

HB 1088

Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1088

(Delegate Griffith)(Chair, Joint Committee on Pensions)

Appropriations

Budget and Taxation

**Audit Responsibilities - State Department of Education, Maryland Higher
Education Commission, and State Retirement Agency**

This bill alters the responsibility for conducting audits to determine whether local school systems, community colleges, and libraries are properly reimbursing the State for pension payments for their employees whose salaries are not paid fully by State and local funds.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: None. It is assumed that the Maryland State Department of Education (MSDE) and the Maryland Higher Education Commission (MHEC) will exercise the discretion provided by the bill and require local school boards, community colleges, and libraries to include a review of State pension payments in their audit processes.

Local Effect: Potential minimal increase in local government expenditures to conduct the audits, assuming that they are required to do so by MSDE and MHEC. To the extent that the audit responsibilities are incorporated into existing audits required by State and federal law, the marginal costs of the additional responsibility should be minimal and likely recoverable under the bill. To the extent that separate audits must be conducted, the full cost of the audits may not be fully recoverable.

Small Business Effect: None.

Analysis

Bill Summary: The bill clarifies that it is the responsibility of local school systems, community colleges, and libraries to reimburse the State for pension contributions made on behalf of their employees who are members of the Teachers' Retirement System (TRS) or Teachers' Pension System (TPS) and whose salaries are not paid fully by State and local funds. Reimbursements made for affected employees whose salaries are partially paid by State or local funds must be on a pro rata basis.

To ensure that the local entities are properly reimbursing the State and that State payments for retirement contributions are in accordance with State pension law, MSDE may conduct audits of local school systems and public libraries, and MHEC may conduct audits of local community colleges. Alternatively, MSDE and MHEC may request that the local entities conduct their own audits. Audits conducted for this purpose may be included with or conducted in conjunction with other existing audit requirements under State or federal law, or they may be conducted independently.

Reimbursements collected from local school systems, community colleges, and libraries will be applied first to offset the cost of any audit or portion of an audit relating to the reimbursement of State pension contributions. If local entities conduct an audit, they are responsible for documenting the incremental costs of the audit prior to being reimbursed. Any funds remaining after the costs of any audits are reimbursed are then credited to the State's general fund.

The State Retirement Agency (SRA) remains authorized to audit the records of any participating employer to determine whether employer and employee contributions and benefit payments are in accordance with State pension law. If discrepancies are found, SRA and the participating employer must correct their records and payments must be adjusted appropriately.

Current Law: SRA is authorized to audit the records of local school systems, community colleges, and public libraries to determine whether State payments for retirement contributions for employees are in accordance with State pension law. The agency must notify a local school system, college, or library if the audit reveals that the State has paid more than is required, and the local agency has 30 days to appeal the notice of overpayment to the Secretary of Budget and Management. The Secretary must then appoint a hearing examiner who must be an attorney.

The hearing examiner makes recommendations to the Secretary, who is responsible for making a final determination regarding the amount, if any, of the overpayment. A local agency may appeal the Secretary's decision to the Office of Administrative Hearings (OAH), which must issue a written decision within 45 days of the end of the

proceedings. OAH's decision is final and not subject to judicial review. If a local agency does not appeal to the Secretary or to OAH, or if OAH determines that a local agency must reimburse the State for excess payments, MSDE or MHEC may request that any money owed by the local agency be deducted from any other State funds otherwise paid to the local agency.

Any reimbursements resulting from SRA's audits of local agencies must first be paid to reimburse SRA for the cost of the audits, and any remaining funds are credited to the general fund.

Background: The State pays the full cost of pensions for employees of local governments who are members of TRS or TPS, including teachers and principals employed by local school systems, community college faculty, and librarians employed by county libraries. MSDE is responsible for making payments to the State Retirement and Pension System on behalf of teachers and librarians, while MHEC makes the payments on behalf of community college faculty.

Since 1990, SRA has been authorized to conduct audits of local school systems, community colleges, and public libraries. A key purpose of the audits has been to determine whether the local agencies receive other funds, most notably federal funds, to pay the cost of fringe benefits for a member of TRS/TPS for whom the State has already paid. That legislation required any reimbursements for these double payments that are recovered through the audit process be applied first to offset the cost of the audits, with the remainder being credited to the general fund. For the first few audit cycles conducted by SRA, the level of reimbursement exceeded the cost of the audits, so SRA did not incur any net expenses. However, for the 1998-2000 audit cycle, the level of reimbursement dropped and the agency incurred a \$56,000 loss. Subsequent legislation has narrowed the scope of potential reimbursements particularly for school teachers (*e.g.*, State categorical funds are no longer recoverable), and SRA believes it is unlikely to recoup the cost of future audits.

Since the State already requires local school systems, community colleges, and public libraries to submit annual audited financial statements, it is assumed that to the extent MSDE or MHEC require a local agency to conduct an audit, it will be incorporated into existing required audits.

Additional Information

Prior Introductions: None.

Cross File: SB 358 (Senator Jones-Rodwell)(Chair, Joint Committee on Pensions) – Budget and Taxation.

Information Source(s): Maryland State Department of Education, Maryland Higher Education Commission, Maryland State Retirement Agency, Montgomery County, Department of Legislative Services

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