

# HOUSE BILL 1088

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CF SB 358

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By: **Delegate Griffith (Chair, Joint Committee on Pensions)**

Introduced and read first time: February 11, 2011

Assigned to: Appropriations

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Committee Report: Favorable

House action: Adopted

Read second time: March 15, 2011

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Audit Responsibilities – State Department of Education, Maryland Higher**  
3 **Education Commission, and State Retirement Agency**

4 FOR the purpose of requiring the county boards of education to conduct certain audits  
5 under certain circumstances; requiring certain local school systems to  
6 reimburse the State for certain employer contributions for certain employees  
7 participating in the Teachers' Retirement System or the Teachers' Pension  
8 System; providing that the State Department of Education may authorize  
9 certain county boards of education and public libraries to conduct certain  
10 audits; authorizing the State Department of Education, rather than the State  
11 Retirement Agency, to conduct certain audits of local school systems and public  
12 libraries to determine if certain employer contributions have been paid  
13 appropriately to the State Retirement and Pension System; clarifying that  
14 certain audits conducted by certain groups may be conducted in a certain  
15 manner; requiring that reimbursements for certain audits be applied to the  
16 State Department of Education, certain county boards of education, the  
17 Maryland Higher Education Commission, certain public junior or community  
18 colleges, certain public libraries, and the General Fund in a certain manner;  
19 requiring certain county boards of education and public libraries to provide  
20 certain documentation to the State Department of Education under certain  
21 circumstances; providing that the Maryland Higher Education Commission may  
22 authorize certain public junior or community colleges to conduct certain audits;  
23 authorizing the Maryland Higher Education Commission, rather than the State  
24 Retirement Agency, to conduct certain audits of public junior or community  
25 colleges to determine if certain employer contributions have been paid

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 appropriately to the State Retirement and Pension System; requiring certain  
 2 public junior or community colleges to provide certain documentation to the  
 3 Maryland Higher Education Commission under certain circumstances;  
 4 clarifying that the State Retirement Agency may perform certain audits of  
 5 certain participating employers; requiring that if certain audits by the State  
 6 Retirement Agency reveal certain information, certain actions shall be taken  
 7 and certain payments shall be made to the State Retirement and Pension  
 8 System; and generally relating to performing audits of local school systems,  
 9 public junior or community colleges, and public libraries for purposes of  
 10 determining if employer and member contributions have been paid  
 11 appropriately to the State Retirement and Pension System.

12 BY repealing and reenacting, with amendments,  
 13 Article – Education  
 14 Section 5–109, 5–203, 16–306, and 23–504  
 15 Annotated Code of Maryland  
 16 (2008 Replacement Volume and 2010 Supplement)

17 BY repealing and reenacting, with amendments,  
 18 Article – State Personnel and Pensions  
 19 Section 21–121  
 20 Annotated Code of Maryland  
 21 (2009 Replacement Volume and 2010 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Education**

25 5–109.

26 (a) **(1)** Each county board shall provide for an annual audit of its financial  
 27 transactions and accounts.

28 **(2) AT THE REQUEST OF THE DEPARTMENT, A COUNTY BOARD**  
 29 **SHALL CONDUCT AN AUDIT UNDER § 5–203 OF THIS TITLE.**

30 (b) (1) The audit shall be made by a certified public accountant or a  
 31 partnership of certified public accountants who are:

32 (i) Licensed by the State Board of Public Accountancy; and

33 (ii) Approved by the State Superintendent.

34 (2) The audit shall be made in accordance with the standards and  
 35 regulations adopted by the State Board.

1 (c) (1) The results of the audit, including the letter of recommendation  
2 submitted by the auditor, are a matter of public record.

3 (2) The results shall be reported within 3 months after the close of the  
4 fiscal year for the county board on the form and in the manner required by the State  
5 Board to:

6 (i) The State Superintendent;

7 (ii) The county fiscal authority;

8 (iii) The Joint Audit Committee of the General Assembly;

9 (iv) The Senate Budget and Taxation Committee;

10 (v) The Senate Education, Health, and Environmental Affairs  
11 Committee;

12 (vi) The House Appropriations Committee; and

13 (vii) The House Committee on Ways and Means.

