

Expedited Bill No. 12-21
Concerning: Personnel - Employees'
Retirement System - Retirement
Savings Plan-Group Trust -
Amendments
Revised: 3/9/2021 Draft No. 3
Introduced: March 22, 2021
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Sunset Date: None
Ch. 16, Laws of Mont. Co. 2021

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

AN EXPEDITED ACT to:

- (1) increase the mandatory required distribution age by which benefits must begin as permitted by a recent change to federal law;
- (2) change the timing of distributions of benefits for beneficiaries as required by a recent change to federal law;
- (3) change the submission timing of a beneficiary form for a GRIP, EOP or RSP participant;
- (4) permit the suspension of required minimum distributions for 2020 from the Retirement Savings Plan and Elected Officials' Plan as permitted by recent federal law;
- (5) clarify the process for escheatment for certain distributions to participants in the Retirement Savings Plan, GRIP, or Elected Officials' Plan when a participant or beneficiary cannot be located, or the participant or beneficiary has not accepted the distribution;
- (6) clarify operations of the Group Trust;
- (7) permit unitization of the Employees' Retirement System held within the Group Trust to provide an investment option for defined contribution participants; and
- (8) generally amend the retirement laws.

By amending

Montgomery County Code

Chapter 33, Personnel and Human Resources

Sections 33-44, 33-46, 33-52, 33-60, 33-120, 33-125, 33-127, 33-145, 33-162 and 33-170

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:

53 elected official. If the distribution cannot be made because the
 54 elected official cannot be located, the elected official will forfeit
 55 the amount. If the elected official later contacts the County, the
 56 elected official will receive the forfeited amount.

57 (3) Notwithstanding this subsection, an elected officials' participant or
 58 beneficiary who would have been required to receive a minimum
 59 required distribution for 2020 but for the enactment of Internal
 60 Revenue Code Section 401(a)(9)(I), must receive those
 61 distributions for 2020 unless the participant or beneficiary elects
 62 not to receive such distributions.

63 (i) *Period for distribution of death benefits of a retired elected officials'*
 64 *participant who [was receiving] elected to receive benefits in the form*
 65 *of an annuity. Any death benefits must be paid to a joint annuitant or*
 66 *beneficiary under the terms of the annuity elected. [If the distribution*
 67 *to a retired elected officials' participant has commenced in accordance*
 68 *with the second sentence of subsection 33-44(h) and the elected*
 69 *officials' participant dies before the elected officials' participant's entire*
 70 *benefit has been distributed to that elected official's participant, the*
 71 *remaining part of such benefit must be distributed at least as rapidly as*
 72 *under the method of distribution in effect as of the date of the retired*
 73 *elected officials' participant's death.]*

74 (j) *Period for distribution of death benefits of an elected officials'*
 75 *participant who was not receiving benefits or who was receiving*
 76 *benefits in the form other than an annuity.*

77 [(1) If an elected officials' participant dies before the payment of the
 78 benefits under the elected officials' plan has commenced, the b]

79 Benefits must be distributed before the end of the calendar year
 80 containing the fifth anniversary of the elected official
 81 participant's death; however, the five-year rule does not apply
 82 [if]:

83 [(A)] (1) [Any] If any portion of the elected officials' participant's
 84 benefit is payable to, or for the benefit of, [a] an individual
 85 designated as a beneficiary, the benefits must be distributed by
 86 the end of the calendar year containing the tenth anniversary of
 87 the elected officials' participant's death.[:]

88 [(B)] (2) [The portion of the benefit to which the designated beneficiary
 89 is entitled will be distributed over the life of the beneficiary, or
 90 over a period not extending beyond the life expectancy of the
 91 beneficiary; and] If any portion of the elected officials'
 92 participant's benefit is payable to, or for the benefit of, an eligible
 93 designated beneficiary as defined in Internal Revenue Code
 94 Section 401(a)(9)(E)(ii), benefits are payable as follows:

95 [(C)] (A) The distributions must commence before the end of the
 96 calendar year following the calendar year in which the
 97 elected official's participant's death occurred. [Also, the
 98 five-year rule does not apply if:]

99 [(i)](B)The portion of the elected officials' participant's benefit
 100 to which the [surviving spouse] eligible designated
 101 beneficiary is entitled must be distributed over the life of
 102 the [surviving spouse] eligible designated beneficiary, or
 103 over a period not extending beyond the life expectancy of

104 the [surviving spouse] eligible designated beneficiary. [;
105 and]

106 [(ii)](C) If the eligible designated beneficiary is a surviving
107 spouse, [The] the distributions may instead commence
108 before the later of the end of the calendar year following
109 the calendar year in which the participant died or the end
110 of the calendar year in which the elected officials'
111 participant would have attained age [70 ½] 72.

