

Expedited Bill No.: 27-07
Concerning: Personnel – Retirement –
Investment Authority
Revised: 10/31/2007 Draft No. 1
Introduced: November 6, 2007
Enacted: December 4, 2007
Executive: December 17, 2007
Effective: December 17, 2007
Sunset Date: None
Ch. 19, Laws of Mont. Co. 2007

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) amend the investment provisions of the Employees' Retirement System and Retirement Savings Plan to conform with the principles governing the investment and management of funds contained in the Uniform Management of Public Employee Retirement Systems Act and the Pension Protection Act of 2006; and
- (2) generally amend County law governing retirement and investments.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-35, 33-60, 33-113 and 33-125

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:

1 **Sec. 1. Sections 33-35, 33-60, 33-113 and 33-125 are amended as follows:**

2 **33-35. Definitions.**

3 * * *

4 *Fiduciary:* A person who:

- 5 (1) exercises discretionary authority to manage a retirement system;
- 6 (2) exercises authority to invest or manage assets of a retirement system;
- 7 (3) renders investment advice for a fee or other compensation about assets
8 of a retirement system or has authority or responsibility to render that
9 advice; or
- 10 (4) is a trustee on the Board of Investment Trustees.

11 However, an investment manager of an investment vehicle is only a fiduciary if it
12 holds plan assets as defined under the Employee Retirement Income Security Act
13 (ERISA) and its corresponding regulations.

14 * * *

15 *Investment manager:* A person or entity who [is:] exercises discretion to manage all
16 or part of the assets of an institutional investor.

- 17 [(1) Registered as an investment adviser under the Investment
18 Advisers Act of 1940; or
- 19 (2) A bank, as defined in that act; or
- 20 (3) An insurance company qualified to do business in more than one
21 state; and who acknowledges in writing that it is a fiduciary with
22 respect to the assets of the retirement system that it is managing.
23 However, an insurance company will be deemed to be an
24 investment manager without meeting the provisions of this
25 definition solely with respect to contracts with the insurance
26 company in existence on the day before the day all of the trustees
27 have accepted the trust in writing.]

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

(a) General.

* * *

(2) [a.] (A) The board must invest and reinvest, or cause to be invested or reinvested, as authorized in subsection (c)(1), the principal and income of the retirement system and keep the same invested without distinction between principal and income. The board has the exclusive authority to manage the assets of the retirement system. [The board may make or permit an investment manager to make individual investment selections with respect to investments described in subsections (c)(1) d., e., f., and g. of this section and with respect to personal property described in subsection (c)(1) h. The board must select investment managers to make individual investment selections with respect to investments described in subsection (c)(1) a., b., and c. of this section and with respect to real property described in subsection (c)(1) h.] However, any investment of the retirement system in existence on the day before all members have accepted the trust may remain as an investment until the earlier of:

- (i) Its maturity date, if any; or
- (ii) The date it is liquidated under the investment policy of the board[; or
- (iii) The date it is liquidated under subsection (c)(6)].

The board must hold the annuities purchased under the Amendment, Settlement and Transfer agreement under Group

54 Annuity Contract #1920 until Aetna Life Insurance Company has
55 completed its performance under that agreement.

56 [b. The board must appoint at least two (2) investment managers as
57 soon as possible after all of the members of the board have
58 accepted the trust. Within one (1) year of the date all of the
59 trustees have accepted the trust in writing, the board must have
60 appointed at least three (3) investment managers. The investment
61 manager which has contracts for the investment of the retirement
62 system's assets as of the date the council adopts this article may
63 be one of these investment managers.]

64 [c.] (B) At any time the board is selecting a new investment manager,
65 the board may have fewer than [three (3)] 3 investment
66 managers.

67 * * *

68 (c) Authorized investments.

