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2022 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 805 (Delegate Szeliga)  
Ways and Means and Appropriations

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Primary and Secondary Education - Virtual Schools - Alterations

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This bill authorizes the Maryland State Department of Education (MSDE), a local board of education, or a public institution of higher education to establish a *statewide* virtual public school without approval from the State Superintendent of Schools. A statewide virtual public school is exempt from specified State policies and regulations. A statewide virtual public school may not (1) enroll more than 1% of school-aged children in each county or (2) charge any fees or tuition to enroll in or attend the virtual school. The bill establishes a funding formula to distribute federal and State funds to a statewide virtual public school. An institution of higher education may contract with other entities to perform the duties of the virtual school and retain up to 2% of distributed funds to administer the program. **The bill takes effect July 1, 2022.**

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Fiscal Summary

**State Effect:** To the extent that the bill encourages students who are currently homeschooled or enrolled in a private school to enroll in a statewide virtual public school, general fund expenditures increase, due to the funding formula established by the bill. To the extent that student characteristics of students who attend a virtual school differ from the State as a whole, general fund expenditures likely increase (or potentially decrease), as explained below. To the extent a public four-year institution or Baltimore City Community College (BCCC) opens a virtual school, revenues and expenditures increase. This estimate assumes that a statewide virtual school follows all federal laws and requirements.

**Local Effect:** *Under one set of assumptions*, local school system revenues and expenditures decrease and local expenditures decrease. To the extent a local community college opens a virtual school, revenues and expenditures increase.

**Small Business Effect:** Minimal, as explained below.

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## Analysis

**Bill Summary:** The bill alters the definition of a virtual school to be a *statewide* virtual public school; under current law, MSDE or a local board can establish a virtual school that is not statewide (and some local boards are in the process of establishing county or regional virtual schools).

The bill repeals the requirement that the State Board of Education (SBE) adopt regulations to establish minimum criteria for the establishment and approval of a virtual school. A virtual school must have *only* online components; under current law, a virtual school must have *significant* online components.

A student who is eligible for enrollment in a public school in the State may enroll in *any* virtual public school established under the bill.

The State must distribute directly to a virtual school an amount equal to the product of the total enrollment of the virtual school and all federal and State operating funds for elementary, middle, and secondary students that each local board receives from all sources, divided by the sum of each county's full-time equivalent (FTE) enrollment.

Notwithstanding any other provision of law, a virtual school is exempt from State policies or regulations relating to attendance, curriculum, class size, instruction, staffing ratios, professional development, and textbooks. The bill also repeals increases in student achievement according to local and State academic standards as criteria by which a virtual school must be evaluated by its sponsor each year.

The bill repeals the requirement that the sequential curriculum provided by a virtual school must be approved by SBE. It also repeals the requirement that a virtual school provide the same length of time for learning opportunities per academic year that is required for public school students.

An institution of higher education may only establish a virtual public school if the institution offers a teacher education program.

If MSDE, a local board of education, or an institution of higher education establishes a virtual school, it must establish a policy and procedure to ensure a fair enrollment process.

### **Current Law:**

#### *Federal Law*

The federal Every Student Succeeds Act requires a State to adopt challenging academic  
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content standards and aligned academic achievement standards (*i.e.*, assessments) that will be used by the State, its local school systems, and its schools. In general, these academic standards must apply to all public schools in the State. There is an exception for students with the most significant cognitive disabilities who take an alternative assessment. The standards must include at least mathematics, reading/language arts, and science, and may include other subjects determined by the State.

The challenging academic content standards must (1) specify what all students are expected to know and be able to do; (2) contain coherent and rigorous content; and (3) encourage the teaching of advanced skills. A State's academic content standards may be grade specific or cover more than one grade if grade-level content expectations are provided for each of grades 3 through 8. At the high school level, the academic content standards must define the knowledge and skills that all high school students are expected to know and be able to do in at least reading/language arts, mathematics, and science, irrespective of course titles or years completed.

#### *Federal and State Education Aid*

Federal and State education funding is distributed through a variety of formulas (and some competitive grant programs). Much of the funding is distributed based on the number of students with specific characteristics. For example, there is both State and federal aid specifically directed to students with disabilities. Therefore, a local school system receives more federal and State funding for each student with disabilities than for a student without disabilities.

The great majority of direct State aid to public schools (excluding teachers' retirement) is determined by enrollment-based funding formulas found in Title 5, Subtitle 2 of the Education Article. Collectively, the formulas account for a uniform base cost per pupil that is necessary to provide general education services to students in every school system and address the additional costs associated with educating three student populations: special education students; students eligible for free and reduced-price meals; and students who are English-language learners. Chapter 36 of 2021 established additional major education aid programs.

Most State education aid formulas also entail wealth equalization across counties, compensating for differences in local wealth by providing less aid per pupil to the more wealthy counties and more aid per pupil to the less wealthy counties. Although on the whole most State aid formulas are designed to have the State pay roughly one-half of program costs, the State's share for the less wealthy counties is higher than 50%, and the State's share for more wealthy counties is lower than 50%.

### *Establishment of a Public School*

Subject to approval by the State Superintendent and in accordance with SBE regulations, a local board may establish a public school if, in its judgment, it is advisable. On approval by the State Superintendent, any school established becomes a part of the State program of public education. With the advice of the local superintendent of schools, a local board of education must determine the geographical attendance area for each school established.

