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
Enacted: June 29, 2021
Executive: July 9, 2021
Effective: July 9, 2021
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	*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 33-44, 33-46, 33-52, 33-60, 33-120, 33-125, 33-127, 33-145, 33-162 and 33-170 are amended as follows:

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

* * *

(f) *Distributions from the elected officials' plan*. The chief administrative officer must pay an elected officials' participant's account balances in the elected officials' plan upon normal retirement or withdrawal of vested county contributions under the provisions of this subsection.

(1) Normal Method of Distribution. Unless the elected officials' participant elects an option under paragraph (2), the normal method of distribution must be a variable annuity that reflects investment gains and must be paid for the elected officials' participant's life.

(2) Optional Methods of Distribution. An elected officials' participant may choose to have the account balances paid to that elected officials' participant in one of the following optional methods:

* * *

(F) Payment of the account balances of the elected official participant in the form of as nearly equal periodic payments as the market will allow, over a period not exceeding the lesser of the joint life expectancy of the elected officials' participant and the elected officials' participant's beneficiary or twenty (20) years. <u>Notwithstanding the preceding, payments must comply with the requirements of Internal Revenue Code Section</u>

401(a)(9), as amended, and the corresponding Treasury Regulations.

* * *

(h) (1) *Required commencement of benefit payments from the elected officials' plan*. The distribution of an elected officials' participant's retirement benefits must be made no later than April 1 of the calendar year following the later of the calendar year in which the elected officials' participant attains age **[**seventy and one-half (70 ½)**]** 72 or the calendar year in which the elected officials' participant retires. In the alternative, the payment of benefits to an elected officials' participant must begin not later than such April 1 under a method of payment that, in accordance with the applicable United States Treasury Regulations, provides for distribution of the elected officials' participant's benefits over:

(A) The life of the elected official's participant;

(B) The lives of the elected officials' participant and the elected officials' participant's designated beneficiary;

(C) A period not extending beyond the life expectancy of the elected officials' participant; or

(D) A period not extending beyond the life expectancy of the elected officials' participant and the elected officials' participant's designated beneficiary.

(2) Notwithstanding any other provision, an elected official's account balance of $1,000 or less must be automatically distributed in a lump sum as soon as administratively feasible after termination of employment without a request from the

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) *Required commencement of benefit payments for members of the optional or integrated plans.* The distribution of a member's retirement benefit must be made, or must begin, no later than April 1 of the calendar year following the later of the calendar year in which the member attains age **[**seventy and one-half (70 1/2)**]** 72 or the calendar year in which the member retires. **[**In the alternative, the payment of benefits to a member must begin not later than such April 1 in accordance with applicable United States Treasury Regulations over:

(1) The life of the member;

(2) The lives of the member and the member's designated beneficiary;

(3) A period not extending beyond the life expectancy of the member; or

(4) A period not extending beyond the life expectancy of the member and the member's designated beneficiary.**]**

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

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

[(1)**]** **[**If a member dies before the payment of the benefit has commenced, the**]** The benefit must be distributed before the end of the calendar year containing the fifth anniversary of the member's death. **[**; however, the five-year rule does not apply if:

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

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

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

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

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

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

[(3) For purposes of this subsection, the life expectancy of a member and the member's spouse may be recalculated each year. Also, for purposes of this subsection, any amount paid to a child must be treated as if it had been paid to the surviving spouse of a member if the amount becomes payable to the surviving spouse of a member when the child reaches the age of majority (or other designated event permitted under applicable treasury regulations).**]**

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

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

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

* * *

33-46. Death benefits and designation of beneficiaries.

* * *

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

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

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

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

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

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

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

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

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

(1) the designated beneficiary:

(A) predeceases the member;

(B) disclaims the benefit; or

(C) is not an identifiable person; or

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

33-52. Payment of benefits.

* * *

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

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

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(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, 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 its investment authority in this Article, the Board or its delegate 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 or its delegate may determine in reasonable good faith. For the avoidance of doubt, the Board must determine that it is consistent with its fiduciary duties to participate in a pooled investment that permits the sale or purchase of its units as an investment option under another retirement plan or retiree health benefit trust created by the County.

* * *

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

* * *

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

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

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

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33-120. Distribution of Benefit.

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(c) *Death benefits.*

* * *

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

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

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

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

(A) the designated beneficiary:

(i) predeceases the member;

(ii) disclaims the benefit; or

(iii) is not an identifiable person; or

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

* * *

(h) *Benefit distribution date*.

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

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

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

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

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

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

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

(i) *Required commencement of benefit payments*.

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

(A) the calendar year in which the participant attains age **[**70 ½**]** 72; or

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

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

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

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

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

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

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

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

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

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

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

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

[(2) For purposes of this Section:

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

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

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

* * *

33-125. Powers and duties of the Board.

(a) *General.*

* * *

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

mutual funds, commingled funds**,** <u>unitized investments in the Montgomery County Group Trust,</u> or any combination of other investments as investment options for the retirement savings plan.