69 (1) [Subject to subsection (a)(2) of this section, the] The board may
70 invest or permit an investment manager to invest the assets of the
71 retirement system fund in any investment it considers prudent
72 within the policies set by the board. The board must use an
73 investment manager except when investing in any pooled
74 investment vehicle, including any combined, common or
75 commingled trust fund, retirement or annuity contract, mutual
76 fund, investment company, association, or business trust. The
77 board also may authorize the Executive Director to make
78 investments in pooled investment vehicles and transition assets
79 from one investment manager to another investment manager as
80 the board specifies.], including but not limited to:

- 81 a. Bonds, debentures, notes, savings accounts, certificates of
 82 deposit, variable note arrangements, obligations of the
 83 United States Government, commercial paper, money
 84 market certificates, bankers' acceptances or other evidence
 85 of indebtedness;
- 86 b. Mortgages, certificates of mortgage pools and guaranteed
 87 mortgage pass-through certificates or other similar
 88 investments in mortgages;
- 89 c. Stocks (regardless of class), or other evidence of
 90 ownership, in any corporation, mutual fund, investment
 91 company, association, or business trust;
- 92 d. Combined, common or commingled trust funds;
- 93 e. Retirement or annuity contracts;
- 94 f. Guaranteed investment contracts;
- 95 g. Group annuity contracts; and
- 96 h. Real and personal property of all kinds, including
 97 leaseholds on improved or unimproved real estate, oil,
 98 mineral or gas properties, or royalty interests or rights.
 99 However, any investment in real property is limited to a
 100 pooled investment arrangement in which the board has no
 101 power or right to manage the real estate property, provided
 102 that the pooled arrangement does not invest more than
 103 10% of its assets in real property located in Montgomery
 104 County.]
- 105 (2) If an investment through any combined, common or commingled
 106 trust fund exists, the declaration of trust of that fund is a part of
 107 the retirement system trust under this [article] Article.

108 (3) The board [and] or an investment manager must not invest [the]
109 any retirement system [assets] asset in any [bonds, notes or debt
110 instruments] bond, note, or debt instrument issued by:

111 [a.] (A) The [county] County;

112 [b.] (B) Any political subdivision within the [county] County;

113 [c.] (C) Any agency supported or financed wholly or partly by
114 taxes levied by the [county council] County Council; or

115 [d.] (D) Any agency supported by bond issues underwritten by
116 the [county] County.

117 * * *

118 (g) Investment management agreements.

119 (1) Appointment of investment manager. Except as permitted under
120 subsection [(a)(2)] (c)(1), the board must appoint investment
121 managers to manage, acquire, or dispose of all or some of the
122 assets of the retirement system. The board may dismiss any
123 manager the board appoints. The fees charged by any manager
124 are expenses of the retirement system.

125 (2) Investment contract. Any contract must provide that when the
126 investment manager is making individual investment selections,
127 the investment manager must make the individual investment
128 selections subject to the written policies of the board. In any
129 contract, the board must identify the assets that are the subject to
130 the contract. In any contract, the board may give an investment
131 manager the right to invest the assets of the retirement system
132 specified in the contract without prior notice to or approval by the
133 board. In any contract, the board may limit the investment of a
134 specified portion of the retirement system to a certain type of

135 property, such as but not limited to common stocks, bonds, or
 136 real estate. If a contract only applies to a portion of the assets of
 137 the retirement system and specifies the type of property to be
 138 invested in, the manager must achieve diversification within the
 139 specified category of property, but is not responsible for
 140 diversification of investments of the entire retirement system. In
 141 any contract, the board may delegate to the investment manager
 142 any [of the powers] power or discretion conferred on the board
 143 under this [article] Article and may provide that the investment
 144 manager must have custody and control of certain assets of the
 145 retirement system.

- 146 (3) Monitoring of investment manager. The board must monitor the
 147 performance of the managers and may terminate any
 148 appointment. Monitoring may include any tests or analyses that
 149 the board considers prudent in the circumstances to ensure the
 150 stability and growth of the retirement system.

151 33-113. Definitions

152 * * *

- 153 (h) Investment manager means a person or entity who exercises discretion
 154 to manage all or part of the assets of an institutional investor. The
 155 investment manager is a fiduciary as defined in Section 33-35.