112 [(2) For purposes of subsections (f), (h), (i), and (j), the life
113 expectancy of an elected officials' participant and the elected
114 officials' participant's spouse may be recalculated each year.
115 Also, for purposes of subsections (f), (h), (i), and (j), any amount
116 paid to a]

117 (D) If the eligible designated beneficiary is a child who has not
118 reached majority, the benefit must be paid within 10 years
119 [child must be treated as if it had been paid to the surviving
120 spouse of an elected officials' participant if the amount
121 becomes payable to the surviving spouse of an elected
122 officials' participant] of the date when the child reaches the
123 age of majority (or other designated event permitted under
124 applicable Treasury Regulations).

125 (k) *Required commencement of benefit payments for members of the*
126 *optional or integrated plans*. The distribution of a member's retirement
127 benefit must be made, or must begin, no later than April 1 of the
128 calendar year following the later of the calendar year in which the
129 member attains age [seventy and one-half (70 1/2)] 72 or the calendar

130 year in which the member retires. [In the alternative, the payment of
 131 benefits to a member must begin not later than such April 1 in
 132 accordance with applicable United States Treasury Regulations over:

- 133 (1) The life of the member;
- 134 (2) The lives of the member and the member's designated
 135 beneficiary;
- 136 (3) A period not extending beyond the life expectancy of the
 137 member; or
- 138 (4) A period not extending beyond the life expectancy of the member
 139 and the member's designated beneficiary.]

140 (l) *Period for distribution of death benefits of a retired member of the*
 141 *optional or integrated plan who was receiving benefits[.] in the form of*
 142 *an annuity. Any death benefits must be paid to a joint annuitant or*
 143 *beneficiary under the terms of the annuity elected.* [If the distribution
 144 to a retired member has commenced in accordance with the second
 145 sentence of subsection 33-44 (k) and the member dies before the
 146 member's entire benefit has been distributed to the member, the
 147 remaining part of such benefit must be distributed at least as rapidly as
 148 under the method of distribution in effect as of the date of the retired
 149 member's death.]

150 (m) *Period for distribution of death benefits of a member of the optional or*
 151 *integrated plan who was not receiving benefits and the death benefit is*
 152 *a return of member contributions with credited interest.*

153 [(1)] [If a member dies before the payment of the benefit has
 154 commenced, the] The benefit must be distributed before the end

155 of the calendar year containing the fifth anniversary of the
156 member's death. [; however, the five-year rule does not apply if:

157 (A) Any portion of the member's benefit is payable to, or for
158 the benefit of, a designated beneficiary;

159 (B) The portion of the benefit to which the designated
160 beneficiary is entitled will be distributed over the life of
161 the beneficiary, or over a period not extending beyond the
162 life expectancy of the beneficiary; and

163 (C) The distributions commence before the end of the calendar
164 year following the calendar year in which the elected
165 official's participant's death occurred.]

166 [(2) Also, the five-year rule does not apply if:

167 (A) The portion of the member's benefit to which the surviving
168 spouse is entitled will be distributed over the life of the
169 surviving spouse, or over a period not extending beyond
170 the life expectancy of the surviving spouse; and

171 (B) The distributions commence before the later of the
172 end of the calendar year following the calendar year
173 in which the participant died or the end of the
174 calendar year in which the member would have
175 attained age 70 ½.]

176 [(3) For purposes of this subsection, the life expectancy of a member
177 and the member's spouse may be recalculated each year. Also,
178 for purposes of this subsection, any amount paid to a child must
179 be treated as if it had been paid to the surviving spouse of a
180 member if the amount becomes payable to the surviving spouse

181 of a member when the child reaches the age of majority (or other
 182 designated event permitted under applicable treasury
 183 regulations).]

