


**MEMORANDUM**

April 28, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Expedited Bill 11-17, Retirement - Board of Investment Trustees - Consolidated Retiree Health Benefit Trust Board of Trustees – Powers and Duties - Montgomery County Group Trust

**Government Operations and Fiscal Policy Committee recommendation (3-0):** approve the Bill as introduced.

Expedited Bill 11-17, Retirement – Board of Investment Trustees – Consolidated Retiree Health Benefit Trust Board of Trustees – Powers and Duties – Montgomery County Group Trust, sponsored by Lead Sponsor Council President at the request of the County Executive, was introduced on April 18. A public hearing was held on April 25 and a Government Operations and Fiscal Policy Committee worksession was held on April 26.

Bill 11-17 would permit the County’s employee benefit trusts to create a group trust to be used by each individual employee benefit trust to invest through one vehicle. The different employee benefit trusts include the Employees’ Retirement System, the Retirement Savings Plan, the Deferred Compensation Plan, and the Consolidated Retiree Health Benefits Trust. The Bill would amend the County’s retirement law, and the law governing the consolidated retiree health benefits trust, to permit the Board of Investment Trustees and the Consolidated Retiree Health Benefits Trust Board of Trustees to establish a group trust. The group trust authorized by the Bill would allow the participating trusts to access certain investment opportunities which may otherwise be closed to new investors due to capacity or other constraints. The group trust would also reduce the administrative work effort across the investment programs of the different trust funds.

**Public Hearing**

The lone speaker, Linda Herman, Executive Director of the County Retirement Plans, speaking on behalf of the Executive, supported the Bill. See ©17.

**GO Worksession**

Linda Herman, Executive Director of the Retirement Plans represented the Executive Branch. The Committee discussed the need for a group trust and recommended (3-0) approval of the Bill as introduced.

## Discussion

Many of the current investments held by the much larger Employees' Retirement System are closed to new investors and therefore unavailable to the smaller Consolidated Retiree Health Benefit Trust. The Bill would lead to lower costs and potentially greater returns by opening these investment opportunities to each employee benefit trust by investing through this single vehicle. OMB was unable to estimate the savings from lower costs and greater returns due to using the group trust. See ©13. Numerous other pension systems use a group trust structure to gain economies of scale and efficiencies by aggregating assets across multiple trusts.

**Committee recommendation (3-0):** approve the Bill as introduced.

| This packet contains:                | <u>Circle #</u> |
|--------------------------------------|-----------------|
| Expedited Bill 11-17                 | 1               |
| Legislative Request Report           | 10              |
| Executive's Transmittal Memo         | 12              |
| Fiscal and Economic Impact Statement | 13              |
| Testimony of Linda Herman            | 17              |

Expedited Bill No. 11-17  
Concerning: Retirement - Board of  
Investment Trustees - Consolidated  
Retiree Health Benefit Trust Board of  
Trustees - Powers and Duties -  
Montgomery County Group Trust  
Revised: April 25, 2017 Draft No. 2  
Introduced: April 18, 2017  
Expires: October 18, 2018  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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**AN EXPEDITED ACT to:**

- (1) create a group trust to permit the County's employee benefit trusts to invest through one vehicle to create investment opportunities and efficiencies; and
- (2) generally amend the law regarding the Employees' Retirement System, Retirement Savings Plan, Deferred Compensation Plan and Consolidated Retiree Health Benefits Trust.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-60, 33-125, 33-145, and 33-162

By adding

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Section 33-170

|                              |  |
|------------------------------|--|
| <b>Boldface</b>              | <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:*

**Sec. 1. Sections 33-60, 33-125, 33-145 and 33-162 are amended and Section 33-170 is added as follows:**

**33-60. The board of investment trustees-Powers and duties.**

\* \* \*

(d) *Trustee powers.* Subject to the limitations under subsection (a)(2) of this section, the Board has the power to:

\* \* \*

(16) Pool all or any of the assets of the trust, from time to time, with assets belonging to any other retirement plan trust or retiree health benefit trust created by the County, and commingle such assets and make joint or common investments and carry joint accounts on behalf of this trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or in any pooled assets to the two or more trusts in accordance with their respective interests. Consistent with its investment authority in this Article, the Board may also buy or sell any assets or undivided interests in this trust or in any other trust with which the assets of this trust may be pooled, to or from this trust or such other trusts at such prices or valuations as the Board may determine.

(17) Do all acts which it considers necessary and exercise any and all powers of this article with respect to the management of the retirement system, and in general, exercise all powers in the management of the assets which an individual could exercise in the management of property owned in the individual's own right except for making an individual investment selection.

