

MEMORANDUM

January 31, 2014

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Expedited Bill 15-14, Personnel – Board of Investment Trustees – Consolidated Retiree Health Benefits Trust Board of Trustees – Investments – Amendments

Expedited Bill 15-14, Personnel – Board of Investment Trustees – Consolidated Retiree Health Benefits Trust Board of Trustees – Investments - Amendments, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on February 4. A public hearing is tentatively scheduled for February 25 at 1:30 p.m.

Bill 15-14 would:

- (1) repeal the requirement that investments made by the Board of Investment Trustees and the Consolidated Retiree Health Benefits Board of Trustees retain U.S. indicia of ownership;
- (2) repeal the prohibition on investments in County related bonds by the Board of Investment Trustees and the Consolidated Retiree Health Benefits Board of Trustees;
- (3) repeal the restriction on real estate investment by the Consolidated Retiree Health Benefits Board of Trustees; and
- (4) generally amend the law regarding the Employees' Retirement System, Retirement Savings Plan, the Deferred Compensation Plan, and the Consolidated Retiree Health Benefits Trust Fund.

Background

The Boards of the Montgomery County Employee Retirement Plans and the Montgomery County Consolidated Retiree Health Benefits Trust are currently precluded from making investments maintaining indicia of ownership of assets outside the jurisdiction of the U.S. courts. Since investment opportunities are increasingly located outside of the United States, many without maintaining United States indicia of ownership within the jurisdiction of the courts of the U.S, current law constrains the pool of investments available to the Employee Retirement Plans and Consolidated Retiree Health Benefits Trust. This restriction may unnecessarily limit the returns that can be generated by these entities.

Restricting the Boards from making these investments may hinder their ability to fulfill their fiduciary duty. Similarly, the Employee Retirement Plans and Consolidated Retiree Health Benefits Trust are currently prohibited from investing in County-related bonds, which precludes participation in investments with certain investment managers. The Consolidated Retiree Health Benefits Trust is also prohibited from making investments in real estate funds if more than 10% of such fund's assets comprise real estate in Montgomery County; this precludes participation in investments with a wide variety of real estate investment managers.

The goal of the Bill is to provide the Boards with the flexibility to make investments with indicia of ownership outside of the United States courts, investments in County-related bonds, and County-related real estate, as consistent with their fiduciary duties.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 15-14
 Concerning: Personnel - Board of
Investment Trustees - Consolidated
Retiree Health Benefits Trust Board
of Trustees - Investments -
Amendments
 Revised: January 16, 2014 Draft No. 1
 Introduced: February 4, 2014
 Expires: August 4, 2015
 Enacted: _____
 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) repeal the requirement that investments made by the Board of Investment Trustees and the Consolidated Retiree Health Benefits Board of Trustees retain U.S. indicia of ownership;
- (2) repeal the prohibition on investments in County related bonds by the Board of Investment Trustees and the Consolidated Retiree Health Benefits Board of Trustees;
- (3) repeal the restriction on real estate investment by the Consolidated Retiree Health Benefits Board of Trustees; and
- (4) generally amend the law regarding the Employees' Retirement System, Retirement Savings Plan, the Deferred Compensation Plan, and the Consolidated Retiree Health Benefits Trust Fund.

By amending

Montgomery County Code
 Chapter 33, Personnel and Human Resources
 Sections 33-59, 33-60, 33-125, 33-145, 33-160 and 33-162

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 (D) Two individuals knowledgeable in pensions, investments,
29 or financial matters. Before nominating these trustees, the
30 Executive must consider, and should select from,
31 individuals recommended by citizens or countywide
32 citizens' groups. An individual recommended by a
33 citizens' group need not be a member of the group. The
34 Executive must notify the Council when nominating an
35 individual not recommended by a citizens' group. A 3-
36 year term for these trustees ends on March 1 of every
37 third year after each trustee is confirmed by the Council.

38 (5) A trustee appointed under paragraph [(3)] (4) continues to serve
39 after the trustee's term ends until the Council confirms a
40 successor, but the term for each position is not affected by any
41 holdover. A trustee who, after appointment and before the end
42 of a term, is no longer qualified for the trustee's position is
43 removed from the Board by operation of law.