184 (n) *Required distribution for guaranteed retirement income plan*
 185 *participants.*

186 (1) The distribution of a participant's guaranteed retirement income
 187 plan account balance must be made no later than April 1 of the
 188 calendar year after the later of the calendar year in which the
 189 participant attains age [70 ½] 72 or the calendar year in which
 190 the participant terminates employment. Distributions must be
 191 made in accordance with subsection (g). If the participant does
 192 not elect a form of distribution, the distribution must be made in
 193 a lump sum. If the participant dies before beginning to receive
 194 benefits, the participant's designated beneficiary under 33-46(h)
 195 must receive a lump sum distribution as soon as practicable after
 196 the participant's death, but not later than the December 31st of
 197 the year containing the fifth anniversary of the participant's
 198 death.

199 (2) A participant's account balance of \$1,000 or less must be
 200 automatically distributed in a lump sum as soon as
 201 administratively feasible after termination of employment
 202 without a request from the participant.

203 * * *

204 **33-46. Death benefits and designation of beneficiaries.**

205 * * *

206 (g) *Elected officials plan.* If an elected officials' participant dies before the
 207 County has implemented the method of distribution of benefits to the
 208 elected officials participant under a method of distribution designated
 209 in Section 33-44, the elected officials' participant's vested County
 210 elected officials' contributions account balance, including picked-up
 211 contributions, and the amounts distributable under Section 33-39(c)(2)
 212 from the elected officials' plan, must be distributed to the elected
 213 officials' participant's designated beneficiary. A beneficiary may
 214 choose to have benefits distributed in any method listed in Section 33-
 215 44(f)(2). If the beneficiary does not choose a method of distribution, the
 216 method of distribution must be a variable annuity that reflects
 217 investment gains and is payable for the beneficiary's life. The County
 218 Executive may provide by regulation adopted under method (3) a
 219 procedure for a beneficiary to choose a method of distribution.

220 (1) A participant may name a primary beneficiary or beneficiaries
 221 and contingent beneficiary or beneficiaries on a designation of
 222 beneficiary form filed with the Office of Human Resources, or
 223 designee of the Chief Administrative Officer, including a third
 224 party service provider. If a participant names 2 or more persons
 225 as beneficiaries, the persons are considered co-beneficiaries and
 226 share the benefit equally unless the participant specifies
 227 otherwise on the designation of beneficiary form. A participant
 228 may change any named beneficiary by completing a new
 229 designation of beneficiary form. The consent of the beneficiary
 230 or beneficiaries is not required to name or change a beneficiary.
 231 The designation is effective if the form is received by the Office

232 or the designee of the Chief Administrative Officer, including a
 233 third party service provider, during the participant's lifetime.

234 (2) If a participant dies without designating a surviving beneficiary
 235 or the designation is not enforceable under subsection (i), the
 236 surviving spouse or domestic partner (or if there is no surviving
 237 spouse or domestic partner, each surviving child, sharing equally
 238 with any other surviving child) is the designated beneficiary. If
 239 no spouse, domestic partner, or child survives a participant who
 240 left no enforceable beneficiary designation, the participant's
 241 estate is the designated beneficiary.

242 (h) *Guaranteed retirement income plan.* Subsections (a)-(g) do not apply
 243 to the guaranteed retirement income plan. If a participant dies before
 244 receiving the participant's guaranteed retirement income plan account,
 245 the guaranteed retirement income plan account balance must be
 246 distributed to the participant's designated beneficiary in a lump sum as
 247 soon as practicable after the participant's death, but not later than the
 248 December 31st of the year containing the fifth anniversary of the
 249 participant's death.

250 (1) A participant may name a primary beneficiary or beneficiaries
 251 and contingent beneficiary or beneficiaries on a designation of
 252 [beneficiaries] beneficiary form filed with the Office of Human
 253 Resources, or designee of the Chief Administrative Officer,
 254 including a third party service provider. If a participant names 2
 255 or more persons as beneficiaries, the persons are considered co-
 256 beneficiaries and share the benefit equally unless the participant
 257 specifies otherwise on the designation of [beneficiaries]

258 beneficiary form. A participant may change any named
 259 beneficiary by completing a new designation of [beneficiaries]
 260 beneficiary form. The consent of the beneficiary or beneficiaries
 261 is not required to name or change a beneficiary. The designation
 262 is effective [when the participant signs the form even if the
 263 participant is not living when the Office, or designee of the Chief
 264 Administrative Officer, receives the request, but without
 265 prejudice for any payments made before the Office, or the
 266 designee of the Chief Administrative Officer, received the
 267 request] if the form is received by the Office or the designee of
 268 the Chief Administrative Officer, including a third party service
 269 provider, during a participant's lifetime.

