

Expedited Bill No. 54-10
Concerning: Retirement – Investments
Revised: November 22, 2010 Draft No. 2
Introduced: October 26, 2010
Enacted: November 30, 2010
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) require an automatic distribution for account balances of \$1,000 or less in the Guaranteed Retirement Income Plan and the Retirement Savings Plan;
- (2) permit rollover contributions into the Retirement Savings Plan from any eligible retirement plan;
- (3) permit additional investment choices in the Retirement Savings Plan;
- (4) permit additional investments in the Deferred Compensation Plan; and
- (5) generally amend the law regarding the retirement and deferred compensation plans.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-44, 33-113, 33-116, 33-120, 33-121, 33-125 and 33-145

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:

28 (r) *Rollover contributions* means that portion of a participant's account
 29 balances in the retirement savings plan that is attributable to any
 30 assets transferred or rolled over to the retirement savings plan from
 31 another [qualified pension or profit sharing plan] eligible retirement
 32 plan as defined in [under] the Internal Revenue Code Section 402(c).
 33 No after-tax contributions may be transferred or rolled over into the
 34 retirement savings plan.

35 * * *

36 **33-116. Participant Contributions**

37 * * *

38 (c) *Participant rollover contributions.* With the Chief Administrative
 39 Officer's written consent, a participant may transfer or rollover to the
 40 retirement savings plan any interest in any other [qualified] eligible
 41 retirement plan [under] as defined in [the] Internal Revenue Code
 42 Section 402(c).

43 * * *

44 **Section 33-120. Distribution of Benefit**

45 * * *

46 (h) *Benefit distribution date.*

47 (1) The Chief Administrative Officer must pay a participant who
 48 retires by reason of normal, deferred, or disability retirement
 49 the participant's account balances in the retirement savings plan.
 50 The distribution must begin as soon as administratively feasible
 51 after the participant's retirement and after the date elected by
 52 the participant, but no later than April 1 following the later of
 53 the calendar year in which the participant attains age 70½, or

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

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

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

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

77 (4) Notwithstanding any other provision of this subsection, [[if a
78 participant terminates employment with an]] a participant's
79 account balance of \$1000 or less[[, the account balance]] must
80 be automatically distributed in a lump sum as soon as

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

83 * * *

84 **33-121. Investment of contributions to the retirement savings plan.**

85 (a) *Investment [funds] options.*

86 (1) A participant must direct that contributions allocated to the
 87 participant's retirement accounts be invested in one or more of
 88 the investment [funds] options selected by the Board. The
 89 investment [fund] options selected by the Board must conform
 90 to all applicable requirements of the Internal Revenue Code.

91 (2) A participant must allocate contributions among the investment
 92 [funds] options only in percentages of the value of the account
 93 balances of the participant, as determined by the Board.

94 (3) A participant's direction of investment must remain in effect
 95 until the participant changes the direction. If a participant does
 96 not provide a valid direction of investment, the account
 97 balances of the participant, to the extent they are not governed
 98 by a valid direction of investment, must be invested in an
 99 appropriate investment option selected by the Board.

100 (b) *Change of allocation.*

101 (1) A participant or former participant may change the allocation of
 102 the participant's account balances among the investment [funds]
 103 options [by giving written notice of the requested change at a
 104 time] in accordance with procedures set by the Board. The
 105 changes [will] must take effect on the date or dates set by the
 106 Board.

107 (2) A participant or former participant may designate that the
108 change of the allocation among investment [funds] options is
109 effective as to one or both of:

110 (A) the participant's or former participant's account balances
111 on the effective date of the change; and

112 (B) the participant's contributions and County contributions
113 made after the effective date of the change.

114 (c) *Gains and losses.* The Board must maintain [pro rata accounts of a
115 commingled fund or] separate and distinct accounts for each
116 participant. [If the Board establishes pro rata accounts, the Board may
117 allocate realized and unrealized gains and losses, using the ratio that
118 the portion of the account balance of a participant allocated to an
119 investment fund bears to the portion of the account balances of all
120 participants allocated to the investment fund as of the previous
121 valuation date. If the Board establishes separate and distinct accounts,
122 the] The Board must determine the value of an individual account
123 solely with respect to the activity within each participant's account and
124 unrealized gains to a participant's account. [The Chief Administrative
125 Officer may deduct operating expenses from the realized and
126 unrealized gains before allocation.]

127 * * *

128 **33-125. Powers and duties under the retirement savings plan.**

129 * * *

130 (a) *General*

131 * * *

132 (2) The Board must invest and reinvest, or cause to be invested or
133 reinvested, the principal and income of the retirement savings

134 plan and keep the same invested without distinction between
 135 principal and income. The Board has the exclusive authority to
 136 manage the assets of the retirement savings plan, but must, to
 137 the extent directed by participants, invest each participant's
 138 accounts in the manner directed by the participant. [The Board
 139 may make or permit an investment manager to make individual
 140 investment selections with respect to any investments described
 141 in this section.] The Board may select mutual funds,
 142 commingled funds, or any combination of [funds] other
 143 investments [to provide] as investment options for the
 144 retirement savings plan.