\* \* \*

**33-125. Powers and duties of the Board.**

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(d) *Trustee powers.* Except as otherwise provided in this Division, the Board may:

\* \* \*

(16) pool all or any of the assets of the trust, from time to time, with assets belonging to any other [qualified pension or profit sharing trust] retirement plan trust or retiree health benefit trust created by the County, and commingle such assets and make joint or common investments and carry joint accounts on behalf of this trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or in any pooled assets to the two or more trusts in accordance with their respective interests. Consistent with its investment authority, the [The] Board may also buy or sell any assets or undivided interests in this trust or in any other trust with which the assets of this trust may be pooled, to or from this trust or such other trusts at such prices or valuations as the Board may determine; and

\* \* \*

**33-145. Powers and duties of the board.**

\* \* \*

(e) *Trustee powers.* Except as otherwise provided in this Article, the Board may:

\* \* \*

(14) pool all or any of the assets of the deferred compensation plan trust with assets belonging to any other [qualified pension or profit sharing trust] retirement plan trust or retiree health benefit trust created by the County. The Board may commingle the assets and

55 make joint or common investments and carry joint accounts on  
 56 behalf of the deferred compensation plan trust and one or more  
 57 other trusts, allocating undivided shares or interests in the  
 58 investments or accounts, or in any pooled assets, to the trusts  
 59 according to the trusts' respective interests. Consistent with its  
 60 investment authority in this Article, the [The] Board also may buy  
 61 or sell any assets or undivided interests in any trust where the assets  
 62 of the deferred compensation plan trust are pooled at the prices or  
 63 valuations that the Board determines; and

64 \* \* \*

65 **33-162. Trust Fund management.**

66 \* \* \*

67 (h) *Board Powers.* Except as otherwise provided in this Article, the Board  
 68 may:

69 \* \* \*

70 (13) hold, buy, transfer, surrender, and exercise all other incidents of  
 71 ownership of any insurance or annuity contract; [and]

72 (14) pool all or any of the assets of the trust, from time to time, with  
 73 assets belonging to any retirement plan trust or other retiree health  
 74 benefit trust created by the County, and commingle such assets and  
 75 make joint or common investments and carry joint accounts on  
 76 behalf of this trust and such other trust or trusts, allocating  
 77 undivided shares or interests in such investments or accounts or in  
 78 any pooled assets to the two or more trusts in accordance with their  
 79 respective interests. Consistent with the authority granted in this  
 80 Article, the Board may also buy or sell any assets or undivided  
 81 interests in this trust or in any other trust with which the assets of

82                   this trust may be pooled, to or from this trust or such other trusts at  
 83                   such prices or valuations as the Board may determine; and

84           (15) do any act that the Board finds necessary and exercise the power  
 85           of this Article to manage the Trust Fund. The Board may exercise  
 86           all powers to manage the assets that an individual could exercise  
 87           to manage property owned by that individual.

88   \*       \*       \*

89           **Article XII. MONTGOMERY COUNTY GROUP TRUST.**

90   **33-170.       Montgomery County Group Trust.**

91           (a)   Creation of Group Trust. The Board of Investment Trustees established  
 92           under Article III and the Consolidated Retiree Health Benefits Trust  
 93           Board of Trustees established under Article XI may create a combined,  
 94           common or commingled trust fund known as the Montgomery County  
 95           Group Trust for the commingling of assets of any retirement plan and any  
 96           retiree health benefit trust created by the County under this Chapter.

97           (b)   Purpose. The Montgomery County Group Trust is established solely for  
 98           the purpose of creating a collective investment vehicle intended to create  
 99           investment opportunities and efficiencies for the investment of  
 100           Montgomery County's employee benefit plan trusts. The interests of  
 101           each investing trust must be accounted for separately and the assets  
 102           attributable to an investing trust must be held for the benefit of that trust  
 103           only within the general holdings of the Montgomery County Group Trust.  
 104           No employee benefit plan trust must be deemed to have an individual  
 105           ownership interest in any asset held by the Montgomery County Group  
 106           Trust. Instead, each employee benefit plan trust must have an undivided  
 107           ownership interest in the Montgomery County Group Trust, with each  
 108           trust owning an undivided ownership interest in its respective subtrust

109 within the Montgomery County Group Trust, and must share  
 110 proportionately with all other employee benefit plan trusts participating  
 111 in the Montgomery County Group Trust in the net income, profits, and  
 112 losses thereof.

