

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 782 (Delegate Atterbeary)
 Ways and Means

Education - Maryland Office of the Inspector General for Education - Powers and Notifications

This bill establishes that the Maryland Office of the Inspector General for Education (OIGE) is a State educational authority under federal law and authorized to audit or evaluate elementary and secondary education programs and services that receive State or federal support. The bill limits the inspector general (IG) to not more than two full five-year terms and establishes a process to remove and replace the IG. The bill allows the IG to appoint deputies and appoint and employ professional and clerical staff to conduct the office’s work, and to use outside legal counsel. In addition, the bill adds the Accountability and Implementation Board (AIB) to the entities OIGE may investigate, and the bill specifies that OIGE is authorized to conduct investigations, budgetary analyses, and financial, management, and performance audits or similar review of indicated entities. The bill allows OIGE to work jointly with other agencies. Lastly, the bill requires each unit of government that receives State education funds to have postings from OIGE in conspicuous places and on its website indicating ways to report fraud, waste, and abuse. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: *Under one set of assumption, general fund expenditures increase by \$793,500 in FY 2024 due to additional staff, consultants, equipment, and travel. Future years reflect ongoing staffing, consultant, equipment, and travel costs. Revenues are not affected.*

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	793,500	904,900	944,200	1,039,700	1,035,100
Net Effect	(\$793,500)	(\$904,900)	(\$944,200)	(\$1,039,700)	(\$1,035,100)

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

Local Effect: Local school systems can provide the required notification using existing resources. It is assumed that temporarily detailing local employees has no material impact on local finances; however, detailing local employees for a significant amount of time may increase local expenditures. Revenues are not directly affected.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Authorization to Audit or Evaluate

The bill establishes that OIGE is a State educational authority under the federal Family Educational Rights and Privacy Act and the State unit authorized to audit or evaluate elementary and secondary education programs and services that receive federal or State support.

Appointment and Removal of the Inspector General

Before removing the IG, the Governor, the Attorney General, and the State Treasurer must provide the IG with written notice of the proposed removal. The IG may request an administrative hearing within 10 days to be overseen by an assistant Attorney General as specified.

Appointment of Staff and Retaining of Consultants and State Support

The IG may, as provided in the State Budget, appoint term merit employees, including one or more deputy inspectors general. The term of a deputy inspector general must end when the next IG takes office, unless the IG specifies a shorter term when appointing the deputy inspector general.

The IG may, as provided in the State budget, retain project staff or other consultants by contract and may, with the agreement of the head of any other government agency or local board of education, temporarily detail an employee of that department or local board to OIGE. The IG may appoint and employ professional and clerical staff, including attorneys, accountants, auditors, analysts, and investigators, as provided in the State budget, to conduct the work of OIGE.

The IG may obtain legal services from a person outside the Office of the Attorney General if: (1) the IG finds that obtaining independent legal services is necessary to effectively

perform the office's duties and (2) the Department of Budget and Management (DBM) appropriates sufficient funds to cover the cost of the legal services.

The State must provide the IG with appropriately located office space and sufficient physical facilities, including necessary office supplies, equipment, and furnishings to enable the office to perform its independent functions.

Investigations

In performing investigations, the IG may (1) seek assistance from any other government agency or private party and (2) undertake any project jointly with any other government agency.

A State or local agency, local board of education, nonpublic school, or public official may not take adverse, retaliatory action against any individual who is protected under the Public School Employee Whistleblower Protection Act (Title 6, Subtitle 9 of the Education Article).

Notification

Each unit of government or local board of education that receives State education funds must: (1) keep posted in conspicuous places on its premises a notice prepared by OIGE setting forth the methods for reporting fraud, waste, and abuse of education resources; (2) keep posted in conspicuous places on its website a direct link to OIGE for reporting fraud, waste, and abuse; and (3) on request of OIGE, distribute information related to the prevention, detection, and reporting of fraud, waste, and abuse of education resources to the State, local board of education employees, and other persons or entities receiving State education funds.

Other Changes

The bill makes other conforming changes to the operation of OIGE and the duties of the IG.

Current Law:

Maryland Office of the Inspector General

OIGE is an independent unit of the State. The IG is responsible for examining and investigating local boards of education, local school systems, and public schools; nonpublic schools that receive State funds; the Maryland State Department of Education (MSDE); and the Interagency Commission on School Construction. The IG may employ specified staff and receive and investigate complaints or information concerning:

- fraud, waste, and abuse involving the use of public funds and property;
- violations of the civil rights of students and employees;
- whether policies and procedures governing the prevention and reporting of child abuse and neglect comply with federal and State law; and
- compliance with other federal and State law.

With the exception of certain protected, confidential, and privileged documents, the IG must have access to records, data, reports, contracts, correspondence, and other documents of the entities it may investigate. The office may serve a subpoena in the same manner as does a circuit court. The office must annually report on its goals and priorities, activities, the number and nature of incidents it reports to specified State and federal entities, and findings and recommendations related to (1) instances of fraud, waste, and abuse; (2) civil rights violations; and (3) specified policy matters.

