

Expedited Bill No. 28-07  
Concerning: Personnel – Other Post  
Employment Benefits Trust –  
Establishment  
Revised: 3/25/08 Draft No. 4  
Introduced: November 13, 2007  
Enacted: April 1, 2008  
Executive: April 10, 2008  
Effective: April 10, 2008  
Sunset Date: None  
Ch. 3, Laws of Mont. Co. 2008

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Council President at the Request of the County Executive

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An Expedited Act to:

- (1) establish a certain trust to fund certain County retiree benefit plans; and
- (2) ~~[[establish]]~~ designate a Board to manage the trust.

By adding

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Article XI, Other Post Employment Benefits Trust

<b>Boldface</b>	Heading or a defined term.
<u>Underlining</u>	Added to existing law by original bill.
[Single boldface brackets]	Deleted from existing law by original bill.
<u>Double underlining</u>	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:*

1           **Sec. 1 Chapter 33 is amended by adding Article XI as follows:**

2                           **Article XI Other Post Employment Benefits Trust**

3   **33-158: Definitions.**

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

5           (a) *Board*: The Board of Investment Trustees established under Article III.

6           ~~[(a)]~~ (b) *Contribution*: payment made to the Trust Fund by the County.

7           ~~[(b)]~~ (c) *Custodian*: the Director of Finance.

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

10           ~~[(d)]~~ *OPEB Board or Board*: the Board of Trustees established under this Article  
 11           to manage and invest Trust Fund assets.]]

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

15           (f) *Retiree benefit plan*: any retiree medical plan, dental plan, vision plan, or life  
 16           insurance plan administered by the Chief Administrative Officer.

17           (g) *Trust Fund*: the ~~[[Other Post Employment]]~~ *Retiree Health Benefits*  
 18           ~~[[OPEB]]~~ *RHB* Trust Fund established to pay all or part of the benefits  
 19           provided under any retiree benefit plan.

20   **33-159: Establishment of Trust.**

21           (a) *County Retiree Benefit Plans*. The Chief Administrative Officer must  
 22           include the terms of any retiree benefit plan, including eligibility and  
 23           benefits, including those benefits collectively bargained, in a plan document.  
 24           All benefits must meet any applicable Federal or State requirement. Subject  
 25           to the County's obligations under collective bargaining agreements and the  
 26           collective bargaining laws, to the extent applicable, the ~~[[The]]~~ Chief  
 27           Administrative Officer may amend a plan document at any time. Subject

28 the County's obligations under collective bargaining agreements and the  
 29 collective bargaining laws, to the extent applicable, any [[Any]] retiree  
 30 benefit plan may be terminated at any time for any reason. No retiree  
 31 benefit is guaranteed, except as expressly provided by a contract entered into  
 32 by the County [[and the beneficiary]].

33 (b) Establishment of Trust. [[A]] An Other Post Employment Benefits Trust  
 34 [[trust]], known as the [[Other Post Employment]] Retiree Health Benefits  
 35 [[OPEB]] (RHB) Trust, effective July 1, 2007, is established to fund all or  
 36 a portion of benefits provided under the County retiree benefit plans. The  
 37 Trust is intended solely as a funding mechanism to pay for County retiree  
 38 benefits provided under the terms of any retiree benefit plan, and does not  
 39 create any obligation by the County to provide any benefit listed in any  
 40 County retiree benefit plan. Any participant in a retiree benefit plan, any  
 41 current or former County employee, or any current or former participating  
 42 agency employee, has no right to any asset in the Trust Fund. The Trust  
 43 Fund may be, but is not required to be, the sole source of funding for any  
 44 County retiree benefit plan.

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

- 46 (1) be used to perform its essential government function of providing  
 47 benefits, including health and life insurance benefits, to participants  
 48 and eligible dependents; and  
 49 (2) qualify as a tax exempt trust under Internal Revenue Code Section  
 50 115.