270 (2) If a participant dies without designating a surviving beneficiary
 271 or the designation is not enforceable under subsection (i), the
 272 surviving spouse or domestic partner (or if there is no surviving
 273 spouse or domestic partner, each surviving child, sharing equally
 274 with any other surviving child) is the designated beneficiary. If
 275 no spouse, domestic partner, or child survives a participant who
 276 left no enforceable beneficiary designation, the participant's
 277 estate is the designated beneficiary.

278 (i) For purposes of this Section, a beneficiary designation is "not
 279 enforceable" if:

- 280 (1) the designated beneficiary:
- 281 (A) predeceases the member;
 - 282 (B) disclaims the benefit; or
 - 283 (C) is not an identifiable person; or

284 (2) the designation is legally void for any reason.

285 **33-52. Payment of benefits.**

286 * * *

287 (f) Lost Participants in the Elected Officials' Plan or Guaranteed
288 Retirement Income Plan. The Chief Administrative Officer must use all
289 reasonable resources to locate or communicate with a former participant
290 or a beneficiary in order to make and process required minimum
291 distributions as required by Internal Revenue Code Section 401(a)(9). If
292 such efforts fail, the Chief Administrative Officer, or a third party holding
293 these amounts, must distribute the former participant's or beneficiary's
294 unprocessed required minimum distributions to the State under the
295 unclaimed property laws. No amounts will be due to a former participant
296 or beneficiary once paid to the State. The former participant or
297 beneficiary must claim the distributed amounts directly from the State.

298 **33-60. The board of investment trustees - Powers and duties.**

299 * * *

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

302 * * *

303 (16) Pool all or any of the assets of the trust, from time to time, with
304 assets belonging to any other retirement plan trust or retiree health
305 benefit trust created by the County, including any subtrust thereof,
306 and commingle such assets and make joint or common investments
307 and carry joint accounts on behalf of this trust [and], such other
308 trust or trusts, or subtrusts, allocating undivided shares or interests
309 in such investments or accounts or in any pooled assets to the two

310 or more trusts or subtrusts in accordance with their respective
 311 interests. Any such trusts or subtrusts may be unitized for
 312 investment purposes. Consistent with its investment authority in
 313 this Article, the Board or its delegate may also buy or sell any
 314 assets or undivided interests in this trust or in any other trust with
 315 which the assets of this trust may be pooled, to or from this trust or
 316 such other trusts at such prices or valuations as the Board or its
 317 delegate may determine in reasonable good faith. For the
 318 avoidance of doubt, the Board must determine that it is consistent
 319 with its fiduciary duties to participate in a pooled investment that
 320 permits the sale or purchase of its units as an investment option
 321 under another retirement plan or retiree health benefit trust created
 322 by the County.

323 * * *

324 (e) *Prohibited transactions.* The board must not engage in any transaction
 325 between the trust and the county, or any entity controlled by the county,
 326 in which the board:

327 * * *

328 (4) Makes any substantial purchase of securities or other property for
 329 more than adequate consideration which, for avoidance of doubt,
 330 does not include a transfer conducted on the terms described in
 331 Section 33-170(i) between employee benefit plan trusts or a
 332 subtrust;

333 (5) Sells any substantial part of its securities or other property for less
 334 than adequate consideration which, for avoidance of doubt, does

335 not include a transfer conducted on the terms described in Section
 336 33-170(i) between employee benefit plan trusts or a subtrust; or

337 * * *

338
 339 **33-120. Distribution of Benefit.**

340 * * *

341 (c) *Death benefits.*

342 * * *

343 (3) A participant may name a primary beneficiary or beneficiaries
 344 and contingent beneficiary or beneficiaries on a designation of
 345 [beneficiaries] beneficiary form filed with the Office of Human
 346 Resources, or designee of the Chief Administrative Officer,
 347 including a third party service provider. If a participant names 2
 348 or more persons as beneficiaries, the persons are considered co-
 349 beneficiaries and share the benefit equally unless the participant
 350 specifies otherwise on the designation of [beneficiaries]
 351 beneficiary form. A participant may change any named
 352 beneficiary by completing a new designation of [beneficiaries]
 353 beneficiary form. The consent of the beneficiary or beneficiaries
 354 is not required to name or change a beneficiary. The designation
 355 is effective [when the participant signs the form even if the
 356 participant is not alive when the Office, or designee of the Chief
 357 Administrative Officer, receives the request, but without
 358 prejudice for any payments made before the Office, or designee
 359 of the Chief Administrative Officer, received the request] if
 360 received by the Office or the designee of the Chief

