

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 331

(Senator Kasemeyer)

Budget and Taxation

Appropriations

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Optional Retirement Program - Supplemental Annuities

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This bill clarifies that higher education supplemental retirement plan assets may be invested notwithstanding any laws limiting the investment of State funds. The bill also extends the same indemnification and insurance protection to higher education employees who administer supplemental retirement plans as that afforded employees of the State Retirement and Pension System of Maryland and the Teachers' and State Employees' Supplemental Retirement Plans.

The bill takes effect June 1, 2003 and applies retroactively to supplemental retirement plans and accounts and supplemental annuity contributions made after December 31, 2001.

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Fiscal Summary

**State Effect:** None. Any indemnification or insurance costs by the State's public institutions of higher education could be absorbed within the institutions' budgeted resources.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill provides that assets of the supplemental retirement plans may be deposited and invested in accordance with the investment elections allowed under the

supplemental retirement plans notwithstanding any other law limiting the types of investments that may be made with State funds or imposing conditions on the deposit of State funds. This language parallels existing provisions applicable to the supplemental retirement plans supervised by the Board of Trustees of the Teachers' and State Employees' Supplemental Retirement Plans.

An employee of an employing institution with discretionary authority over the management or administration of any of the supplemental retirement plans or the management or disposition of the assets of any of the supplemental retirement plans is entitled to indemnification and insurance under the bill. The bill requires the State to indemnify a covered individual who is, or is threatened to be made, a party to an action or proceeding, including an administrative or investigative proceeding, by reason of the covered individual's service as an employee of an employing institution with discretionary authority over the management or administration of any of the supplemental retirement plans or the management or disposition of the assets of any of the supplemental retirement plans.

With respect to a civil, administrative, or investigative action or proceeding, the State shall indemnify a covered individual for the expenses of the action or proceeding if the covered individual acted: (1) in good faith; and (2) in a manner the covered individual reasonably believed to be in or not opposed to the best interest of the supplemental retirement plans. With respect to a criminal action or proceeding, the State shall indemnify a covered individual for the expenses of the action or proceeding if the covered individual: (1) acted in good faith; (2) acted in a manner the covered individual reasonably believed to be in or not opposed to the best interest of the supplemental retirement plans; and (3) did not have reasonable cause to believe that the covered individual's conduct was unlawful.

Indemnifiable expenses under the bill include reasonable attorney's fees, judgments, fines, and other expenses that were actually and reasonably incurred by the individual in connection with the action or proceeding.

The State may not indemnify: (1) a covered individual with respect to an action or proceeding as to which the covered individual was held liable for gross negligence or willful misconduct in the performance of the covered individual's duty to the supplemental retirement plans; or (2) an independent contractor furnishing services to the supplemental retirement plans.

The State is required to provide insurance for a covered individual eligible for indemnification under the bill. The State may provide self-insurance under terms and conditions satisfactory to the State Treasurer.

The indemnification language parallels existing provisions that apply to the State Retirement and Pension System and the Teachers' and State Employees' Supplemental Retirement Plans.

**Current Law:** See discussion below.

**Background:** Members of the faculty, and certain other professional employees, of the State's public institutions of higher education are eligible for the Optional Retirement Program (ORP). Eligible employees who elect this defined contribution pension program do so in lieu of the State's defined benefit pension plans such as the Employees' Pension System or Teachers' Pension System. On behalf of ORP members, the State contributes 7.25% of the member's pay into the member's ORP account. There is no mandatory member contribution.

In addition, the four authorized ORP vendors, as well as the Teachers' and State Employees' Supplemental Retirement Plans, are authorized to offer supplemental accounts to ORP members and other non-ORP eligible employees at the institutions. These supplemental accounts may follow the terms of three different provisions of the Internal Revenue Code: § 403(b) (for educational employees), § 457 (for public employees), and § 401(k) (for Maryland State employees under a specific private letter ruling from the Internal Revenue Service). Chapter 334 of 2002 explicitly permitted the institutions to authorize the four ORP vendors to offer § 457 and § 401(k) plans to their employees. Previously, the ORP vendors were only explicitly authorized to offer § 403(b) plans.

**State Expenditures:** Any additional indemnification or insurance costs are assumed to be minimal. The University System of Maryland advises that it is not aware of any institution employee requiring indemnification. In any event, absent the legislation it is likely that the institutions would seek, under other authority, to indemnify an employee subject to action under the above conditions.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 262 (Delegates Rosenberg and James) – Appropriations.

**Information Source(s):** Maryland Supplemental Retirement Plans, University System of Maryland, Maryland State Retirement Agency, Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2003  
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Analysis by: Matthew D. Riven

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510