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

53 (e) Exclusive Benefit. The Trust Fund must be held for the exclusive benefit of  
 54 participants in retiree benefit plans and eligible dependents, and used only to

55 provide benefits and defray reasonable expenses of administering retiree  
 56 benefit plans. Trust Fund assets must not revert to the County unless the  
 57 County terminates all retiree benefit plans. Some funds may partially revert  
 58 to the County if at least one benefit plan is terminated under Section 33-166.

59 **33-160 Board of Trustees.**

60 ~~[(a)]~~ *Management.* ~~[[An OPEB Board of Trustees must manage the Trust Fund.]]~~  
 61 The Board of Investment Trustees established under Section 33-59 is  
 62 responsible for managing the Trust Fund. The [[OPEB]] Board must hold  
 63 legal title to all assets of the Trust Fund, but may transfer some incidents of  
 64 ownership to the [[OPEB]] Board's agents as provided in this Article. The  
 65 powers and duties of the Board under this Article are not effective until the  
 66 Board members have accepted the Trust Fund in writing. Within 10 days  
 67 after the Council confirms a Board member, the member must certify in  
 68 writing to the Chief Administrative Officer that the member accepts the  
 69 Trust Fund and will administer its affairs with care, skill, prudence, and  
 70 diligence.

71 ~~[(b)]~~ *Membership.*

- 72 (1) The OPEB Board has 3 members.  
 73 (2) The County Executive must appoint 3 voting, ex officio members of  
 74 the OPEB Board, subject to County Council confirmation. Each  
 75 member must serve indefinitely while holding the respective office.  
 76 These members should be:  
 77 (A) the Director of Finance;  
 78 (B) the Director of Human Resources; and  
 79 (C) the County Council Staff Director.

80 (c) *Temporary Vacancy.* If there is a temporary vacancy on the OPEB Board  
 81 because of an unfilled position or an extended absence of an OPEB Board

82 member, the County Executive may appoint, subject to Council  
 83 confirmation, a temporary OPEB Board member to serve until the position is  
 84 filled or the absent member returns to service.

85 (d) Compensation. Each Board member serves on the OPEB Board without  
 86 additional compensation from the County and without compensation from  
 87 any other source. The OPEB Board must reimburse any Board member for  
 88 any expense approved by the OPEB Board. An OPEB Board member must  
 89 not receive reimbursement for any expense from any other source.

90 (e) Acceptance of Trust. Within 10 days after the Council confirms an OPEB  
 91 Board member, the member must certify in writing to the Chief  
 92 Administrative Officer that the member accepts the Trust and will  
 93 administer its affairs with care, skill, prudence, and diligence.

4 (f) Written policies. The OPEB Board must establish written policies to  
 95 administer and invest funds under this Article and transact the Trust's  
 96 business.

97 (g) Officers. The OPEB Board must select a chair, vice chair, and secretary  
 98 from its members.

99 (1) The chair must preside at Board meetings and may take administrative  
 100 action, including executing an instrument, on behalf of the Board. A  
 101 person may rely in good faith on an act of the chair as legally valid.

102 (2) The vice chair must perform the duties and exercise the powers of the  
 103 chair when:

104 (A) the chair is unavailable to perform those duties; or

105 (B) the OPEB Board determines that the chair is otherwise unable  
 106 to perform those duties.

107 (3) The secretary must record the proceedings and actions of the OPEB  
 108 Board and may certify a document or action of the OPEB Board. A

109 person may rely in good faith on the secretary's certification as proof  
 110 of a document or action.

111 (h) Meetings and actions.

112 (1) The OPEB Board must meet at least once during each calendar  
 113 quarter. The chair, or 2 members of the OPEB Board, may call a  
 114 meeting in the manner and at times and places provided under the  
 115 Board's policies. The OPEB Board is a public body under the State  
 116 Open Meetings Act.

117 (2) Each OPEB Board member has one vote. Two OPEB Board members  
 118 constitute a quorum. Two OPEB Board members must agree for the  
 119 OPEB Board to take any action.