113 (c) Participation in Group Trust. The Board of Investment Trustees may  
 114 elect to invest assets of the Employees' Retirement System, Retirement  
 115 Savings Plan, and/or Deferred Compensation Plan through the  
 116 Montgomery County Group Trust, and the Consolidated Retiree Health  
 117 Benefits Trust Board of Trustees may elect to invest assets of the  
 118 Consolidated Retiree Health Benefits Trust through the Montgomery  
 119 County Group Trust. Each board must discharge its duties with respect  
 120 to its respective employee benefit plan trust in accordance with the  
 121 provisions of Sections 33-61 or 33-163, as applicable, and this Section  
 122 33-170.

123 (d) Implementation and Administration Authority. The Board of Investment  
 124 Trustees established under Article III and the Consolidated Retiree  
 125 Health Benefits Trust Board of Trustees established under Article XI  
 126 must have the authority to:

- 127 (1) implement the Montgomery County Group Trust, as authorized by  
 128 subsection (a), after consulting any other participating retirement  
 129 plan trust or retiree health benefits trust with a separate Board of  
 130 Trustees;
- 131 (2) develop and maintain the Montgomery County Group Trust;
- 132 (3) modify or amend the terms of the Montgomery County Group  
 133 Trust; and
- 134 (4) retain any service providers it deems appropriate to carry out these  
 135 actions.



136 The terms of the Montgomery County Group Trust must be contained in  
137 a written document.

138 (e) Custodian. The Director of Finance must serve as the custodian of the  
139 Montgomery County Group Trust and must give bond with a surety and  
140 for a period and in an amount as the Boards determine. If the Boards  
141 approve, the Director of Finance may make written contracts with banks,  
142 trust companies, insurance companies, or investment companies  
143 authorized to do business in any state for the safe custody of investments,  
144 banking services, the payment of benefits and expenses, and any other  
145 function necessary to manage and safeguard the assets of the Group Trust.

146 (f) Trustees. The Chair of the Board of Investment Trustees and the Chair  
147 of the Consolidated Retiree Health Trust Board of Trustees must be the  
148 Trustees of the Montgomery County Group Trust. The Trustees may take  
149 administrative action by joint action taken at a meeting, by unanimous  
150 written consent, or by any other method as set forth in the Montgomery  
151 County Group Trust Declaration of Trust approved in writing by both  
152 Trustees. The Trustees may appoint a directed Trustee.

153 (g) Investment Authority. The Board of Investment Trustees and the  
154 Consolidated Retiree Health Benefits Trust Board of Trustees have the  
155 authority to select the investments of the Montgomery County Group  
156 Trust consistent with the authority granted under Articles III, Article VIII,  
157 Article IX and Article XI.

158 (h) Delegation of Signature Authority. In its written policies and  
159 procedures, the Board of Investment Trustees and the Consolidated  
160 Retiree Health Benefits Trust Board of Trustees may authorize a  
161 Trustee, the Executive Director or a similarly situated Montgomery

162 County employee to execute instruments on behalf of the Montgomery  
163 County Group Trust.

164 (i) Withdrawal of an Employee Benefit Plan Trust. An employee benefit  
165 plan trust may withdraw, in whole or in part, from the Montgomery  
166 County Group Trust at any time upon action by its board. The amount  
167 distributed to the employee benefit plan trust upon the withdrawal in  
168 whole or in part will be equal to the value of the employee benefit plan  
169 trust, or part thereof, on the date as of the effective date of the withdrawal.

170 (j) Termination of Group Trust. Termination of an employee benefit plan  
171 trust's participation in the Montgomery County Group Trust or an  
172 employee benefit plan trust's interest in the Montgomery County Group  
173 Trust must have no effect on the continuance of the Montgomery County  
174 Group Trust with respect to any other employee benefit plan trust whose  
175 participation or interest is not so terminated. Notwithstanding this  
176 Section, the County Council may terminate the Montgomery County  
177 Group Trust at any time. If the Montgomery County Group Trust is  
178 terminated, the assets of the Montgomery County Group Trust must be  
179 returned to the board of the respective employee benefit plan trusts  
180 participating in the Montgomery County Group Trust. Assets of the  
181 Montgomery County Group Trust may only be used for the exclusive  
182 purpose of providing benefits to members and beneficiaries and defraying  
183 reasonable expenses of administering each respective employee benefit  
184 plan trust and the Montgomery County Group Trust.

185 (k) Procurement. Chapter 11B does not apply to the procurement of goods  
186 and services for the Montgomery County Group Trust.

