

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 243

(Delegate Hixson, *et al.*)

Ways and Means

Finance

Fairness in Negotiations Act

This bill establishes a Public School Labor Relations Board (PSLRB) to administer and enforce the labor relations laws for local boards of education and their employees. The authority of the State Board of Education to decide public school labor relations disputes and the authority of the State Superintendent of Schools to declare labor impasses are repealed. The bill also repeals the authority of the local boards of education to make final determinations of matters that have been the subject of negotiation. By July 1, 2014, PSLRB must report on the implementation of the bill.

The bill takes effect July 1, 2010, and terminates June 30, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by an estimated \$105,100 in FY 2011 to provide for the administration of PSLRB. Alternatively, local school systems could reimburse the State for the administrative costs of PSLRB. Future year expenditure estimates reflect annualization, regular salary increases, and inflation through FY 2015, after which the bill terminates. Revenues are not affected.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	105,100	137,400	142,800	148,400	154,300
Net Effect	(\$105,100)	(\$137,400)	(\$142,800)	(\$148,400)	(\$154,300)

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

Local Effect: Local school system expenditures may increase to support half the costs of mediation and arbitration. Additional costs may be incurred if local school systems are required to reimburse the State for PSLRB administrative costs.

Small Business Effect: None.

Analysis

Bill Summary:

Establishment of the Public School Labor Relations Board

PSLRB consists of five members appointed by the Governor with the advice and consent of the Senate, including two chosen from a list provided by employee organizations and two chosen from a list provided by the Maryland Association of Boards of Education and the State Superintendents Association of Maryland. Members serve staggered, five-year terms and are entitled to compensation in accordance with the State budget and standard State reimbursements. A board member must take an oath of office and may be removed by the Governor only for incompetence or misconduct.

PSLRB shares an executive director with the State Labor Relations Board and the Higher Education Labor Relations Board; the executive director is jointly appointed by and serves at the pleasure of all three labor relations boards. The executive director may hire staff necessary to carry out the responsibilities of PSLRB. With the approval of PSLRB, the executive director may employ professional consultants who serve at the pleasure of the executive director.

PSLRB must administer and enforce the labor relations provisions relating to public schools and may adopt regulations, guidelines, and policies to carry out its rights and recommend legislative action regarding its operation. In deciding labor relations matters, the board may conduct hearings, subpoena witnesses, administer oaths, take the testimony or deposition of a person under oath, and conduct investigations. PSLRB must decide controversies and disputes. If a person fails to comply with an order issued by the board, the board may petition a circuit court to order the person to comply with the board's order. Each hearing and determination by PSLRB is subject to review under the Administrative Procedure Act. PSLRB, rather than the State Board of Education, is responsible for supervising employee representation elections.

Changes to the Collective Bargaining Processes

When asked by a local board of education or a local employee organization, PSLRB must determine if a matter is a mandatory, permissive, or illegal subject for bargaining. Procedures regarding employee transfers and assignments are specified as a working condition that must be negotiated for certificated employees.

If PSLRB determines the local board of education and local employee organization have reached an impasse in negotiations, it must order them to begin mediation using a neutral mediator within a certain timeframe. The mediation must follow specified procedures. After receiving the mediator's proposed settlement, the local board of education and local employee organization must notify the mediator of their intent to accept the written proposed settlement, accept it in part, or decline the settlement and request arbitration before PSLRB.

If arbitration is requested, PSLRB must follow specified hearing procedures to develop a final and binding written award that selects and adopts the complete final offer of the local board of education, the complete final offer of the local employee organization, or the mediator's complete offer of settlement. The local board of education and local employee organization are required to equally share the costs of mediation and arbitration.

If the county government does not approve sufficient funds to implement a negotiated agreement, the local school board must negotiate with the employee organization before making a fiscal determination in accordance with the timetable and procedure established by PSLRB. The bill only applies prospectively and may not be applied to any negotiations requested or entered into before July 1, 2010. A final decision of PSLRB may be appealed to a circuit court.

Current Law: The State Board of Education decides all controversies and disputes regarding public elementary and secondary education, including disputes between local boards of education and the local employee organizations representing school system personnel.

Local boards of education and employee organizations must negotiate all matters that relate to salaries, wages, hours, and other working conditions. The school calendar, class size, and any other matter prohibited by State law are not subject to collective bargaining. The groups may negotiate on other matters that are mutually agreed upon, but matters for which there is not mutual agreement may not be raised in any action taken to resolve an impasse between the groups. Impasses are resolved through mediation, and the costs of mediation are shared by the local board of education and the employee organization. Collective bargaining agreements between local boards of education and organizations for certificated personnel may provide for binding arbitration for grievances arising from the agreements.

Local boards must make the final determination as to matters that have been the subject of negotiation, but the determination is subject to the fiscal relationship between the local boards and their local governments.

There is no process to arbitrate the collective bargaining process or alleged unfair labor practice.

Background: The State Board of Education and sometimes the courts have ruled on the matters that can be negotiated in the collective bargaining process. **Exhibit 1** shows some of the subject matter that the State board and the courts have determined is not negotiable. If this bill passes, it is possible that some of these matters could be negotiated.

