

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 966 (Senator Hester)
 Education, Health, and Environmental Affairs

Virtual Schools – Statewide Education Platform – Procurement and Establishment

This emergency bill requires the Maryland State Department of Education (MSDE) to make an expedited procurement for a statewide platform to provide virtual education. MSDE must issue a request for proposals (RFP) by May 1, 2021 and award a contract by June 1, 2021. The platform must meet specified requirements and allow a local school system to begin using the platform by July 1, 2021. By October 1, 2021, each local school system must complete a virtual learning self-assessment, as specified. Beginning with the 2021-2022 school year, each local board of education must adopt a policy to allow a student to attend a virtual school. MSDE must establish a grant program to assist a local school system in transitioning to using the virtual education program. These provisions remain in effect through June 30, 2024, after which time they are abrogated with no further action required by the General Assembly.

Fiscal Summary

State Effect: No costs assumed in FY 2021. *Under one set of assumptions*, MSDE expenditures increase by an estimated \$762,500 in FY 2022 to procure a statewide virtual education platform, user fees for the platform, hire contractual staff, and provide transition grants. Future years reflect one-time costs and the provisions terminating after FY 2024. Federal COVID-19 funds can likely be used to cover these costs. In addition, General fund expenditures through the State education funding formulas may increase to the extent that the bill encourages students who are currently homeschooled or enrolled in a private school to enroll in a virtual public school during the period the bill is effective (not shown). Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
FF Expenditure	762,500	268,700	271,600	0	0
Net Effect	(\$762,500)	(\$268,700)	(\$271,600)	\$0	\$0

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

Local Effect: Local school systems can adopt a policy allowing their students to attend a virtual school using existing resources. Local school system expenditures to provide virtual schooling may decrease due to the statewide platform. State aid for transition grants increases. Local school system and local government expenditures may increase to the extent that the bill encourages students who are currently homeschooled or enrolled in a private school to enroll in a virtual public school. Likewise State aid to local school systems may increase. Any impacts are of limited duration due to the termination date of the bill.

Small Business Effect: None.

Analysis

Bill Summary: In accordance with the expedited procurement process in the State Finance and Procurement Article, MSDE must issue an RFP for a statewide virtual education platform by May 1, 2021. MSDE must review and evaluate proposals in consultation with specified groups.

The statewide platform to provide virtual education must:

- be based on evidence-based learning standards;
- enable a local school system to opt-in as a virtual district, with distinct virtual schools;
- enable sharing of classes between schools and local school systems, including public charter schools that opt-in to the platform;
- allow a local school system to begin using the platform by July 1, 2021;
- provide equitable access for students with disabilities; and
- allow a local school system to design or customize the curriculum on the platform.

Transition Grant Program

MSDE's transition grants may provide funding for (1) professional development for teachers; (2) preparing and adapting MSDE-approved classes for online teaching; and (3) administrative staff time to support the transition to and customization of the virtual school.

Statewide Platform Virtual School Requirements

Priority enrollment in a virtual school that uses the statewide platform must be given to a student who (1) has a health condition that could lead to a negative health outcome for the student, demonstrated by the student's parent or guardian, if the student were to attend

school in person (or lives with such an individual) or (2) has demonstrated improved learning outcomes in an online education environment. If demand for enrollment in a virtual school that uses the statewide platform exceeds the virtual school's availability, the entity operating the virtual school must use a lottery to select students for the virtual school.

A virtual school that uses the statewide platform must follow specified high-quality online education standards.

A virtual school may be operated on a year-round basis provided that the 180-day and minimum hour requirements are met.

A teacher employed by a virtual school that uses the statewide platform must (1) have a Maryland teacher's certificate and (2) join the local collective bargaining unit. A teacher employed by a virtual school that uses the statewide platform may not teach in person and in a virtual setting concurrently.

By December 1, 2023, MSDE must conduct and report on an evaluation as specified of each virtual school that uses the statewide platform.

Current Law:

Virtual Schools

"Virtual school" is defined as a public school established by MSDE or by a local board in which the school uses technology to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting.

Subject to the approval of MSDE, a local board may establish a virtual school. A virtual school is subject to all applicable federal and State laws and regulations governing the operation of a public school. A student who is eligible for enrollment in a public school in the State may enroll in a virtual school.

Enrolled students must be provided with a sequential curriculum that meets or exceeds the local standards and is approved by SBE as well as regular assessments. Enrolled students must also be provided with the same length of time for learning opportunities per academic year that is required for public school students unless the virtual school can show that a student has demonstrated mastery or completion of the subject area.

