

MEMORANDUM

February 10, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney



SUBJECT: **Introduction:** Expedited Bill 2-17, Employees' Retirement System - Retirement Savings Plan – Employee Rights and Benefits - Amendments

Expedited Bill 2-17, Employees' Retirement System - Retirement Savings Plan – Employee Rights and Benefits – Amendments, sponsored by Lead Sponsor Council President at the request of the County Executive, is scheduled to be introduced on February 14. A public hearing is tentatively scheduled for February 28 at 1:30 p.m.

Bill 2-17 would amend the Employees' Retirement System (ERS) and the Retirement Savings Plan (RSP) to remain tax qualified under the Internal Revenue Code.

Background

The County submitted the ERS and the RSP to the Internal Revenue Service to receive a determination letter that each County retirement plan remains tax qualified. The IRS has requested several technical changes that require amendments to specific provisions of the ERS and the RSP related to the Internal Revenue Code. A copy of the IRS Determination Letter for each plan is at ©14-17.

The IRS requested the County to amend the plans to:

- (a) specify that a non-spousal beneficiary may receive a rollover distribution (if otherwise permitted) (ERS and RSP);
- (b) include Internal Revenue Code provisions relating to certain rights provided to employees on military leave (ERS and RSP);
- (c) include a definition of "eligible rollover distribution" (ERS);
- (d) provide a definition of "limitation year" for purposes of complying with Internal Revenue Code Section 415 (RSP); and
- (e) specify that defined contribution plans maintained by the County will be aggregated for purposes of complying with Internal Revenue Code Section 415 (RSP).

Expedited Bill 2-17 would make these changes. The County Attorney's Office explained to Council staff that these are not substantive changes, and none of these amendments would change any employee's existing benefits or rights under either plan.

This packet contains:

Expedited Bill 2-17
Legislative Request Report
Executive's Transmittal Memo
Fiscal and Economic Impact Statement
IRS Determination Letters

Circle #

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F:\LAW\BILLS\1702 ERS-Retirement Savings Plan-Chapter 33\Intro Memo.Docx

Expedited Bill No. 2-17
Concerning: Employees' Retirement System - Retirement Savings Plan - Employee Rights and Benefits - Amendments
Revised: February 10, 2017 Draft No. 1
Introduced: February 14, 2017
Expires: August 14, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) amend the rights and benefits for certain employees under the Employees' Retirement System to remain tax qualified under the Internal Revenue Code; and
- (2) amend the rights and benefits for certain employees under the Retirement Savings Plan to remain tax qualified under the Internal Revenue Code; and
- (3) generally amend the law regarding the County employee retirement plans.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-36, 33-42, 33-44, 33-45, 33-114, 33-118, and 33-120

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 33-36, 33-42, 33-44, 33-45, 33-114, 33-118 and 33-120 are**
2 **amended as follows:**

3 **33-36. Establishment.**

4 * * *

5 (d) Uniformed Services Employment and Reemployment Rights Act.
6 Notwithstanding any provision of any plan, the County must provide
7 rights, contributions, benefits and service credit for qualified military
8 service as required by Section 414(u) of the Internal Revenue Code,
9 including subsection 414(u)(12).

10 **33-42. Amount of pension at normal retirement date or early retirement date.**

11 * * *

12 (g) *Maximum annual contribution to elected officials' plan.*

13 * * *

14 (3) In this subsection (g), only:

15 (A) for purposes of applying Section 415 of the Internal
16 Revenue Code, "compensation" has the same meaning as
17 provided in Treasury Regulation Section 1.415-2(d)(1),
18 including amounts contributed at the election of the
19 participant that are not includible in the gross income of
20 the participant, under Sections 402(g)(3), 125, 457, and
21 132(f)(4) of the Internal Revenue Code. Effective for
22 limitation years after December 31, 2008, must include
23 amounts required to be included pursuant to Section
24 414(u)(12) of the Internal Revenue Code; and

25 * * *

26 (h) *Maximum annual benefit.* Despite any other provision governing the
27 retirement system, the annual benefit of a member must not exceed the

limits of Internal Revenue Code Section 415 that apply to the plan. The Chief Administrative Officer must freeze or reduce a member's annual benefit to comply with this subsection. Effective for limitation years after December 31, 2008, amounts required to be included under Section 414(u)(12) of the Internal Revenue Code must be included in compensation for purposes of Section 415 of the Internal Revenue Code.

