

Expedited Bill No. 17-11
Concerning: Personnel – Other Post
Employment Benefits Trust –
County-funded Agency
Revised: June 27, 2011 Draft No. 9
Introduced: May 26, 2011
Enacted: June 28, 2011
Executive: July 11, 2011
Effective: July 1, 2011
Sunset Date: None
Ch. 14, Laws of Mont. Co. 2011

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Ervin, Councilmembers Navarro, Floreen, Andrews, Riemer, Rice,
Leventhal, Elrich, and Council Vice President Berliner

AN EXPEDITED ACT to:

- (1) amend the Retiree Health Benefits Trust to provide a funding mechanism to pay for other post employment benefits for employees of certain County-funded agencies; and
- (2) generally amend the law governing post employment benefits.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-158, 33-159, 33-160, 33-161, 33-162, 33-165, 33-166, and 33-168

By adding

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-169

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:

2 **Sec. 1. Sections 33-158, 33-159, 33-160, 33-161, 33-162, 33-165, 33-166,**
3 **and 33-168 are amended and Section 33-169 is added as follows:**

4 **33-158. Definitions.**

5 In this Article, the following words and phrases have the following
6 meanings:

7 [(a)] *Board*: The Consolidated Retiree Health Benefits Trust Board [of
8 Investment Trustees] established under [Article III] Section 33-160.

9 [(b)] *Contribution*: payment made to the Trust Fund by the County to pay
10 benefits for County retiree benefit plans or a County-funded agency retiree
11 benefit plan.

12 County: Montgomery County Government.

13 County-funded agency: Montgomery College and Montgomery County
14 Public Schools.

15 [(c)] *Custodian*: The County Director of Finance.

16 [(d)] *Investment manager*: a person or entity who exercises discretion to
17 manage all or part of the assets of an institutional investor.

18 [(e)] *Participating Agency*: an agency eligible to participate in County
19 benefit plans under Section 20-37(b) which elects to participate in any
20 County retiree benefit plan.

21 [(f)] *Retiree benefit plan*: any retiree medical plan, dental plan, vision plan,
22 or life insurance plan maintained by the County and administered by the
23 Chief Administrative Officer. Depending on the context, retiree benefit plan
24 may also refer to a retiree medical plan, prescription drug plan, dental plan,
25 vision plan, or life insurance plan established and maintained by a County-
26 funded agency.

27 [(g)] *Trust Fund*: the Consolidated Retiree Health Benefits (RHB) Trust
28 Fund established to pay all or part of the benefits provided under any retiree
29 benefit plan, including a County-funded agency retiree benefit plan.

30 **33-159. Establishment of Trust.**

31 (a) *County Retiree Benefit Plans*. The Chief Administrative Officer must
32 include the terms of any County retiree benefit plan, including
33 eligibility and benefits, including those benefits collectively
34 bargained, in a plan document. All benefits must meet any applicable
35 Federal or State requirement. Subject to the County's obligations
36 under collective bargaining agreements and the collective bargaining
37 laws, to the extent applicable, the Chief Administrative Officer may
38 amend a plan document at any time. Subject to the County's
39 obligations under collective bargaining agreements and the collective
40 bargaining laws, to the extent applicable, any retiree benefit plan may
41 be terminated at any time for any reason. No retiree benefit is
42 guaranteed, except as expressly provided by a contract entered into by
43 the County.

44 (b) *Establishment of Trust*. An Other Post Employment Benefits Trust,
45 known as the Consolidated Retiree Health Benefits (RHB) Trust,
46 [effective July 1, 2007,] is established to fund all or a portion of
47 benefits provided under the County retiree benefit plans or a County-
48 funded agency retiree benefit plan. The Trust is intended solely as a
49 funding mechanism to pay for County or County-funded agency
50 retiree benefits provided under the terms of any applicable retiree
51 benefit plan, and does not create any obligation by the County to
52 provide any benefit listed in any County or County-funded agency
53 retiree benefit plan. Any participant in a retiree benefit plan, any
54 current or former County or a County-funded agency employee, or

55 any current or former participating agency employee, has no right to
 56 any asset in the Trust fund. The Trust Fund may be, but is not
 57 required to be, the sole source of funding for any County or County-
 58 funded agency retiree benefit plan.

