

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 737 (Delegate Ghrist, *et al.*)
 Ways and Means

Alternative Education Options - Right to Learn and Broadening Options and Opportunities for Students Today Programs (Right to Learn Act of 2023)

This bill establishes the Right to Learn Program, administered by the Maryland State Department of Education (MSDE), to provide scholarships for students in “failing schools” to choose an alternative education option. The bill also codifies the Broadening Options and Opportunities for Students Today Program (BOOST) and requires the Governor to include a \$10.0 million appropriation in the annual budget bill for BOOST. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: Special fund expenditures are not affected, as discussed below, but are redirected to fund BOOST. General fund expenditures increase by \$2.0 million beginning in FY 2025. To the extent the bill reduces public school enrollment, general fund expenditures for public schools decrease as early as FY 2026. The resulting impact on annual State expenditures cannot be reliably estimated and is not reflected below. **This bill establishes a mandated appropriation beginning in FY 2025.**

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	2,000,000	2,000,000	2,000,000	2,000,000
SF Expenditure	0	0	0	0	0
Net Effect	\$0	(\$2,000,000)	(\$2,000,000)	(\$2,000,000)	(\$2,000,000)

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

Local Effect: Beginning as early as FY 2025, some local boards of education must remit funds to MSDE to subsidize private school education tuition or other alternative options. Beginning as early as FY 2026, local school system revenues and local government expenditures for public schools decrease. The impact on revenues and related expenditures cannot be reliably estimated. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: A “failing school” means a school that has, for at least the two prior consecutive school years, received two or fewer stars under the State accountability system adopted by the State board, as required by the federal Every Student Succeeds Act (ESSA). A school continues to be designated as a failing school until the school receives a three-star or higher rating for two consecutive school years.

By January 1 each year, each local board of education must provide to the parent of each student who attends a failing school notification that the school is failing and a list of alternative school options. By April 1, the parent must notify the local board of the student’s decision to continue attending the school or pursue an alternative education option.

A family may use a Right to Learn scholarship to provide a student attending a “failing school” the opportunity to pursue any of the following alternative education options: (1) a public school in the county that is not a failing school; (2) a nonpublic school; or (3) a home instruction program reviewed by the local school system. For each student who receives a Right to Learn scholarship for specified qualified education expenses, the local board of education must remit funds to MSDE equal to *local* per pupil expenditures for public school students to cover the costs of the scholarship. MSDE must return any unused funds to the local board.

MSDE must adopt regulations for Right to Learn provisions of the bill.

The purpose of the BOOST Program is to provide scholarships for students who are eligible for the U.S. Department of Agriculture’s free and reduced-price lunch program to attend an eligible nonpublic school. A student may not receive a Right to Learn scholarship if the student received a BOOST scholarship in the same year. The bill specifies BOOST Advisory Board membership and responsibilities.

Current Law:

Broadening Options and Opportunities for Students Today

BOOST has been authorized annually since fiscal 2017 through the budget bill and budget bill language. Special funds for this program are provided through the Cigarette Restitution Fund (CRF), but annual funding is not mandated. According to the annual authorizing

language, scholarship amounts and distribution of scholarships are determined by the BOOST Advisory Board, while the program is administered by MSDE.

The fiscal 2023 operating budget, as enacted, details the criteria for nonpublic schools that have students who are eligible for a BOOST scholarship and would like to participate in BOOST. These criteria include:

- participation in the Aid to Non-Public Schools Program for textbooks and computer hardware and software in the prior school year;
- providing more grades than only prekindergarten and kindergarten;
- administering standardized assessments approved by the National Blue Ribbon program in English, math, and science at specified grade levels; and
- compliance with Title VI of the Civil Rights Act of 1964 as amended; Title 20, Subtitle 6 of the State Government Article (related to employment nondiscrimination) and not discriminate in student admissions, retention, or expulsion based on race, color, national origin, sexual orientation, or gender identity or expression.

The fiscal 2024 budget as introduced (House Bill 200/Senate Bill 181) includes \$8.0 million in CRF funds for BOOST and also incorporates the above criteria, except that proposed language requires that assessments comply with all State and federal law, without specific reference to the National Blue Ribbon program or certain subject areas.

The fiscal 2024 budget also includes language that limits BOOST award eligibility in fiscal 2024 to those who (1) have a sibling who received a BOOST scholarship award in the 2022-2023 school year or (2) received a BOOST scholarship award for the 2022-2023 school year and will be entering any of grades 1 through 12; those entering grade 9 must have attended a nonpublic school that serves kindergarten through grade 12.

Maryland School Accountability System

In 2017, as required by ESSA, the reauthorization of the federal Elementary and Secondary Education Act, and the parameters set by the Protect Our Schools Act of 2017 (Chapter 29), the State board developed a Maryland school accountability system. Schools are rated on a variety of weighted measures and then awarded between one and five stars based on their scores. This system was first implemented during the 2017-2018 school year; schools have not received star ratings since the 2018-2019 school year.

