

Department of Legislative Services  
 Maryland General Assembly  
 2023 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

Senate Bill 610

(Senator M. Washington, *et al.*)

Education, Energy, and the Environment

Ways and Means

Primary and Secondary Education - Virtual Education

This bill establishes requirements related to virtual education for public schools, including requirements for (1) virtual schools; (2) teacher preparation programs; and (3) expanding computer and Internet security infrastructure for virtual education. The bill also authorizes virtual education days for severe weather conditions under specified circumstances. No virtual schools for the elementary band may be approved for operation before December 1, 2024. A virtual school may not include classes for prekindergarten or kindergarten students. The bill includes various reporting requirements for the Maryland State Department of Education (MSDE). **The bill takes effect July 1, 2023.**

Fiscal Summary

**State Effect:** General fund expenditures by MSDE increase by at least \$100,000 in FY 2024 and \$500,000 in FY 2025 to increase computer security. MSDE can otherwise implement the bill’s provisions with existing resources. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	100,000	500,000	0	0	0
Net Effect	(\$100,000)	(\$500,000)	\$0	\$0	\$0

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

**Local Effect:** Local school systems can likely handle the bill’s requirements with existing resources, as explained below.

**Small Business Effect:** None.

## Analysis

### Bill Summary:

#### *Virtual Education Days for a Severe Weather Event*

A local board of education may authorize the local superintendent, in cases of severe weather conditions, to provide virtual education days to students instead of closing the public schools in the county. Before a local board of education may authorize the local superintendent to provide these virtual education days to students, the local board must (1) discuss this topic at an open meeting and (2) vote affirmatively to authorize the local superintendent to provide virtual education days to students during a severe weather event.

A local board must publish the local board's plan for the use of virtual education days on the school system's website. The local board's plan must include (1) a plan to ensure that attendance will be taken for all students and teachers during each virtual education day; (2) a plan to provide opportunities for students to make up work missed during virtual education days when they return to in-person school; (3) a plan to ensure that all staff and students, including students with disabilities, homeless students, and English language learners, have the necessary devices at home for virtual education days, including access to Wi-Fi; and (4) specific strategies for the continued implementation of Individualized Education Programs during the virtual education day, including specially designed instruction, related services, supplementary aids and services, and accommodations.

A local superintendent may decide to provide a day of virtual education for public school students in the county only if (1) the local school system has used all the days incorporated into its calendar for school closures for severe weather conditions; (2) the local board of education has authorized the local superintendent to provide virtual education days to students; and (3) the local superintendent determines that severe weather conditions are likely to prevent normal attendance at the public school.

If a local superintendent decides to provide a virtual education day for public school students in the jurisdiction, the superintendent must notify the school principals as soon as possible after the decision is made. A school principal who receives notice of a virtual education day immediately must notify the students, parents, and school staff of the implementation of the virtual education day.

A virtual education day must consist of not less than four hours of synchronous instruction and asynchronous instruction designed to maximize the advantages of online access. Notwithstanding any other provision of law, an employee organization designated as an exclusive representative may negotiate with a local school system about (1) the period of time that public school employees require for preparation on a virtual education day and

(2) the time at which synchronous instruction must begin on a virtual education day. A local superintendent must adequately design the virtual education day model, including any time requirements negotiated through collective bargaining as specified, before implementation of the first virtual education day. If a local board of education provides a day of virtual education, the local school system must offer public school employees who are not assigned to work during the virtual education day an opportunity to make up the lost work through other duties before the beginning of the next school year.

### *Virtual Schools*

The bill significantly alters the definition of, and approval process for, virtual schools.

*Defined:* A “virtual school” is defined as a public school established by a local board or multiple local boards that uses one or more technologies to deliver instruction to its students entirely or primarily online and in which students and instructors participate remotely from separate locations. MSDE’s authority to establish a virtual school is repealed.

The bill’s requirements for virtual schools do not apply to (1) a virtual learning opportunity offered by MSDE or a local board of education under the Maryland Virtual Learning Opportunities (MVLO) program; (2) an upper-level high school program that has online components and designs a student’s schedule to accommodate the student’s work schedule; or (3) a public school operating under a virtual education plan during a prolonged state of emergency.

*Multiple County Agreements:* Requirements in the virtual school subtitle referencing a local board of education include multiple county boards operating a virtual school under a written agreement. If multiple local boards of education establish a virtual school, the local boards must designate a lead county. Unless inconsistent with the provisions of the subtitle or the written agreement specifies otherwise, the policies on personnel, instruction, scheduling, and student support in the lead county must govern the virtual school.

*Authorization:* Subject to the approval of MSDE, a local board may establish one virtual school for the elementary, middle, and high school grade bands. MSDE may provide preliminary authorization to a local board of education to establish one additional virtual school on a showing of just cause, as determined by MSDE.

MSDE may revoke approval of a virtual school if during the previous school year the virtual school fails to meet the standards established by MSDE in regulation.