### *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. Beginning in the 2022-2023 school year, a virtual school must follow the quality online education standards.

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.

### *Curriculum*

Each local superintendent of schools must periodically certify to the State Superintendent that its program of instruction meets specified minimum criteria in specified subjects, including technology education, financial literacy, gifted and talented education, social science, career development, world languages, mathematics, physical education, and language arts/literacy.

**State Expenditures:** Although the funding formula established by the bill may initially appear to not impact State expenditures, expenditures may be impacted in two ways. First, additional students may enroll in the public school system through a statewide virtual public school. Second, since some federal and State funding is distributed based on student characteristics, the average funding a local school system receives per student may not match the average per student funding of students from that system that choose to attend a statewide virtual public school. These potential impacts and other State fiscal impacts are explained in greater detail below.

### *Additional Students*

To the extent that the bill encourages students who are currently homeschooled or enrolled in a private school to enroll in a statewide virtual public school, expenditures increase due to the per student funding formula established by the bill. The amount of any increase cannot be determined. There were between 26,000 and 28,000 homeschooled students annually in the State in fiscal 2014 through 2020. In fiscal 2021, during the COVID-19 pandemic, there were nearly 43,000. Private schools enrolled more than 95,000 students in kindergarten through grade 12 during the 2019-2020 and 2020-2021 school years (excluding publicly funded nonpublic school students).

In fiscal 2021, federal and State aid per FTE student was approximately \$9,200 (\$840 federal, \$8,400 State); however, the amount of federal and State per pupil aid varied by local school system from about \$5,200 (\$800 federal, \$4,400 State) for Worcester County to about \$16,400 (\$1,700 federal, \$14,700 State) for Somerset County. As discussed below, the funding formula does not include a local contribution.

Thus, general fund expenditures increase by an estimated \$9,200 for each additional student. This increase may be partially offset by federal funding, as explained below.

### *Composition of the Student Body*

The funding formula established under the bill essentially requires the State to give a statewide virtual public school the average federal and State funding per student provided to school systems in the State, without regard for what it would give a local school system for a student from that jurisdiction. As explained above, this is about \$9,200 per student, more for students from some counties and less for others.

However, federal and State funding is not distributed strictly on a per student basis. Much of the funding is distributed based on the number of students with specific characteristics. Therefore, if the composition of students in a statewide virtual school established under the bill differs from that of the State as a whole, then funding that must be distributed to the virtual school will not match the funding that would have been distributed to the local school systems for those students.

Thus, State general fund expenditures likely increase (although they could potentially decrease). If the percentage of students that enroll in a statewide virtual public school with specified characteristics is less than in the school system as a whole, State expenditures increase. Otherwise, expenditures decrease. Given that the populations that receive additional funding through the funding formulas are less likely to enroll in virtual schooling, State expenditures likely increase. Further, the State will need to backfill any federal funding that cannot be redirected to students for whom the funding is not intended; as under federal law, federal funds can only be allocated to schools with specific student populations.

### *Higher Education Institutions*

To the extent a public four-year institution or BCCC opens a statewide virtual public school, revenues and expenditures increase. Only public institutions with a teacher preparation program may open a school under the bill. An institution may contract with other entities to perform the duties of the virtual school and retain up to 2% of distributed funds to administer the program. Any fiscal impact on an institution depends on choices made by the institution.

### *Federal Funds*

This estimate assumes that, despite the exemptions from State policies and regulations in the bill, statewide virtual public schools follow all federal laws and regulations, including those related to assessments. To the extent that federal laws and regulations are not followed, millions of dollars in federal education aid for all public schools in the State could be jeopardized.

**Local Fiscal Effect:** Local school system revenues and expenditures decrease. Under the bill, only up to 1% of school-aged children from any county (or Baltimore City) may enroll in any particular statewide virtual public school. Thus, any fiscal impact is contained to an approximate 1% decrease in per pupil revenues (depending on student characteristics as explained above) for *each* virtual school. Thus, it is assumed that local school systems can adjust expenditures to having fewer students. However, costs in some smaller systems or in school systems in which many students choose to attend a virtual school may not be fully absorbable during the short-term because many local school system expenditures are fixed. To the extent numerous statewide virtual schools are established, the impact on an individual school system may be significant if many students from that jurisdiction choose to attend a virtual school.

The funding formula established by the bill does not require that any local funds be distributed to virtual public schools established under the bill. Thus, *under one set of assumptions*, to the extent that students from their jurisdiction enroll in a statewide virtual public school, local government expenditures decrease.

#### *Local Community Colleges*

To the extent a local community college opens a virtual school, revenues and expenditures increase. The impact is as explained above. Any impact is dependent on local community college choices.

**Small Business Effect:** The bill allows an institution of higher education to contract with an outside entity to perform the duties of the virtual school. Such an entity may potentially be a small business. Any impact cannot be reliably estimated but is likely minimal overall.

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### **Additional Information**

**Prior Introductions:** HB 1170 of 2021 received a hearing in the House Ways and Means Committee, but no further action was taken. Its cross file, SB 941, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

**Designated Cross File:** None.

**Information Source(s):** Maryland State Department of Education; Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; Morgan State University; Baltimore City Public Schools; Prince George's County Public Schools; Department of Legislative Services

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