A virtual school's curriculum must have an interactive program with *significant* online components.

A virtual school must provide the parents or guardians of enrolled students with instructional materials, including software, and information on the closest public facility that offers access to a computer, printer, and Internet connection. A virtual school may not provide funds for the purchase of instructional programs or materials to a student or to a student's parent or guardian.

A teacher employed by a virtual school must have a teacher's certificate issued by the State Superintendent. A virtual school must maintain an administrative office in the State that must be considered its principal place of business.

A virtual school must be evaluated each year by its sponsor based on the following criteria: (1) the extent to which the school demonstrates increases in student achievement according to local and State academic standards and (2) the accountability and viability of the virtual school, as demonstrated by its academic, fiscal, and operational performance.

SBE must adopt regulations related to virtual schools, including establishing minimum criteria for the establishment and approval of a virtual school.

Collective Bargaining

A public school employee may refuse to join or participate in the activities of employee organizations.

Procurement

As statute allows procurements with a value of \$50,000 or less to be conducted as small procurements, the *Code of Maryland Regulations* (COMAR) specifies that emergency procurement and expedited procurement procedures are only for procurements with a value greater than \$50,000.

Expedited Procurements

Only the Maryland Port Commission (MPC) and the Maryland Aviation Administration may engage in expedited procurements. Prior to the initiation of an expedited procurement, both the agency head and the Board of Public Works (BPW) must approve the procurement and find that:

- urgent circumstances require prompt action; and
- the need for expedited procurement outweighs the benefits of conducting the procurement on the basis of either competitive sealed proposals or competitive sealed bids.

In conducting an expedited procurement, the procurement officer must attempt to obtain as much competition as reasonably possible. COMAR requires notice of each expedited procurement to be submitted to BPW within 30 days of contract award, including specified information about each procurement.

Notification and Reporting Requirements

Within 30 days after the execution and approval of either an emergency or expedited procurement, notification of the contract award must be posted on eMaryland Marketplace.

Within 90 days of the end of each fiscal year, each primary procurement unit must submit a report to the Governor and the General Assembly on each procurement contract awarded during the prior fiscal year. The report must include specified information, including the procurement method used and the basis for the contract award.

Primary Procurement Units

Primary procurement units are authorized to conduct their own procurements for specified goods and services without the approval of any other Executive Branch agency but still subject to the general oversight of BPW. They are:

- the State Treasurer;
- the Department of General Services (DGS);
- the Maryland Department of Transportation;
- MPC;
- the University System of Maryland;
- Morgan State University; and
- St. Mary's College of Maryland.

State Expenditures: DGS advises that even using the expedited procurement process, obtaining a contract will take more than the one-month period allowed by the bill; however, this estimate assumes that a contract can be obtained in the time required by the bill. The Department of Legislative Services advises that it may be possible to expand MSDE's existing learning management system (LMS) to meet the requirements of the bill.

As shown in **Exhibit 1**, *under one set of assumptions*, general fund expenditures increase by an estimated \$762,474 in fiscal 2022 to procure a statewide virtual education platform, user fees for the platform, hire a contractual full-time administrator to operate the platform, and provide transition grants to each local school system in fiscal 2022. Future year costs reflect elimination of one-time costs and termination of the bill after fiscal 2024. Federal funds from COVID-19 relief legislation in 2021 that are set-aside for MSDE, as discussed

further below, can likely be used to cover some if not all of the estimated costs in fiscal 2022 through 2024. To the extent federal funds cannot be used for the bill’s purposes, general fund expenditures increase in fiscal 2022 through 2024.

Annual expenditures for the statewide virtual school platform depends on student and local school system demand. This estimate assumes that 5% of students and professional staff use the statewide virtual school platform procured under the bill. This estimate also assumes that the platform must be used to provide virtual schooling and not replace a local school system’s need for a LMS for all of their students.

In addition, as explained below, State expenditures increase to the extent that the bill encourages students who are currently homeschooled or enrolled in private school to enroll in a virtual school under the virtual school policy required by the bill. Any such impacts are limited to the time period that the bill is effective, and are not included in the estimate.