59 (c) *Type of Trust.* The County intends that the Trust Fund:

60 (1) be used to perform its essential government function of
 61 providing benefits, including health and life insurance benefits,
 62 to participants and eligible dependents; and

63 (2) qualify as a tax exempt trust under Internal Revenue Code
 64 Section 115.

65 (d) *Assets of Trust Fund.* All contributions and all earnings and other
 66 additions, less payments, constitute the assets of the Trust Fund.

67 (e) County-funded agency Participation. A County-funded agency may
 68 participate in the Trust Fund as a funding mechanism for its retiree
 69 benefit plans. A participant in any County-funded agency retiree
 70 benefit plan, or any current or former employee of a County-funded
 71 agency, has no right to the assets in the Trust Fund. The County is not
 72 responsible for establishing, maintaining, or providing any benefit for
 73 any County-funded agency retiree benefit plan.

74 [(e)] (f) *Exclusive Benefit.* The Trust Fund must be held for the
 75 exclusive benefit of participants in retiree benefit plans and eligible
 76 dependents, and used only to provide benefits and defray reasonable
 77 expenses of administering retiree benefit plans. Trust Fund assets
 78 must not revert to the County or a County-funded agency unless the
 79 County or the County-funded agency terminates all retiree benefit

80 plans. Some funds may partially revert to the County if at least one
81 benefit plan is terminated under Section 33-166.

82 **33-160. Board of Trustees.**

83 (a) Establishment. The Consolidated Retiree Health Trust Board of
84 Trustees is established to manage the Trust. The Board has ~~[[15]] 19~~
85 members.

86 (b) Membership.

87 (1) Each member of the Board of Investment Trustees established
88 under Section 33-59 is also a member of the Board.

89 (2) The County Executive must appoint, subject to County Council
90 confirmation, ~~[[1]] 3~~ voting ~~[[member]]~~ members nominated by
91 the Montgomery County Board of Education, who must serve
92 indefinitely while remaining the designee of the Montgomery
93 County Board of Education. The members must include:

94 (A) a designee of the Superintendent;

95 (B) an active employee of the Montgomery County Public
96 Schools who is a member of a bargaining unit; and

97 (C) a retiree of the Montgomery County Public Schools.

98 (3) The County Executive must appoint, subject to County Council
99 confirmation, ~~[[1]] 3~~ voting ~~[[member]]~~ members nominated by
100 the Board of Trustees of Montgomery College, who must serve
101 indefinitely while remaining the designee of Montgomery
102 College. The members must include:

103 (A) a designee of the President;

104 (B) an active employee of Montgomery College who is a
105 member of a bargaining unit; and

106 (C) a retiree of Montgomery College.

107 (c) Vacancies.

- 108 (1) A trustee who is absent from more than 25 percent of the
109 scheduled meetings of the Board during any 12-month period
110 has resigned from the Board. Scheduled meetings mean
111 meetings held at least 7 days after notice of the meeting.
- 112 (2) A vacancy on the Board must be filled for the unexpired term in
113 the same manner as the previous trustee was appointed.
- 114 (d) Compensation. The trustees must serve without compensation from
115 any source for service rendered to the Board, except that an active
116 employee trustee may receive administrative leave to serve on the
117 Board. The Board must reimburse a trustee for any expense approved
118 by the Board. A trustee must not receive reimbursement for expenses
119 from any other source.
- 120 (e) Written policies. The Board must establish written policies to
121 administer and invest the funds created by this Article and to transact
122 the business of the Trust Fund.
- 123 (f) Officers. The Board must select a chair, vice chair, and secretary
124 from the Board's members.
- 125 (1) The chair must preside at meetings of the Board and may take
126 administrative action, including executing an instrument, on
127 behalf of the Board. A person may rely in good faith on an act
128 of the chair as legally valid.
- 129 (2) The vice chair must perform the duties and exercise the powers
130 of the chair when the chair is absent from the County or
131 disabled, or the Board determines is otherwise unable to
132 perform the duties of the chair.
- 133 (3) The secretary must record the proceedings and actions of the
134 Board and may certify a document or action of the Board. A

135 person may rely in good faith on the secretary's certification as
136 proof of the document or action.