14 (d) In addition to the audit required by this section, the county  
15 commissioners or county council may conduct an audit using auditors employed by the  
16 county.

17 5-203.

18 (a) (1) [In this section, "Agency" means the State Retirement Agency.]  
19 **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LOCAL SCHOOL SYSTEM**  
20 **SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS**  
21 **MADE BY THE STATE FOR AN EMPLOYEE WHO:**

22 (i) **IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM**  
23 **OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE**  
24 **PERSONNEL AND PENSIONS ARTICLE; AND**

25 (ii) **IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER**  
26 **THAN STATE OR LOCAL AID.**

27 (2) **TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN**  
28 **PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE LOCAL SCHOOL**  
29 **SYSTEM SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S**  
30 **PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY**  
31 **A SOURCE OTHER THAN STATE OR LOCAL AID.**

1           (b)   (1)   **[The Agency] TO ENSURE THAT EACH LOCAL SCHOOL SYSTEM**  
2 **IS PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER SUBSECTION (A)**  
3 **OF THIS SECTION, THE DEPARTMENT OR, AT THE DEPARTMENT'S REQUEST, A**  
4 **COUNTY BOARD** may at any time examine the records of local school systems to  
5 determine whether the State's payments for retirement contributions for employees of  
6 the school systems are in accordance with the provisions of Division II of the State  
7 Personnel and Pensions Article.

8                   [(2) In making the determination under paragraph (1) of this  
9 subsection, the Agency shall include as employees eligible for State payment of  
10 retirement contributions those employees:

11                           (i)   Whose salaries are funded by State or local aid, whether  
12 general or categorical in nature; and

13                           (ii)   Who are members of the Teachers' Pension System or  
14 Teachers' Retirement System.]

15                   **(2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS**  
16 **SUBSECTION MAY BE:**

17                           **(I) INCLUDED WITH AN EXISTING ANNUAL FINANCIAL**  
18 **AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;**

19                           **(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL**  
20 **FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE**  
21 **PROGRAMS AND TESTED INDEPENDENTLY; OR**

22                           **(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.**

23           (c)   (1)   (i)   If an examination of the records of a local school system  
24 shows that the State has paid more than is required under Division II of the State  
25 Personnel and Pensions Article, within 30 days after the date of the notice to the  
26 school system of the State overpayment, the school system may appeal the notice of  
27 State overpayment to the Secretary of Budget and Management who shall appoint a  
28 hearing examiner who is an attorney.

29                           (ii)   The hearing examiner shall make recommendations to the  
30 Secretary of Budget and Management who shall make a determination regarding the  
31 amount, if any, of the State overpayment.

32                           (iii)   Should a local school system request a transcript of an audit  
33 appeals hearing, the local school system shall provide and pay for the production of the  
34 transcript.

1           (2) At the request of the Department [of Education] the moneys owed  
2 shall be deducted from any other State funds that would otherwise be paid to the  
3 school system if:

4                   (i) A local school system does not appeal to the Secretary of  
5 Budget and Management or to the Office of Administrative Hearings; or

6                   (ii) The Office of Administrative Hearings determines that the  
7 State is due reimbursement for excess payments as provided in paragraph (3) of this  
8 subsection.

9           (3) (i) The local school system may appeal to the Office of  
10 Administrative Hearings a determination by the Secretary of Budget and  
11 Management regarding the amount, if any, of the State overpayment.

12                   (ii) Within 45 days after the close of the hearing record, the  
13 Office of Administrative Hearings shall issue a written decision to the parties and may  
14 grant any appropriate remedy.

15                   (iii) The written decision issued by the Office of Administrative  
16 Hearings is the final finding of fact and conclusion of law and binding on all parties  
17 and is not subject to judicial review.