361 Administrative Officer, including a third party service provider,
 362 during a participant's lifetime.

363 (4) If a participant dies without designating a surviving beneficiary
 364 or the designation is not enforceable under subsection (5), the
 365 surviving spouse or domestic partner (or if there is no surviving
 366 spouse or domestic partner, each surviving child, sharing equally
 367 with any other surviving child) is the designated beneficiary. If
 368 no spouse, domestic partner, or child survives a participant who
 369 left no enforceable beneficiary designation, the participant's
 370 estate is the designated beneficiary.

371 (5) For purposes of this Section, a beneficiary designation is not
 372 enforceable if:

373 (A) the designated beneficiary:

374 (i) predeceases the member;

375 (ii) disclaims the benefit; or

376 (iii) is not an identifiable person; or

377 (B) the designation is legally void for any reason.

378 * * *

379 (h) *Benefit distribution date.*

380 (1) The Chief Administrative Officer must pay a participant who
 381 retires by reason of normal, deferred, or disability retirement the
 382 participant's account balances in the retirement savings plan.
 383 The distribution must begin as soon as administratively feasible
 384 after the participant's retirement and after the date elected by the
 385 participant, but no later than April 1 following the later of the
 386 calendar year in which the participant attains age [70 ½] 72, or

387 the calendar year in which the participant's County employment
388 ends.

389 (2) A participant who has a 100% vested interest in the County
390 contributions account, and whose County employment ends
391 before the participant's death, disability retirement, or normal
392 retirement date, may receive the account balances in the County
393 contribution accounts and the participant contribution accounts
394 before reaching the normal retirement date only upon filing
395 written consent for the distribution with the Chief Administrative
396 Officer. The distribution must be made as soon as
397 administratively feasible after the Chief Administrative Officer
398 receives the written consent for the distribution.

399 (3) (A) If a participant's County employment ends before the
400 participant has a vested interest in the County
401 contributions and the participant properly completes and
402 submits an application for distribution of the participant's
403 contribution account, the County must distribute the
404 participant's contribution account as soon as
405 administratively feasible.

406 (B) If a participant does not properly complete and submit an
407 application for a distribution, the County must distribute
408 the participant's contribution account under the time limits
409 described in this Section.

410 (4) Notwithstanding any other provision of this subsection, a
411 participant's account balance of \$1000 or less must be
412 automatically distributed in a lump sum as soon as

413 administratively feasible after termination of employment
 414 without a request from the participant.

415 (i) *Required commencement of benefit payments.*

416 (1) The distribution of a participant's or former participant's
 417 retirement benefits must begin no later than April 1 following the
 418 later of:

419 (A) the calendar year in which the participant attains age [70
 420 $\frac{1}{2}$] 72; or

421 (B) the calendar year in which the participant separates from
 422 County service.

423 (2) The distribution may be made as provided in subsection (f).

424 (j) [Period for distribution of death benefits of a retired participant who
 425 was receiving benefits. If distribution to a retired participant has begun
 426 under subsection (i) and the participant dies before the participant's
 427 entire benefit has been distributed to the participant, the remaining
 428 benefit, if any, must be distributed at least as rapidly as under the
 429 method of distribution in effect on the date of the retired participant's
 430 death.]

431 Notwithstanding the preceding subsections, a participant or beneficiary
 432 who would have been required to receive minimum required distributions
 433 for 2020 but for the enactment of Internal Revenue Code Section
 434 401(a)(9)(I), must receive those distributions for 2020 unless the
 435 participant or beneficiary elects not to receive such distributions.

436 (k) *Period for distribution of death benefits of a participant who was not*
 437 *receiving benefits or did not receive the entire benefit.*

438 [(1)] If a participant dies before payment of all benefits [under this
439 Section has begun], the benefits must be distributed before the end of
440 the calendar year containing the fifth anniversary of the participant's
441 death unless:

442 [(A)](1) [(i)] any portion of the participant's benefit is payable to,
443 or for the benefit of, [a] an individual designated by the
444 participant as a beneficiary. [;] In such case, the benefits must be
445 distributed by the end of the calendar year containing the tenth
446 anniversary of the participant's death;