* * *

33-44. Pension payment options and cost-of-living adjustments.

* * *

(q) *Direct rollover distributions.* A member or beneficiary may elect, in any manner prescribed by the Chief Administrative Officer at any time, to have any portion of eligible rollover distribution paid directly to an eligible retirement plan specified by the member in a direct rollover. A member may not elect a direct rollover if the eligible rollover distribution is less than \$200.00. As used in this subsection:

(1) *direct rollover* means a payment from the retirement system to the eligible retirement plan specified by the member; [and]

(2) *eligible retirement plan means:*

(A) an individual retirement account described in Internal Revenue Code Section 408(a);

(B) an individual retirement annuity described in Internal Revenue Code Section 408(b) (other than an endowment contract);

(C) a qualified trust;

(D) an annuity plan described in Internal Revenue Code Section 403(a);

- (E) an eligible deferred compensation plan described in Internal Revenue Code Section 457(b) which is maintained by an eligible employer described in Internal Revenue Code Section 457(e)(1)(A); or
- (F) an annuity described in Internal Revenue Code Section 403(b);

(3) eligible rollover distribution means any distribution of all or any portion of the retirement benefit; except:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made:

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary; or

(ii) for a specified period of 10 years or more; or

(B) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code, as amended; and

(4) beneficiary includes a non-spouse beneficiary. A non-spouse beneficiary may make a direct rollover only to an inherited individual retirement account or annuity described in Sections 408(a) or 408(b) of the Internal Revenue Code that is established on behalf of the non-spouse beneficiary. Such rollover must be made in a manner consistent with Section 402(c)(11) of the Internal Revenue Code and any other applicable guidance.

*

*

*

82 **33-45. Vested benefits and withdrawal of contributions.**

83 * * *

84 (c) *Vested benefits.*

85 (9) For purposes of this subsection, vesting will be in accordance
86 with Section 401(a)(37) of the Internal Revenue Code. Effective
87 January 1, 2007, the beneficiary of a member on a leave of
88 absence to perform military service with reemployment rights
89 described in Section 414(u) of the Internal Revenue Code, where
90 the member cannot return to employment on account of his or
91 her death, must be entitled to any additional benefits (other than
92 benefit accruals relating to the period of qualified military
93 service) that would be provided under the employees' retirement
94 system had the member died as an active employee, in
95 accordance with Section 401(a)(37) of the Internal Revenue
96 Code. This provision applies to the elected officials' plan, the
97 guaranteed retirement income plan, and the optional and
98 integrated plans.

99 * * *

100 **33-114. Establishment.**

101 * * *

102 (c) Uniformed Services Employment and Reemployment Rights Act.
103 Notwithstanding any provision of a plan, the County must provide
104 rights, contributions, benefits and service credit for qualified military
105 service according to Section 414(u) of the Internal Revenue Code,
106 including subsection 414(u)(12).

107 **33-118. Maximum annual contribution.**

108 (a) *Contribution limitations.*

136 Section 414(u) of the Internal Revenue Code, where the
137 participant cannot return to employment on account of his or her
138 death, must be entitled to any additional benefits that would be
139 provided under the retirement savings plan had the participant
140 died as an active employee, in accordance with Section
141 401(a)(37) of the Internal Revenue Code.

142 * * *

143 (g) *Direct rollover distributions.* Notwithstanding any provision of this
144 Division that would otherwise limit a participant's election under this
145 Section, a participant or beneficiary may elect in any manner prescribed
146 by the Chief Administrative Officer at any time to have any portion of
147 an eligible rollover distribution paid directly to an eligible retirement
148 plan specified by the participant in a direct rollover. As used in this
149 subsection:

150 * * *

151 (4) For purposes of this subsection, beneficiary includes a non-
152 spouse beneficiary. A non-spouse beneficiary may make a direct
153 rollover only to an inherited individual retirement account or
154 annuity described in Sections 408(a) or 408(b) of the Internal
155 Revenue Code that is established on behalf of the non-spouse
156 beneficiary. Such rollover shall be made in a manner consistent
157 with Section 402(c)(11) of the Internal Revenue Code and any
158 other applicable guidance.