120 (3) The OPEB Board may act without a meeting. All Board members  
 121 must concur in writing for the Board to approve any action without a  
 122 meeting.

123 (4) The OPEB Board may adopt operating procedures consistent with this  
 124 Section and other applicable law.

125 (5) The OPEB Board may authorize a Board member to execute  
 126 instruments on behalf of the Board. The authority must be in writing  
 127 and specifically describe each instrument and how the member must  
 128 execute the instrument.

129 (i) Records.

130 (1) The OPEB Board must keep investment accounts and records,  
 131 including separate accounts for participating agencies, necessary to  
 132 calculate the Trust Fund's value.

133 (2) The Board may designate a person to maintain those records.

134 (3) All Trust Fund accounts and records are subject to State laws on  
 135 public records.]]

136 **33-161: Contributions and Payments.**

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

141 (b) Acceptance of Contributions. The [[OPEB]] Board must accept all  
142 contributions deposited in the Trust Fund and held by the custodian as Trust  
143 Fund property. The [[OPEB]] Board is not responsible for calculating or  
144 collecting any contribution, but is only responsible for contributions  
145 deposited to the Trust Fund and amounts held in the Trust Fund.

146 (c) Payments. Payments may be made from the Trust Fund in those amounts  
147 directed by the Chief Administrative Officer only to pay for all or part of the  
8 benefits provided by any County retiree benefit plan, administrative  
149 expenses relating to a retiree benefit plan and expenses of the Trust Fund.  
150 The [[OPEB]] Board is not liable for any payment directed by the Chief  
151 Administrative Officer and is not required to confirm compliance with any  
152 retiree benefit plan.

153 (d) Expenses. The [[OPEB]] Board must be reimbursed for expenses solely  
154 incurred in the administration of the Trust Fund and must pay from the Trust  
155 Fund expenses reasonably incurred by the Chief Administrative Officer to  
156 administer any County retiree benefit plan to the extent that those expenses  
157 have not been paid by the County. The [[OPEB]] Board may pay expenses  
158 incurred under Section 33-162(h)(11) without direction of the Chief  
159 Administrative Officer.

160 **33-162: Trust Fund Management.**

- 161 (a) General. The [[OPEB]] Board has the exclusive authority to manage the  
162 Trust Fund's assets. All powers and duties required to manage the Trust  
163 Fund are vested in the [[OPEB]] Board by this Article.
- 164 (b) Procurement. Chapter 11B does not apply to the procurement of goods and  
165 services by the [[OPEB]] Board for the Trust Fund.
- 166 (c) Transfer agents.
- 167 (1) The [[OPEB]] Board may register any assets in its own name or in the  
168 name of a nominee. The [[OPEB]] Board or its agent must keep  
169 records that show that the investments are part of the Trust Fund.
- 170 (2) The [[OPEB]] Board may form a partnership under State law to hold  
171 or transfer assets as the Board's nominee.
- 172 (3) The [[OPEB]] Board may designate in writing a trustee to hold or  
173 transfer assets as the Board's nominee.
- 174 (4) The [[OPEB]] Board must provide that any trustee or partnership that  
175 the Board designates must act only as agent of the Board. The Board  
176 may set other conditions that the Board finds prudent.
- 177 (5) Any trustee or partnership that the [[OPEB]] Board designates may  
178 retain the services of a bank or other financial institution to conduct  
179 business.
- 180 (6) The [[OPEB]] Board must maintain the indicia of ownership of the  
181 Trust Fund's assets within the jurisdiction of the United States federal  
182 courts, except as authorized in regulations that the Executive adopts  
183 under method (2). Those regulations must be substantially equivalent  
184 to federal regulations under the Employee Retirement Income  
185 Security Act (ERISA) regarding indicia of ownership of plan assets.
- 186 (d) Authorized investments.



