

Expedited Bill No. 35-04
Concerning: Personnel – Retirement –
Deferred Compensation, Board
of Investment Trustees
Revised: 12-7-04 Draft No. 4
Introduced: October 19, 2004
Enacted: December 7, 2004
Executive: December 15, 2004
Effective: December 15, 2004
Sunset Date: None
Ch. 30, Laws of Mont. Co. 2004

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) allow the County to sponsor additional deferred compensation plans under collective bargaining agreements with employee representatives;
- (2) revise the membership of the Board of Investment Trustees by adding certain public members and representatives of certain employee organizations; and
- (3) generally amend the law concerning deferred compensation plans and the composition of the Board of Investment Trustees.

By adding

Montgomery County Code
Chapter 33, Personnel and Human Resources
Article IX. Deferred Compensation.
Section 33-146B, Collectively Bargained Plans.

By amending

Chapter 33, Personnel and Human Resources
Section 33-59, Board of Investment Trustees.
Section 33-141, Definitions.

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:

27 appointment]]. Any trustee appointed under this

28 subparagraph must not vote on any matter involving the

29 County deferred compensation plan.

30 [[* * *]]

31 (B) An active County employee who is a vested member of the

32 retirement system and the Merit System, and not a member

33 of a collective bargaining unit. A 3-year term for this

34 trustee ends on March 1 [[, 1999, and]] of every third year

35 [[thereafter]] after the trustee is confirmed by the Council.

36 (C) A retired County employee who is a member of the

37 retirement system. Before appointing this trustee, the

38 Executive must consider, and should select from, a list of 3

39 to 5 individuals recommended by the Montgomery County

40 Retired Employees' Association. The Executive must

41 notify the Council when nominating an individual not

42 recommended by the Association. A 3-year term for this

43 trustee ends on March 1 [[, 2000, and]] of every third year

44 [[thereafter]] after the trustee is confirmed by the Council.

45 (D) [[A representative]] Two representatives of the Council

46 who are knowledgeable in pensions, investments, or

47 financial matters. Before appointing [[this trustee]] each of

48 these trustees, the Executive must consider, and should

49 select from, a list of 3 to 5 individuals recommended by

50 the Council. A 3-year term for [[this trustee]] these

51 trustees ends on March 1 [[, 2000, and]] of every third year

52 [[thereafter]] after each trustee is confirmed by the

53 Council.

54 (E) [An] [~~Three~~] Two individuals knowledgeable in
 55 pensions, investments, or financial matters. [~~The~~
 56 Executive must not appoint a person who furnishes, or is
 57 employed by a firm that furnishes, to pension funds and
 58 other institutional investors the kind of investment services
 59 purchased by the Board.] Before nominating [this] these
 60 trustees, the Executive must consider, and should select
 61 from, individuals recommended by citizens or countywide
 62 citizens' groups. An individual recommended by a
 63 citizens' group need not be a member of the group. The
 64 Executive must notify the Council when nominating an
 65 individual not recommended by a citizens' group. A 3-
 66 year term for [this] these trustees ends on March 1 [~~,~~]
 67 [1999, and] of every third year [thereafter] after each
 68 trustee[']s appointment]] is confirmed by the Council.

* * *

70 (5) The Executive must not appoint as a trustee any person who
 71 furnishes, or is employed by a firm that furnishes, to pension
 72 funds and other institutional investors the kind of investment
 73 services purchased by the Board.

74 **33-141. Definitions**

* * *

76 (b) Collectively Bargained Plan means a plan established under Section 33-
 77 146B.

78 [(b)](c) * * *

79 [(c)](d) * * *

80 [(d)] (e) * * *

81 [(e)] (f) * * *

82 [(f)] (g) * * *

83 **33-146B. Collectively Bargained Plans.**

84 The County may [[sponsor]] establish and maintain one or more additional
85 deferred compensation plans for employees covered by a collective bargaining
86 agreement. In the case of any collectively bargained plan:

87 (a) The [[employee]] certified representative must assume the duties and
88 responsibilities of the Board, except for the requirements of Section 33-
89 61(a), and the [[employee]] certified representative must assume the
90 duties and responsibilities of the Chief Administrative Officer and the
91 County under this Article.

92 (b) The Board, Chief Administrative Officer, and County have no fiduciary
93 or other responsibility for a collectively bargained plan except as
94 required by federal law, including any regulation, ruling, or other
95 guidance issued under that law.

96 (c) The [[employee]] certified representative must indemnify the County
97 and provide fiduciary liability insurance protecting itself and the County
98 in an amount agreed to by the County and [[employee]] certified
99 representative through collective bargaining.

100 (d) The officers of the [[employee]] certified representative who have direct
101 responsibility for plan administration, and the trustees of any trust
102 established under this Section, must:

103 (1) provide financial disclosure to the participants of the plan in a
104 form and manner [[similar to]] at least as stringent as that
105 required of the Board; and

106 (2) establish and conform to a code of ethical conduct, approved by
107 participants in the plan, [[similar to]] at least as stringent as that

108 required of the Board.

- 109 (e) The collectively bargained plan, and its separate trust, custodial
110 account or annuity contract, must meet, in form and operation, all
111 applicable requirements of the Internal Revenue Code and any
112 regulation, ruling, or other guidance issued under that law.
- 113 [[f) The plan must allow each participant annually, during a certain time
114 period, to transfer assets from this plan to any other plan for which the
115 participant is eligible, or from that plan to this plan.]]
- 116 [[g) Within two months after any plan begins operations under this Section,
117 and by January 15 of each year thereafter, the plan trustees must
118 transmit to the Chief Administrative Officer and Council a report that
119 documents and certifies that the trustees, as fiduciaries of the plan:
- 120 (1) are in compliance with the prudence and duty of loyalty standard
121 of care codified in Section 33-61C, the prohibited transaction
122 provisions in Section 33-60(e), and the self-dealing prohibitions
123 in Section 33-61D;
- 124 (2) have met their obligations to obtain fiduciary liability insurance,
125 retain a trustee acceptable to the County, and retain an
126 independent investment consultant; and
- 127 (3) have retained an independent auditor that has provided (or, in the
128 case of the first report, will provide) an annual report to the
129 Council, as the Board does for the County Plan, and have fully
130 addressed all issues raised in each audit report;
- 131 (4) have retained all providers and contractors for the plan (for any
132 transaction greater than \$25,000) through an open competitive
133 bidding process; and

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(5) included in the audit report a list of any rebates, and any direct or indirect compensation, received by the plan or any trustee or fiduciary.]]

[[h) The Chief Administrative Officer must report by January 15 of each year to the Council:

- (1) specific data on fund options and fees in any collectively bargained plan and how they compare to the County Plan; and
- (2) on coordination between the County Plan and any collectively bargained plan on contribution limits, tax information, and provisions such as normal retirement age, catch-up rules, and excess deferrals, that are essential to avoid violations of the Internal Revenue Code.]]

(f) Any trustee or fiduciary of a collectively bargained plan must not accept any direct or indirect compensation from any person who does business with that plan.

Sec. 2. Expedited 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 when it becomes law.

Approved:



12/9/04

George Leventhal, Vice President, County Council

Date

Approved:



12/15/04

Douglas M. Duncan, County Executive

Date

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

160

161

Mary A. Edgar
Mary A. Edgar, CMC, Clerk of the Council

12/17/04
Date