159 **Sec. 2. Effective Date.**

160 The Council declares that this legislation is necessary for the immediate
161 protection of the public interest. This Act takes effect on the date on which it
162 becomes law.

LEGISLATIVE REQUEST REPORT

Expedited Bill 2-17

*Employees' Retirement System - Retirement Savings Plan – Employee Rights and Benefits
- Amendments*

DESCRIPTION: The County submitted the Employees' Retirement System (ERS) and the Retirement Savings Plan (RSP) to the IRS to receive a determination letter that both plans remain tax qualified.

PROBLEM: The IRS has requested several technical changes that require amendments to specific provisions of the ERS and the RSP related to the Internal Revenue Code.

The IRS requested the following changes: (a) specify that a non-spousal beneficiary may receive a rollover distribution (if otherwise permitted) (ERS and RSP); (b) include Internal Revenue Code provisions relating to certain rights provided to employees on military leave (ERS and RSP); (c) included a definition of "eligible rollover distribution" (ERS); (d) provide a definition of "limitation year" for purposes of complying with Internal Revenue Code Section 415 (RSP); and (e) specify that defined contribution plans maintained by the County will be aggregated for purposes of complying with Internal Revenue Code Section 415 (RSP).

**GOALS AND
OBJECTIVES:**

To amend the ERS and RSP as requested by the IRS to receive favorable IRS determination letters.

COORDINATION: Montgomery County Employee Retirement Plans

FISCAL IMPACT: Office of Management and Budget

**ECONOMIC
IMPACT:** Department of Finance

EVALUATION: N/A

**EXPERIENCE
ELSEWHERE:** N/A

**SOURCE OF
INFORMATION:** Linda Herman, Montgomery County Employee Retirement Plans
Amy Moskowitz, Office of the County Attorney

**APPLICATION
WITHIN
MUNICIPALITIES: N/A**

PENALTIES: N/A

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ROCKVILLE, MARYLAND

MEMORANDUM

January 26, 2017

TO: Roger Berliner, President
County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Expedited Legislation to Amend Chapter 33, Personnel and Human Resources.

I am attaching for the Council's consideration a bill that would amend the County's retirement law to comply with the request received from the Internal Revenue Service (IRS) to make technical amendments to the Employees' Retirement System (ERS) and the Retirement Savings Plan (RSP) so that the two plans remain tax qualified and the County receives favorable determination letters from the IRS.

The IRS has requested the following changes:

- specify that a non-spousal beneficiary may receive a rollover distribution (ERS and RSP);
- include Internal Revenue Code provisions relating to certain rights provided to employees on military leave (ERS and RSP);
- include a definition of "eligible rollover distribution" (ERS);
- provide a definition of "limitation year" for purposes of complying with Internal Revenue Code Section 415 (RSP); and
- specify that defined contribution plans maintained by the County will be aggregated for purposes of complying with Internal Revenue Code Section 415 (RSP).

Thank you for your consideration of this matter.

Attachments: Determination letter from the IRS
Proposed Legislation

c: Linda Herman, Executive Director, Employee Retirement Plans
Jennifer Hughes, Director, Office of Management and Budget
Shawn Stokes, Director, Office of Human Resources
Alexandre Espinosa, Director, Department of Finance

Fiscal Impact Statement
Expedited Council Bill XX-17 Retirement – Employees' Retirement System and Retirement Savings Plan – Amendments

1. Legislative Summary.

This bill would amend the Employees' Retirement System, Retirement Savings Plan, and the Guaranteed Retirement Income Plan to remain tax qualified under the Internal Revenue Code; address Internal Revenue Code provisions relating to certain rights provided to employees on military leave; and generally amend the law regarding the employees' retirement system.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The proposed legislation is primarily a technical amendment in nature. There is one component to the legislation that clarifies the vesting of benefits for plan participants who pass away while on active military leave. Currently, the County has 6 employees on military leave; any change to their vesting status because of their death while on active military service is expected to be de minimus. There are no other changes to revenues or expenditures related to the legislation.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The proposed legislation has no revenue or expenditure impact.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable.