Exhibit 1

Estimated State Expenditures for Statewide Virtual Platform and Transition Grants Reflects User Fees for 5% of Students and Administrators Fiscal 2022 and 2023

	<u>FY 2022</u>	<u>FY 2023</u>
Position ¹	1	
Salary and Fringe Benefits ¹	\$94,256	\$85,575
Statewide Virtual Education Platform ²	182,473	182,473
Transition Grants ³	480,000	0
Other Operating Expenses	<u>5,745</u>	<u>655</u>
Total State Expenditures	\$762,474	\$268,703

¹One full-time statewide virtual education platform administrator. Additional staff may be required if more than 5% of students and staff use the platform.

²User fees for 5% of kindergarten through grade 12 students and 5% of professional staff beginning July 1, 2021 (fiscal 2022).

³Reflects \$20,000 per local school system.

Note: This estimate assumes no expenditures in fiscal 2021. This does not reflect any additional State aid expenditures due to currently homeschooled or private school students enrolling in a virtual school.

Source: Department of Legislative Services

Statewide Virtual Education Platform

By July 1, 2021, MSDE must establish a statewide virtual education platform for use in all public schools in the State. Thus, *under one set of assumptions*, expenditures increase by an estimated \$282,435 in fiscal 2022. This estimate reflects MSDE hiring one full-time contractual administrator on July 1, 2021, to implement and manage the statewide virtual education platform and purchasing an annual user fee for 5% of kindergarten through grade 12 public school students and 5% of teachers in the State using MSDE's existing LMS for fiscal 2022 through 2024.

Even though this is an emergency bill and requires a contract to be awarded by June 1, 2021, this estimate assumes no costs in fiscal 2021. It is assumed that no additional user fees will be paid until fiscal 2022, for the 2021-2022 school year. Local school systems already have virtual education platforms in place for the 2020-2021 school year (fiscal 2021). Further, it is assumed that the virtual education platform administrator is not hired until July 1, 2021 (fiscal 2022).

This estimate assumes the annual user fee is \$3.59 per student and \$6.79 per staff for a statewide virtual education platform. In October 2019 (pre COVID-19) there were 859,922 public school students (excluding prekindergarten students) and 82,813 professional staff. This estimate does not reflect user fees for parents or guardians, which are a feature of some LMS.

MSDE advises that it will need to collaborate with the Department of Information Technology on additional support required for the statewide virtual education platform. It is unknown if the current technology infrastructure could support additional simultaneous users. Thus, there may be additional expenditures related to establishing a statewide virtual education platform that cannot be reliably estimated at this time; any such costs could be significant.

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses, and elimination of the contractual position after June 30, 2024, due to the bill terminating. This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Transition Grants

State expenditures increase by \$480,000 in fiscal 2022 for MSDE to provide one-time transition grants to local school systems. This estimate reflects \$20,000 grants for each of the 24 local school systems. Actual grants will depend on funding available and the number

of local school systems that request transition grants. It is assumed that they are one-time grants to assist school systems in transitioning to full-time virtual education.

State Aid

General fund expenditures through the State education funding formulas increase to the extent that the bill encourages students who are currently homeschooled or enrolled in a private school to enroll in a local virtual public school. The amount of any increase cannot be determined. There are nearly 30,000 homeschooled students in the State. Private schools enrolled approximately 61,000 students in kindergarten through grade 12 during the 2019-2020 school year (excluding publicly funded nonpublic school students). Due to the COVID-19 pandemic, these numbers increased for the 2020-2021 school year.

It is assumed that every student enrolled in a virtual learning program will count as a full-time equivalent student (FTES) for the local school system in the September 30 enrollment counts (and October counts for specified student populations) used to distribute State education aid. In fiscal 2020, State aid per FTES was approximately \$8,000; however, the amount of State per pupil aid varied by local school system from about \$4,200 for Talbot County to about \$14,200 for Somerset County.

Any impact is only for the 2021-2022 school year through the 2023-2024 school year due to the effective dates of the bill.

Federal COVID-19 Funds

Appendix 1 shows the amount of federal funds that each local school system and the SEED School have received in the three federal laws that have addressed the impact of COVID-19 on K-12 public education, including the American Rescue Plan Act of 2021 (ARP) that was signed into law on March 11, 2021. In total, MSDE receives nearly \$303 million, including \$195 million due to ARP, that may be used to implement this bill. Local education agencies (LEAs) directly receive approximately \$3.0 billion in additional federal funds. All of the funds must be encumbered by September 30, 2023 (fiscal 2024), but may be spent potentially into fiscal 2025.