137 (g) Meetings and actions.

138 (1) The Board must meet at least once during each calendar
139 quarter. The chair, or ~~[[8]] 10~~ members of the Board, may call
140 a meeting of the Board, in the manner and at times and places
141 provided under the policies of the Board. The Board is a public
142 body under the State Open Meetings Act.

143 (2) A. ~~[[Eight]] Ten~~ trustees constitute a quorum.

144 B. Each trustee has one vote.

145 C. ~~[[Eight]] Ten~~ trustees must agree for the Board to act.

146 (3) The Board may act without a meeting. All of the trustees must
147 concur in writing for the Board to approve any action the Board
148 takes without a meeting.

149 (4) The Board may adopt procedures consistent with this Section.

150 (5) The Board may authorize a trustee to execute instruments on
151 behalf of the Board. The authority must be in writing and
152 specifically describe the instrument and how the trustee must
153 execute the instrument.

154 (h) Records.

155 (1) The Board must keep investment accounts and records
156 necessary to calculate the value of each retiree health benefit
157 trust fund and evaluate the experience and performance of the
158 Trust Fund.

159 (2) The Board may designate a person to maintain the records.

160 (3) Accounts and records are subject to State law on public records.

161 (i) Removal of trustee. With the Council's approval, the County
 162 Executive may remove a trustee for violating this Article or other
 163 good cause.

164 (j) Legal adviser. The County Attorney is the legal adviser to the Board.

165 (k) Management. [The Board of Investment Trustees established under
 166 Section 33-59 is responsible for managing the Trust Fund.] The
 167 Board must hold legal title to all assets of the Trust Fund, but may
 168 transfer some incidents of ownership to the Board's agents as
 169 provided in this Article. The powers and duties of the Board under
 170 this Article are not effective until the Board members have accepted
 171 the Trust Fund in writing. Within 10 days after the Council confirms
 172 a Board member, the member must certify in writing to the Chief
 173 Administrative Officer that the member accepts the Trust Fund and
 174 will administer its affairs with care, skill, prudence, and diligence.

175 **33-161. Contributions and payments.**

176 (a) County Contributions. The County may contribute to the Trust Fund
 177 those amounts that the Council appropriates. The County is not
 178 required to make any contribution to the Trust Fund unless a written
 179 contract with one or more beneficiaries so requires.

180 (b) County-funded Agency Contributions. The County may contribute to
 181 the Trust Fund, on behalf of a County-funded agency, those amounts
 182 that the County Council appropriates. A County-funded agency may
 183 also make contributions to the Trust Fund in its discretion.
 184 Notwithstanding the preceding sentence, the County must make any
 185 contribution necessary to pay a County-funded agency's pro rata cost
 186 of the expenses of the Trust Fund. Contributions to the Trust Fund
 187 made on behalf of a County-funded agency or by a County-funded

188 agency must be attributed to the County-funded agency for actuarial
189 valuation and financial reporting.

190 [(b)] (c) *Acceptance of Contributions.* The Board must accept all
191 contributions deposited in the Trust Fund and held by the custodian as
192 Trust Fund property. The Board is not responsible for calculating or
193 collecting any contribution, but is only responsible for contributions
194 deposited to the Trust Fund and amounts held in the Trust Fund. The
195 Board must separately account for any contribution made on behalf of
196 a County-funded agency and earnings and expenses attributable to
197 that contribution.