- 187           (1) The [[OPEB]] Board may invest or permit an investment manager to  
188 invest the assets of the Trust Fund in any investment it considers  
189 prudent within the Board's policies, except as otherwise prohibited in  
190 this Section. The Board must use an investment manager except when  
191 making an investment in any type of pooled investment vehicle,  
192 including any combined, common, or commingled trust fund,  
193 retirement or annuity contract, mutual fund, investment company,  
194 association or business trust. The Board also may authorize the Board  
195 [[of Trustees]] staff to make investments in pooled investment  
196 vehicles and transition assets from one investment manager to another  
197 investment manager.
- 198           (2) The [[OPEB]] Board or any investment manager must not invest in  
199 real property, including securities based on ownership or other  
200 interests in real property, unless the investment is a pooled investment  
201 in which the Board has no power to manage the real property. A  
202 pooled investment must not invest more than 10 percent of its assets  
203 in real property located in the County. This 10 percent limit applies to  
204 the market value of the total assets on the preceding June 30. If the  
205 market value of investments in real property in the County exceeds  
206 the 10-percent limit as a result of market forces, the Board or the  
207 investment manager need not sell an existing equity investment. The  
208 Board may obtain valuations and take appropriate steps to comply  
209 with this 10-percent limit.
- 210           (3) If an investment through any combined, common, or commingled  
211 trust fund exists, the declaration of trust of that fund is a part of the  
212 Trust Fund.

213           (4) The [[OPEB]] Board and any investment manager must not invest any  
 214           Trust Fund asset in any bond, note, or debt instrument issued by:

215           (A) the County;

216           (B) a political subdivision in the County; or

217           (C) an agency supported by bond issues underwritten by the  
 218           County.

219           However, the Board or any investment manager may invest plan  
 220           assets in bonds, notes, and debt instruments of any of these entities if  
 221           the investment is held indirectly through a mutual fund or other  
 222           pooled investment vehicle and complies with any limit in the Internal  
 223           Revenue Code.

224           (e) [[Investment Policy]] *Written Policies.* The [[OPEB]] Board must establish  
 225           an investment policy and guidelines appropriate for the Trust Fund, and may  
 226           review and change the policy and guidelines as necessary. The Board must  
 227           establish such other written policies to administer and invest funds under this  
 228           Article and transact the Trust's business.

229           (f) *Investment Manager.*

230           (1) Except as provided in subsection (d)(1), the [[OPEB]] Board must  
 231           appoint one or more investment managers to invest all or part of the  
 232           [[OPEB]] RHB trust fund assets consistent with applicable guidelines.  
 233           If the Board has properly appointed an investment manager, the Board  
 234           is not liable for any act or omission of the manager and is not  
 235           otherwise responsible for the investment of funds allocated to the  
 236           investment manager.

237           (2) Any investment management contract must provide that when the  
 238           investment manager is making individual investment selections, the  
 239           investment manager must make individual investment selections

240 subject to applicable Board policies. In any contract, the Board may  
 241 limit the investment of a specified portion of the Trust Fund to a  
 242 certain type of property. In any contract, the Board may delegate to  
 243 the investment manager any power or discretion conferred on the  
 244 Board under this Article and may assign to the investment manager  
 245 custody and control of certain Trust Fund assets. The fees charged by  
 246 any manager are expenses of the Trust Fund.

247 (3) The [[OPEB]] Board must monitor the performance of each  
 248 investment manager and may terminate any appointment. Monitoring  
 249 may include any tests or analyses that the Board finds prudent in the  
 250 circumstances to assure the Trust Fund's stability and growth.

251 (g) Available Cash. The [[OPEB]] Board may keep cash available in an amount  
 252 it finds prudent to pay benefits and expenses. The Board may keep cash on  
 253 deposit in one or more banks or trust companies organized under the laws of  
 254 any state or the United States, but the amount on deposit in any bank or trust  
 255 company must not exceed 25% of the paid-in capital and surplus of that  
 256 bank or trust company.