18           (d) **(1)** Any reimbursements [which result from audits under this section]  
19 **UNDER SUBSECTION (A) OF THIS SECTION:**

20                   **[(1)] (I)** Shall be applied first to **THE COST OF ANY AUDIT OR**  
21 **PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO**  
22 reimburse **EITHER** the [Agency] **DEPARTMENT OR THE COUNTY BOARD** for the  
23 expenses of the audits; and

24                   **[(2)] (II)** After reimbursement to the [Agency] **DEPARTMENT OR**  
25 **COUNTY BOARD** under item **[(1)](I)** of this [subsection] **PARAGRAPH**, shall be  
26 credited to the General Fund.

27           **(2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A**  
28 **COUNTY BOARD, BEFORE THE COUNTY BOARD IS REIMBURSED UNDER**  
29 **PARAGRAPH (1)(I) OF THIS SUBSECTION, THE COUNTY BOARD SHALL PROVIDE**  
30 **DOCUMENTATION TO THE DEPARTMENT THAT THE INCREMENTAL COSTS OF**  
31 **THE AUDIT INCURRED BY THE COUNTY BOARD ARE REASONABLE.**

32 16-306.

33           (a) **(1)** [In this section, "Agency" means the State Retirement Agency.]  
34 **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC JUNIOR OR**

1 COMMUNITY COLLEGE SHALL REIMBURSE THE STATE ANNUALLY FOR THE  
2 EMPLOYER CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:

3 (I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM  
4 OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE  
5 PERSONNEL AND PENSIONS ARTICLE; AND

6 (II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER  
7 THAN STATE OR LOCAL AID.

8 (2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN  
9 PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE PUBLIC JUNIOR OR  
10 COMMUNITY COLLEGE SHALL REIMBURSE THE STATE A PRO RATA SHARE OF  
11 THE STATE'S PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE'S  
12 SALARY FUNDED BY A SOURCE OTHER THAN STATE OR LOCAL AID.

13 (b) (1) [The Agency] TO ENSURE THAT THE PUBLIC JUNIOR OR  
14 COMMUNITY COLLEGE IS PROPERLY REIMBURSING THE STATE AS PROVIDED  
15 UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSION OR, AT THE  
16 COMMISSION'S REQUEST, A PUBLIC JUNIOR OR COMMUNITY COLLEGE may at  
17 any time examine the records of public junior or community colleges to determine  
18 whether the State's payments for retirement contributions for employees of the public  
19 junior or community colleges are in accordance with the provisions of Division II of the  
20 State Personnel and Pensions Article.

21 (2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS  
22 SUBSECTION MAY BE:

23 (I) INCLUDED WITH AN EXISTING FINANCIAL ANNUAL  
24 AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;

25 (II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL  
26 FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE  
27 PROGRAMS AND TESTED INDEPENDENTLY; OR

28 (III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.

29 (c) (1) (i) If an examination of the records of a public junior or  
30 community college shows that the State has paid more than is required under Division  
31 II of the State Personnel and Pensions Article, within 30 days after the date of the  
32 notice to the junior or community college of the State overpayment, the junior or  
33 community college may appeal the notice of State overpayment to the Secretary of  
34 Budget and Management who shall appoint a hearing examiner.

1 (ii) The hearing examiner shall make recommendations to the  
2 Secretary of Budget and Management who shall make a final determination regarding  
3 the amount, if any, of the State overpayment.

4 (2) If a public junior or community college does not appeal to the  
5 Secretary of Budget and Management or if the Secretary of Budget and Management  
6 determines that the State is due reimbursement for excess payments, as provided in  
7 paragraph (1) of this subsection, at the request of the [Agency] COMMISSION the  
8 moneys owed shall be deducted from any other State funds that would otherwise be  
9 paid to the public junior or community college.

10 (3) For purposes of the Administrative Procedure Act, an appeal taken  
11 under this section is not a contested case.

