

Chapter 452

(Senate Bill 358)

AN ACT concerning

Audit Responsibilities – ~~Local Education Agencies, Community Colleges, and Public Libraries – Employer Pension Contributions~~ State Department of Education, Maryland Higher Education Commission, and State Retirement Agency

FOR the purpose of requiring the county boards of education to conduct certain audits under certain circumstances; requiring certain local school systems to reimburse the State for certain employer contributions for certain employees participating in the Teachers' Retirement System or the Teachers' Pension System; providing that the State Department of Education may authorize certain county boards of education and public libraries to conduct certain audits; authorizing the State Department of Education, rather than the State Retirement Agency, to conduct certain audits of local school systems and public libraries to determine if certain employer contributions have been paid appropriately to the State Retirement and Pension System; ~~altering a provision relating to the employees included for purposes of certain audits as eligible for State payment of retirement contributions;~~ clarifying that certain audits conducted by certain groups may be conducted in a certain manner; requiring that reimbursements for certain audits be applied to the State Department of Education, certain county boards of education, the Maryland Higher Education Commission, certain public junior or community colleges, certain public libraries, and the General Fund in a certain manner; requiring certain county boards of education and public libraries to provide certain documentation to the State Department of Education under certain circumstances; providing that the Maryland Higher Education Commission may authorize certain public junior or community colleges to conduct certain audits; authorizing the Maryland Higher Education Commission, rather than the State Retirement Agency, to conduct certain audits of public junior or community colleges to determine if certain employer contributions have been paid appropriately to the State Retirement and Pension System; ~~requiring that certain reimbursements determined from performing certain audits of local school systems, public junior or community colleges, and public libraries be credited entirely to the General Fund;~~ requiring certain public junior or community colleges to provide certain documentation to the Maryland Higher Education Commission under certain circumstances; clarifying that the State Retirement Agency may perform certain audits of certain participating employers; requiring that if certain audits by the State Retirement Agency reveal certain information, certain actions shall be taken and certain payments shall be made to the State Retirement and Pension System; and generally relating to performing audits of local school systems,

public junior or community colleges, and public libraries for purposes of determining if employer and member contributions have been paid appropriately to the State Retirement and Pension System.

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

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

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

Article – Education

5–109.

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

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

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

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

(ii) Approved by the State Superintendent.

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

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

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

- (i) The State Superintendent;
- (ii) The county fiscal authority;
- (iii) The Joint Audit Committee of the General Assembly;
- (iv) The Senate Budget and Taxation Committee;
- (v) The Senate Education, Health, and Environmental Affairs Committee;
- (vi) The House Appropriations Committee; and
- (vii) The House Committee on Ways and Means.

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

5-203.

~~(a) In this section, "Agency" means the State Retirement Agency.~~

(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LOCAL SCHOOL SYSTEM SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:

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

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

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

~~(b)~~ **(1) The [Agency] DEPARTMENT TO ENSURE THAT EACH LOCAL SCHOOL SYSTEM IS PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT OR, AT THE DEPARTMENT'S REQUEST, A COUNTY BOARD** may at any time examine the records of local school systems to determine whether the State's payments for retirement

contributions for employees of the school systems are in accordance with the provisions of Division II of the State Personnel and Pensions Article.

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

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

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

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

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

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

(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.

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

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

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

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

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

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

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

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

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

~~[(d)] (c)~~ **(1)** Any reimbursements ~~which result from audits under this section~~ UNDER SUBSECTION (A) OF THIS SECTION;

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

~~(2)~~ **(II)** After reimbursement to the ~~Agency under item (1) of this subsection,~~ DEPARTMENT OR COUNTY BOARD UNDER ITEM (I) OF THIS PARAGRAPH, shall be credited to the General Fund.

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

16-306.

(a) **(1)** ~~In this section, ["Agency"] "COMMISSION" means the [State Retirement Agency] MARYLAND HIGHER EDUCATION COMMISSION.~~ SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC JUNIOR OR COMMUNITY COLLEGE SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:

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

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

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

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

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

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

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

(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.

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

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

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

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

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

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

~~(2)~~ **(II)** After reimbursement to the ~~Agency under item (1) of this subsection,~~ **COMMISSION OR THE PUBLIC JUNIOR OR COMMUNITY COLLEGE UNDER ITEM (I) OF THIS PARAGRAPH,** shall be credited to the General Fund.

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

23-504.

~~(a) [In this section, "Agency" means the State Retirement Agency.]~~

(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC LIBRARY SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:

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

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

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

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

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

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

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

(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.

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

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

(2) If a public library does not appeal to the Secretary of Budget and Management or if the Secretary of Budget and Management determines that the State is due reimbursement for excess payments as provided in paragraph (1) of this subsection, at the request of the Department of ~~Education~~ the moneys owed shall be

deducted from any other State funds that would otherwise be paid to the public library.

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

~~[(d)] (C)~~ **(1)** Any reimbursements ~~which result from audits under this section~~ UNDER SUBSECTION (A) OF THIS SECTION;

~~(1)~~ **(I)** Shall be applied first to ~~reimburse the Agency~~ THE COST OF ANY AUDIT OR PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO REIMBURSE EITHER THE DEPARTMENT OR THE PUBLIC LIBRARY for the expenses of the audits; and

~~(2)~~ **(II)** After reimbursement to the ~~Agency under item (1) of this subsection,~~ DEPARTMENT OR PUBLIC LIBRARY UNDER ITEM (I) OF THIS PARAGRAPH, shall be credited to the General Fund.

(2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A PUBLIC LIBRARY, BEFORE THE PUBLIC LIBRARY IS REIMBURSED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION, THE PUBLIC LIBRARY SHALL PROVIDE DOCUMENTATION TO THE DEPARTMENT THAT THE INCREMENTAL COSTS OF THE AUDIT INCURRED BY THE PUBLIC LIBRARY ARE REASONABLE.

Article – State Personnel and Pensions

21–121.

(A) [Whenever an audit of the records of an educational institution, public library, or school system reveals that the institution, library, or school system owes money to the accumulation fund of the Teachers’ Retirement System or the Teachers’ Pension System, the State Retirement Agency may collect the delinquent payment as provided under §§ 5–203, 16–306, and 23–504 of the Education Article.] THE STATE RETIREMENT AGENCY MAY AT ANY TIME EXAMINE THE RECORDS OF A PARTICIPATING EMPLOYER TO DETERMINE WHETHER THE PAYMENT OF BENEFITS TO A PARTICIPANT AND THE PAYMENT OF CONTRIBUTIONS BY A PARTICIPATING EMPLOYER OR PARTICIPANT ARE AND WILL BE IN ACCORDANCE WITH THE PROVISIONS OF DIVISION II OF THIS ARTICLE.

(B) WHENEVER AN AUDIT REVEALS THAT THE PAYMENT OF BENEFITS TO A PARTICIPANT OR THE PAYMENT OF CONTRIBUTIONS BY A PARTICIPATING EMPLOYER OR PARTICIPANT IS NOT IN ACCORDANCE WITH THE PROVISIONS OF DIVISION II OF THIS ARTICLE:

(1) THE STATE RETIREMENT AGENCY AND PARTICIPATING EMPLOYER SHALL CORRECT THEIR RECORDS; AND

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

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

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

Approved by the Governor, May 19, 2011.