145 * * *

146 (c) *Authorized investments.*

- 147 (1) The Board may select or remove any investment option for the
 148 retirement savings plan that the Board finds prudent under the
 149 policies set by the Board. [The Board may invest or permit an
 150 investment manager to invest the assets of the retirement
 151 savings plan in any investment it considers prudent within the
 152 policies set by the Board. The Board must use an investment
 153 manager except when making an investment in any pooled
 154 investment vehicle, including any combined, common or
 155 commingled trust fund, retirement or annuity contract, mutual
 156 fund, investment company, association, or business trust. The
 157 Board also may authorize the Executive Director to make
 158 investments in pooled investment vehicles and transition assets
 159 from one investment manager to another investment manager as
 160 the Board specifies.]

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

164 [(3) The board or any investment manager must not invest any
 165 retirement savings plan asset in any bond, note, or debt
 166 instrument issued by:

167 (A) Montgomery County;

168 (B) any political subdivision within Montgomery County;

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

171 (D) any agency supported by bond issues underwritten by
 172 Montgomery County.

173 However, the Board and any investment manager may invest plan
 174 assets in such bonds, notes, and debt instruments if held indirectly
 175 through a mutual fund, subject to any limit in the Internal Revenue
 176 Code.]

177 * * *

178 (f) *[Investment management agreements.*

179 (1) The Board may appoint investment managers to manage,
 180 acquire, or dispose of all or some of the assets of the retirement
 181 savings plan. The Board may dismiss any manager the Board
 182 appoints. The fees charged by any manager are expenses of the
 183 retirement savings plan.

184 (2) In any contract with an investment manager, the Board must
 185 identify the assets that are subject to the contract. The Board
 186 may give an investment manager the right to invest the assets of
 187 the retirement savings plan specified in the contract without

188 prior notice to or approval by the Board. The Board may limit
 189 the investment of a specified portion of the retirement savings
 190 plan to a certain type of property. If a contract with an
 191 investment manager only applies to a portion of the assets of
 192 the retirement savings plan and specifies the type of property to
 193 be invested in, the manager must achieve diversification within
 194 the specified category of property, but is not responsible for
 195 diversification of investments of the entire retirement savings
 196 plan. The Board may delegate to the investment manager any
 197 power or discretion conferred on the Board under this Division
 198 and may provide that the investment manager must have
 199 custody and control of certain assets of the retirement savings
 200 plan.

- 201 (3) The Board must monitor the performance of any investment
 202 manager. Monitoring may include any tests or analyses that the
 203 Board considers prudent in the circumstances.]

204 The Board must monitor the performance of investment options.
 205 Monitoring may include any tests or analyses that the Board finds
 206 prudent.

207 **33-145. Powers and duties of the board.**

208 * * *

209 (d) *Authorized investments.*

- 210 (1) The Board must invest each participant's account in one or
 211 more of the Board-designated investment options in the manner
 212 directed by the participant.
- 213 (2) The Board may select or remove any investment options for the
 214 deferred compensation plan that the Board [considers] finds

215 prudent [within] under the policies set by the Board [, except
216 real property investments described in this subsection].

217 (3) [The Board must not invest in real property unless the
218 investment is a pooled investment in which the Board has no
219 power or right to manage the real estate property. The pooled
220 investment must not invest more than 10 percent of its assets in
221 real property located in Montgomery County. The 10-percent
222 limitation applies to the market value of the total assets on the
223 preceding June 30. If the market value of investments in real
224 property in the County exceeds the 10-percent limitation as a
225 result of market forces, the Board, or the investment manager
226 without direction from the Board, is not required to sell an
227 existing equity investment. The Board may obtain valuations
228 and take appropriate steps to comply with the 10-percent
229 limitation.]

230 [(4)] If an investment through any combined, common, or
231 commingled trust fund exists, the declaration of trust of that
232 fund is a part of the deferred compensation plan trust.

233 [(5)] The Board and any investment manager must not invest the
234 deferred compensation plan assets in any bonds, notes, or debt
235 instruments issued by:

236 (A) Montgomery County;

237 (B) a political subdivision in Montgomery County;

238 (C) an agency that receives support or funds from taxes
239 levied by the County Council; or

240 (D) an agency supported by bond issues underwritten by
241 Montgomery County.

242 The Board and any investment manager may invest plan assets in
243 bonds, notes, and debt instruments of these entities if the investment is
244 held indirectly through a mutual fund and complies with any limit in
245 the Internal Revenue Code.]

246 * * *

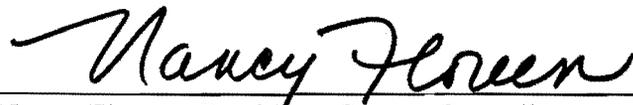
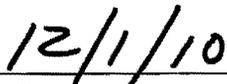
247 (g) [Investment management agreements. Section 33-60(g) (Investment
248 management agreements) applies to the Board with respect to its
249 responsibilities under the deferred compensation plan.] The Board
250 must monitor the performance of each investment option. Monitoring
251 may include any tests or analyses that the Board finds prudent.

252 * * *

253 **Sec. 2. Effective Date.**

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

257 *Approved:*

258 
259 _____ 
Nancy Floreen, President, County Council Date

260 *Approved:*

261 _____
Isiah Leggett, County Executive Date

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

263 _____
Linda M. Lauer, Clerk of the Council Date