257 (h) [[OPEB]] Board Powers. Except as otherwise provided in this Article, the  
 258 [[OPEB]] Board may:

- 259 (1) buy or subscribe for any investment with any cash, at a premium or  
 260 discount, and retain the investment;
- 261 (2) sell, exchange, convey, transfer, lease for any period, pledge,  
 262 mortgage, grant options, contract with respect to, or otherwise  
 263 encumber or dispose, at public or private sale, for cash or credit or  
 264 both, any part of the Trust Fund;
- 265 (3) subject to Section 33-165(h)(2), sue, defend, compromise, arbitrate,  
 266 compound, and settle any debt, obligation, claim, suit, or legal

- 267 proceeding involving the Trust Fund, and reduce the rate of interest  
268 on, extend or otherwise modify, foreclose upon default, or otherwise  
269 enforce any debt, obligation, or claim;
- 270 (4) retain a part of the Trust Fund assets uninvested in preparation for  
271 distributions;
- 272 (5) exercise any option on any investment for conversion into another  
273 investment, exercise any right to subscribe for additional investments,  
274 and make all necessary payments;
- 275 (6) join in, consent to, dissent from, oppose, or deposit in connection with  
276 the reorganization, recapitalization, consolidation, sale, merger,  
277 foreclosure, or readjustment of the finances of any corporation or  
278 property in which the assets of the Trust Fund are invested, or the  
279 sale, mortgage, pledge or lease of that property or the property of any  
280 such corporation on any terms that the Board finds prudent; exercise  
281 any options, make any agreements or subscriptions, pay any expenses,  
282 assessments, or subscriptions, and take any other action in connection  
283 with these transactions that the [[OPEB]] Board finds prudent; and  
284 accept and hold any investment issued in or as a result of any such  
285 proceeding;
- 286 (7) vote, in person or by proxy, at any election of any corporation in  
287 whose stock the assets of the Trust Fund are invested, and exercise,  
288 personally or by any power of attorney, any right appurtenant to any  
289 investment held in the Trust Fund, and give general or specific proxies  
290 or powers of attorney with or without power of substitution;
- 291 (8) sell at a public or private sale, enter into an option to sell, mortgage,  
292 lease, partition, or exchange any real property at prices and for terms  
293 that the Board finds prudent. The Board may execute and deliver

- 294 deeds of conveyance and all assignments, transfers, and other legal  
295 instruments to pass ownership to a buyer, free and discharged of all  
296 liens;
- 297 (9) renew or extend any mortgage, on any terms that the Board finds  
298 prudent, and increase or reduce the rate of interest on any mortgage or  
299 modify the terms of any mortgage or of any guarantee as the Board  
300 finds prudent to protect the Trust Fund or preserve the value of the  
301 investment; waive any default or enforce any default in a manner that  
302 the Board finds prudent; exercise and enforce any right of foreclosure,  
303 bid on property in foreclosure, take a deed in lieu of foreclosure with  
304 or without paying a consideration, and release the obligation on the  
305 bond secured by the mortgage; and exercise and enforce in any legal  
306 action any right or remedy regarding any mortgage or guarantee;
- 307 (10) form a corporation or partnership under the laws of any jurisdiction,  
308 or acquire an interest in or otherwise make use of any corporation or  
309 partnership already formed to invest in and hold title to any property;
- 310 (11) incur and pay expenses for agents, financial advisors, actuaries,  
311 accountants, and legal counsel, if those expenses are incurred solely to  
312 perform the Board's duties under the Trust;
- 313 (12) borrow, raise or lend money for the purpose of the Trust Fund, in any  
314 amounts and on any terms and conditions as the Board in its discretion  
315 finds prudent; for any money borrowed, issue a promissory note and  
316 secure the repayment of this note by pledging or mortgaging all or  
317 part of the Trust Fund;
- 318 (13) hold, buy, transfer, surrender, and exercise all other incidents of  
19 ownership of any insurance or annuity contract; and

320 (14) do any act that the Board finds necessary and exercise the powers of  
 321 this Article to manage the Trust Fund. The Board may exercise all  
 322 powers to manage the assets that an individual could exercise to  
 323 manage property owned by that individual.

