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By: **Delegates Rosenberg and James**  
Introduced and read first time: January 30, 2003  
Assigned to: Appropriations

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A BILL ENTITLED

1 AN ACT concerning

2 **Optional Retirement Program - Supplemental Annuities**

3 FOR the purpose of clarifying the authority of certain higher education institutions to  
4 invest supplemental retirement plan funds and administer certain  
5 supplemental retirement plans under the Internal Revenue Code; providing  
6 certain higher education institutions with indemnification by the State; defining  
7 certain terms; providing for the application of this Act; and generally relating to  
8 the Optional Retirement Program and supplemental retirement plans.

9 BY repealing and reenacting, without amendments,  
10 Article - State Personnel and Pensions  
11 Section 30-101(a)  
12 Annotated Code of Maryland  
13 (1997 Replacement Volume and 2002 Supplement)

14 BY adding to  
15 Article - State Personnel and Pensions  
16 Section 30-101(j) and 30-210.1  
17 Annotated Code of Maryland  
18 (1997 Replacement Volume and 2002 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article - State Personnel and Pensions  
21 Section 30-210  
22 Annotated Code of Maryland  
23 (1997 Replacement Volume and 2002 Supplement)

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

1 **Article - State Personnel and Pensions**

2 30-101.

3 (a) In this title the following words have the meanings indicated.

4 (J) "SUPPLEMENTAL RETIREMENT PLANS" MEAN PLANS ESTABLISHED  
5 PURSUANT TO § 30-210 OF THIS TITLE.

6 30-210.

7 (a) With respect to a participating employee who is employed by an employing  
8 institution or an institution over which the employing institution has administrative  
9 authority, the employing institution shall administer the participating employee's  
10 enrollment, termination, or retirement under the program.

11 (b) (1) An employing institution may:

12 (i) establish supplemental retirement plans that provide  
13 supplemental retirement accounts offered by a designated company in accordance  
14 with § 401(a), § 403(b), or § 457 of the Internal Revenue Code, or any other provision  
15 of federal law that authorizes supplemental retirement accounts; and16 (ii) authorize its employees or the employees of an institution over  
17 which it has administrative authority to participate in one or more of the  
18 supplemental retirement plans.19 (2) If an employing institution authorizes its employees or the employees  
20 of an institution over which it has administrative authority to participate in a  
21 supplemental retirement account, the employing institution shall designate the  
22 companies that may offer supplemental retirement accounts to those employees and  
23 shall administer the participation of those employees in the supplemental retirement  
24 [account] PLAN.25 (3) Contributions authorized under this subsection to a supplemental  
26 retirement account on behalf of an employee may be made by payroll deduction, a  
27 reduction in salary, or deferral in compensation in accordance with § 403(b), § 457, or  
28 § 414(h) of the Internal Revenue Code.29 (4) ASSETS OF THE SUPPLEMENTAL RETIREMENT PLANS MAY BE  
30 DEPOSITED AND INVESTED IN ACCORDANCE WITH THE INVESTMENT ELECTIONS  
31 ALLOWED UNDER THE SUPPLEMENTAL RETIREMENT PLANS NOTWITHSTANDING  
32 ANY OTHER LAW LIMITING THE TYPES OF INVESTMENTS THAT MAY BE MADE WITH  
33 STATE FUNDS OR IMPOSING CONDITIONS ON THE DEPOSIT OF STATE FUNDS.34 (5) AN EMPLOYEE OF AN EMPLOYING INSTITUTION WITH  
35 DISCRETIONARY AUTHORITY OVER THE MANAGEMENT OR ADMINISTRATION OF ANY  
36 OF THE SUPPLEMENTAL RETIREMENT PLANS OR THE MANAGEMENT OR  
37 DISPOSITION OF THE ASSETS OF ANY OF THE SUPPLEMENTAL RETIREMENT PLANS IS

1 ENTITLED TO INDEMNIFICATION AND INSURANCE AS PROVIDED UNDER § 30-210.1 OF  
2 THIS SUBTITLE.

3 30-210.1.

4 (A) IN THIS SECTION, "COVERED INDIVIDUAL" MEANS AN EMPLOYEE OF AN  
5 EMPLOYING INSTITUTION WITH DISCRETIONARY AUTHORITY OVER THE  
6 MANAGEMENT OR ADMINISTRATION OF ANY OF THE SUPPLEMENTAL RETIREMENT  
7 PLANS OR THE MANAGEMENT OR DISPOSITION OF THE ASSETS OF ANY OF THE  
8 SUPPLEMENTAL RETIREMENT PLANS.