State Fiscal Effect: General fund expenditures may increase by an estimated \$105,119 in fiscal 2011 which accounts for a 90-day start-up delay after the July 1, 2010 effective date. This estimate reflects the cost of hiring an additional administrative staff member and increasing the current labor relations assistant Attorney General position from 60% to full-time. This will assist with the additional workload that will be created by PSLRB. The estimate includes one full-time salary, one 40% salary, fringe benefits, expenses for PSLRB, compensation and travel expenses for PSLRB members, rental costs for additional space for staff of the labor relations board, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2011</u>	<u>FY 2012</u>
Salaries and Fringe Benefits	\$75,583	\$102,504
Lease Payments for Additional Space	16,500	22,220
Other Start-up and Operating Expenses	<u>13,036</u>	<u>12,720</u>
Total State Expenditures	\$105,119	\$137,444

Future year expenditures reflect one full-time salary and one 40% salary with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

If funding for PSLRB is set up like the Higher Education Labor Relations Board, which is supported with funds from institutions of higher education, local school systems could pay to support the new board. In this case, no general funds would be needed to operate PSLRB.

Exhibit 1
Nonnegotiable Subject Matters

<u>Subject Matter</u> <u>Not Negotiable/Arbitrable</u>	<u>State Board Decision/</u> <u>Appellate Court Opinion</u>
Reclassification	<i>MCEA v. Board of Education of Montgomery County</i> , 311 Md. 303, 534 A.2d 980 (December 28, 1987)
Classroom Observation	<i>Howard County Education Association v. Board of Education</i> , State Board Opinion 88-5 (April 27, 1987)
Second Class Certificates	<i>Dorchester Educators v. Board of Education</i> , State Board Opinion 88-3 (April 27, 1988)
Assignment (but procedure is negotiable)	<i>Brezinski/Wallace v. Board of Education of Howard County</i> , State Board Opinion 98-14 (June 28, 1989)
Transfer and Reassignment (but procedure is negotiable)	<i>Einem v. Board of Education of Howard County</i> , State Board Opinion 89-13 (June 28, 1989)
A local school board may neither negotiate nor delegate its responsibilities for determining tenure	<i>Board of Education of Carroll County v. Education Association, Inc.</i> , 53 Md. App. 355, 452 A.2d 1316 (1982)
Right to transfer teachers involuntarily (procedures are negotiable and arbitrable)	<i>Williamson v. Board of Education of Prince George's County</i> , State Board Opinion 89-11 (June 28, 1989)
Matters of educational policy including promotion, transfer, and evaluation of noncertificated employee is not negotiable	<i>Howard County Educational Support Personnel v. Board of Education of Howard County</i> , State Board Opinion 89-32 (December 13, 1989)
Change in step caused by a reclassification plan	<i>Washington County Educational Classified Employee Association v. Board of Education of Washington County</i> (Ct. of Sp. App., September 3, 1993)
Extra-curricular assignments, such as coaching assignment decisions	<i>Education Association of St. Mary's County and Thomas Murray v. Board of Education of St. Mary's County</i> , State Board Opinion 97-22 (May 28, 1997) upheld by the Circuit Court for St. Mary's County, case no. 18-C-97-000781, May 14, 1998

Source: Maryland Association of Boards of Education

The elimination of the current responsibilities of the State Board of Education and the State Superintendent of Schools with respect to public school labor relations will not materially affect the budget of the Maryland State Department of Education.

The State pays retirement benefits for teachers based on the salaries of teachers in the second prior fiscal year. If the new collective bargaining process impacts employee salaries, State retirement payments would also be affected.

Local Expenditures: Local school system expenditures may increase to pay the costs of mediation and PSLRB arbitration hearings, when necessary. Local school boards and the designated local school employee organization are required to split these costs. Mediation and arbitration costs will depend on the number of cases per year and cannot be reliably estimated. The bill does provide specific timeframes for the completion of mediation and arbitration, which may help to control costs.

If local boards of education are required to reimburse the State for the administrative costs of operating PSLRB, local school system expenditures will increase by approximately \$105,119 in fiscal 2012 and \$154,258 by fiscal 2015.

Nothing in the bill suggests that the new collective bargaining process would have an impact on school system salaries, but if it does, the impact could be significant. In fiscal 2008, school systems collectively spent \$6.7 billion on salaries and wages and another \$1.9 billion on employee benefits (excluding State-paid retirement costs).

Additional Information

Prior Introductions: SB 673 of 2009 passed the Senate with amendments, but no action was taken in the House. Its cross file, HB 1243 of 2009, received a hearing from the House Ways and Means Committee, but no further action was taken.

Cross File: SB 590 (Senator Raskin *et al.*) – Finance.

Information Source(s): Maryland State Department of Education; Department of Budget and Management; Kent, Montgomery, Prince George's, Washington, and Worcester counties; Maryland Association of Counties; Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2010
ncs/mwc Revised - House Third Reader - April 12, 2010
Revised - Clarification - April 29, 2010

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