324 (i) Prohibited Transactions. The [[OPEB]] Board must not engage in any  
 325 transaction between the Trust and the County or any entity controlled by the  
 326 County or a participating agency in which the Board:

327 (1) lends any part of its income or corpus without receiving adequate  
 328 security and a reasonable rate of interest;

329 (2) pays any compensation more than a reasonable allowance for salaries  
 330 or other compensation or services actually rendered;

331 (3) makes any service available on a preferential basis;

332 (4) makes any substantial purchase of securities or other property for  
 333 more than adequate consideration;

334 (5) sells any substantial part of its securities or other property for less than  
 335 adequate consideration; or

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

338 **33-163: Board Duties and Responsibilities.**

339 (a) Duty of Care. The [[OPEB]] Board must discharge its duties with respect to  
 340 the Trust Fund:

341 (1) only in the interest of the participants in retiree benefit plans and  
 342 eligible dependents;

343 (2) only to provide benefits to participants in retiree benefits plans and to  
 344 defray reasonable expenses of administering and operating the Trust  
 345 Fund;

- 346           (3) with the care, skill, prudence and diligence under the circumstances  
 347               then prevailing that a prudent person acting in a like capacity and  
 348               familiar with such matters would use in the conduct of an enterprise of  
 349               a like character and with like aims;
- 350           (4) by diversifying the investments of the Trust Fund to minimize the risk  
 351               of large losses, unless it is clearly not prudent to diversify under the  
 352               circumstances; and
- 353           (5) in accordance with the laws, policies, and instruments governing the  
 354               Trust.

355           (b) Records. The [[OPEB]] Board must maintain accurate and detailed accounts  
 356               of each investment, receipt, disbursement, and other transaction, including  
 357               any specific record required by law, separate accounting for participating  
 358               agencies and any additional record it finds necessary. All accounts, books  
 359               and records are subject to applicable State laws governing maintenance and  
 360               disclosure of public records.

361           (c) Annual Accounting. The Trust Fund fiscal year is the same as the County  
 362               fiscal year. On or before January 1 of each year, the [[OPEB]] Board must  
 363               file with the Chief Administrative Officer a written account, listing each  
 364               investment, receipt, disbursement, and other transaction during the preceding  
 365               fiscal year or during the period from the close of the last preceding fiscal  
 366               year to any interim date that the Board selects. The account must include a  
 367               list of the Trust Fund assets and the current fair market value of each asset at  
 368               the end of that period. The account must include the separate accounts of  
 369               the participating agencies. If a current fair market value is not available for  
 370               or does not apply to a particular investment, the Board must assign a value to  
 71               that investment. The Board must apply the investment valuation method on

372 a consistent basis. If the Board changes the investment valuation method,  
 373 the Board must notify the Executive and Council of the change.

374 (d) Ethics. The [[OPEB]] Board is subject to Chapter 19A. A[[An OPEB]]  
 375 Board member must not:

376 (1) be a party to any transaction engaged in by the Board or an investment  
 377 manager involving the assets of the Trust Fund;

378 (2) use the gains or profits of the Trust Fund for any purpose except to  
 379 make investments or payments authorized by the Board;

380 (3) deal with the assets of the Trust Fund for the member's own interest  
 381 or account;

382 (4) act in any transaction involving the Trust Fund on behalf of a party  
 383 whose interests are adverse to the interests of the Trust Fund or the  
 384 interests of participants or beneficiaries of the Trust Fund; or

385 (5) become an endorser or surety, or in any manner an obligor, for money  
 386 loaned to or borrowed from the Board.