447 (2) any portion of the participant's benefit payable to, or for the
448 benefit of, an eligible designated beneficiary as defined in
449 Internal Revenue Code Section 401(a)(9)(E)(ii). In such a case:

450 [(ii)](A) the portion of the benefit to which the eligible
451 designated beneficiary is entitled will be distributed over
452 the life of the eligible designated beneficiary or over a
453 period not extending beyond the life expectancy of the
454 eligible designated beneficiary; and

455 [(iii)] (B) the distributions begin before the end of the calendar
456 year following the calendar year in which the participant's
457 death occurred; or

458 [(B)](3) [(i)] (A) if the eligible designated beneficiary is a
459 surviving spouse, the portion of the participant's
460 benefit to which the surviving spouse is entitled will
461 be distributed over the life of the surviving spouse,
462 or over a period not extending beyond the life
463 expectancy of the surviving spouse; and

464 [(ii)] (B) the distributions begin before the later of the
 465 end of the calendar year following the calendar year
 466 in which the participant died or the end of the
 467 calendar year in which the participant would have
 468 reached age [70 ½] 72.

469 [(2) For purposes of this Section:

470 (A) the life expectancy of a participant and the participant's
 471 spouse may be recalculated each year; and

472 (B) any amount paid to a child is treated as if it had been paid
 473 to the participant's surviving spouse if the amount is
 474 payable to the surviving spouse before]

475 (4) If the eligible designated beneficiary is a child who has not
 476 reached majority, the benefit must be paid within 10 years of the
 477 child [reaches] reaching the age of majority or other designated
 478 event permitted under federal regulation.

479 * * *

480 **33-125. Powers and duties of the Board.**

481 (a) *General.*

482 * * *

483 (2) The Board must invest and reinvest, or cause to be invested or
 484 reinvested, the principal and income of the retirement savings
 485 plan and keep the same invested without distinction between
 486 principal and income. The Board has the exclusive authority to
 487 manage the assets of the retirement savings plan, but must, to the
 488 extent directed by participants, invest each participant's accounts
 489 in the manner directed by the participant. The Board may select

490 mutual funds, commingled funds, unitized investments in the
 491 Montgomery County Group Trust, or any combination of other
 492 investments as investment options for the retirement savings
 493 plan.

494 * * *

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

497 * * *

498 (16) pool all or any of the assets of the trust, from time to time, with
 499 assets belonging to any other retirement plan trust or retiree health
 500 benefit trust created by the County, including any subtrust thereof,
 501 and commingle such assets and make joint or common investments
 502 and carry joint accounts on behalf of this trust [and], such other
 503 trust or trusts, or subtrusts, allocating undivided shares or interests
 504 in such investments or accounts or in any pooled assets to the two
 505 or more trusts or subtrusts in accordance with their respective
 506 interests. Any such trusts or subtrusts may be unitized for
 507 investment purposes. The Board may, subject to its fiduciary
 508 duties, offer units of such pooled trust or subtrust as an investment
 509 option under the Retirement Savings Plan. Consistent with its
 510 investment authority, the Board or its delegate may also buy or sell
 511 any assets or undivided interests in this trust or in any other trust
 512 with which the assets of this trust may be pooled, to or from this
 513 trust or such other trusts at such prices or valuations as the Board
 514 may determine in reasonable good faith; and

515 * * *

516 (e) *Prohibited transactions.* The Board must not engage in any transaction
517 between the trust and the County, or any entity controlled by the County,
518 in which the Board:

519 * * *

520 (4) makes any substantial purchase of securities or other property for
521 more than adequate consideration which, for avoidance of doubt,
522 does not include a transfer conducted on the terms described in
523 Section 33-170(i) between employee benefit plan trusts or a
524 subtrust;

525 (5) sells any substantial part of its securities or other property for less
526 than adequate consideration which, for avoidance of doubt, does
527 not include a transfer conducted on the terms described in Section
528 33-170(i) between employee benefit plan trusts or a subtrust; or

529 * * *

530 **33-127. Miscellaneous.**

531 * * *

532 (d) *Lost Participants.* [If the Chief Administrative Officer is unable to locate
533 a former participant or a beneficiary following a former participant's
534 death or attainment of normal retirement age, the] The Chief
535 Administrative Officer must [take] use all reasonable resources [steps] to
536 locate or communicate with a [the] former participant or beneficiary, in
537 order to make and process required minimum distributions as required by
538 Internal Revenue Code Section 401(a)(9). [including using the resources
539 available through the Federal Social Security Administration and the
540 Internal Revenue Service. If the Chief Administrative Officer is unable
541 to locate the former participant or beneficiary after making reasonable