44 * * *

45 (l) In this Section, "retirement system" means the Employees'
46 Retirement System, [or] the Retirement Savings Plan, or the Deferred
47 Compensation Plan under Article IX.

48 **33-60. The board of investment trustees-Powers and duties.**

49 * * *

50 (b) *Agents for transfer of property.*

51 * * *

52 [(6) Except as authorized by executive regulation adopted under
53 method (3) that is substantially equivalent to federal ERISA
54 regulations on maintenance of indicia of ownership of plan

55 assets, the board must maintain the indicia of ownership of the
56 assets of the retirement system within the jurisdiction of the
57 district courts of the United States.]

58 (c) *Authorized investments.*

59 * * *

60 [(3) The board or an investment manager must not invest any
61 retirement system asset in any bond, note, or debt instrument
62 issued by:

63 (A) The County;

64 (B) Any political subdivision within the County;

65 (C) Any agency supported or financed wholly or partly by
66 taxes levied by the County Council; or

67 (D) Any agency supported by bond issues underwritten by
68 the County.]

69 * * *

70 **33-125. Powers and duties of the Board.**

71 * * *

72 (b) *Agents for transfer of property.*

73 * * *

74 [(6) The Board must maintain the indicia of ownership of the assets
75 of the retirement savings plan within the jurisdiction of the
76 district courts of the United States.]

77 * * *

78 **33-145. Powers and duties of the board.**

79 * * *

80 (c) *Agents for transfer of property.*

81 * * *

82 [(6) The Board must maintain the indicia of ownership of the
 83 assets of the deferred compensation plan within the jurisdiction
 84 of the district courts of the United States, except as authorized
 85 in regulations adopted under method (3) that are substantially
 86 equivalent to federal regulations under the Employee
 87 Retirement and Income Security Act (ERISA) regarding indicia
 88 of ownership of plan assets.]

89 * * *

90 **33-160. Board of Trustees.**

91 * * *

92 (f) *Officers.* The Board must select a chair, vice chair, and secretary
 93 from the Board's members.

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

98 (2) The vice chair must perform the duties and exercise the powers
 99 of the chair when the chair is [absent from the County or
 100 disabled] unavailable, or the Board determines is otherwise
 101 unable to perform the duties of the chair.

102 (3) The secretary must record the proceedings and actions of the
 103 Board and may certify a document or action of the Board. A
 104 person may rely in good faith on the secretary's certification as
 105 proof of the document or action.

106 * * *

107 **33-162. Trust Fund management.**

108 * * *

109 (c) *Transfer Agents.*

110 * * *

111 [(6) The Board must maintain the indicia of ownership of the Trust
112 Fund's assets within the jurisdiction of the United States federal
113 courts, except as authorized in regulations that the Executive
114 adopts under method (2). Those regulations must be
115 substantially equivalent to federal regulations under the
116 Employee Retirement Income Security Act (ERISA) regarding
117 indicia of ownership of plan assets.]

118 * * *

119 (d) *Authorized investments.*

120 * * *

121 [(2) The Board or any investment manager must not invest in real
122 property, including securities based on ownership or other
123 interests in real property, unless the investment is a pooled
124 investment in which the Board has no power to manage the real
125 property. A pooled investment must not invest more than 10
126 percent of its assets in real property located in the County. This
127 10 percent limit applies to the market value of the total assets on
128 the preceding June 30. If the market value of investments in real
129 property in the County exceeds the 10-percent limit as a result of
130 market forces, the Board or the investment manager need not sell
131 an existing equity investment. The Board may obtain valuations
132 and take appropriate steps to comply with this 10-percent limit.]

133 [(3)] (2) * * *

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

- 136 (A) the County;
- 137 (B) a political subdivision in the County; or
- 138 (C) an agency supported by bond issues underwritten by the
- 139 County.

140 However, the Board or any investment manager may invest plan assets
 141 in bonds, notes, and debt instruments of any of these entities if the
 142 investment is held indirectly through a mutual fund or other pooled,
 143 investment vehicle and complies with any limit in the Internal Revenue
 144 Code.]

