

**Department of Legislative Services**

Maryland General Assembly

2004 Session

**FISCAL AND POLICY NOTE**

Senate Bill 920

(Senator Hughes, *et al.*)

Education, Health, and Environmental Affairs

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**State Government - Office of Legislative Audits - Baltimore City Board of School Commissioners**

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This bill requires the Office of Legislative Audits (OLA) to audit the Baltimore City Board of School Commissioners to determine whether there has been wrongdoing on the part of the board including: (1) negligence; (2) gross negligence; (3) malfeasance; (4) misfeasance; (5) nonfeasance; (6) criminal intent; or (7) criminal actions. OLA must have access to and may inspect any records of the board with respect to any matter under its jurisdiction, including confidential records, and may report any criminal violation discovered to the Attorney General. The Attorney General is authorized to investigate and prosecute any alleged criminal violation reported by OLA and has all the powers and duties of a State's Attorney, including the use of a grand jury in Baltimore City. The Attorney General must keep the report of OLA confidential if no prosecution is undertaken

The bill is effective June 1, 2004.

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**Fiscal Summary**

**State Effect:** The exact impact cannot be reliably quantified. The magnitude of any fiscal impact on OLA or the Attorney General would be determined by the extent of any wrongdoing uncovered by OLA and whether the Attorney General chooses to investigate and prosecute any alleged criminal violation. Assuming the bill requires only a one-time audit, OLA could handle the bill's requirements within existing budgeted resources.

**Local Effect:** None.

**Small Business Effect:** None.

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## **Analysis**

**Current Law:** Statute requires OLA to conduct a fiscal/compliance audit of each unit of the State government (except for units in the Legislative Branch) once every three years. However, other provisions of the code require more frequent audits by OLA: (1) the Maryland Agricultural Land Preservation Foundation (annually); (2) the Physician Rehabilitation Committee (every two years); and (3) licensees of the State Racing Commission (every two years).

OLA is required to review the annual audit report of a: (1) county, municipal corporation, or taxing district; (2) community college; (3) local board of education; and (4) local library board.

**Background:** In December 1994, the American Civil Liberties Union (ACLU), on behalf of Baltimore City school children, sued the State alleging that the children of Baltimore are not receiving an adequate education as provided in the State constitution. In September 1995, Baltimore City also filed suit against the State Superintendent of Schools and other State officials claiming that the State had failed to fulfill its duty to provide a “thorough and efficient” education for children as provided in the State constitution. The State responded by filing to include Baltimore City officials as defendants in the ACLU lawsuit and called for a total restructuring of the management of the city school system.

Through subsequent negotiations led by the judges assigned to the pending court cases, a consent agreement was reached between the State and the city that called for Baltimore City to receive \$230 million in new State aid over the next five years. In addition, Baltimore City would be eligible to receive a supplemental grant based on the current expense formula for any enrollment decreases that exceeded enrollment projections in the consent agreement.

Chapter 105 was enacted in April 1997 and restructured the management of the Baltimore City Public Schools contingent on the State providing additional funding to the city. The existing board of school commissioners was replaced with a 10-member board appointed jointly by the Mayor and the Governor and was responsible for all functions relating to the public school system including the establishment of a personnel system governing all employees and the adoption of regulations governing school system procurement.

In February 2004 the Baltimore City school system announced that it had incurred a significant deficit, and would be insolvent and unable to meet its payroll by the end of the month without emergency loans to meet a \$58 million cash-flow shortfall.

**State Fiscal Effect:** The Attorney General advises that general fund expenditures could increase by approximately \$600,000 annually beginning in fiscal 2005 through 2009. This reflects the cost of hiring three additional attorneys, three accountants, three fraud investigators, and one legal secretary.

The Department of Legislative Services (DLS) disagrees with this assessment since the bill does not require the Attorney General to investigate or prosecute any alleged violation revealed by the OLA audit. Furthermore, the extent to which any investigation or prosecution undertaken by the Attorney General would be sufficiently complex or labor intensive to require the hiring of seven additional employees, will depend on the nature of any alleged criminal violation uncovered by an OLA audit.

Currently, the Criminal Investigation Division of the Attorney General comprises four attorneys, four accountants, and four investigators from the Maryland State Police. The fiscal 2004 budget was \$1,139,399. The fiscal 2005 budget allowance is \$1,427,507.

**State Fiscal Effect:** The bill requires OLA to perform a “fraud, waste, and abuse” audit, which typically exceeds the scope of a typical audit. Given the size of the Baltimore City school system, performing the audit could consume a substantial amount of staff time; however, the audit could be performed within OLA’s existing resources provided that the bill requires a single audit. The language of the bill is unclear in this regard. There is a potential for expenditures to increase significantly depending on the nature and extent of any fraud, waste, or abuse uncovered.

If the bill requires regular audits akin to similar requirements in the State Government Article, OLA would require one additional employee annually beginning in fiscal 2005 at an estimated cost of \$75,000 for salary and benefits.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City, Office of the Attorney General, Department of Legislative Services (Office of Legislative Audits)

**Fiscal Note History:** First Reader - March 16, 2004  
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