's 13,535
Talbot	845	4,091	8,522	15	13,474	21.	Washington 13,521
Washington	667	8,487	4,331	36	13,521	22.	Harford 13,489
Wicomico	903	10,306	2,816	134	14,159	23.	Talbot 13,474
Worcester	856	4,218	12,861	36	17,971	24.	Frederick 13,409
Total	\$688	\$7,372	\$7,128	\$81	\$15,268		

Source: Local School Budgets; Department of Legislative Services

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 no less than \$1,000 multiplied by the total enrollment of all the public charter schools authorized by MPCSA. The cost of this provision will depend on the number of students enrolled in MPCSA schools annually beginning as early as fiscal 2019. 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 \$577,100 in fiscal 2019 and by \$733,500 by fiscal 2022. This total includes \$499,900 in fiscal 2018, increasing to \$628,900 in fiscal 2022 for MPCSA to retain approximately eight attorneys, managers, and other professional personnel to administer the bill. The total also includes MSDE costs to hire one additional education specialist to meet monitoring requirements related to federal funding and expand technical assistance to LEAs totaling \$77,200 in fiscal 2018 and \$104,600 in fiscal 2022. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, and accounts for the October 1, 2017 effective date of the bill. Out-year estimates reflect the elimination of one-time costs, annualization of personnel and ongoing operating expenses, and inflation.

Federal Funds

To the extent that the bill's provisions enable Maryland to successfully compete for federal CSP funds, federal revenues to MSDE increase. Most of these funds pass through to charter schools but some may be retained by MSDE, 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.

Local Fiscal Effect: 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, it is assumed that these effects begin no earlier than the budget for the 2018-2019 school year (fiscal 2019). 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.

Additional Information

Prior Introductions: None.

Cross File: SB 704 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs.

Information Source(s): Baltimore City; Baltimore, Charles, and Montgomery counties; Maryland State Department of Education; Department of Budget and Management; Department of General Services; Maryland Department of Planning; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2017
md/rhh

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Public Charter School Act of 2017

BILL NUMBER: SB704/HB878

PREPARED BY: Administration
(Dept./Agency)

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