145 [(5)] (3) * * *

146 **Sec. 2. Expedited Effective Date.**

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

150 *Approved:*

151 Craig L. Rice, President, County Council Date

152 *Approved:*

153 Isiah Leggett, County Executive Date

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

155 Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 15-14

*Personnel - Board of Investment Trustees - Consolidated Retiree Health Benefits Trust
Board of Trustees – Investments - Amendments*

DESCRIPTION: The Bill would repeal the requirement that investments made by the Board of Investment Trustees for the Montgomery County Employee Retirement Plans and the Board of Trustees for the Montgomery County Consolidated Retiree Health Benefits Trust maintain the indicia of ownership of assets within the jurisdiction of the courts of the U.S. The bill would also repeal other categorical restrictions on investments, including County-related bonds and County-related real estate, and make technical changes.

PROBLEM: The Boards of the Montgomery County Employee Retirement Plans and the Montgomery County Consolidated Retiree Health Benefits Trust are currently precluded from making investments maintaining indicia of ownership of assets outside the jurisdiction of the U.S. courts. Since investment opportunities are increasingly located outside of the United States, many without maintaining United States indicia of ownership within the jurisdiction of the courts of the U.S, current law constrains the pool of investments available to the Employee Retirement Plans and Consolidated Retiree Health Benefits Trust. This restriction may unnecessarily limit the returns that can be generated by these entities. Restricting the Boards from making these investments hinders their ability to fulfill their fiduciary duty, as the Uniform Management of Public Employee Retirement Systems Act (UMPERSA) mandates that all categorical restrictions on types of investments be eliminated. Similarly, the Employee Retirement Plans and Consolidated Retiree Health Benefits Trust are currently prohibited from investing in County-related bonds, which precludes participation in investments with certain investment managers. The Consolidated Retiree Health Benefits Trust is also prohibited from making investments in real estate funds if more than 10% of such fund's assets comprise real estate in Montgomery County; this precludes participation in investments with a wide variety of real estate investment managers.

**GOALS AND
OBJECTIVES:**

The goal of the Bill is to provide the Boards with the flexibility to make investments with indicia of ownership outside of the United States courts, investments in County-related bonds, and County-related real estate, as consistent with their fiduciary duties.

The Bill also makes other clarifying changes such as providing that a retiree member of the Board of Investment Trustees may be a member of the Deferred Compensation Plan and that the vice chair of the Board of Trustees for the Consolidated Retiree Health Benefits Trust assumes the duties of the chair when the chair is unavailable.

COORDINATION: The Board of Investment Trustees, Board of Trustees, and the County Attorney's Office have reviewed this Bill.

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: Department of Finance

EVALUATION: N/A

EXPERIENCE ELSEWHERE: Numerous other governmental retirement plans, including the State of Maryland Retirement and Pension System, Virginia Retirement System and D.C. Retirement System, have no similar requirement that investments maintain the indicia of ownership of assets within the jurisdiction of the U.S. courts. Neither the Maryland State Retirement and Pension System nor Virginia Retirement System have a prohibition against investing in State-related bonds.

SOURCE OF INFORMATION: Linda Herman and Bradley Stelzer, Board of Investment Trustees, Board of Trustees
Amy Moskowitz, Office of the County Attorney
Morgan Lewis, outside legal counsel for the Board of Investment Trustees

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

December 19, 2013

TO: Craig Rice, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Expedited Bill to Amend the County's Retirement Law

I am attaching for the Council's consideration a bill that would amend the County's law to allow the Employee Retirement Plans and Consolidated Retiree Health Benefits Trust to delete a provision which requires the Boards overseeing the investment of the Trust Funds to maintain the indicia of ownership of assets within the jurisdiction of the district courts of the United States. The bill would also delete other categorical restrictions on investments and make technical changes.