Inspector General Terms of Office

The term of the IG is five years, beginning July 1 after the appointment. At the end of a term, the IG must continue to serve until a successor is appointed. If a vacancy occurs, and interim inspector general must be appointed to serve for the remainder to the term.

The IG may be removed unanimously by the Governor, the Attorney General, and the State Treasurer for (1) misconduct in office; (2) persistent failure to perform the duties of the office; or (3) conduct prejudicial to the proper administration of justice.

Public School Employee Whistleblower Protection Act

Under the Public School Whistleblower Protection Act (Chapter 730 of 2017), a public school employer is prohibited from taking or refusing to take any personnel action as reprisal against a public school employee because the employee discloses or threatens to disclose unlawful behavior, provides information or testifies for an investigation of unlawful behavior, or objects to or refuses to participate in unlawful behavior.

The protection provided applies if the employee has a reasonable, good faith belief that the employer has, or still is, engaged in an action or policy that is a violation of law, rule, or regulation. Also, the employee must disclose information that the employee reasonably believes evidences (1) an abuse of authority, gross mismanagement, or gross waste of money; (2) a substantial and specific danger to public health or safety; or (3) a violation of law. Finally, the employee must report the employer's acts to a supervisor or administrator in writing and provide the employer with a reasonable opportunity to correct the situation.

Any public school employee who is subject to a violation of the whistleblower law's provisions may file an administrative complaint with a public school employer. A public school employer must (1) provide an administrative complaint and (2) complete the administrative remedial process within 30 days after an employee files an initial administrative complaint. Before instituting a civil action, a public school employee who is subject to a personnel action in violation of the whistleblower law, must notify the local superintendent of schools in writing of the employee's intention to institution a civil action. The civil action must be brought within nine months after the alleged violation or within nine months after the employee first became aware of the alleged violation.

A court is authorized to issue an injunction, reinstate the employee, and remove an adverse personnel record related to a violation. The court may also reinstate full fringe benefits and seniority rights; require compensation for lost wages, benefits, and other remuneration; and assess reasonable attorney's fees and litigation expenses against the employer. If the employer prevails, however, the attorney's fees may be assessed against the employee if the court finds that the lawsuit was brought in bad faith and without basis in law or fact.

In any action brought under the law, it is a defense that a personnel action was based on grounds other than the employee's exercise of rights protected by the law.

State Expenditures: OIGE advises that the bill adds oversight responsibilities for funding provided under the Blueprint for Maryland's Future (Chapter 36 of 2021) and authorizes investigations of AIB, and that these added responsibilities require additional audit and investigative staff and administrative support. OIGE advises that due to the time and resources required to conduct independent, thorough, and fact-based investigations, OIGE has had to request supplemental funding during previous budget cycles and that current staffing levels are not sufficient to conduct timely and relevant investigations based on the number of complaints received.

OIGE further advises that it is currently operating under a memorandum of understanding (MOU) with MSDE. Under the MOU, MSDE provides financial services to OIGE. This has caused conflict because OIGE has investigative authority over MSDE and the independent agencies it manages. Finally, OIGE uses DBM for all human resources and personnel matters.

Thus, *under one set of assumptions*, general fund expenditures increase by \$793,537 in fiscal 2024 to appoint deputies and appoint and employ professional and clerical staff to conduct OIGE's work, contractual expenditures, travel expenses, fuel, and periodic automobile expenses, which accounts for a 90-day start-up delay from the bill's July 1, 2023 effective date. This estimate reflects the cost of hiring two deputy investigators, two auditors, two analysts, and one financial officer to conduct the office's work, including primarily oversight of funding provided under the Blueprint for

Maryland’s Future and AIB. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes technology, contractual and travel (mileage, fuel, and periodic automobile purchases) costs associated with conducting the office’s investigations.

Positions	7.0
Salaries and Fringe Benefits	\$671,424
Technology/Travel/Contractual	68,000
Other Operating Expenses	<u>54,113</u>
Total FY 2024 State Expenditures	\$793,537

Future year expenditures reflect the full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses including technology, travel, and contractual costs.

The fiscal 2024 budget as introduced includes \$2.5 million for OIGE, an increase of \$298,500 over the fiscal 2023 appropriation for OIGE. The fiscal 2024 budget as introduced includes 16 authorized positions, 2 more than in fiscal 2023. OIGE advises it hired an administrative officer to manage its daily financial obligations in January 2023. The staff included in this estimate are in addition to staff included in the fiscal 2024 budget as introduced.

Actual expenditures depend on the funding provided in the annual budget for the purposes authorized by the bill. Actual need for expenditures depends on the number and types of complaints and tips received by OIGE and the investigations it conducts.

This estimate does not include any additional costs associated with office space or physical facilities. It is assumed that office space and physical facilities are currently sufficient.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Office of the Inspector General for Education; Governor’s Office; Maryland State Treasurer’s Office; Maryland State Department of Education; Department of Budget and Management; Anne Arundel County Public Schools; Department of Legislative Services - Office of Legislative Audits

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