A local board of education may appeal a denial or revocation of approval for the establishment of a virtual school to the State Board of Education (SBE) for adjudication during a public hearing. SBE must develop an appeals process to carry out these provisions.

*Accountability and For-profit Entities:* Each approved virtual school must have a unique school code assigned by MSDE.

A local board of education may not contract with a for-profit entity, but may contract with a nonprofit entity, to operate or administer a virtual school; however, this may not be construed to prohibit a local board from contracting with a for-profit entity for goods and services for a virtual school.

*Student Enrollment:* In addition to the criteria established by MSDE or a local board, an application for enrollment in a virtual school must require an applicant to describe why instruction in a virtual learning environment will lead to successful academic outcomes for the applicant. Not more than 10% of the students from a single public school in the county in any school year may enroll in a virtual school established by a local board of education; however, a sudden decrease in enrollment in a single public school that results in 10% or more of the students who would otherwise attend that public school attending a virtual school established by a local board is not a violation. Further, MSDE may authorize a local board to exceed the cap on a showing of just cause.

If a local board of education receives more applications than there are available spaces in a virtual school, the local board must admit all students on a lottery basis. A local board must give greater weight to a student's lottery status based on demographic diversity and any other criteria established by the local board. To the extent practicable, the student body of a virtual school must reflect the socioeconomic, racial, ethnic, cultural, and gender diversity of the students enrolled in the county's public school system.

The local board must develop an outreach campaign to provide information to the public on the availability of the virtual school option. The outreach campaign must be designed to encourage applications from students that reflect the diversity of the students enrolled in the public school system, as specified.

*Services and Curriculum:* A virtual school must provide each enrolled student with access to the following services: (1) to the extent practicable, extracurricular activities at the public school the student would otherwise attend in person; (2) notwithstanding any other law or regulation and subject to a participation agreement between the public school and the parent or guardian of the student, to the extent practicable, participation in organized athletics and on athletic teams at the public school the student would otherwise be required to attend in person; (3) wraparound services; (4) food and nutrition services; and (5) health care services equivalent to services available to students who receive in-person instruction

in the county's public schools. A virtual school must provide informational material on specified school policies. A virtual school curriculum must have an interactive social and emotional wellness component designed for a virtual school environment. If required, a virtual school must provide the appropriate digital device to a student to participate in the virtual school.

A virtual school is strongly encouraged to hold in-person orientation sessions. If the virtual school is unable to hold in-person orientation sessions, it must hold online orientation to provide specified information.

After collaboration with local school systems, MSDE must establish in regulations specified standards for a virtual school. A local board must adopt policies for the mandatory return to in-person instruction for students enrolled in a virtual school, including students who are failing academically after receiving the appropriate supports.

*Teachers and Staff:* In addition to a current requirement to have a teaching certificate or any other relevant professional certification authorized under the Maryland Code of Regulations (COMAR 13A.12.01), a teacher or education support personnel assigned to a virtual school must (1) be an employee of the county, or collaborating county, that established the virtual school; (2) be subject to the collective bargaining agreement of that jurisdiction; and (3) have access to professional development.

A collective bargaining agreement may include provisions specific to employees who work in a virtual school in consideration of the conditions and requirements relevant to that work environment. An employee assigned to a virtual school may not be required to provide virtual and in-person instruction or support to students simultaneously.

Subject to standards set by MSDE, the local board must determine the appropriate student-teacher ratio for the size of a class in a virtual school based on multiple factors. The student-teacher ratio of a class in a virtual school must be consistent with the median in-person class size by course and grade level.

A virtual school must provide teachers and any other employees assigned to teach or provide direct instruction in a virtual school the technology and equipment required and if necessary, a physical space to conduct teaching or provide direct instruction.

A virtual school must have a planned staffing model, including provisions for staff recruitment, training, evaluation, and professional development.

*Oversight:* The State Superintendent of Schools may assign the duties related to the oversight of virtual schools to the appropriate office or division within MSDE. These duties must include (1) the development, compilation, and updating of best practices for teaching

and learning in a virtual environment, provision of services, and the operation and administration of a virtual school and (2) liaising with local boards that operate virtual schools or other stakeholders.

### *Prolonged State of Emergency*

By June 1, 2024, a local board of education must, in consultation with local administrators and school staff, adopt a virtual education plan for use during a prolonged state of emergency using the local board's continuity of learning plan in effect during the 2020-2021 school year.

The virtual education plan for a prolonged State of Emergency adopted by a local board of education must contain specified components and be updated by the board every two years. While a school is operating under a virtual education plan during a prolonged state of emergency, the principal must require a staff member to conduct regular wellness check-ins with students at least once per week, with appropriate follow-up. If funding is available during the prolonged state of emergency, a local board must establish additional learning centers, as specified.

### *Virtual Education Teacher Preparation*

Each teacher preparation program must include training in the skills and techniques for teaching effectively in a virtual learning environment, including the use of online curriculum.