387 **33-164 Custodian.**

388 (a) General. The Director of Finance is the custodian of the Trust Fund assets.  
 389 The Director must give bond with a surety and for a period and in an amount  
 390 as the [[OPEB]] Board determines. Each payment from the Trust Fund must  
 391 be made by the Director, the Director's designee, or 2 persons designated by  
 392 the Board acting jointly. The Board must file a copy of its resolution  
 393 designating the 2 persons, with specimen signatures of those persons, with  
 394 the Director to confirm their authority to make payments.

395 (b) Contracts. If the [[OPEB]] Board approves, the Director of Finance may  
 396 make written contracts with banks, trust companies, insurance companies or  
 397 investment companies authorized to do business in any state for the safe  
 398 custody of investments, banking services, the payment of benefits and



399 expenses, and any other function necessary to manage and safeguard the  
 400 assets of the Trust Fund.

401 (c) Procurement. Chapter 11B does not apply to the procurement of goods and  
 402 services for the Trust Fund by the Director of Finance.

403 **33-165: Indemnification of [[OPEB]] Board Members.**

404 (a) General. The County must indemnify each member of the [[OPEB]] Board  
 405 who is or may become a party to any legal action, including any  
 406 administrative or investigative proceeding, because of service as a Board  
 407 member, subject to the conditions in this Section.

408 (b) Standards; payments.

409 (1) The County must indemnify a Board member:

410 (A) with respect to civil matters, if the member acted in good faith  
 411 and in a manner that the member reasonably believed to be in  
 412 the best interest of the Trust Fund; and

413 (B) with respect to criminal matters, if the member had no  
 414 reasonable cause to believe that the member's conduct was  
 415 unlawful.

416 (2) If the County indemnifies a Board member under this Section, the  
 417 County must indemnify the member for any expense when the  
 418 member incurs the expense, including:

419 (A) reasonable attorney fees;

420 (B) judgments;

421 (C) damages;

422 (D) fines; and

423 (E) settlements.

424 (c) Effect of Terminating any legal action. The termination of any legal action  
 425 does not, by itself, create a presumption that a Board member did not act in

426 good faith and in a manner reasonably believed to be in the best interest of  
 427 the Trust Fund. The termination of a criminal proceeding does not, by itself,  
 428 create a presumption that a Board member had reasonable cause to believe  
 429 that any conduct was unlawful.

430 (d) Exceptions. The County must not indemnify a Board member if:

431 (1) the member is found by a court or other tribunal to be liable for gross  
 432 negligence or willful and wanton misconduct in the performance of a  
 433 duty to the Trust Fund; or

434 (2) liability arises from an action that occurred before the date when all  
 435 Board members accepted the Trust Fund in writing.

436 (e) Recovery of Payments. If the County Attorney finds that any  
 437 indemnification payment was made that was outside the scope of the  
 438 indemnification allowed under this Section, the County Attorney must take  
 439 appropriate action on behalf of the County to recover that payment.

440 (f) Insurance Provided. The County must provide insurance for each Board  
 441 member against any liability asserted against or incurred by the member  
 442 with respect to service on the Board. Assets of the Trust Fund must not be  
 443 used to pay any premium. The County may self-insure, wholly or partly, for  
 444 this purpose. If the County does not provide adequate insurance coverage or  
 445 indemnification under this Section, a Board member need not pay any  
 446 amount attributable to liability incurred by serving on the Board and the  
 447 County must pay any amount due.

448 (g) Defenses. The County may assert the defense of governmental immunity,  
 449 and any other available defense, in any legal action arising out of the actions  
 450 of the Board.

451 (h) County Attorney.

- 452           (1) The County Attorney must determine whether a Board member is  
 453           eligible for indemnification with respect to any matter and the  
 454           reasonableness of any fee, expense, or settlement.
- 455           (2) Unless the County Attorney approves the settlement, a Board member  
 456           cannot settle a claim against another Board member using:
- 457               (A) County funds;  
 458               (B) funds of a Participating agency;  
 459               (C) funds provided by a self-insurance program of the County; or  
 460               (D) funds provided under a policy the County has with an insurance  
 461               company.