198 [(c)] (d) *Payments.*

199 (1) Payments for County Retiree Benefit Plans. Payments may be
200 made from the Trust Fund attributable to the County in those
201 amounts directed by the Chief Administrative Officer only to
202 pay for all or part of the benefits provided by any County retiree
203 benefit plan, administrative expenses relating to a retiree benefit
204 plan, and expenses of the Trust Fund. The Board is not liable
205 for any payment directed by the Chief Administrative Officer
206 and is not required to confirm compliance with any retiree
207 benefit plan.

208 (2) Payments for a County-funded Agency Retiree Benefit Plan.
209 The Chief Administrative Officer may direct that payments be
210 made from the Trust Fund attributable to a County-funded
211 agency as authorized by a County Council appropriation
212 resolution. Payments from the Trust Fund must be used to pay
213 for all or part of the benefits provided by a County-funded
214 agency retiree benefit plan and expenses of any County-funded
215 agency retiree benefit plan. The Board is not liable for any

216 payment made under the direction of the Chief Administrative
 217 Officer and has no responsibility to confirm compliance with
 218 any retiree benefit plan.

219 [(d)] (e) *Expenses.* The Board must be reimbursed for expenses solely
 220 incurred in the administration of the Trust Fund and must pay from
 221 the Trust Fund expenses reasonably incurred by the Chief
 222 Administrative Officer to administer any County retiree benefit plan
 223 to the extent that those expenses have not been paid by the County.
 224 The Board may pay expenses incurred under Section 33-162(h)(11)
 225 without direction of the Chief Administrative Officer. The Chief
 226 Administrative Officer may direct the Board to pay expenses
 227 reasonably incurred by a County-funded agency to administer its
 228 retiree benefit plans.

229 **33-162. Trust Fund management.**

230 * * *

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

- 235 (1) lends any part of its income or corpus without receiving
 236 adequate security and a reasonable rate of interest;
- 237 (2) pays any compensation more than a reasonable allowance for
 238 salaries or other compensation or services actually rendered;
- 239 (3) makes any service available on a preferential basis;
- 240 (4) makes any substantial purchase of securities or other property
 241 for more than adequate consideration;
- 242 (5) sells any substantial part of its securities or other property for
 243 less than adequate consideration; or

244 (6) engages in any transaction which results in a substantial
 245 diversion of its income or corpus.

246 (j) To comply with Section 315 of the County Charter, a firm of certified
 247 public accountants, under contract with the Council, must complete an
 248 annual independent audit of the Trust Fund. The complete audit must
 249 be filed with the Council and each County-funded agency, and copies
 250 made available for public inspection.

251 **33-165. Indemnification of Board Members.**

252 * * *

253 (h) *County Attorney.*

254 (1) The County Attorney must determine whether a Board member
 255 is eligible for indemnification with respect to any matter and
 256 the reasonableness of any fee, expense, or settlement.

257 (2) Unless the County Attorney approves the settlement, a Board
 258 member cannot settle a claim against another Board member
 259 using:

260 (A) County funds;

261 (B) funds of a participating agency;

262 (C) County-funded agency funds;

263 [(C)] (D) funds provided by a self-insurance program of the
 264 County; or

265 [(D)] (E) funds provided under a policy the County has with an
 266 insurance company.

267 **33-166. Amendment and Termination.**

268 (a) *Termination.* Except on termination, no part of the Trust Fund may
 269 revert to the County or a participating agency or be used for any
 270 purpose other than the exclusive benefit of participants of a retiree
 271 benefit plan. If all County retiree benefit plans are terminated and all

272 benefit claims and expenses are paid, any remaining assets in the
 273 Trust Fund relating to contributions made by the County and
 274 participating agencies must revert to the County and the participating
 275 agencies. The Trust Fund must terminate in its [entirely] entirety on
 276 the earlier of the termination of all County retiree benefit plans or the
 277 depletion of the Trust Fund. Funds may partially revert to the County
 278 or participating agencies if one or more retiree benefit plans is
 279 terminated. When a County or a County-funded agency retiree
 280 benefit plan is terminated, the assets in the Trust Fund attributable to
 281 that plan after expenses and benefits have been paid must revert to the
 282 County and the participating agencies as provided in the adoption
 283 agreement. If the County terminates all of its retiree benefit plans and
 284 a County-funded agency continues to maintain at least one retiree
 285 benefit plan, the assets attributable to each County-funded agency
 286 retiree benefit plan must be transferred to a trust which meets the
 287 requirements of Internal Revenue Code Section 115.