### *Computer and Internet Security*

MSDE must expand computer and Internet security infrastructure for virtual education, including staff to maintain security. Each local school system must dedicate at least one staff member to oversee computer and Internet security infrastructure for virtual education.

### *Revoking of Approval of Current Virtual Schools*

MSDE *may* revoke approval of a virtual school authorized to continue to operate through the 2024-2025 school year if during the previous school year the virtual school performed in the bottom 10% of schools. A virtual school that is authorized to continue to operate is encouraged to seek all available opportunities to bring the virtual school into compliance with the requirements established by the bill.

## *Regulations*

SBE must adopt regulations to carry out the provisions of the bill, including establishing minimum criteria for the adoption and implementation of virtual education plans by a local board during a prolonged state of emergency.

## *Reporting Requirements*

By December 31, 2023, the State Superintendent of Schools must submit a report to SBE and the General Assembly on findings and recommendations regarding the appropriate balance of the number of hours of synchronous learning and asynchronous learning for instructional effectiveness of students in virtual schools based on research that has systematically examined this issue and collaboration with local school systems.

By July 1, 2023, MSDE must convene a study group, including local boards of education, institutions of higher education, public school administrators, parents, teachers, students, and other relevant stakeholders, to: (1) study and identify appropriate next steps in virtual education and leveraging technology and digital learning in the classroom, including those specified and (2) develop criteria for the establishment of virtual schools that incorporate the data gathered and are as least as rigorous as the criteria established by the bill. By September 1, 2024, MSDE must report to the Governor and the General Assembly on the results of the study and criteria developed.

## **Current Law:**

### *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.

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.

### *Maryland Virtual Learning Opportunities Program*

MSDE must provide MVLO that include (1) offering a distance learning program to provide Maryland public school students with equal opportunities to develop a strong academic foundation; (2) offering expanded educational choices not otherwise available to students through online courses and services; and (3) expanding the professional development opportunities available to educational staff in Maryland public schools through online courses and services.

MSDE must develop, or review and approve, online courses and services. MSDE must also (1) develop standards for teachers and other school system employees for the offering of courses or services on the Internet or through other developing technologies and (2) review courses and courseware to assure quality and alignment with the Maryland content standards and other appropriate standards. Further, the development, review, and approval



of an online course or service as part of the MVLO program must include an assessment regarding the accessibility of the online course or service to individuals with disabilities, including the blind.

A local board of education may request that MSDE develop, or review and approve, online courses and services. MSDE may delegate this responsibility to a local board of education. If MSDE delegates this authority to a local board, the local board must request approval of the online course from MSDE once it has completed the development or the review and approval. A local board may impose reasonable fees to be paid by the vendor to cover the cost of reviewing and approving online courses and services and must remit 15% of the fees collected to MSDE. SBE may set reasonable fees for developing or reviewing online courses and services and for processing approvals for online courses and services.

**State Expenditures:** *Under one set of assumptions*, State expenditures increase for MSDE by at least \$100,000 in fiscal 2024 and \$500,000 in fiscal 2025 to increase computer security.

In response to a similar note during the 2022 session, MSDE advised that it will need to collaborate with the Department of Information Technology (DoIT) on additional support required to improve its computer and Internet security. It is unknown if the current technology infrastructure could support additional simultaneous users. MSDE estimates a \$100,000 contract in fiscal 2025 for a project manager to research current capacity and develop a plan for expanding the current infrastructure. The Department of Legislative Services estimates costs of approximately \$500,000 in fiscal 2025 with no ongoing costs to implement the plan's recommendations. An in-depth needs assessment by DoIT is necessary for a more accurate cost estimate. Thus, there may be additional expenditures related to improving computer and Internet security that cannot be reliably estimated at this time; however, any such costs could be significant. Costs could include hiring additional information technology staff.

#### *Teacher Preparation Programs and Reporting Requirements*

Public four-year institutions can meet the teacher preparation requirements using existing resources. MSDE can produce the required virtual education reports using existing resources.

**Local Expenditures:** A local school system that elects to establish a virtual school must meet specified requirements. A local board of education may authorize a local superintendent to provide virtual education days during a severe weather event during specified circumstances.

All local school systems developed Continuity of Learning plans for use during the 2020-2021 school year; thus, local school systems already have a plan that includes the components required for the virtual education plan for use during a prolonged State of Emergency.

Overall, local school systems can likely meet the requirements of the bill using existing resources, although local school systems may make different choices about virtual education than under current law.

It is assumed that a local school system that chooses to establish a virtual school will choose to do so by reallocating existing resources. Therefore, revenues and expenditures are not materially affected. Further, the establishment of a virtual school is at the discretion of each local board.

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### **Additional Information**

**Prior Introductions:** Similar legislation has been introduced within the last three years. See SB 362 and HB 1163 of 2022 and HB 1376 of 2021.

**Designated Cross File:** None.

**Information Source(s):** Maryland Association of County Health Officers; Maryland State Department of Education; Department of Legislative Services

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