542 efforts,] If such efforts fail, the Chief Administrative Officer or a third
 543 party holding these amounts, must [, after 5 plan years have passed,]
 544 distribute the former participant's or beneficiary's unprocessed required
 545 minimum distributions [account balances] to the State under the
 546 unclaimed property laws. No amounts must be due to a former
 547 participant or beneficiary once paid to the State. The former participant
 548 or beneficiary must claim the distributed amounts directly from the State.
 549 [If the former participant or beneficiary returns, satisfactorily proves the
 550 participant's or beneficiary's identity, and requests the account balances
 551 after the money has escheated to the State, the County Government must
 552 make a contribution to the retirement savings plan and pay the participant
 553 or beneficiary the account balances to which the participant or beneficiary
 554 is entitled.]

555 * * *

556 **33-145. Powers and duties of the board.**

557 * * *

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

560 * * *

561 (14) pool all or any of the assets of the deferred compensation plan trust
 562 with assets belonging to any other retirement plan trust or retiree
 563 health benefit trust created by the County, including any subtrust
 564 thereof. The Board may commingle the assets and make joint or
 565 common investments and carry joint accounts on behalf of the
 566 deferred compensation plan trust, one or more other trusts, or
 567 subtrusts, allocating undivided shares or interests in the

568 investments or accounts, or in any pooled assets, to the trusts or
 569 subtrusts, according to the trusts' respective interests. Any such
 570 trusts or subtrusts may be unitized for investment purposes. The
 571 Board may, subject to its fiduciary duties, offer units of such
 572 pooled trust or subtrust as an investment option. Consistent with
 573 its investment authority in this Article, the Board, or its delegate,
 574 also may buy or sell any assets or undivided interests in any trust
 575 where the assets of the deferred compensation plan trust are pooled
 576 at the prices or valuations that the Board or its delegate may
 577 [determines] determine in reasonable good faith. For the avoidance
 578 of doubt, the Board must determine that it is consistent with its
 579 fiduciary duties to participate in a pooled investment that permits
 580 the purchase or sale of its units as an investment option under
 581 another retirement plan or retiree health benefit trust created by the
 582 County; and

583 * * *

584 (f) *Prohibited transactions*. The Board must not engage in any direct or
 585 indirect transaction between the trust and the County, or any entity
 586 controlled by the County, that would violate the prudent person rule
 587 (Section 33-61C) or result in the diversion of trust income or corpus in
 588 violation of the exclusive benefit rule (Section 33-144(d)). For avoidance
 589 of doubt, such a transaction does not include a transfer conducted on the
 590 terms described in Section 33-170(i) between employee benefit plan
 591 trusts or a subtrust.

592 * * *

593 **33-162. Trust Fund Management**

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

* * *

(14) pool all or any of the assets of the trust, from time to time, with assets belonging to any retirement plan trust or other retiree health benefit trust created by the County, including any subtrust thereof, 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, or subtrusts, allocating undivided shares or interests in such investments or accounts or in any pooled assets to the two or more trusts or subtrusts in accordance with their respective interests. Any such trusts or subtrusts may be unitized for investment purposes. Consistent with the authority granted in this Article, the Board may also buy or sell any assets or undivided interests in this trust or in any other trust or subtrust with which the assets of this trust may be pooled, to or from this trust or such other trusts or subtrusts at such prices or valuations as the Board may determine in reasonable good faith; and

* * *

(i) *Prohibited Transactions.* The Board must not engage in any transaction between the Trust and the County or any entity controlled by the County, including a County-funded agency, or a participating agency in which the Board:

* * *

619 (4) makes any substantial purchase of securities or other property for
 620 more than adequate consideration which, for avoidance of doubt,
 621 does not include a transfer conducted on the terms described in
 622 Section 33-170(i) between employee benefit plan trusts or a
 623 subtrust;

624 (5) sells any substantial part of its securities or other property for less
 625 than adequate consideration which, for avoidance of doubt, does
 626 not include a transfer conducted on the terms described in Section
 627 33-170(i) between employee benefit plan trusts or a subtrust; or

