

MEMORANDUM

April 21, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney



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

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 Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for April 26 at 2:15 p.m.

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.

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 greater returns by opening these investment opportunities to each employee benefit trust by investing through this single vehicle. Numerous other pension systems use a group trust structure to gain economies of scale and efficiencies by aggregating assets across multiple trusts.

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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 10, 2017 Draft No. 1
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

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

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

Boldface

Heading or defined term.

Underlining

Added to existing law by original bill.

[Single boldface brackets]

Deleted from existing law by original bill.

Double underlining

Added by amendment.

[[Double boldface brackets]]

Deleted from existing law or the bill by amendment.

* * *

Existing law unaffected by bill.

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.

28 * * *
29 (d) *Trustee powers.* Except as otherwise provided in this Division, the Board
30 may:

31 * * *
32 (16) pool all or any of the assets of the trust, from time to time, with
33 assets belonging to any other [qualified pension or profit sharing
34 trust] retirement plan trust or retiree health benefit trust created by
35 the County, and commingle such assets and make joint or common
36 investments and carry joint accounts on behalf of this trust and
37 such other trust or trusts, allocating undivided shares or interests in
38 such investments or accounts or in any pooled assets to the two or
39 more trusts in accordance with their respective interests.
40 Consistent with its investment authority, the [The] Board may also
41 buy or sell any assets or undivided interests in this trust or in any
42 other trust with which the assets of this trust may be pooled, to or
43 from this trust or such other trusts at such prices or valuations as
44 the Board may determine; and

45 * * *

46 **33-145. Powers and duties of the board.**

47 * * *

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

50 * * *

51 (14) pool all or any of the assets of the deferred compensation plan trust
52 with assets belonging to any other [qualified pension or profit
53 sharing trust] retirement plan trust or retiree health benefit trust
54 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

Roger Berliner, President, County Council

Date

194 *Approved:*

195

Isiah Leggett, County Executive

Date

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

197

Linda M. Lauer, Clerk of the Council

Date

198

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

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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.

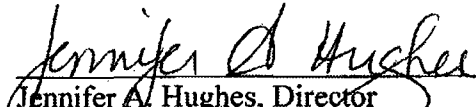
13. Other fiscal impacts or comments.

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.

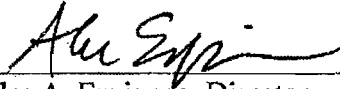
Bill #-17 may have a positive economic impact on incomes to the County residents because the creation of a group trust could reduce the costs to the County through reduced contributions and therefore could reduce taxes paid by the County residents. The amount of reduction to the County's contributions 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