Local Fiscal Effect: Under the bill, a local school system may use the statewide virtual school platform procured by MSDE to operate a virtual school. A virtual school operated using the statewide platform must meet specified requirements. In addition, each county board of education must adopt a policy to allow a student to attend a virtual school beginning in the 2021-2022 school year. The bill does not require each local school system to operate its own virtual school.

Self-assessment

In addition each local school system must conduct a virtual learning self-assessment using a research-based framework recommended by the SBE by October 1, 2021. It is assumed that a local school system can conduct the self-assessment using existing resources; however, resources may be temporarily diverted from current tasks and priorities.

Additional Students

Local school system expenditures may increase if students currently homeschooled or enrolled in private schools decide to enroll in a virtual public school. It is assumed that virtual schools will receive the same per student funding as other students in the district. Per pupil local appropriations for public schools averaged about \$7,600 in fiscal 2020, ranging from about \$2,800 in Caroline County to \$14,100 in Worcester County.

It is assumed that local school systems can use the existing per pupil funding to provide virtual schooling for all grades. However, costs in some smaller systems or in school systems in which many students choose to attend the virtual school may not be fully absorbable during the short term because many local school system expenditures are fixed costs and cannot be quickly adjusted. Any such impact cannot be reliably estimated but may be mitigated by local school systems joining together to provide regional virtual schools (at least one is currently under development using federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funds).

This estimate assumes that the local school systems use local teachers to deliver local curriculum and that these curriculum do not need to be approved by MSDE. To the extent that MSDE review is required, local school system expenditures increase. However, it is assumed that any such expenditures can be absorbed.

Virtual schools may help to alleviate school construction costs for local school systems. Given the backlog of school construction requests across the State, it is assumed there is no immediate impact.

Any impact is only for the 2021-2022 school year through the 2023-2024 school year due to the effective dates of the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland State Department of Education; Department of General Services; Board of Public Works; Department of Legislative Services

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Appendix 1
Federal K-12 COVID-19 Funds Distribution by LEA and MSDE
(\$ in Thousands)

<u>LEA</u>	<u>ESSER I</u>	<u>ESSER II</u>	<u>ESSER III</u>	<u>Total</u>
Allegany	\$2,557.9	\$11,278.2	\$25,329.3	\$39,165.4
Anne Arundel	11,855.6	48,393.5	108,684.9	168,934.0
Baltimore City	48,392.8	197,474.4	443,499.4	689,366.6
Baltimore	23,741.8	96,638.6	217,036.6	337,417.0
Calvert	1,201.9	5,098.5	11,450.4	17,750.8
Caroline	1,490.1	6,096.0	13,690.8	21,276.9
Carroll	1,975.7	7,491.7	16,825.4	26,292.9
Cecil	3,128.8	12,391.7	27,830.0	43,350.6
Charles	3,127.3	13,743.7	30,866.5	47,737.5
Dorchester	1,901.2	7,775.7	17,463.1	27,139.9
Frederick	4,008.5	16,879.1	37,908.0	58,795.6
Garrett	957.2	3,986.8	8,953.9	13,897.9
Harford	4,451.8	18,905.7	42,459.5	65,817.0
Howard	4,236.7	19,372.0	43,506.7	67,115.4
Kent	522.2	2,330.2	5,233.2	8,085.5
Montgomery	24,768.2	112,233.8	252,061.1	389,063.0
Prince George's	30,031.7	122,234.7	274,521.8	426,788.2
Queen Anne's	739.9	3,026.0	6,796.1	10,562.0
St. Mary's	2,574.4	11,611.0	26,076.7	40,262.0
Somerset	1,347.2	6,009.4	13,496.3	20,852.9
Talbot	896.1	3,665.8	8,232.8	12,794.7
Washington	5,606.1	24,618.4	55,289.3	85,513.8
Wicomico	5,166.1	21,093.1	47,372.0	73,631.2
Worcester	1,566.0	6,406.9	14,389.0	22,361.9
SEED School	805.6	3,139.3	7,050.3	10,995.1
MSDE	20,783.8	86,877.1	195,114.0	302,774.9
Total	\$207,834.5	\$868,771.2	\$1,951,137.0	\$3,027,742.7

ESSER: Elementary and Secondary School Emergency Relief Fund

LEA: local education agency

MSDE: Maryland State Department of Education

Notes: LEA allocations are based on the proportion of Title I-A funds received in fiscal 2019 for ESSER I and in fiscal 2020 for ESSER II and III. MSDE receives a set-aside of 10% of each total allocation.

Source: Maryland State Department of Education; Congressional Research Service; Department of Legislative Services