The County Code currently requires the Employee Retirement Plans (ERP) and Consolidated Retiree Health Benefits Trust (CRHBT) to maintain the indicia of ownership of assets within the jurisdiction of the courts of the United States. (Sections 33-60, 33-125, 33-145, and 33-162). These provisions of the County Code mirror the Employee Retirement Income Security Act (ERISA) which governs private retirement plans, but not the ERP. The Board of Investment Trustees for the ERP and the Board of Trustees for the CRHBT (collectively, "Boards") have been advised by outside legal counsel that it is viewed as an acceptable practice by plans subject to ERISA to make investments with indicia of ownership outside of the U.S. provided that documents relating to the investment are held in the U.S. under the untested theory that this satisfies the requirement that the courts of the U.S. maintain jurisdiction of the assets. The outside counsel for the Boards has advised them that a better approach for the ERP and CRHBT would be to remove the requirement that investments maintain U.S. indicia of ownership rather than to rely on "acceptable practice." Outside legal counsel also noted that such a provision is unusual in governmental retirement plans. Numerous other governmental retirement plans, including the Maryland State Retirement and Pension System, Virginia Retirement System, and D.C. Retirement Board, have no similar requirement that investments maintain the indicia of ownership of assets within the jurisdiction of the U.S. courts.

Due to the increasingly global nature of investment opportunities, the bill under consideration is important, since it would remove the requirement that investments

Craig Rice, Council President
October 19, 2013
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for the ERP and CRHBT maintain indicia of ownership of assets within the jurisdiction of the courts of the U.S. and allow the Boards to pursue investments with favorable return potential without doubt that the “acceptable practice” continues to be sufficient. The changes included in the bill also serve to improve the Boards’ ability to perform their fiduciary duty, as the Uniform Management of Public Employee Retirement Systems Act (UMPERSA) mandates that all categorical restrictions on types of investments be eliminated due to the limitations these restrictions place on the trustee’s ability to perform their fiduciary duties in the investment of retirement plan funds and the potential loss of investment income. The Council previously took action in Bill 27-07 to eliminate other categorical restrictions on investments from the Code.

The County Code also currently contains categorical restrictions on the ERP’s and CRHBT’s ability to invest in County-related bonds (33-60 and 33-162) and the CRHBT’s ability to make real estate fund investments if more than 10% of such fund’s investments are located in the County (33-162) (“County-related real estate investments”). The prohibition against investing in County-related bonds cannot be adhered to by certain investment managers as their fiduciary duty requires them to pursue the best investment opportunities on a risk/return basis without restriction. This restriction limits the Boards’ ability to perform their fiduciary duty and, therefore, to adhere to UMPERSA. It is important to note that the Boards currently do not have authority to make direct investments in securities, as 33-60(c)(1) and 33-162(d)(1) require that all investments be made through an investment manager. Under the proposed legislation, there would be no changes to the requirement to use an investment manager, meaning that only investment managers – not the Boards directly – could purchase County-related bonds. Other local jurisdictions such as Virginia and Maryland do not restrict investment by their retirement systems in State-related bonds. Also, prior legislation removed the restriction on the Board of Investment Trustees’ ability to make County-related real estate investments for the ERP; removing the same restriction for the Board of Trustees for the CRHBT brings parity to the Boards’ ability to pursue real estate investments.

The Bill also makes several other technical changes such as clarifying that a retiree member of the Board of Investment Trustees may be a member of the Deferred Compensation Plan and that the vice chair of the Board of Trustees for the Consolidated Retiree Health Benefits Trust assumes the duties of the chair when the chair is unavailable.

Thank you for your prompt consideration of this bill.

IL:lh
Attachments

Fiscal Impact Statement

Council Bill XX-13

Board of Investment Trustees – County Retirement Plans
Board of Trustees – Consolidated Retiree Health Benefits Trust

1. Legislative Summary.

This bill would amend the Montgomery County Code by removing requirements that investments made by the Boards overseeing the County's Retirement Plans and the Consolidated Retiree Health Benefits Trust (CRHBT) retain U.S. indicia of ownership. The bill would also delete other categorical restrictions on investments, including County-related bonds and real estate located in the County, and make technical changes.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Implementation of this bill would not impact County revenue. County expenditures could be impacted if the bill resulted in the ability to generate higher investment returns, which would reduce the required County contribution to the Retirement Plans and the CRHBT. The extent or degree of the impact is unquantifiable. The assumption is that there is an opportunity cost to limiting available investment options.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Not applicable