* * *

(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 retirement plan trust or retiree health benefit trust created by the County, <u>including any subtrust thereof,</u> and commingle such assets and make joint or common investments and carry joint accounts on behalf of this trust **[**and**]**<u>,</u> such other trust or trusts, <u>or subtrusts,</u> allocating undivided shares or interests in such investments or accounts or in any pooled assets to the two or more trusts <u>or subtrusts</u> in accordance with their respective interests. <u>Any such trusts or subtrusts may be unitized for investment purposes. The Board may, subject to its fiduciary duties, offer units of such pooled trust or subtrust as an investment option under the Retirement Savings Plan.</u> Consistent with its investment authority, the Board <u>or its delegate</u> 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 <u>in reasonable good faith</u>; and

* * *

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

* * *

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

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

* * *

33-127. Miscellaneous.

* * *

(d) *Lost Participants*. [If the Chief Administrative Officer is unable to locate a former participant or a beneficiary following a former participant's death or attainment of normal retirement age, the] The Chief Administrative Officer must [take] use all reasonable resources [steps] to locate or communicate with a [the] former participant or beneficiary, in order to make and process required minimum distributions as required by Internal Revenue Code Section 401(a)(9). [including using the resources available through the Federal Social Security Administration and the Internal Revenue Service. If the Chief Administrative Officer is unable to locate the former participant or beneficiary after making reasonable efforts,**]** If such efforts fail, the Chief Administrative Officer or a third party holding these amounts, must **[**, after 5 plan years have passed,**]** distribute the former participant's or beneficiary's unprocessed required minimum distributions **[**account balances**]** to the State under the unclaimed property laws. No amounts must be due to a former participant or beneficiary once paid to the State. The former participant or beneficiary must claim the distributed amounts directly from the State. **[**If the former participant or beneficiary returns, satisfactorily proves the participant's or beneficiary's identity, and requests the account balances after the money has escheated to the State, the County Government must make a contribution to the retirement savings plan and pay the participant or beneficiary the account balances to which the participant or beneficiary is entitled.**]**

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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 retirement plan trust or retiree health benefit trust created by the County, including any subtrust thereof. The Board may commingle the assets and make joint or common investments and carry joint accounts on behalf of the deferred compensation plan trust, one or more other trusts, or subtrusts, allocating undivided shares or interests in the

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

* * *

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

* * *

33-162. Trust Fund Management

* * *

(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:

* * *

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

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

* * *

33-170. Montgomery County Group Trust

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(b) *Purpose.* The Montgomery County Group Trust is established solely for the purpose of creating a collective investment vehicle intended to create investment opportunities and efficiencies for the investment of Montgomery County's employee benefit plan trusts. The interests of each investing trust must be accounted for separately and the assets attributable to an investing trust must be held for the benefit of that trust only within the general holdings of the Montgomery County Group Trust. No employee benefit plan trust must be deemed to have an individual ownership interest in any asset held by the Montgomery County Group Trust. Instead, each employee benefit plan trust must have an undivided ownership interest in the Montgomery County Group Trust, with each trust owning an undivided ownership interest in **[**its**]** <u>the</u> respective subtrust <u>or subtrusts in which it invests</u> within the Montgomery County Group Trust, and must share proportionately with all other employee benefit plan trusts participating in the subtrust within Montgomery County Group Trust in the net income, profits, and losses thereof.

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

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

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(i) *Partial or Full Withdrawal of an Employee Benefit Plan Trust*. An employee benefit plan trust may withdraw, in whole or in part, from the Montgomery County Group Trust, including a subtrust, at any time upon action by its board or its authorized delegate. The amount distributed to the employee benefit plan trust upon the withdrawal in whole or in part will be equal to the value of the employee benefit plan trust, or part thereof, on the date as of the effective date of the withdrawal. If an employee benefit plan trust desires to withdraw an interest in the Montgomery County Group Trust, or any subtrust thereunder, the Trustees or their delegate may facilitate a transfer of that interest to another employee benefit plan trust or subtrust thereunder at the market value established by the custodian bank, or another entity authorized to establish such market values, if:

(1) such other employee benefit plan trust or subtrust thereunder has the capacity to engage in the transfer;

(2) the transfer results in such employee benefit plan trust or subtrust thereunder having its allocation brought closer to the strategic target as set in the employee benefit plan trust or subtrust's investment policy statement; and

(3) the employee benefit plan or subtrust thereunder receives the market value established by the custodian bank, or another entity authorized to establish such market value.

* * *

Sec. 2. Effective Date.

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

(a) the amendments in Section 1 to §§ 33-44 and 33-120 increasing the required distribution age from 70½ to 72 must take effect for individuals attaining age 70 ½ after December 31, 2019; and

(b) the amendments in Section 1 to §§ 33-44 and 33-120 requiring distributions to beneficiaries upon a participant's death must take effect for deaths occurring after December 31, 2021.

Approved:

7/1/2021

Tom Hucker, President, County Council — Date

Approved:

7/9/21

Marc Elrich, County Executive — Date

This is a correct copy of Council action.

7/12/2021

Selena Mendy Singleton, Esq., Clerk of the Council — Date