9 (B) SUBJECT TO THE PROVISIONS OF THIS SECTION, THE STATE SHALL  
10 INDEMNIFY A COVERED INDIVIDUAL WHO IS, OR IS THREATENED TO BE MADE, A  
11 PARTY TO AN ACTION OR PROCEEDING, INCLUDING AN ADMINISTRATIVE OR  
12 INVESTIGATIVE PROCEEDING, BY REASON OF THE COVERED INDIVIDUAL'S SERVICE  
13 AS AN EMPLOYEE OF AN EMPLOYING INSTITUTION WITH DISCRETIONARY  
14 AUTHORITY OVER THE MANAGEMENT OR ADMINISTRATION OF ANY OF THE  
15 SUPPLEMENTAL RETIREMENT PLANS OR THE MANAGEMENT OR DISPOSITION OF  
16 THE ASSETS OF ANY OF THE SUPPLEMENTAL RETIREMENT PLANS.

17 (C) (1) IN THIS SUBSECTION, "EXPENSES" INCLUDE:

18 (I) REASONABLE ATTORNEY'S FEES;

19 (II) JUDGMENTS;

20 (III) FINES; AND

21 (IV) OTHER EXPENSES THAT WERE ACTUALLY AND REASONABLY  
22 INCURRED BY THE INDIVIDUAL IN CONNECTION WITH THE ACTION OR PROCEEDING.

23 (2) WITH RESPECT TO A CIVIL, ADMINISTRATIVE, OR INVESTIGATIVE  
24 ACTION OR PROCEEDING, THE STATE SHALL INDEMNIFY A COVERED INDIVIDUAL  
25 FOR THE EXPENSES OF THE ACTION OR PROCEEDING IF THE COVERED INDIVIDUAL  
26 ACTED:

27 (I) IN GOOD FAITH; AND

28 (II) IN A MANNER THE COVERED INDIVIDUAL REASONABLY  
29 BELIEVED TO BE IN OR NOT OPPOSED TO THE BEST INTEREST OF THE  
30 SUPPLEMENTAL RETIREMENT PLANS.

31 (3) WITH RESPECT TO A CRIMINAL ACTION OR PROCEEDING, THE STATE  
32 SHALL INDEMNIFY A COVERED INDIVIDUAL FOR THE EXPENSES OF THE ACTION OR  
33 PROCEEDING IF THE COVERED INDIVIDUAL:

34 (I) ACTED IN GOOD FAITH;

1 (II) ACTED IN A MANNER THE COVERED INDIVIDUAL REASONABLY  
2 BELIEVED TO BE IN OR NOT OPPOSED TO THE BEST INTEREST OF THE  
3 SUPPLEMENTAL RETIREMENT PLANS; AND

4 (III) DID NOT HAVE REASONABLE CAUSE TO BELIEVE THAT THE  
5 COVERED INDIVIDUAL'S CONDUCT WAS UNLAWFUL.

6 (C) ANY TERMINATION OF AN ACTION OR PROCEEDING DOES NOT, OF ITSELF,  
7 CREATE A PRESUMPTION THAT THE COVERED INDIVIDUAL DID NOT MEET THE  
8 STANDARDS FOR INDEMNIFICATION DESCRIBED IN SUBSECTION (B) (2) AND (3) OF  
9 THIS SECTION.

10 (D) THE STATE MAY NOT INDEMNIFY:

11 (1) A COVERED INDIVIDUAL WITH RESPECT TO AN ACTION OR  
12 PROCEEDING AS TO WHICH THE COVERED INDIVIDUAL WAS HELD LIABLE FOR  
13 GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN THE PERFORMANCE OF THE  
14 COVERED INDIVIDUAL'S DUTY TO THE SUPPLEMENTAL RETIREMENT PLANS; OR

15 (2) AN INDEPENDENT CONTRACTOR FURNISHING SERVICES TO THE  
16 SUPPLEMENTAL RETIREMENT PLANS.

17 (E) (1) THE STATE SHALL PROVIDE INSURANCE FOR A COVERED  
18 INDIVIDUAL ELIGIBLE FOR INDEMNIFICATION UNDER THIS SECTION.

19 (2) FOR THE PURPOSE OF PARAGRAPH (1) OF THIS SUBSECTION, THE  
20 STATE MAY PROVIDE SELF-INSURANCE UNDER TERMS AND CONDITIONS  
21 SATISFACTORY TO THE STATE TREASURER.

22 (3) A COVERED INDIVIDUAL MAY NOT BE REQUIRED TO PAY AMOUNTS  
23 ATTRIBUTABLE TO LIABILITY DESCRIBED IN THIS SECTION BECAUSE THE STATE  
24 DOES NOT PROVIDE ADEQUATE INSURANCE COVERAGE OR OTHERWISE FAILS TO  
25 INDEMNIFY IN ACCORDANCE WITH THIS SECTION.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
27 construed to apply retroactively and shall be applied to and interpreted to affect  
28 supplemental retirement plans and accounts authorized and supplemental annuity  
29 contributions made after December 31, 2001.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 June 1, 2003.