628 * * *

629 **33-170. Montgomery County Group Trust**

630 * * *

631 (b) *Purpose.* The Montgomery County Group Trust is established solely for
 632 the purpose of creating a collective investment vehicle intended to create
 633 investment opportunities and efficiencies for the investment of
 634 Montgomery County’s employee benefit plan trusts. The interests of
 635 each investing trust must be accounted for separately and the assets
 636 attributable to an investing trust must be held for the benefit of that trust
 637 only within the general holdings of the Montgomery County Group Trust.
 638 No employee benefit plan trust must be deemed to have an individual
 639 ownership interest in any asset held by the Montgomery County Group
 640 Trust. Instead, each employee benefit plan trust must have an undivided
 641 ownership interest in the Montgomery County Group Trust, with each
 642 trust owning an undivided ownership interest in [its] the respective
 643 subtrust or subtrusts in which it invests within the Montgomery County
 644 Group Trust, and must share proportionately with all other employee

645 benefit plan trusts participating in the subtrust within Montgomery
 646 County Group Trust in the net income, profits, and losses thereof.

647 (c) *Participation in Group Trust.* The Board of Investment Trustees may
 648 elect to invest all or any assets of the Employees' Retirement System,
 649 Retirement Savings Plan, and/or Deferred Compensation Plan through
 650 the Montgomery County Group Trust, including any one or more
 651 subtrusts, and the Consolidated Retiree Health Benefits Trust Board of
 652 Trustees may elect to invest all or any assets of the Consolidated Retiree
 653 Health Benefits Trust through the Montgomery County Group Trust,
 654 including any one or more subtrusts. Each board described above must
 655 discharge its duties with respect to its respective employee benefit plan
 656 trust in accordance with the provisions of Sections 33-61 or 33-163, as
 657 applicable, and this Section 33-170.

658 * * *

659 (e) *Custodian.* The Director of Finance must serve as the custodian of the
 660 Montgomery County Group Trust and must give bond with a surety and
 661 for a period and in an amount as the Boards determine. If the Boards
 662 approve, the Director of Finance may make written contracts with banks,
 663 trust companies, insurance companies, or investment companies
 664 authorized to do business in any state for the safe custody of investments,
 665 banking services, the payment of benefits and expenses, and any other
 666 function necessary to manage and safeguard the assets of the Group Trust.

667 * * *

668 (i) *Partial or Full Withdrawal of an Employee Benefit Plan Trust.* An
 669 employee benefit plan trust may withdraw, in whole or in part, from the
 670 Montgomery County Group Trust, including a subtrust, at any time upon

671 action by its board or its authorized delegate. The amount distributed to
 672 the employee benefit plan trust upon the withdrawal in whole or in part
 673 will be equal to the value of the employee benefit plan trust, or part
 674 thereof, on the date as of the effective date of the withdrawal. If an
 675 employee benefit plan trust desires to withdraw an interest in the
 676 Montgomery County Group Trust, or any subtrust thereunder, the
 677 Trustees or their delegate may facilitate a transfer of that interest to
 678 another employee benefit plan trust or subtrust thereunder at the market
 679 value established by the custodian bank, or another entity authorized to
 680 establish such market values, if:

- 681 (1) such other employee benefit plan trust or subtrust thereunder has
 682 the capacity to engage in the transfer;
- 683 (2) the transfer results in such employee benefit plan trust or subtrust
 684 thereunder having its allocation brought closer to the strategic
 685 target as set in the employee benefit plan trust or subtrust's
 686 investment policy statement; and
- 687 (3) the employee benefit plan or subtrust thereunder receives the
 688 market value established by the custodian bank, or another entity
 689 authorized to establish such market value.

690 * * *

691 **Sec. 2. Effective Date.**

692 The Council declares that this legislation is necessary for the immediate
 693 protection of the public interest. This Act takes effect on the date on which it becomes
 694 law, except:

- 695 (a) the amendments in Section 1 to §§ 33-44 and 33-120 increasing the
 696 required distribution age from 70½ to 72 must take effect for

697 individuals attaining age 70 ½ after December 31, 2019; and
698 (b) the amendments in Section 1 to §§ 33-44 and 33-120 requiring
699 distributions to beneficiaries upon a participant's death must take effect
700 for deaths occurring after December 31, 2021.

Approved:



Tom Hucker, President, County Council 7/1/2021
Date

Approved:



Marc Elrich, County Executive 7/9/21
Date

This is a correct copy of Council action.



Selena Mendy Singleton, Esq., Clerk of the Council 7/12/2021
Date