288 (b) *Amendments.* Any provision of this Article may be amended at any
 289 time. No amendment may:

- 290 (1) authorize any part of the Trust Fund to be used for any purpose
 291 other than the exclusive benefit of participants of retiree benefit
 292 plans and eligible dependents; or
 293 (2) cause or allow any part of the Trust Fund to revert to or become
 294 the property of the County or a County-funded agency, except
 295 as provided in Sections 33-166(a), [or] 33-167, or 33-169.

296 * * *

297 **33-168. Protection from Creditors.**

298 Any asset held by the Trust Fund is not subject to any creditor of the County
 299 or a County-funded agency and is exempt from execution, attachment, prior

300 assignment, or any other judicial relief or order for the benefit of any creditor or
301 third person.

302 **33-169. County-funded Agency Participation.**

303 (a) County Liability. Except for any obligation to refund or transfer
304 assets under subsection (b) or (c), no legal liability for benefits must
305 accrue to the County by including a County-funded agency in the
306 Trust Fund.

307 (b) Termination of Participation by a County-funded Agency. Any Trust
308 Fund assets must not revert to a County-funded agency. Assets may
309 partially revert to the County if a County-funded agency terminates at
310 least one retiree benefit plan. Only funds attributable to the
311 terminated retiree benefit plan, after benefits and expenses have been
312 paid, may revert to the County.

313 (c) Transfer of Trust Fund: If the County decides to terminate a County-
314 funded agency's participation in the Trust Fund, the County must
315 notify the County-funded agency in writing. If the County-funded
316 agency continues to maintain a retiree benefit plan, assets must be
317 transferred to a trust which meets the requirements of Internal
318 Revenue Code Section 115. Any transfer of assets from the Trust
319 Fund resulting from the termination of participation in the Trust Fund
320 must comply with the Internal Revenue Code.

321 **Sec. 2. Transition.**

322 The Consolidated Health Benefits Trust Fund mentioned in County Code
323 §33-159, as amended by Section 1 of this Act, does not create a new trust. The
324 Trust Fund is the same legal entity first created in County Code §33-159 and
325 inserted by Chapter 3, Laws of Montgomery County 2008. Any reference to the
326 Retiree Health Benefits Trust in any document produced before the effective date

327 of this Act must be treated as referring to the Consolidated Retiree Health Benefit
328 Trust referenced in County Code §33-159, as amended by Section 1 of this Act.

329 **Sec. 3. Expedited Effective Date.**

330 The Council declares that this legislation is necessary for the immediate
331 protection of the public interest. This Act takes effect on July 1, 2011.

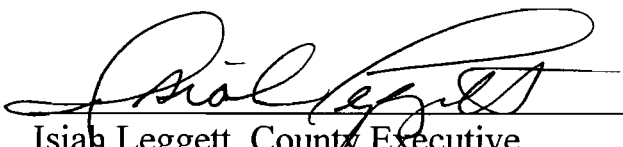
332 *Approved:*

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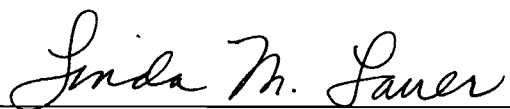
Valerie Ervin, President, County Council 6/30/2011
Date

335 *Approved:*

336 

Isiah Leggett, County Executive July 11, 2011
Date

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

338 

Linda M. Lauer, Clerk of the Council July 12, 2011
Date