156 [(1) who is:

- 157 (A) registered as an investment adviser under the Investment
 158 Advisers Act of 1940;
 159 (B) a bank, as defined in that act; or
 160 (C) an insurance company qualified to do business in more
 161 than one state; and

162 (2) which acknowledges in writing that it is a fiduciary with respect
163 to the assets of the retirement savings plan that it is managing.]

164 * * *

165 **33-125. Powers and Duties of the Board of Investment Trustees**

166 * * *

167 (c) Authorized investments.

168 (1) The Board may invest or permit an investment manager to invest
169 the assets of the retirement savings plan in any investment it
170 considers prudent within the policies set by the Board. The
171 Board must use an investment manager except when making an
172 investment in any pooled investment vehicle, including any
173 combined, common or commingled trust fund, retirement or
174 annuity contract, mutual fund, investment company, association,
175 or business trust. The Board also may authorize the Executive
176 Director to make investments in pooled investment vehicles and
177 transition assets from one investment manager to another
178 investment manager as the Board specifies. [, including but not
179 limited to:

180 (A) bonds, debentures, notes, savings accounts, certificates of
181 deposit, variable note arrangements, obligations of the
182 United States government and other sovereign
183 governments, commercial paper, money market
184 certificates, bankers' acceptance or other evidence of
185 indebtedness;

186 (B) mortgages, certificates of mortgage pools and guaranteed
187 mortgage pass-through certificates, or other similar
188 investments in mortgages;

- 189 (C) stocks (regardless of class), or other evidences of
190 ownership, in any corporation, mutual fund, investment
191 company, association, or business trust;
- 192 (D) combined, common or commingled trust funds;
- 193 (E) retirement or annuity contracts;
- 194 (F) guaranteed investment contracts;
- 195 (G) group annuity contracts; and
- 196 (H) real and personal property of all kinds, including
197 leaseholds on improved or unimproved real estate, oil,
198 mineral or gas properties, or royalty interests or rights.
199 However, any investment in real property is limited to a
200 pooled investment arrangement in which the Board has no
201 power or right to manage the real estate property, provided
202 that the pooled arrangement does not invest more than 10
203 percent of its assets in real property located in
204 Montgomery County. The percentage limitation must be
205 calculated by applying the percentage to the market value
206 of the total assets as of the close of the preceding June 30.
207 If the market value of the assets of the retirement savings
208 plan exceeds the percentage limitation of this subparagraph
209 as a result of market forces, the Board or the investment
210 manager, without direction from the Board, is not required
211 to sell any existing equity investments. The Board may
212 obtain valuations and take appropriate steps to comply
213 with this percentage limitation.]

214 (2) If an investment through any combined, common, or commingled
 215 trust fund exists, the declaration of trust of that fund is a part of
 216 the retirement savings plan trust.

217 (3) The [Board] board [and] or any investment manager must not
 218 invest [the] any retirement savings plan [assets] asset in any
 219 [bonds, notes, or debt instruments] bond, note, or debt instrument
 220 issued by:

221 (A) Montgomery County;

222 (B) any political subdivision within Montgomery County;

223 (C) any agency supported or financed wholly or partly by taxes
 224 levied by the County Council; or

225 (D) any agency supported by bond issues underwritten by
 226 Montgomery County.

227 However, the Board and any investment manager may invest
 228 plan assets in such bonds, notes, and debt instruments if held
 229 indirectly through a mutual fund, subject to any limit in the
 230 Internal Revenue Code.

231 [(4) The Board may invest and may permit an investment manager to
 232 invest the assets of the retirement savings plan fund in any
 233 combination of the investment vehicles in this subsection as the
 234 Board considers prudent.]

235 **Sec. 2. Expedited Effective Date.**

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

239 Approved:

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241

Michael J. Knapp

5 DEC 07

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Michael J. Knapp, President, County Council

Date

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244 Approved:

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Isiah Leggett

Dec 17, 2007

247

Isiah Leggett, County Executive

Date

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249 This is a correct copy of Council action.

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251

Linda M. Lauer

Dec. 17, 2007

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Linda M. Lauer, Clerk of the Council

Date