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable

6. An estimate of the staff time needed to implement the bill.

Not applicable

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable

8. An estimate of costs when an additional appropriation is needed.

Not applicable

9. A description of any variable that could affect revenue and cost estimates.

Not applicable

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable

11. If a bill is likely to have no fiscal impact, why that is the case.

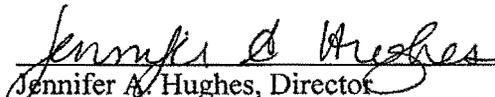
Implementation of this bill would not impact County revenue. County expenditures could be impacted if the bill resulted in the ability to generate higher investment returns, which would reduce the required County contribution to the Retirement Plans and the CRHBT. While the extent or degree of the impact is unquantifiable, it is believed that there is an opportunity cost to limiting available investment options.

12. Other fiscal impacts or comments.

Not applicable

13. The following contributed to and concurred with this analysis:

Linda Herman and Bradley Stelzer, Montgomery County Employee Retirement Plans; and
Corey Orlosky, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

12/12/13
Date

Economic Impact Statement
Bill xx-13
Board of Investment Trustees – County Retirement Plans
Board of Trustees – Consolidated Retiree Health Benefits Trust

Background:

This legislation would:

- amend the requirements of the County retiree member of the Board of Investment Trustees.
- amend the requirement that investments made by the Board of Investment Trustees must retain U.S. indicia of ownership.
- amend the requirement that investments made by the Consolidated Retiree Health Benefits Board of Trustees must retain U.S. indicia of ownership.
- amend the Employees' Retirement System to delete the prohibition of investments in County related bonds.
- amend the Consolidated Retiree Health Benefits Trust to delete the prohibition of investment in Montgomery County real estate.
- amend the Consolidated Retiree Health Benefits Trust to delete the prohibition of investments in County related bonds.
- generally amend the law regarding the Employees' Retirement System, Retirement Savings Plan and the Deferred Compensation Plan.
- generally amend the law regarding the Consolidated Retiree Health Benefits Trust Fund.

1. The sources of information, assumptions, and methodologies used.

The source of information is from the staff of the Montgomery County Employee Retirement Plans. Assumptions and methodologies are not applicable.

2. A description of any variable that could affect the economic impact estimates.

Not applicable. Bill xx-13 would have no economic impact because the proposed legislation is a technical change that removes the requirement that investments made by the Board of Investment Trustees for the County's Retirement Plans and the Board of Trustees for the Consolidated Retiree Health Benefits Trust retain a U.S. indicia of ownership. The Bill also deletes other categorical restrictions on investments, including County-related bonds and real estate located in Montgomery County. The Bill also makes other technical changes relating to membership of the Board of Investment Trustees and duties of officers on the Board of Trustees. No economic impact results from these technical changes since they do not affect employment, spending, savings or other economic variables.

Economic Impact Statement
Bill xx-13
Board of Investment Trustees – County Retirement Plans
Board of Trustees – Consolidated Retiree Health Benefits Trust

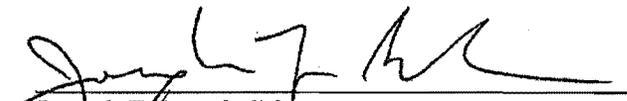
3. **The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

Not applicable. See #2 above. Bill xx-13 would have no economic impact.

4. **If a Bill is likely to have no economic impact, why is that the case?**

See #2 above. The proposed legislation removes the requirement that investments made by the Board of Investment Trustees for the County's Retirement Plans and the Board of Trustees for the Consolidated Retiree Health Benefits Trust retain a U.S. indicia of ownership. The Bill also deletes other categorical restrictions on investments, including County-related bonds and real estate located in Montgomery County. The legislation also makes other technical changes relating to membership of the Board of Investment Trustees and duties of officers on the Board of Trustees. No economic impact results from these changes.

5. **The following contributed to and concurred with this analysis:** Linda Herman and Brad Stelzer of the Board of Investment Trustees and David Platt and Rob Hagedoorn, Finance;



Joseph F. Beach, Director
Department of Finance

12/5/13
Date