Education Funding Formulas

The great majority of direct State aid to public schools (excluding teachers' retirement) is determined by enrollment-based funding formulas generally 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%.

State Expenditures:

Cigarette Restitution Fund and General Funds

The proposed budget for fiscal 2024 includes \$8.0 million in CRF funds for BOOST. Absent the bill, this analysis assumes funding for BOOST would continue at \$8.0 million a year with CRF monies; CRF has been used to fund BOOST since its inception. This analysis assumes that CRF is used to meet the required \$10.0 million required appropriation under the bill, thus increasing CRF BOOST expenditures by \$2.0 million annually, beginning in fiscal 2025. Since CRF and general funds are used to meet State Medicaid obligations (as well as for other purposes), any increase in CRF special fund expenditures for BOOST means those funds are not available for Medicaid, thereby necessitating an equivalent increase in general funds to pay for Medicaid. Accordingly, an increase of \$2.0 million in CRF expenditures in fiscal 2025 and subsequent years for BOOST means that \$2.0 million less in CRF monies are available to pay for Medicaid in that year, thus requiring an annual increase of \$2.0 million in general fund expenditures, beginning in fiscal 2025.

To the extent that provisions limiting eligibility in the fiscal 2024 proposed budget are continued and/or expanded in subsequent years, thus annually phasing downward required BOOST expenditures under current law, the gap between funding levels absent the bill and the mandated appropriation in the bill grows. Under this scenario, the annual increase in general fund expenditures under the bill increases annually from the \$2.0 million base in fiscal 2025. This analysis assumes all funding available to BOOST is expended each year;

current practice has allowed for some unused special funds to carry over for awards the following year.

Education Aid

To the extent that Right to Learn provisions of the bill, and the assumed increase in BOOST scholarship awards compared to current law, encourage more students to attend private school than under current law, State aid to public schools, which depends largely on student enrollment counts, is reduced as early as fiscal 2026, after factoring in a one-year lag between measured enrollment declines in fiscal 2025 and adjustments to State aid in fiscal 2026. In fiscal 2021, State aid per student was approximately \$8,400; however, the amount of State per pupil aid varied by local school system from about \$4,400 for Worcester County to about \$14,700 for Somerset County. Annual per pupil State funding will increase significantly under the Blueprint for Maryland's Future legislation (Chapters 36 and 55 of 2021). The impact on enrollment and, therefore, on State general and special fund expenditures for public schools cannot be reliably estimated.

Local Fiscal Effect: To the extent that Right to Learn provisions of the bill, and the assumed increase in BOOST scholarship awards, encourage more students to attend private school or home schooling than under current law, local school boards are required to annually remit the local share of per pupil funds to MSDE beginning in fiscal 2025. Thus, local revenues for public schools decrease due to funds being diverted to MSDE for Right to Learn scholarships. In addition, State aid and local appropriations to local school systems will be reduced beginning in fiscal 2026 due to decreased enrollments.

Reduced State aid to public schools beginning in fiscal 2026 reflects public school enrollment declining in fiscal 2025 due to alternative education options taken in April 2024 and Right to Learn scholarship funding that year, with adjustments to State aid following in fiscal 2026. Similarly, reduced public school enrollment reduces the required minimum local appropriations to public schools beginning in fiscal 2026. Per pupil local appropriations for public schools averaged about \$8,000 in fiscal 2021, ranging from about \$2,900 in Caroline County to \$14,800 in Worcester County. Annual per pupil local funding for some counties will increase significantly under the Blueprint for Maryland's Future legislation. (Because the "total per pupil amount" used to determine scholarship funding is based on school system per pupil *expenditures*, it is assumed that this amount will be based on actual data from two or more years prior.)

To the extent local school system enrollment significantly decreases, local school system expenditures may also decrease; however, many local school system expenditures are fixed costs and cannot be quickly adjusted. Any such impact cannot be reliably estimated and will vary significantly by school system because it depends on (1) the number of failing schools in each county and (2) the number of students in each failing school that opt for

alternative learning options. Recent data indicates that the number of schools with a two-star or lower rating under the Maryland school accountability system is 58 in Baltimore City, 16 in Baltimore County, and 12 in Prince George’s County. Anne Arundel, Dorchester, Harford, and Montgomery counties have either 1 or 2 such schools; no such schools are identified in other counties.

Additional Comment: As noted above, MSDE has not awarded star ratings to schools since the 2018-2019 school year. Moreover, MSDE advises that school accountability systems under the Blueprint may evolve. Therefore, it is not clear that the star system will remain a valid measure for identifying “failing schools.”

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 737 of 2022.

Designated Cross File: None.

Information Source(s): Baltimore City Public Schools; Anne Arundel County Public Schools; Maryland State Department of Education; Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2023
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