7. An estimate of the staff time needed to implement the bill.

No additional staff time will be required to implement the bill.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

No additional staff responsibilities would be added.

9. An estimate of costs when an additional appropriation is needed.

Not applicable.

10. A description of any variable that could affect revenue and cost estimates.

Dramatically increased military leave among County plan participants, where the plan participants cannot return to employment on account of his or her death, could result in benefit changes that go beyond de minimus.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

The number of County plan participants on military leave is very small, and the other changes in the proposed legislation are primarily technical in nature.


13. Other fiscal impacts or comments.

The letter from the IRS made the positive determination of tax qualified status conditioned on the County making the amendments included in this bill. Failure to make the amendments would likely result in penalties levied against the County by the IRS or the loss of tax qualified status. This would result in cost impacts for the County and its employees.

14. The following contributed to and concurred with this analysis:

Corey Orlosky, Office of Management and Budget

Linda Herman, Executive Director, Montgomery County Employee Retirement Plans



Jennifer A. Hughes, Director
Office of Management and Budget

1/23/17
Date

Economic Impact Statement
Bill #-17, Employees' Retirement System, Guaranteed Retirement Income Plan, and Retirement Savings Plan - Amendments

Background:

The proposed legislation provides technical amendments requested by the Internal Revenue Service (IRS), U.S. Department of the Treasury, to the Employees' Retirement System (ERS), the Guaranteed Retirement Income Plan (GRIP), and the Retirement Savings Plan (RSP) so that the plans remain tax qualified and the County receives favorable determination letters from the IRS.

The IRS requested the following changes:

- Specify that a non-spousal beneficiary may receive a rollover distribution (ERS, GRIP, and RSP);
- Include Internal Revenue Code provisions relating to certain rights provided to employees on military leave (ERS, GRIP, and RSP);
- Include a definition of "eligible rollover distribution" (ERS);
- Provide a definition of "limitation year" for purposes of complying with Internal Revenue Code Section 415 (GRIP and RSP); and
- Specify that defined contribution plans maintained by the County will be aggregated for purposes of complying with Internal Revenue Code Section 415 (GRIP and RSP).

1. The sources of information, assumptions, and methodologies used.

Not applicable

2. A description of any variable that could affect the economic impact estimates.

Not applicable

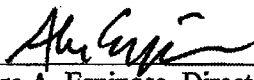
3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Not applicable

4. If a Bill is likely to have no economic impact, why is that the case?

The proposed legislation provides technical corrections to the Employees' Retirement System and the Retirement Savings Plan, and it is administrative in nature.

5. The following contributed to or concurred with this analysis: David Platt and Robert Hagedoorn, Finance; Linda Herman, Montgomery County Employees Retirement Plans.



Alexandre A. Espinosa, Director
Department of Finance

1/13/2017
Date

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: **OCT 13 2016**

MONTGOMERY COUNTY MARYLAND
101 MONROE ST 15TH FLR
ROCKVILLE, MD 20850

Employer Identification Number:
52-6000980
DLN:
17007006074026
Person to Contact:
RUTH CHEN ID# 95048
Contact Telephone Number:
(626) 927-1423
Plan Name:
MONTGOMERY COUNTY EMPLOYEES'
RETIREMENT SYSTEM
Plan Number: 001

Dear Applicant:

Based on the information you provided, we are issuing this favorable determination letter for your plan listed above. However, our favorable determination only applies to the status of your plan under the Internal Revenue Code and is not a determination on the effect of other federal or local statutes. To use this letter as proof of the plan's status, you must keep this letter, the application forms, and all correspondence with us about your application.

Your determination letter does not apply to any qualification changes that become effective, any guidance issued, or any statutes enacted after the dates specified in the Cumulative List of Changes in Plan Requirements (the Cumulative List) for the cycle you submitted your application under, unless the new item was identified in the Cumulative List.

Your plan's continued qualification in its present form will depend on its effect in operation (Section 1.401-1(b)(3) of the Income Tax Regulations). We may review the status of the plan in operation periodically.