462 **33-166: Amendment and Termination.**

- 463           (a) Termination. Except on termination, no part of the Trust Fund may revert to  
 464           the County or a participating agency or be used for any purpose other than  
 465           the exclusive benefit of participants of a retiree benefit plan. If all County  
 466           retiree benefit plans are terminated and all benefit claims and expenses are  
 467           paid, any remaining assets in the Trust Fund relating to contributions made  
 468           by the County and participating agencies must revert to the County and the  
 469           participating agencies. The Trust Fund must terminate in its entirety on the  
 470           earlier of the termination of all County retiree benefit plans or the depletion  
 471           of the Trust Fund. Funds may partially revert to the County or participating  
 472           agencies if one or more retiree benefit plans is terminated. When a County  
 473           retiree benefit plan is terminated, the assets in the Trust Fund attributable to  
 474           that plan after expenses and benefits have been paid must revert to the  
 475           County and the participating agencies as provided in the adoption  
 476           agreement.
- 77           (b) Amendments. Any provision of this Article may be amended at any time.  
 478           No amendment may:

479 (1) authorize any part of the Trust Fund to be used for any purpose other  
 480 than the exclusive benefit of participants of retiree benefit plans and  
 481 eligible dependents; or

482 (2) cause or allow any part of the Trust Fund to revert to or become the  
 483 property of the County, except as provided in Sections 33-166(a) or  
 484 33-167.

485 (c) Compliance with Applicable Law. The Council may amend the Trust at any  
 486 time, retroactively if required, if found necessary to conform to any  
 487 requirement of State law, the Internal Revenue Code or any similar act or  
 488 any amendments or corresponding regulations or applicable guidance.

489 **33-167: Participating Agencies.**

490 (a) Participating Agencies. An agency permitted to participate in County  
 491 benefit plans under Section 20-37(b) which chooses to participate in a retiree  
 492 benefit plan must participate in the Trust Fund. However, a participating  
 493 agency must be eligible to participate under Internal Revenue Code Section  
 494 115. Each participating agency in the Trust Fund must execute an adoption  
 495 agreement in a form satisfactory to the Chief Administrative Officer and  
 496 must submit any information the Chief Administrative Officer requires.  
 497 Except for any obligation to refund assets under subsection (b), legal  
 498 liability must not accrue to the County by including any participating agency  
 499 in the Trust Fund. Each participating agency must be fully responsible for  
 500 its pro rata cost of coverage, including any required annual contribution to  
 501 the County and its share of administrative expenses.

502 (b) Termination of Participating Agency. If a participating agency decides to  
 503 terminate participation in a retiree benefit plan and the Trust Fund, the  
 504 agency must notify the Chief Administrative Officer in writing. The Chief  
 505 Administrative Officer and the participating agency must agree on a date to

506 end the agency's participation. Any transfer of assets from the Trust Fund  
507 resulting from the termination of an agency's participation must comply  
508 with the Internal Revenue Code and the adoption agreement between the  
509 County and the participating agency.

510 **33-168: Protection from Creditors.**

511 Any asset held by the Trust Fund is not subject to any creditor of the County and is  
512 exempt from execution, attachment, prior assignment, or any other judicial relief or order  
513 for the benefit of any creditor or third person.

514 **Sec. 2. Expedited Effective Date.**

515 The Council declares that this legislation is necessary for the immediate protection  
516 of the public interest. This Act takes effect on the date when it becomes law.

517 *Approved:*

8

519 Michael J. Knapp 2 APRIL 08  
Michael J. Knapp, President, County Council Date

520 *Approved:*

521 Isiah Leggett April 10, 2008  
522 Isiah Leggett, County Executive Date

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

524 Linda M. Lauer April 15, 2008  
525 Linda M. Lauer, Clerk of the Council Date