187 **Sec. 2. Expedited Effective Date.**

188 The Council declares that this legislation is necessary for the immediate

189 protection of the public interest. This Act takes effect on the date on which it becomes  
190 law.

191 *Approved:*

192

193

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Roger Berliner, President, County Council

Date

194 *Approved:*

195

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Isiah Leggett, County Executive

Date

196 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date

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## LEGISLATIVE REQUEST REPORT

Expedited Bill 11-17

*Retirement - Board of Investment Trustees - Consolidated Retiree Health Benefit Trust  
Board of Trustees – Powers and Duties - Montgomery County Group Trust*

**DESCRIPTION:** The Bill amends the County's retirement law, and the law governing the consolidated retiree health benefits trust, to permit the Board of Investment Trustees and the Consolidated Retiree Health Benefits Trust Board of Trustees to establish a group trust. The group trust would permit the Boards to secure investment opportunities and obtain administrative efficiencies for the County's retirement plans and the consolidated retiree health benefits trust.

**PROBLEM:** The Bill would allow the participating trusts to access certain investment opportunities which may otherwise be closed to new investors due to capacity or other constraints, and reduce the administrative work effort across the investment programs of the trust funds.

**GOALS AND OBJECTIVES:** To permit the Board of Investment Trustees and the Consolidated Retiree Health Benefits Trust Board of Trustees to establish a group trust. The group trust would allow the Boards to create investment opportunities and obtain administrative efficiencies for the County's retirement plans and the consolidated retiree health benefits trust.

**COORDINATION:** Montgomery County Employee Retirement Plans, Finance

**FISCAL IMPACT:** Office of Management and Budget

**ECONOMIC IMPACT:** Department of Finance

**EVALUATION:** N/A

**EXPERIENCE ELSEWHERE:** Numerous other pension systems utilize a group trust structure to gain economies of scale and efficiencies by aggregating assets across multiple trusts. The Boards are currently authorized by the County Code to commingle trust assets into a group trust for investment purposes.

**SOURCE OF INFORMATION:** Linda Herman, Montgomery County Employee Retirement Plans

Amy Moskowitz, Office of the County Attorney  
Groom Law Group, outside legal counsel for the Board of Investment  
Trustees and Board of Trustees

**APPLICATION  
WITHIN  
MUNICIPALITIES:** N/A

**PENALTIES:** N/A

F:\LAW\BILLS\1711 Retirement - Group Trust\LRR.Doc



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

**MEMORANDUM**

April 7, 2017

TO: Roger Berliner, Montgomery County Council President

FROM: Isiah Leggett, County Executive *Isiah Leggett*

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 law related to the retirement plans and the consolidated retiree health benefits trust to permit the Boards overseeing the investment programs to establish a group trust. The Employees' Retirement System, Consolidated Retiree Health Benefits Trust, Retirement Savings Plan, and the Deferred Compensation Plan will be considered the participating trusts in the group trust. The Boards are authorized by County Code sections 33-60(d), 33-125(d), 33-145(e) and 33-162(h) to commingle the corpus of such trusts for investment purposes.

The group trust would create an investment vehicle to commingle the assets of each participating trust, if the Board has so authorized, to secure investment opportunities and obtain administrative efficiencies for the participating trusts. The group trust is intended to qualify as a group trust under Internal Revenue Service Revenue Ruling 81-100 as amended by Revenue Rulings 2004-67, 2008-40, 2011-1, and 2014-24, and any successor ruling, regulation, or similar pronouncement. In accordance with County Code section 33-170(e), the Chair of the Board of Investment Trustees and the Chair of the Consolidated Retiree Health Benefits Trust Board of Trustees shall serve as the trustee of the group trust.

Thank you for your consideration of this matter.

Attachments: Draft legislation

Cc: Linda Herman, Executive Director, MCERP

**Fiscal Impact Statement**  
**Bill XX-17 – Retirement – and Consolidated Retiree Health Benefit Trust**

**1. Legislative Summary**

The bill would create a group trust for purposes of allowing the County's employee benefit trusts to invest through one vehicle to create investment opportunities and to streamline administration. Many of the current investments held in the Employees' Retirement System are closed to new investors including the Consolidated Retiree Health Benefit Trust (CRHBT). Currently the CRHBT accesses some managers via their commingled product which results in higher fees and limited access to products that are not closed to new investors.

**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.**

If the CRHBT cannot access the managers they will either pay a higher fee or find another manager with little or no exposure to the asset sector and strategy. These factors will result in lower revenues to the CRHBT, however the degree of increase in fees and decrease in revenues is indeterminable at this time. The bill would allow the Consolidated Retiree Health Benefits Trust the opportunity to access additional investment managers, with no change to the fee or expense structure for investment.