You can find more information on favorable determination letters in Publication 794, Favorable Determination Letter, including:

- The significance and scope of reliance on this letter,
- The effect of any elective determination request in your application materials,
- The reporting requirements for qualified plans, and
- Examples of the effect of a plan's operation on its qualified status.

You can get a copy of Publication 794 by visiting our website at www.irs.gov/formspubs or by calling 1-800-TAX-FORM (1-800-829-3676) to request a copy.

This letter considered the 2014 Cumulative List of Changes in Plan Qualification Requirements.

We made this determination on the condition that you adopt the proposed

Letter 5274

MONTGOMERY COUNTY MARYLAND

amendments you submitted in your letter dated 9-28-16, on or before the date the Income Tax Regulations provide under Section 401(b) of the Internal Revenue Code.

We based this determination letter solely on your claim that the plan meets the requirements of a governmental plan under Section 414(d) of the Internal Revenue Code.

This determination letter applies to the plan and related documents you submitted with the application you filed during the remedial amendment cycle ending 1-31-16.

This determination letter expresses no opinion as to the federal tax consequences of the replacement, or proposed replacement, of any joint and survivor, single life or other annuity being paid with a lump sum payment or other accelerated form of distribution.

If you submitted a Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, with your application and asked us to send your authorized representative or appointee copies of written communications, we will send a copy of this letter to him or her.

If you have any questions, you can contact the person listed at the top of this letter.

Sincerely,



Karen D. Truss
Director, EP Rulings & Agreements

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: **OCT 13 2016**

MONTGOMERY COUNTY MARYLAND
101 MONROE ST
ROCKVILLE, MD 20850

Employer Identification Number:
52-6000980
DLN:
17007006074016
Person to Contact:
RUTH CHEN ID# 95048
Contact Telephone Number:
(626) 927-1423
Plan Name:
MONTGOMERY COUNTY RETIREMENT
SAVINGS PLAN
Plan Number: 002

Dear Applicant:

Based on the information you provided, we are issuing this favorable determination letter for your plan listed above. However, our favorable determination only applies to the status of your plan under the Internal Revenue Code and is not a determination on the effect of other federal or local statutes. To use this letter as proof of the plan's status, you must keep this letter, the application forms, and all correspondence with us about your application.

Your determination letter does not apply to any qualification changes that become effective, any guidance issued, or any statutes enacted after the dates specified in the Cumulative List of Changes in Plan Requirements (the Cumulative List) for the cycle you submitted your application under, unless the new item was identified in the Cumulative List.

Your plan's continued qualification in its present form will depend on its effect in operation (Section 1.401-1(b)(3) of the Income Tax Regulations). We may review the status of the plan in operation periodically.

You can find more information on favorable determination letters in Publication 794, Favorable Determination Letter, including:

- The significance and scope of reliance on this letter,
- The effect of any elective determination request in your application materials,
- The reporting requirements for qualified plans, and
- Examples of the effect of a plan's operation on its qualified status.

You can get a copy of Publication 794 by visiting our website at www.irs.gov/formspubs or by calling 1-800-TAX-FORM (1-800-829-3676) to request a copy.

This letter considered the 2014 Cumulative List of Changes in Plan Qualification Requirements.

We made this determination on the condition that you adopt the proposed

Letter 5274

MONTGOMERY COUNTY MARYLAND

amendments you submitted in your letter dated 10-11-16, on or before the date the Income Tax Regulations provide under Section 401(b) of the Internal Revenue Code.

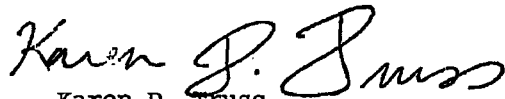
We based this determination letter solely on your claim that the plan meets the requirements of a governmental plan under Section 414(d) of the Internal Revenue Code.

This determination letter applies to the plan and related documents you submitted with the application you filed during the remedial amendment cycle ending 1-31-16.

If you submitted a Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, with your application and asked us to send your authorized representative or appointee copies of written communications, we will send a copy of this letter to him or her.

If you have any questions, you can contact the person listed at the top of this letter.

Sincerely,



Karen D. Truss
Director, EP Rulings & Agreements