12 (d) (1) Any reimbursements [which result from audits under this section]  
13 UNDER SUBSECTION (A) OF THIS SECTION:

14 [(1)] (I) Shall be applied first to THE COST OF ANY AUDIT OR  
15 PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO  
16 reimburse EITHER the [Agency] COMMISSION OR THE PUBLIC JUNIOR OR  
17 COMMUNITY COLLEGE for the expenses of the audits; and

18 [(2)] (II) After reimbursement to the [Agency] COMMISSION OR THE  
19 PUBLIC JUNIOR OR COMMUNITY COLLEGE under item [(1)](I) of this [subsection]  
20 PARAGRAPH, shall be credited to the General Fund.

21 (2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A  
22 PUBLIC JUNIOR OR COMMUNITY COLLEGE, BEFORE THE PUBLIC JUNIOR OR  
23 COMMUNITY COLLEGE IS REIMBURSED UNDER PARAGRAPH (1)(I) OF THIS  
24 SUBSECTION, THE PUBLIC JUNIOR OR COMMUNITY COLLEGE SHALL PROVIDE  
25 DOCUMENTATION TO THE COMMISSION THAT THE INCREMENTAL COSTS OF THE  
26 AUDIT INCURRED BY THE PUBLIC JUNIOR OR COMMUNITY COLLEGE ARE  
27 REASONABLE.

28 23-504.

29 (a) (1) [In this section, "Agency" means the State Retirement Agency.]  
30 SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC LIBRARY SHALL  
31 REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS MADE  
32 BY THE STATE FOR AN EMPLOYEE WHO:

33 (I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM  
34 OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE  
35 PERSONNEL AND PENSIONS ARTICLE; AND

1                   **(II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER**  
2 **THAN STATE OR LOCAL AID.**

3                   **(2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN**  
4 **PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE PUBLIC LIBRARY**  
5 **SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S PAYMENT**  
6 **BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY A**  
7 **SOURCE OTHER THAN STATE OR LOCAL AID.**

8           **(b) (1) [The Agency] TO ENSURE THAT EACH PUBLIC LIBRARY IS**  
9 **PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER SUBSECTION (A) OF**  
10 **THIS SECTION, THE DEPARTMENT OR, AT THE DEPARTMENT'S REQUEST, A**  
11 **PUBLIC LIBRARY** may at any time examine the records of public libraries to  
12 determine whether the State's payments for retirement contributions for employees of  
13 the public libraries are in accordance with the provisions of Division II of the State  
14 Personnel and Pensions Article.

15                   **(2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS**  
16 **SUBSECTION MAY BE:**

17                   **(I) INCLUDED WITH AN EXISTING FINANCIAL ANNUAL**  
18 **AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;**

19                   **(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL**  
20 **FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE**  
21 **PROGRAMS AND TESTED INDEPENDENTLY; OR**

22                   **(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.**

23           **(c) (1) (i)** If an examination of the records of a public library shows  
24 that the State has paid more than is required under Division II of the State Personnel  
25 and Pensions Article, within 30 days after the date of the notice to the library of the  
26 State overpayment, the public library may appeal the notice of State overpayment to  
27 the Secretary of Budget and Management who shall appoint a hearing examiner.

28                   **(ii)** The hearing examiner shall make recommendations to the  
29 Secretary of Budget and Management who shall make a final determination regarding  
30 the amount, if any, of the State overpayment.

31                   **(2)** If a public library does not appeal to the Secretary of Budget and  
32 Management or if the Secretary of Budget and Management determines that the State  
33 is due reimbursement for excess payments as provided in paragraph (1) of this  
34 subsection, at the request of the Department of Education the moneys owed shall be  
35 deducted from any other State funds that would otherwise be paid to the public  
36 library.





1                   **(2) (I) THE PARTICIPATING EMPLOYER SHALL PAY ANY**  
2 **AMOUNTS OWED TO THE ACCUMULATION FUND OF THE APPROPRIATE STATE**  
3 **SYSTEM; AND**

4                   **(II) THE MEMBER CONTRIBUTIONS OWED BY THE**  
5 **PARTICIPANT SHALL BE MADE BY THE PARTICIPANT IN ACCORDANCE WITH §**  
6 **21-312(E) OF THIS TITLE.**

7           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 July 1, 2011.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.