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

See response #2.

**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.**

Not applicable.

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

Not applicable.

**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.**

Not applicable.

**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.**

Not applicable.


**13. Other fiscal impacts or comments.**

Not applicable.

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

Corey Orlosky, Office of Management and Budget

Linda Herman, Director, Montgomery County Employee Retirement Plans

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

3/30/17  
Date



**Economic Impact Statement**  
**Bill #-17, Retirement and Consolidated Retiree Health Benefit Trust**

**Background:**

This legislation would:

- establish a group trust for purposes of allowing the County's retirement plans and the consolidated retiree health benefits trust to invest through one vehicle to access investment opportunities and efficiencies; and
- amend the law regarding the Employees' Retirement System (ERS), Retirement Savings Plan (RSP), Deferred Compensation Plan (DCP), and Consolidated Retiree Health Benefits Trust (CRHBT).

The purpose of the legislation is to create an investment vehicle, i.e., a group trust, that would commingle certain assets of each participating trust for investment purposes only. The establishment of the group trust is to secure investment opportunities with managers of investment vehicles which may otherwise be closed to new clients due to capacity or other constraints. The proposed legislation would also provide efficiencies for the participating trusts.

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

Source of information includes the Board of Investment Trustees (BIT) and the CRHBT Board of Trustees. Based on information provided by the Boards, the proposed legislation would allow participating trusts the opportunity to access certain investment opportunities. By allowing such access and increasing investment opportunities, the revenue to the Trust Funds may be increased and the fees may be reduced resulting in the County's contributions to the Trust Funds being reduced. By permitting participating trusts to expand their investment opportunity set through the potential reduction in fees, the Trust Funds would gain economies of scale and administrative efficiencies.

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

The variables that could affect the economic impact are the number of investment opportunities that could be accessed resulting in the potential increase in revenue and reduction in fees.

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

Bill #-17 may have a positive economic impact on incomes to the County residents because the creation of a group trust could reduce the costs to the County through reduced contributions and therefore could reduce taxes paid by the County residents. The amount of reduction to the County's contributions and subsequent effects on taxes would be determined by the investment opportunities accessed, the revenue generated, and the reduction in fees.

**Economic Impact Statement**  
**Bill #-17, Retirement and Consolidated Retiree Health Benefit Trust**

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

Please see paragraph 3.

**5. The following contributed to or concurred with this analysis: David Platt, Dennis Hetman, and Robert Hagedoorn, Finance.**



\_\_\_\_\_  
Alexandre A. Espinosa, Director  
Department of Finance

3/31/2017

\_\_\_\_\_  
Date

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**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE LEGGETT ON  
EXPEDITED BILL 11-17, EMPLOYEE RETIREMENT PLANS AND  
CONSOLIDATED RETIREE HEALTH BENEFITS TRUST AMENDMENTS**

**April 25, 2017**

Good afternoon. I am Linda Herman, the Executive Director of the Montgomery County Employee Retirement Plans, which oversees the assets and the administration of the County's three retirement plans. I am here today on behalf of the County Executive to testify in support of Bill 11-17 which would amend the law regarding the Employee Retirement Plans and the Consolidated Retiree Health Benefits Trust.

The bill that would amend the County's law related to the retirement plans and the consolidated retiree health benefits trust to permit the Boards overseeing the investment programs to establish a group trust. The Employees' Retirement System, Consolidated Retiree Health Benefits Trust, Retirement Savings Plan, and the Deferred Compensation Plan will be considered the participating trusts in the group trust. The Boards are authorized by County Code sections 33-60(d), 33-125(d), 33-145(e) and 33-162(h) to commingle the corpus of such trusts for investment purposes.

The group trust would create an investment vehicle to commingle the assets of each participating trust, if the Board has so authorized, to secure investment opportunities and obtain administrative efficiencies for the participating trusts. The group trust is intended to qualify as a group trust under Internal Revenue Service Revenue Ruling 81-100 as amended by Revenue Rulings 2004-67, 2008-40, 2011-1, and 2014-24, and any successor ruling, regulation, or similar pronouncement. In accordance with County Code section 33-170(e), the Chair of the Board of Investment Trustees and the Chair of the Consolidated Retiree Health Benefits Trust Board of Trustees shall serve as the trustee of the group trust.

Thank you for the opportunity to testify on Bill 11-17. We look forward to working with the Council in its deliberations on this legislation.